

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

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

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

STATEMENT OF COMMISSIONER NORMAN J. KENNARD

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of PPL Electric Utilities Corporation (PPL) to the Recommended Decision (RD) of Administrative Law Judges Myers and Cheskis, issued on September 11, 2018, relative to the above-captioned proceeding. The RD addresses the Application of PPL for Approval of Intercompany Restructuring (Application).

In its Application, PPL proposes a restructuring which would insert two new companies between PPL and its parent company, PPL Corporation (PPL Corp). There is currently no affiliate between the utility and its holding company. In final result, the proposal simply adds two tiers between PPL Corp and its operating companies, including PPL.

The RD recommends that the Application be denied because PPL failed to show that the transaction is necessary or proper for the service, accommodation, convenience, or safety of the public pursuant to Sections 1102 and 1103 of the Public Utility Code (Code).¹ The RD is premised on a conclusion that the proposed restructuring constitutes a sufficient change in control to trigger Sections 1102 and 1103 of the Code, requiring Commission approval of transfers of utility property. The RD also determined that the proposed restructuring proposes a change in control triggering the Commission's Statement of Policy regarding Utility Stock Transfers at 52 Pa. Code § 69.901 (Policy Statement).²

Legal Standards:

Section 1102(a)(3) of the Code provides, in pertinent part, that the Commission's prior approval, evidenced by a certificate of public convenience first had and obtained, is required:

For any public utility . . . 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.³

¹ 66 Pa. C.S. § 1102, 1103.

² 52 Pa. Code § 69.901.

³ 66 Pa. C.S. § 1102(a)(3).

The Commission has interpreted this section to require a certificate of public convenience when a transfer of voting interests constitutes a change in *de facto* control of the utility or its parent. 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 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.*⁴

Section 1103(a) of the Code establishes the standard for granting a certificate of public convenience:

A certificate of public convenience shall be granted . . . 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.⁵

In *City of York*, the Pennsylvania Supreme Court found that satisfying the standard of Section 1103(a) requires the Commission to find that the proposed transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.”⁶ In *Popowsky*, the Pennsylvania Supreme Court explained that the *City of York* test can be met without securing legally binding commitments and without quantifying the specific benefits where this may be impractical, burdensome, or impossible. In *Popowsky*, the Pennsylvania Supreme Court further explained that a *City of York* analysis can include predictive determinations.⁷

No Ultimate Change in Control:

As explained in the Application, the proposed restructuring involves no change in the ultimate control of PPL or any of the other entities involved.⁸ Both before and after the restructuring, PPL and all of the other corporate entities will be 100% owned by PPL Corporation.⁹ Additionally, the proposed restructuring will have no effect on the management or operations of PPL. Further, there will be no changes in PPL’s officer, director, or employee

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

⁵ 66 Pa. C.S. § 1103(a) (emphasis added).

⁶ *City of York v. Pa. PUC*, 449 Pa. 136, 141, 295 A.2d 825, 828 (1972) (*City of York*).

⁷ *Popowsky v. Pa. PUC*, 594 Pa. 583, 937 A.2d 1040 (2007) (*Popowsky*).

⁸ PPL Application at 3.

⁹ Albeit such ownership will be indirect following the restructuring.

positions.¹⁰ Finally, PPL will maintain a separate investment grade rating from credit rating agencies.

The Commission's *Policy Statement Regarding Interpretation of 66 Pa. C.S. § 1102(a)(3)* states:

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.¹¹

As PPL has clearly stated, there is no such effect here.

By the *Policy Statement*, the Commission construed Section 1102(a)(3) to address transfers of control. It did so in order to sustain the authority to control utility parent acquisitions and mergers. This is a valid reason. Most mergers occur at a parent level and the Commission should review such transactions.

I don't think that we should have it both ways. Having declared Section 1102(a)(3) to be a change of control statute via the *Policy Statement*, the Commission should not now rule that a change of control is not required for the Commission to have jurisdiction over a transaction under Section 1102(a)(3). Particularly where there is no "fundamental effect on the management and operations of a utility." Without a change of control or any "fundamental effect," the *Policy Statement* and Section 1102(a)(3) simply should not be applied to this transaction.

Affirmative Public Benefit:

Even if Commission approval is required, PPL has demonstrated that the proposed restructuring will provide affirmative public benefit consistent with the *City of York* precedent and Sections 1102(a)(3) and 1103(a) of the Code.

The proposed restructuring will provide cash flow flexibility for PPL Corp.¹² 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 (Newco 1 and Newco 2) rather than PPL Corp.

PPL also points out that the restructuring will allow PPL Corp to better manage the cash flows and tax liabilities of its non-regulated subsidiaries, which would make more funds

¹⁰ PPL Electric Statement No. 1 at 5.

¹¹ *Policy Statement Regarding Interpretation of 66 Pa. C.S. § 1102(a)(3)*, 1994 WL 932348 (Pa. P.U.C.), Docket No. M-930490 (Order entered September 13, 1994) (*Policy Statement Order*).

Policy Statement Order at 4. (emphasis added).

¹² PPL Electric Statement No. 1 at 4.

available to PPL Corp. for other activities including payments of dividends and investment in utility and non-utility projects.

Additionally, PPL contends that managing tax liabilities would benefit its customers because a financially stronger and more efficiently operated PPL Corp. will have lower capital needs and an improved ability to raise capital. PPL Corp. would be more likely to raise such capital at more favorable rates, which would result in more internal capital available to PPL and a reduced need for PPL to further leverage its business and increase its financial risk.¹³

The Commission has previously recognized the ability of a parent company of a utility to raise capital on reasonable terms and attract investors is an example of a substantial public benefit under Section 1102(a)(3) and the *City of York* standard.¹⁴

I find the public benefits asserted by PPL sufficient to approve the transaction. Appellate courts have conceded that the Commission’s authority is broad and that “the various and specific factors to be considered in determining whether to grant a certificate, beyond those expressly stated in the statute, are matters left to the administrative expertise, sound discretion, and good judgment of the Commission.”¹⁵ To require PPL to specifically quantify the benefits of the proposed transaction to ratepayers would be inconsistent with *Popowsky*.

Public Policy Considerations:

As part of our deliberation, we should also consider the practical implications of a ruling on this matter. As far as I can recall, the Commission has never previously rejected an internal restructuring or reorganization. Therefore, a denial of PPL’s Application would create an unprecedented result.

Second, the recently enacted Act 40 of 2017 allows utilities to calculate utility income taxes in rates on a “stand-alone” basis rather than using a consolidated tax rate.¹⁶ As a result of not passing parent level taxes through to ratepayers, utility restructuring proposals focusing on the management of corporate cash flows and tax liabilities may now face the almost impossible task of demonstrating that the transaction provides an affirmative *public* benefit under the *City of York* standard. Such a harsh result is improper and sets an unattainable goal for utilities to engage in these types of internal restructuring and reorganizations. Most assuredly, this was not the result intended by the General Assembly.

¹³ PPL M.B. at 10.

¹⁴ See e.g. *Application of Duquesne Light Company for a Certificate of Public Convenience Under Section 1102(a)(3)*, Docket Nos. A-110150 and A-311233 (Order entered April 24, 2007).

¹⁵ *Application of James Black Water Service Company*, Docket No. A-2013-2395443 (Order entered April 5, 2018).

¹⁶ Act 40 of 2017, 48 Pa.B. 111.

Accordingly, based on the foregoing, I vote to grant PPL's Exceptions, reverse the RD, and approve PPL's Application.

Date: April 25, 2019



NORMAN J. KENNARD
COMMISSIONER