

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105**

**Application of PPL Electric
Utilities Corporation for
Approval of Intercompany
Restructuring**

**Public Meeting: April 25, 2019
2629534-OSA
Docket No. A-2017-2629534**

STATEMENT OF COMMISSIONER ANDREW G. PLACE

Before the Pennsylvania Public Utility Commission (Commission) today for consideration and disposition are the Exceptions of PPL Electric Utilities Corporation (PPL EU or Company) filed in October 2018 concerning the Recommended Decision (R.D.) of Administrative Law Judges (ALJs) Myers and Cheskis in the above-captioned proceeding. The Office of Small Business Advocate (OSBA) filed Replies to Exceptions in the matter on October 11, 2018.

The R.D. denies PPL EU's application for approval of a corporate restructuring which would inject two new Delaware holding companies – PPL Subsidiary Holdings, LLC (New Co 1) and PPL Energy Holdings, LLC (New Co 2) – between PPL EU and its current parent, PPL Corporation. The R.D. found that PPL EU's proposed transaction constitutes sufficient change in control to trigger Commission review under Sections 1102 and 1103(a) of the Public Utility Code. It also falls squarely within the parameters of the Commission's Policy Statement governing *Utility Stock Transfer Under 66 Pa. C.S. §1102(a)(3)* at 52 Pa. Code §69.901 as the proposal results in a new controlling interest of PPL EU and in a different entity becoming the beneficial holder of the largest voting interest in the utility or parent, regardless of the tier. R.D. at 14-15.

In reviewing this matter, I agree with the ALJs' jurisdictional analysis. I also agree with the ALJs' conclusion that the Applicant failed to show that the proposed intercompany restructuring is necessary or proper for the service, accommodation, convenience, or safety of the public as required by Section 1103 of the Public Utility Code. The ALJs reasoned that, in order to satisfy the standard of Section 1103(a) as prescribed by governing case law, the proposed transaction has to "affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way." *City of York v. Pa. PUC*, 449 Pa. 136, 141, 295 A.2d 825, 828 (1972) (*City of York*). The Supreme Court further defined the Commission's standard of review regarding Section 1103(a) applications in *Popowsky v. Pa. PUC*, 594 Pa. 583, 937 A.2d 1040 (2007) (*Popowsky*) as follows:

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 611, 937 A.2d at 1057.¹ Further, the Supreme Court explained that demonstration of the affirmative public benefit does not require that every customer receive a benefit from the proposed transaction. *Id.* at 617-18, 937 A.2d at 1061.

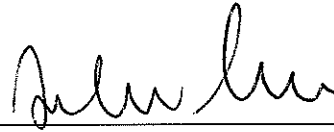
The paramount legal requirements for approval of the proposed transaction in this proceeding are well-established regarding the Commission's jurisdiction, review standard, and the Company's burden of proof to demonstrate affirmative benefits. Although PPL EU argued that the proposed transaction strengthens the financial position of PPL Corporation, provides an ultimate source of equity capital for PPL EU that may benefit PPL EU's customers through PPL Corporation raising capital at reasonable rates, the Company does not provide sufficient record evidence that these benefits meet the standard set forth in the *City of York* and *Popowsky* cases. Rather, OSBA pointed out that PPL EU has admitted throughout this proceeding that no cash distributions related to PPL EU are contemplated as a result of the proposed restructuring thus there is no cash benefit to PPL EU. OSBA Reply Exc. at 9 (citing PPL Direct Testimony at 5). OSBA also pointed out that the corporate restructure will reduce tax payments to the Commonwealth of Pennsylvania without any commensurate reduction in taxes paid by PPL EU's ratepayers, which does not constitute a public benefit. *Id.* at 8-9. Further, OSBA pointed out that the alleged tax savings may be dissipated through dividend payments, alternative investments, or enrich PPL Corporation's shareholders. OSBA Reply Exc. at 9.

I agree with OSBA that the record evidence does not support that the Company has proven affirmative public benefits as required by the statutory and case law requirements. As stated previously, PPL EU has the burden of proof to demonstrate that it has met the legal requirements to approve the proposed transaction through record evidence of affirmative public benefits, not just corporate benefits. PPL EU has not met its burden of proof and the Commission is not required to furnish the necessary legal requirements for the Company in this proceeding.

¹ The *Popowsky* case also found that "...while in some circumstances conditions may be necessary to satisfy the Commission that public benefit sufficient to meet the requirement of Section 1103(a) also confers discretion upon the agency to impose conditions which it deems to be just and reasonable." *Popowsky*, 937 A. 2d at 1057, n. 21. In addition, the Commission retains general authority to impose conditions upon approval of a transaction, as codified in the Public Utility Code at 66 Pa. C.S. §1103.

At the same time, PPL EU's options are not limited here. The Company can reexamine the proposed transaction and determine whether it will refile a corporate restructuring that achieves demonstrative affirmative public benefits. In addition, evidence can be introduced regarding the impact of Act 40 on corporate restructurings. I stand ready to review any future filings made by the Company.

DATE: April 25, 2019



Andrew G. Place, Commissioner