



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

February 17, 2021

Via Electronic Filing

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
I&E Second Prehearing Memorandum

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's (I&E) **Second Prehearing Memorandum** for the above-captioned proceeding.

Copies are being served on parties of record per the attached Certificate of Service. *Due to the temporary closing of the PUC's offices, I&E is only providing electronic service.* Should you have any questions, please do not hesitate to contact me.

Respectfully,

A handwritten signature in black ink, appearing to read 'Gina L. Miller', is written over a light blue circular stamp.

Gina L. Miller
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 313863
(717) 787-8754
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GLM/jfm
Enclosures

cc: Honorable Joel H. Cheskis, Deputy Chief Administrative Law Judge (*via email only*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**SECOND PREHEARING MEMORANDUM
OF
THE BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO ADMINISTRATIVE LAW JUDGE JOEL H. CHESKIS:

In accordance with the Further Prehearing Conference Order dated January 12, 2021, the Bureau of Investigation and Enforcement (“I&E”) hereby submits this Second Prehearing Memorandum. The I&E prosecutor assigned to this proceeding is Gina L. Miller. Ms. Miller may be contacted as follows:

By mail:¹ Gina L. Miller
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
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400 North Street
Harrisburg, PA 17120

By e-mail: ginmiller@pa.gov

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¹ In accordance with page 4, paragraph 8 the *Commission’s Emergency Order Re: Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements* (Docket No. M-2020-3019262) entered on March 20, 2020, I&E will not require hard-copy service by mail in this case for the effective duration of the Emergency Order, and I&E will not provide hard-copy service by mail. Electronic service will be made and accepted by I&E while the Emergency Order remains in place.

I. BACKGROUND

On October 16, 2017, PPL Electric Utilities Corporation (“PPL”) filed an Application for Approval of Intercompany Restructuring (“Application”) with the Pennsylvania Public Utility Commission (“Commission”). The Application, filed at Docket No. A-2017-2629534, served as PPL’s request for approval of a corporate restructuring plan that would interject two new Delaware holding companies, PPL Subsidiary Holdings, LLC and PPL Energy Holdings, LLC between PPL and its corporate parent, PPL Corporation. In its Application, PPL alleged that there would be no change in its management or operations under the proposed restructuring.² PPL’s Application also acknowledged that both the Public Utility Code and the Commission’s policies provide an avenue for Commission review and approval of transactions involving restructuring.³

On November 21, 2017, the Office of the Small Business Advocate filed a Notice of Intervention, Protest, and Public Statement. On November 22, 2017, the Office of Consumer Advocate filed a Notice of Intervention and Public Statement. On December 1, 2017, I&E entered its appearance in this matter.

Subsequently, the Commission’s Office of Administrative Law Judge assigned the proceeding to Administrative Law Judges (“ALJs”) Joel H. Cheskis and Benjamin J. Myers. An in-person Prehearing Conference was held in this case on January 22, 2018. Afterward, on January 24, 2018, the ALJs issued a Scheduling Order adopting a litigation

² PPL’s Application, ¶ 9.

³ PPL’s Application, ¶¶ 11-15; 66 Pa. C.S. § 1102(a)(3); 66 Pa. C.S. § 1102; 66 Pa. C.S. § 1102; 52 Pa. Code § 69.901; *Policy Statement Regarding Interpretation of 66 Pa. C.S. § 1102(a)(3)*, Docket No. M-930490, 1994 Pa. PUC LEXIS 56 (Order entered September 13, 1994).

schedule and establishing the procedures that would govern this case. In accordance with that schedule, and through the briefing process, PPL and OSBA litigated this case.⁴

On September 11, 2018, a Recommended Decision was issued recommending that the application be denied because PPL failed to show that the proposed intercompany restructuring was necessary or proper for the service, accommodation, convenience or safety of the public pursuant to Section 1103 of the Public Utility Code. On October 1, 2018, PPL filed Exceptions to the ALJs' Recommended Decision. On October 11, 2018, OSBA filed Replies to Exceptions.

On April 25, 2019, the Commission issued an Order adopting the ALJs' Recommended Decision. Subsequently, PPL appealed the Commission's Order to the Commonwealth Court of Pennsylvania, arguing that (1) the Commission erred in determining that PPL was required to obtain a Certificate of Public Convenience ("CPC") for the proposed restructuring; and (2) that, assuming, arguendo, a CPC was required, the Commission erred in applying the standard necessary for a CPC for restructuring. On October 27, 2020, the Pennsylvania Commonwealth Court upheld the Commission's determination that PPL was required to obtain a CPC for its proposed restructuring; however, it reversed the Commission's determination of the applicable standard for evaluation of a CPC for restructuring. Accordingly, the Commonwealth Court remanded this case to the Commission for a determination of whether PPL's proposed internal restructuring is "proper" for servicing the public with electricity and deserving of a CPC.⁵

⁴ I&E did not advocate a position in the case and did not seek to admit any evidence into the record.

⁵ *PPL Electric Utilities Corporation v. Pa. PUC*, 2020 WL 6278305, at *9 (Pa. Cmwlth., 2020).

On January 12, 2021, a further prehearing conference notice was issued setting a call-in further prehearing conference for this remanded matter for Wednesday, February 24, 2021 at 10:00 a.m. and assigning ALJ Cheskis as the presiding officer for the remanded proceeding. Pursuant to the Prehearing Conference Order issued by ALJ Cheskis on January 12, 2021, I&E submits this Second Prehearing Memorandum.

II. ISSUES

I&E avers that the primary issue to be resolved in this case is whether PPL's proposed internal restructuring is "proper" for servicing the public with electricity and deserving of a CPC.⁶ I&E has not yet determined whether it will submit testimony in this remanded proceeding. If I&E determines that it will submit testimony, it will promptly notify the parties and the ALJ of the subject matter of such testimony.

III. WITNESSES

At this time, I&E has not determined whether expert witness testimony will be necessary to support its position in this case. If I&E does determine that expert witness testimony is necessary, I&E will promptly notify Your Honor and all active parties, by letter, of the identity of its witness(es), the business address and telephone number of the witness(es), and the anticipated subject matter of testimony.

IV. EVIDENCE

I&E may elect to present written testimony and accompanying exhibits at the evidentiary hearing. Moreover, I&E intends to rely on PPL's filing and all supplemental materials provided by PPL, answers to interrogatories, other documents submitted or

⁶ *Id.*

filed with the Commission, and other public documents and reports. However, there may be issues of law or Commission policy that are not properly the subject of testimony or factual issues that are clear on the record and need not be supported by testimony. I&E thereby reserves the right to dispense with testimony when, in its opinion, an issue can be adequately addressed through briefing.

V. SCHEDULE

I&E will work with the other parties to develop a schedule for the submission of testimony, hearings, and briefs in this matter that is mutually agreeable to the parties and to the ALJ.

VI. DISCOVERY

I&E does not request any further modification of the Commission's Rules of Practice and Procedure for the conduct of discovery beyond the modifications that were previously agreed upon and adopted in this case. For ease of reference, I&E understands that existing modifications include the following:⁷

- a. The parties shall serve answers to written interrogatories within ten (10) calendar days of service.
- b. Documents served after noon on a Friday or on any business day immediately preceding a state holiday will be deemed served on the next business day for purposes of determining the due date of the responses and responsive pleadings.

⁷ Scheduling Order, p. 4, ¶¶7(a)-7(b), issued in this case on January 24, 2018.

VII. SETTLEMENT

I&E is willing to make a good faith effort to successfully resolve this matter. If settlement discussions do not result in a full and complete resolution of the matter, I&E is prepared to fully or partially litigate this proceeding as it deems appropriate.

Respectfully submitted,



Gina L. Miller

Prosecutor

PA Attorney ID No. 313863

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
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Dated: February 17, 2021

**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 I am serving the foregoing **Second Prehearing Memorandum** dated February 17, 2021, in the manner and upon the persons listed below.

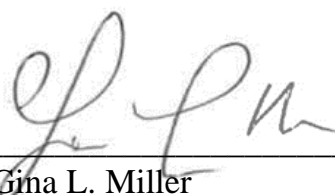
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