

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of PPL Electric Utilities	:	
Corporation for Approval of	:	A-2017-2629534
Intercompany Restructuring	:	

**RECOMMENDED DECISION**

Before  
Benjamin J. Myers

Joel H. Cheskis  
Administrative Law Judges

**INTRODUCTION**

This decision recommends that the application for intercompany restructuring be denied in its entirety because the application does not provide substantial affirmative public benefits as required by applicable law.

**HISTORY OF THE PROCEEDING**

On October 16, 2017, PPL Electric Utilities Corporation (PPL or PPL EU) filed an application for approval of intercompany restructuring (application) with the Pennsylvania Public Utility Commission (Commission) seeking approval for a proposed corporate restructure. This filing was made pursuant to Section 1102 of the Public Utility Code, 66 Pa.C.S. § 1102, and Section 69.901 of the Commission's regulations, 52 Pa. Code § 69.901.

Notice of this application was published in the Pennsylvania Bulletin on October 28, 2017 and directed that formal protests and petitions to intervene must be filed with the Commission on or before November 13, 2017.

On November 21, 2017, Steven C. Gray, Esquire, entered his appearance in this matter on behalf of the Office of Small Business Advocate (OSBA). On this same date, OSBA filed a Notice of Intervention and Protest, Public Statement and Verification with the Commission intervening in this matter and protesting elements of PPL's proposed corporate restructure.

On November 22, 2017, Aron J. Beatty, Esquire, entered his appearance on behalf of the Office of Consumer Advocate (OCA). On this same date, OCA filed a Notice of Intervention and Public Statement in this matter.

On December 1, 2017, Gina L. Miller, Esquire, entered her appearance in this matter on behalf of the Commission's Bureau of Investigation and Enforcement (I&E).

On December 6, 2017, the Commission issued a hearing notice establishing an initial in-person hearing for this matter for Monday, January 22, 2018 at 2:00 p.m. A corrected hearing notice was issued on December 7, 2017, changing the hearing from an initial in-person hearing to a prehearing conference.

On December 15, 2017, a prehearing conference order was issued which outlined various prehearing procedures including those relating to the content and filing of prehearing memoranda on or before January 12, 2018. Pursuant to that order, each of the parties filed a prehearing memorandum on January 12, 2018 outlining their various positions including the conduct of discovery, a litigation timeline and the identification of witnesses.

A prehearing conference was conducted as scheduled on January 22, 2018 at 2:00 p.m. in Hearing Room 4 at the Commission's offices in Harrisburg. Present were counsel for PPL, OSBA, OCA and I&E. During the prehearing conference, issues relating to statutory deadlines, modifications to the Commission's rules of discovery and a litigation schedule were discussed. On January 24, 2018, a scheduling order was issued memorializing the matters discussed and resolved at the prehearing conference, including modifications to the Commission's discovery rules and a litigation schedule.

Pursuant to that litigation schedule the parties submitted the following pre-served testimony:

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

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

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

On May 29, 2018, the parties indicated that they had agreed to waive cross examination of all witnesses and to admit evidence into the record by written stipulation. This request was granted and the evidentiary hearing scheduled for May 30, 2018 was cancelled.

On June 13, 2018, PPL and OSBA filed a stipulation for the admission of evidence. The stipulation requested admission into the record of: PPL direct testimony; PPL rebuttal testimony; OSBA direct testimony; OSBA Exhibits IEc-1 and IEc-2; PPL's application; and PPL Exhibit No. 1-A. This stipulation will be granted as part of the ordering paragraphs below. The parties will be required to provide two copies of all documents referenced in the stipulation to the Commission's Secretary's Bureau for inclusion in the official record.

On June 29, 2018, PPL and OSBA filed their main briefs in this matter. On July 13, 2018, PPL and OSBA filed their reply briefs. The record in this matter closed at that time. This matter is now ready for disposition. For the reasons discussed below, it is recommended that PPL's application for approval of intercompany restructuring be denied.

#### FINDINGS OF FACT

1. The Applicant in this case is PPL Electric Utilities Corporation.
2. On October 16, 2017, PPL filed an application for approval of intercompany restructuring with the Commission seeking approval for a proposed corporate restructure.

3. Under PPL's proposed restructuring, two new Delaware holding companies - PPL Subsidiary Holdings, LLC and PPL Energy Holdings, LLC - would be placed between PPL Corporation and several of its operating subsidiaries, including PPL EU. (PPL Exhibit No. 1, p. 2-3); (OSBA Statement No. 1, p. 2).

4. Under PPL's proposed corporate structure, PPL Subsidiary Holdings, LLC would be wholly owned by PPL Corporation; PPL Energy Holdings, LLC would be wholly owned by PPL Subsidiary Holdings, LLC; and PPL EU and certain other subsidiaries currently owned by PPL Corporation directly would be owned by PPL Energy Holdings, LLC. (PPL Exhibit No. 1, p. 2-3).

5. Under this proposed restructure, PPL Corporation would be positioned as a pure holding company. (PPL Statement No. 1, p. 4); See also, PPL Application Paragraph 18.

6. PPL Corporation would transfer all of its interests in PPL EU to PPL Subsidiary Holdings, LLC. (PPL Statement No. 1, p. 4).

7. PPL Subsidiary Holdings, LLC would then transfer all of its interests in PPL EU to PPL Energy Holdings, LLC. (PPL Statement No. 1, p. 4).

8. PPL Subsidiary Holdings, LLC or PPL Energy Holdings, LLC would then handle all of the regulatory and compliance matters of PPL EU. (PPL Statement No. 1, p. 4); See also, PPL Application Paragraph 18.

## DISCUSSION

### Description of the Application

In its application, PPL explained the nature and purpose of its proposed restructuring. PPL EU is a direct operating subsidiary of PPL Corporation which currently owns all of the shares of PPL EU directly. Under PPL's proposed restructuring, two new holding

companies, PPL Subsidiary Holdings, LLC and PPL Energy Holdings, LLC, would be placed between PPL Corporation and several of its operating subsidiaries, including PPL EU. Under PPL's proposed corporate structure, PPL Subsidiary Holdings, LLC would be wholly owned by PPL Corporation; PPL Energy Holdings, LLC would be wholly owned by PPL Subsidiary Holdings, LLC; and PPL EU and certain other subsidiaries currently owned by PPL Corporation directly would be owned by PPL Energy Holdings, LLC. PPL asserts that ultimately, PPL EU and all of its other regulated and non-regulated subsidiary companies would still be owned and controlled by PPL Corporation and this restructuring is intended to allow PPL Corporation to more effectively manage its intercompany cash flows. PPL Corporation would serve as a holding company with intercompany financing accomplished through the lower tier holding companies. PPL further asserted that the new structure would allow for more efficient operation of PPL Corporation's businesses to prudently manage its tax liabilities. (PPL Exhibit No. 1, p. 2-3); (PPL Statement No. 1, p. 4-5).

### Legal Standard

As noted above, PPL's application was filed pursuant to Section 1102 of the Public Utility Code. 66 Pa.C.S. § 1102 provides in relevant part:

(a) General rule. -- Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:

\*\*\*

(3) For any public utility or an affiliated interest of a public utility as defined in section 2101 (relating to definition of affiliated interest), except a common carrier by railroad subject to the Interstate Commerce Act, to acquire from, or to transfer to, any person or corporation, including a municipal corporation, by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service . . . .

Furthermore, 66 Pa.C.S. § 1103 provides in relevant part:

(a) General rule. -- Every application for a certificate of public convenience shall be made to the commission in writing, be verified by oath or affirmation, and be in such form, and contain such information, as the commission may require by its regulations. A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable. In every case, the commission shall make a finding or determination in writing, stating whether or not its approval is granted. Any holder of a certificate of public convenience, exercising the authority conferred by such certificate, shall be deemed to have waived any and all objections to the terms and conditions of such certificate.

The Pennsylvania Supreme Court has held that satisfying this standard requires the Commission to find that a proposed transaction would “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” City of York v. Pa. Pub. Util. Comm’n, 449 Pa. 136, 141, 295 A.2d 825, 828 (1972) (City of York). In addition, Section 1103(a) allows the Commission to impose upon its issuance of a certificate of public convenience “such conditions as it may deem to be just and reasonable.”

It is also noted that both parties referred to the Pennsylvania Supreme Court case in Popowsky v. Pa. Pub. Util. Comm’n, 594 Pa. 583, 937 A.2d 1040 (2007) (Popowsky), which provides precedent with respect to the affirmative public benefit standard. The Court held that when addressing the issue of affirmative public benefits:

In summary, as indicated in City of York, the appropriate legal framework requires a reviewing court to determine whether substantial evidence supports the Commission's finding that a merger will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. In conducting the underlying inquiry, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the PUC properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.

Id. at 66, 937 A.2d at 1057.

The Court found evidence of affirmative public benefits in the proposed merger between the parties in Popowsky:

Indeed, even from a lay perspective, bearing in mind today's technological advances affecting all segments of business and personal life, there is much force to the Commission's conclusion that a combination of Verizon's and MCI's assets and strengths has substantial potential to create an integrated infrastructure supporting delivery of innovative, high-speed data and video services via the fiber-optic network, as well as deployment of mobile devices freeing workers from fixed workstations.

Id. at 612, 937 A.2d at 1058.

PPL's application was also filed pursuant to Section 69.901 of the Commission's regulations. This regulation provides:

**69.901. Utility stock transfer under 66 Pa.C.S. § 1102(a)(3).**

(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).

(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.

(2) For purposes of this section, a controlling interest is an interest, held by a person or a group acting in concert, which enables the beneficial holders to control at least 20% of the voting interest in the utility or its parent, regardless of the remoteness of the transaction. In determining whether a controlling interest is present, voting power arising from a contingent right shall be disregarded.

\*\*\*

52 Pa. Code § 69.901.

There are also several Commission decisions that were discussed in this proceeding.

In Joint Application of Frontier Communications of Breezewood, Inc., et al. for Approval of Restructurings from Corporations to Limited Liability Companies, Docket No. A-310400F004, 2003 Pa. PUC LEXIS 323 (Order entered October 17, 2003) (Frontier), it was noted that the Commission has not required a demonstration of affirmative public benefit when evaluating internal organizations that do not result in a fundamental change in control.

In Application of Duquesne Light Company to Convert to a Limited Liability Company, Docket No. A-2017-2599375 (Order entered August 31, 2017) (Duquesne Light), the Commission reviewed and approved a proposed restructuring in the form of a conversion from a corporation to a limited liability company without requiring affirmative benefit or issuing a certificate pursuant to Section 1102 (a)(3) where there was no change in the utility's management, finances or ownership.

In Application of Verizon North Inc. for any Approvals required under the Public Utility Code for Transactions related to the Restructuring of the Company to a Pennsylvania-

only Operation and Notice of an Affiliate Transaction, Docket No. A-2009-2111330, 2009 Pa. PUC LEXIS 2341 (Order entered November 19, 2009) (Verizon), it was noted that when evaluating Section 1102(a) applications, the Commission has accepted improved ability of a utility to focus its operational and managerial efforts as public benefits and sufficient justification to approve the proposed transactions.

It is against this legal backdrop that PPL's application must be judged.

### Summary of the Parties' Positions

In general, there are two issues to be addressed in this proceeding. First, whether the application must provide substantial affirmative public benefits and, second, if so, whether there is substantial record evidence that demonstrates that those benefits are provided.

With regard to the first issue, PPL argued that it is not required to show that the application will produce substantial affirmative public benefits. PPL argued that the Commission's focus in evaluating Section 1102 applications that involve a proposed internal restructuring is whether the proposed restructuring would result in an ultimate change in control of the utility. Where there is no change in ultimate control and no impact on the management and operations of the utility, PPL asserts that the utility should not be required to show that the proposed restructuring will result in affirmative public benefit. PPL argues that the fundamental management and operations of PPL EU will remain unchanged by the proposed restructuring and the application should be approved on this basis alone. (PPL Main Brief, p. 4).

In the alternative, PPL argues that even if the Commission were to determine that affirmative public benefit is required to issue a Section 1103 certificate of public convenience, the application should still be approved because PPL has demonstrated that the proposed restructuring will benefit its customers and strengthen the financial position of PPL Corporation which is the ultimate source of equity capital for PPL EU. PPL argues that this in turn will benefit PPL's customers as it will improve PPL Corporation's ability to raise capital at

reasonable rates and will also facilitate PPL Corporation's ability to effectively manage its tax liabilities.

In short, PPL argues that it should not be required to show that the proposed restructuring will result in affirmative public benefit because the proposed restructuring amounts to a technical change in control and will have no negative effect on utility operations. However, PPL also argues that even if the Commission applies the affirmative public benefit standard to PPL's application, the proposed restructuring meets this standard and as such PPL would qualify for a certificate of public convenience that facilitates this internal restructuring. (PPL Main Brief, p. 8).

The OSBA has objected to PPL's proposed restructuring on several grounds. OSBA argues that the application involves a utility stock transfer and results in a change of control of PPL EU as addressed by the Commission's policy statement in 52 Pa.Code § 69.901 and is therefore jurisdictional under 66 Pa.C.S. § 1102(a)(3) and requires the Commission to issue a certificate of public convenience. Such a certificate can only be issued under 66 Pa.C.S. § 1103(a) 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."

OSBA next argued that while a public utility could meet the Section 1103(a) standard if the proposed transaction produced affirmative public benefits, PPL's application produces no such affirmative public benefits because only PPL Corporation and its shareholders are benefited by the proposed intercompany restructuring. OSBA therefore requested that the Commission reject PPL's application in its entirety. (OSBA Main Brief, p. 3).

## Issues

### 1. Application of §§ 1102 and 1103

#### a. Positions of the Parties

In support of its position in this proceeding that it is not required to satisfy Sections 1102 and 1103 of the Public Utility Code, PPL provided the direct testimony of Alexander Torok regarding the proposed restructuring. In explaining this restructuring, Mr. Torok stated the following:

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. The resulting proposed corporate structure is attached as "Exhibit B" to PPL EU's Application.

(PPL Statement No. 1, p.4).

PPL argues that within the context of Section 1102, as well as the policy statement contained in Section 69.901, the Commission's focus on applications before the Commission which involve a proposed internal restructuring is whether the proposed restructuring would result in an ultimate change in control of the utility. PPL argues that where there is no change in ultimate control and no impact on the management and operations of the utility, the utility should not be required to show that the proposed restructuring will result in affirmative public benefit. Since the fundamental management and operations of PPL EU will remain unchanged by the restructuring, PPL argues that its application should be approved on this basis alone. (PPL Main Brief, p. 4-5).

PPL's argument focuses on language contained within Section 69.901(a)(2) to support its position. Specifically, PPL references language within the background section of the policy statement which identifies what types of transactions require Commission approval. This language indicates that Commission approval is required "if the effect of the transaction is to change the control of a utility" or when it is "a transaction resulting in a change of the de facto controlling interest in a utility or its parent . . .". (PPL Main Brief, p. 2-3). As such, PPL's position is that the proposed restructuring is merely a technical change in control because PPL Corporation will no longer hold PPL EU's stock directly. Instead, two holding companies will be inserted between PPL Corporation and PPL EU. However, PPL argues this change in structure will not negatively affect the day-to-day management or operations of the utility in any way. PPL believes the Commission should consider that the express purpose stated in the order adopting the policy statement is to determine whether the proposed transaction would have a fundamental effect on the management and operations of a utility. PPL asserts that the Commission's order adopting the policy statement focuses on transfers of utility property accomplished by mergers of utility parents or selling utility stock and changing ultimate ownership of utility property and that no transfer of property to a new ultimate owner occurs as a result of PPL's proposed internal restructuring. PPL argues that the determination of whether a certificate of public convenience under Section 1102(a)(3) is needed turns on whether the transaction results in transfer of ownership and that since no such transfer occurs here, Section 1102 would not be applicable. (PPL Main Brief, p. 5-6).

PPL also argued that Commission decisions in Frontier, Duquesne and Verizon North, *supra*, also support its arguments. For example, PPL argued that the Commission determined in Frontier that City of York did not apply to a proposed corporate restructuring in which the existing utilities would be converted from business corporations to Pennsylvania LLCs because there would be no change in the managerial, technical and financial resources to the utilities, and the entities would remain under the direct or indirect control of the existing parent.

In response, OSBA has taken exception to PPL's interpretation of the policy statement. Specifically, OSBA argues that PPL incorrectly attempts to focus the analysis in this matter on what OSBA calls the "fundamental effect" language from the policy statement.

Instead, OSBA argues that the “fundamental effect” of the proposed intercompany restructuring is that the application meets the legal standard for a change of control of a utility and is therefore jurisdictional under 66 Pa. C.S. § 1102(a)(3). (OSBA Main Brief, p. 8-9). Citing to the policy statement under Section 69.901(a), OSBA points out the language which states, “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)” and that under Section 69.901(b)(1) of the policy statement:

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.

(OSBA Main Brief, p. 9-10).

OSBA notes the same testimony of PPL’s own witness, Mr. Torok, that PPL relies on but argues that such testimony demonstrates that PPL’s proposed restructuring meets the standard for a change of control of PPL EU. (OSBA Main brief, p. 10), citing PPL Statement No. 1 at 4. OSBA then referenced Mr. Torok’s further testimony:

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 Statement No. 1, p. 4); See also, PPL Application Paragraph 18.

In short, OSBA argued that the testimony of PPL’s own witness contradicts PPL’s assertion that the intercompany restructuring is “merely a technical change of control,” because it would divest PPL Corporation of all of its interests in PPL EU to Newco 1 and Newco 2. PPL

EU Statement No. 1, at 4. PPL Corporation would then become a “pure holding company.” Id. In addition, OSBA argued that Newco 1 and Newco 2 are not simply just “inserted between PPL Corporation and PPL Electric” as Newco 2 will receive all of the shares of PPL EU and Newco 1 or Newco 2 will handle PPL EU’s regulatory compliance. Id. OSBA therefore asserts that the proposed intercompany restructuring goes beyond a mere technical change of control.

The OSBA also responded to PPL’s reliance on Commission decisions regarding this matter. For example, in response to PPL’s reliance on Frontier, *supra*, OSBA noted that the Frontier companies only involved 40,000 customers whereas PPL serves about 1.4 million customers. (OSBA Reply Brief, p. 7). OSBA also noted that the Frontier proceeding was much simpler since it involved a restructure from a business corporation to a limited liability company. Id.

b. Disposition

We find the argument advanced by OSBA to be more persuasive. The testimony and evidence presented in this case demonstrates that the proposed restructuring will place two new holding companies between PPL EU and its current direct parent, PPL Corporation. As a result, PPL Corporation 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<sup>1</sup>, to Newco 1 (PPL Subsidiary Holdings, LLC). Newco 1 will then contribute all of those shares to Newco 2 (PPL Energy Holdings, LLC). Under the proposed corporate structure, PPL EU will be a direct subsidiary of Newco 2 and an indirect subsidiary of Newco 1 and PPL Corporation. This constitutes sufficient change in control to trigger Sections 1102 and 1103.

As cited by OSBA, Section 69.901(b)(1) of the policy statement provides that:

**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**

---

<sup>1</sup> PPL Energy Funding Corporation (PPL EF) is a holding company within the PPL Corporation affiliated group and owns indirectly 100% of the interests in PPL Corporation’s electric distribution businesses in the United Kingdom. (PPL Statement No. 1, p.3).

**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 contribution of all of PPL Corporation's interests including its shares in PPL EU and PPL EF to Newco 1 (PPL Subsidiary Holdings, LLC) which will then contribute all of those shares to Newco 2 (PPL Energy Holdings, LLC) is a transaction or series of transactions resulting in a new controlling interest of PPL EU and results in a different entity becoming the beneficial holder of the largest voting interest in the utility or parent, regardless of the tier. PPL's position that the proposed restructuring is merely a technical change in control because PPL Corporation will no longer hold PPL EU's stock directly is misplaced in light of the policy statement language. PPL's proposed restructuring results in a new controlling interest in PPL EU - as a direct subsidiary of PPL Energy Holdings, LLC and an indirect subsidiary of PPL Subsidiary Holdings, LLC. PPL cannot argue that the proposed restructuring is merely a technical change in control when there would be new layers of ownership, and thus control, between PPL EU and PPL Corporation that were not present before any such restructuring.

PPL's argument that Section 1102(a)(3) of the Public Utility Code, 66 Pa. C.S. § 1102(a)(3), applies only to transfers of utility property to a new ultimate owner is without merit and will be rejected. The Commission's Policy Statement on Section 1102(a)(3) defines when this type of transfer occurs, such as in the case of a merger or sale of utility stock, including by a parent or grandparent of a utility. See, 52 Pa.Code § 69.901. PPL argues that no transfer of property to a new ultimate owner would occur as a result of PPL EU's proposed reorganization. PPL further argued in its reply brief that OSBA's arguments fail to recognize that the proposed restructuring is limited to an internal reorganization with no ultimate change in control of utility property while the City of York standard applies to transfers of ultimate ownership of utility property. PPL asserts that the Commission should not apply the City of York substantial public benefit standard to an internal reorganization where there is simply an insertion of new holdings companies between PPL EU and PPL Corporation. Instead PPL argues, the Commission should

examine whether the proposed reorganization affects utility management or operations in accordance with the order adopting the policy statement. See, 52 Pa.Code § 69.901.

However, as OSBA has pointed out, PPL Corporation 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 Corporation. (PPL Statement No. 1, p. 4); See also, PPL Application Paragraph 18. PPL Corporation will become a pure holding company after it transfers all of its interests in PPL EU to Newco 1. Then Newco 2 receives all of the shares of PPL EU from Newco 1. Then Newco 1 or Newco 2 will handle the regulatory compliance of PPL EU. The tiered control of PPL EU transfers from the parent, PPL Corporation, down to subsidiaries Newco 1 and Newco 2, including the handling of regulatory matters. We agree with the OSBA that the proposed intercompany restructuring is a “change of de facto control” of PPL EU addressed by 52 Pa.Code § 69.901(b)(1).

PPL also argues that OSBA’s position that transactions involving nonregulated businesses must provide substantial benefits to customers of the regulated utility is beyond the scope of Section 1102(a)(3) as it requires approval of new ultimate ownership of utility property but does not limit a utility parent’s ability to reorganize its structure to acquire and manage its regulated and nonregulated businesses. PPL argues that the Commission has separate authority to oversee utility contracts with nonregulated affiliated companies under 66 Pa.C.S. § 2102, and that Section 1102(a)(3) should not be used to prevent internal reorganizations that would not have a negative impact on utility operations, such as the proposed restructuring. PPL believes that OSBA’s attempt to limit corporate reorganizations to those that produce substantial benefits for public utility customers goes beyond the scope of Section 1102(a)(3) and must be rejected as a matter of law.

PPL’s argument that OSBA would require transactions involving nonregulated businesses to provide substantial benefits to customers of the regulated utility is incorrect. OSBA has argued that the proposed restructuring is a transaction or series of transactions that result in a new controlling interest that is jurisdictional because the proposed restructuring will

result in a different entity becoming the beneficial holder of the largest voting interest in the utility or parent, regardless of the tier. In other words, it is not transactions involving nonregulated businesses that must provide substantial benefits to customers of the regulated utility. It is the transaction involving the regulated utility that must provide those benefits. And because PPL proposes transactions involving the transfer of PPL EU stock to other corporations, PPL must satisfy the requirements of Section 1102(a)(3).

In addition, we believe that PPL's reliance on Frontier, Duquesne and Verizon North is misplaced. In particular, for example, as noted above, the facts in Frontier involved the much simpler transaction of converting an entity from a business corporation to a limited liability corporation. The proposed restructuring in this proceeding is more complicated.

We therefore conclude that pursuant to 66 Pa.C.S. § 1102(a)(3), in order for PPL to acquire from, or to transfer to, any person or corporation, including a municipal corporation, by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service, it must first have and obtain a certificate of public convenience before its proposed restructuring may occur. As a result, Sections 1102 and 1103 of the Public Utility Code apply to this proceeding.

## 2. Affirmative public benefit

Because we have determined that PPL is required to obtain a certificate of public convenience in order to effectuate its restructuring under Section 1102, the next question that must be answered is whether the proposed restructuring provides an affirmative public benefit. That is, whether PPL's proposed restructuring is necessary or proper for the service, accommodation, convenience, or safety of the public.

a. Position of the parties

In addressing whether the proposed restructuring will provide an affirmative public benefit, PPL argued that there were potential benefits to PPL EU's customers such as improved ability to manage internal cash flow and raising equity capital at more favorable rates. (PPL Main Brief, p. 8). PPL argued that the efficient flow of cash to PPL Corporation without creating new tax liabilities would strengthen PPL Corporation, the ultimate source of equity capital for PPL EU, and that mitigating potential future tax payments would mean that more cash would potentially be available to PPL Corporation, and in turn, to PPL EU. PPL further argued that the increased source of equity capital would reduce the need for PPL Corporation to go to the equity market and would reduce the need for PPL EU to raise additional external debt – thus improving its financial condition. (PPL Main Brief, p. 9).

PPL also argues that the amount of state taxes paid by nonregulated entities of the utility parent is in no way related to the day-to-day operations of PPL EU. Even so, PPL asserts that the proposed restructuring would not result in a reduction of any existing taxes paid by PPL EU or any affiliate. (PPL Reply Brief, p. 3). PPL cites Mr. Torok's rebuttal testimony which indicated that the reduction of potential future tax liabilities for non-regulated affiliates is simply an example of how financial and tax matters could be managed more effectively under the proposed corporate structure. (PPL Statement No. 1-R, p. 5-6). As such, PPL argues that managing future tax liabilities of non-regulated companies is not a detriment to utility customers; it is simply a prudent business practice. (PPL Reply Brief, p. 3-4).

PPL's reply brief also argued that OSBA fails to recognize how enhancing PPL Corporation's ability to effectively manage tax liabilities would benefit PPL EU's customers and that the improved financial strength and efficiency of PPL Corporation does ultimately benefit PPL EU's customers. (PPL Reply Brief, p. 4). PPL reiterated its previous argument regarding the many benefits associated with PPL Corporation's potential improved ability to manage tax payments, including improved ability to raise capital at reasonable rates and emphasized that its ability to raise capital was particularly important given that it was implementing a major

infrastructure program and tax reform has increased requirements to raise capital in public markets. (PPL Main Brief, p. 5-6); (PPL Statement No. 1-R, p. 6).

PPL believes that these benefits further demonstrate that the proposed restructuring is necessary or proper for the service, accommodation, convenience, or safety of the public and should be approved with citations to City of Erie v. Buffalo and Lake Erie Traction Co., 4 P.S.C. 628, 634 (1920) - (“In no manner can the public interest be better served than by the adoption of a policy which will result in financially strong and efficiently constructed public utilities in order that they may render adequate service for a reasonable rate.”); Borough of Verona v. Suburban Water Co., 4 P.S.C. 748, 755 (1920) - (“[The utility] should be so maintained that it can at all times meet its needs and that the finances required to make necessary improvements and extensions be forthcoming.”). PPL again argued that attempts to limit corporate reorganizations to those that produce substantial benefits for public utility customers goes beyond the scope of Section 1102(a)(3) and must be rejected as a matter of law. (PPL Reply Brief, p. 4).

In response, OSBA addressed each of the public benefits PPL argued would result from its proposed restructuring. With respect to a consolidation of tax bases, OSBA asserted that PPL had failed or refused to provide additional explanation as to how the proposed restructuring would serve to reduce PPL’s tax liability. In response to interrogatories, OSBA asserted that PPL would only indicate that it would work to avoid future tax costs. OSBA argued that there is a reasonable possibility that approving the proposed restructuring would reduce tax revenues for the Commonwealth with no offset reduction in consumer utility rates and that allowing PPL Corporation to avoid state taxes would not be an affirmative public benefit. (OSBA Main Brief, p. 12). OSBA cited to testimony provided by PPL’s witness which indicated that the proposed intercompany restructuring would allow PPL Corporation to avoid “unnecessary Pennsylvania state tax liability. . . thereby allowing PPL Corporation and its shareholders more efficient, lower cost access to cash distributions.” (PPL Statement No. 1, p. 5). OSBA asserted that a reduction in taxes paid to the Commonwealth, with no corresponding reduction in ratepayer costs, would not constitute an affirmative public benefit – but rather a positive private benefit with a negative public cost. (OSBA Main Brief, p. 12-13).

OSBA also argued that PPL had failed to establish how the proposed restructuring would help PPL EU finance capital projects. OSBA again cited to testimony provided by PPL's witness, Mr. Torok, who on page 5 of his direct testimony stated that "the proposed transaction will not result in any change to the financing of PPL Electric." OSBA further pointed out that in response to its interrogatories in OSBA-I-1, PPL indicated that no cash distributions related to PPL EU were contemplated. (OSBA Main Brief, p. 13). OSBA also argued that PPL had failed to explain how capital costs for PPL EU would be lowered and that PPL's response to OSBA-II-2(a) suggested that making PPL Corporation more financially sound would be a benefit to PPL EU without offering a specific mechanism by which capital costs would be reduced. (OSBA Main Brief, p. 13).

OSBA also takes issue with PPL's assertion in its application that the proposed restructuring would "facilitate future business acquisitions . . . as well as any combination or merger of existing non-regulated corporate entities" (Application at Paragraph 18.) - or that such mergers or acquisitions represent a public benefit. OSBA argued that PPL had failed to provide any evidence that the facilitation of unspecified acquisitions, combinations, or mergers will provide any affirmative public benefit. (OSBA Main Brief, p. 14-15).

b. Disposition

The overarching requirement that PPL must meet in order to qualify for a certificate of public convenience is laid out in 66 Pa.C.S. § 1103. PPL must demonstrate that the granting of such a certificate – and therefore PPL's proposed restructuring - is necessary or proper for the service, accommodation, convenience, or safety of the public. In City of York, it was held that in order to satisfy this standard, the Commission must find that a proposed transaction would "affirmatively promote the 'service, accommodation, convenience, or safety of the public' in some substantial way." While PPL has argued that certain corporate tax and financial benefits may result from the proposed restructuring, it has failed to demonstrate that such theoretical or potential benefits affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. Benefits to PPL's shareholders are not substantial affirmative benefits "to the public."

It should be noted that arguing that something is not a negative does not in and of itself demonstrate that it is a positive. For example, with respect to the management of future tax liabilities, PPL argued that managing such future liabilities of its non-regulated companies would not be a detriment to PPL EU's utility customers. However, the question is not whether managing future tax liabilities of non-regulated companies is not a detriment to those utility customers – it is whether the management of future tax liabilities of PPL's non-regulated companies would provide an affirmative public benefit or would be necessary or proper for the service, accommodation, convenience, or safety of the public. PPL has failed to demonstrate that the proposed restructure would provide for any of these criteria. The same is true for the other purported benefits PPL believes support the application.

Finally, we agree with OSBA that while the Court in Popowsky permitted predictive benefits, this does not mean that the City of York standard cited above is easily met. The parties in Popowsky brought tangible assets to the table, which the Court noted even a “lay perspective” could see the benefits of when those tangible assets were combined and were not purely speculative. That is not the case here. PPL has failed to show that any of the benefits it alleges will be created by its proposed restructuring are ones that a lay perspective can see or that they are benefits that are anything more than purely speculative. The Court in City of York required that such benefits be something more. PPL has failed to show that.

### Conclusion

We believe that Sections 1102 and 1103 apply to PPL's application for proposed restructuring. That is, the proposed restructuring acquires from, or transfers to, a person or corporation, by a method or device, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, tangible or intangible property used or useful in the public service. It therefore requires PPL to obtain a certificate of public convenience in order to effectuate that restructure. However to do that, PPL must demonstrate that the proposed restructure would provide an affirmative public benefit or would be necessary or proper for the service, accommodation, convenience, or safety of the public. We

believe the application fails to meet those standards. We must therefore recommend that PPL's application for a certificate of public convenience under 66 Pa.C.S. § 1103 be denied.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the application for approval of intercompany restructuring filed by PPL Electric Utilities Corporation on October 16, 2017. 66 Pa.C.S. § 1102.

2. A utility must first obtain a certificate of public convenience in order to acquire from, or to transfer to, any person or corporation, by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service. 66 Pa.C.S. § 1102.

3. A certificate of public convenience shall be granted by order of the Commission, only if the Commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. 66 Pa.C.S. § 1103.

4. Where there is an actual change in the ultimate control of a utility and, therefore, a transfer of property under Section 1103(a)(3), the Commission must find that the transaction will "affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way." City of York v. Pa. Pub. Util. Comm'n, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972).

5. The Commission must find that substantial evidence supports that a merger will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. Popowsky v. Pa. Pub. Util. Comm'n, 594 Pa. 583, 937 A.2d 1040 (2007).

6. The Commission is not required to secure legally binding commitments or to quantify benefits where impractical, burdensome, or impossible but instead can properly apply a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters. Popowsky v. Pa. Pub. Util. Comm'n, 594 Pa. 583, 937 A.2d 1040 (2007).

7. 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. 52 Pa.Code § 69.901 *citing to*, Joint Application of Commonwealth Telephone Company, et al., A-310800, F.0006, (October 22, 1993).

8. 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). 52 Pa.Code § 69.901 *citing to*, Joint Application of Paging Network of Pittsburgh, Inc. et al., A-330013, F.0005.

9. 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. 52 Pa.Code § 69.901(b)(1).

10. PPL's proposed intercompany restructuring acquires from, or transfers to, a person or corporation, by a method or device, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, tangible or intangible property used or useful in the public service. 66 Pa.C.S. § 1102.

11. PPL's proposed intercompany restructure is an actual change in the ultimate control of a utility and, therefore, a transfer of property. 66 Pa.C.S. § 1103(a)(3).

12. PPL must first obtain a certificate of public convenience in order to effectuate the proposed intercompany restructuring. 66 Pa.C.S. § 1102.

13. PPL has failed to show that the granting of such certificate to effectuate the proposed intercompany restructuring is necessary or proper for the service, accommodation, convenience, or safety of the public. 66 Pa.C.S. § 1103.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the stipulation for admission of evidence submitted by PPL Electric Utilities Corporation and the Office of Small Business Advocate on June 13, 2018 (stipulation) be granted and the following documents be admitted into the record of this proceeding:

March 23, 2018, PPL Direct Testimony of Alexander J. Torok,  
April 23, 2018, the OSBA Direct Testimony of Robert D. Knecht,  
May 9, 2018, PPL Rebuttal Testimony of Mr. Torok,  
OSBA Exhibits IEc-1 and IEc-2,  
PPL Exhibit No. 1-A, and  
PPL's application for approval of intercompany restructuring.

2. That the parties shall provide two copies of all documents referenced in the stipulation to the Commission's Secretary's Bureau for inclusion in the official record.

3. That the application for intercompany restructuring filed by PPL Electric Utilities Corporation on October 16, 2017 at docket number A-2017-2629534 be denied in its entirety.

