

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

RECOMMENDED DECISION ON REMAND

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision recommends that a joint petition for approval of settlement be approved in its entirety without modification because it is in the public interest and supported by substantial evidence. This decision finds that the settlement complies with the relevant standard for the approval of applications for intercompany restructuring as set forth by the Commonwealth Court and is consistent with the Commission’s policy to encourage settlements.

HISTORY OF THE PROCEEDING

On October 16, 2017, PPL Electric Utilities Corporation (PPL or PPL Electric) filed with the Pennsylvania Public Utility Commission (Commission) an application for approval of intercompany restructuring (application) in which PPL is requesting approval of the corporate restructuring which would interject two new Delaware holding companies – PPL Subsidiary Holdings, LLC (Newco 1) and PPL Energy Holding, LLC (Newco 2) – between PPL and its current parent, PPL Corporation. The application was docketed at A-2017-2629534.

On November 21, 2017, the Office of Small Business Advocate (OSBA) filed a notice of intervention, protest and public statement in response to the publication of the

application. On November 22, 2017, the Office of Consumer Advocate (OCA) filed a notice of intervention and public statement intervening into this matter. On December 1, 2017, the Commission's Bureau of Investigation and Enforcement (I&E) also entered an appearance.

A prehearing conference was held on January 22, 2018, before Administrative Law Judges Joel Cheskis and Benjamin Myers during which a procedural schedule was established for the submission of testimony, hearings and briefs. On January 24, 2018, a scheduling order was issued memorializing the matters discussed and agreed to at the prehearing conference.

Pursuant to the litigation schedule, PPL and OSBA pre-served written testimony. That pre-served testimony was admitted into the record by written stipulation dated June 13, 2018. PPL and OSBA filed main briefs on June 29, 2018 and reply briefs on July 13, 2018.

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. Exceptions to the Recommended Decision were filed by PPL on October 1, 2018 and Reply Exceptions were filed by OSBA on October 11, 2018.

By Opinion and Order entered April 25, 2019, the Commission denied PPL's Exceptions and adopted the Recommended Decision. The Commission determined that the proposed restructuring required a certificate of public convenience but determined that the proposed restructuring did not meet the substantial affirmative public benefit standard required to have a certificate of public convenience be issued.

On May 24, 2019, PPL filed a Petition for Review to the Commonwealth Court. On June 24, 2019, the OSBA intervened into the appeal.

On October 27, 2020, the Commonwealth Court issued a decision, *infra*, affirming in part and reversing and remanding in part the Commission's Opinion and Order. In doing so, the Court determined that the Commission correctly held that a certificate of public

convenience was required for PPL to complete the proposed transaction but that the Commission applied the wrong standard when adjudicating whether the application should be approved. The Court remanded the application so that the correct standard could be applied.

Therefore, 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 me as presiding officer. In anticipation of that prehearing conference, a further prehearing order was issued on January 12, 2021. Following that prehearing conference, a second scheduling order was issued on February 24, 2021 memorializing the procedural schedule agreed to by the parties.

Pursuant to the second scheduling order, PPL submitted supplemental direct testimony on March 30, 2021. The parties engaged in settlement negotiations and, on April 27, 2021, indicated that a comprehensive settlement had been reached. As a result, on April 29, 2021, an order suspending the second scheduling order was issued and the parties were directed to file the settlement and related documents by May 14, 2021.

On May 14, 2021, PPL, OSBA and I&E filed a joint petition for approval of settlement (settlement). The parties indicated that the settlement represents a complete settlement of all issues among the settling parties in the proceeding. Attached to the settlement was the Commonwealth Court's opinion issued on October 27, 2020, statements in support of the settlement from each of the settling parties and joint proposed findings of fact, conclusions of law and ordering paragraphs.

Also on May 14, 2021, PPL filed a joint stipulation for admission of evidence seeking the admission of the supplemental direct testimony of PPL witness Andrew W. Elmore dated March 30, 2021, along with a verification from Mr. Elmore, that was pre-served on March 30, 2021 as part of the remanded proceeding. The joint stipulation will be approved as part of this decision and PPL will be directed to file two (2) copies of its supplemental direct testimony with the Commission's Secretary's Bureau for inclusion in the Commission's official file.

Also on May 14, 2021, the OCA filed a letter indicating that it does not oppose the settlement.

A cancellation notice was issued on May 27, 2021 formally cancelling the hearing scheduled for this case for June 8, 2021.

The record in this case closed on May 14, 2021 when the settlement was submitted. For the reasons discussed below, the settlement will be recommended for approval in its entirety without modification because it is in the public interest and supported by substantial evidence.

FINDINGS OF FACT

Attached to the settlement as appendix E were joint proposed findings of fact. Those facts are adopted herein as follows:

1. PPL Electric is a Pennsylvania business corporation formed in 1920.
2. PPL Electric is a public utility as defined in Section 102 of the Public Utility Code.
3. PPL Electric provides service to approximately 1.4 million customers in eastern and central Pennsylvania.
4. PPL Electric's existing holding company structure was approved by the Commission in 1995. PPL St. No. 1 Supplemental at 4.
5. PPL Corporation is the parent of PPL Electric and other subsidiaries and is a pure holding company. PPL St. No. 1 Supplemental at 5.

6. The corporate structure being proposed by PPL Electric would interject two new Delaware holding companies, Newco 1 and Newco 2, between PPL Electric and its parent, PPL Corporation.

7. Newco 1 and Newco 2 are holding companies for tax and finance purpose. PPL St. No. 1 Supplemental at 5.

8. PPL Electric will continue to raise debt capital and maintain credit ratings from rating agencies. PPL St. No. 1 Supplemental at 5.

9. PPL Electric previously revised its holding company structure in 1995 to provide PPL Electric with the necessary flexibility to manage various financial matters and tax obligations. PPL St. No. 1 Supplemental at 5-6.

10. PPL Electric's witnesses demonstrated that the internal restructuring makes the transaction proper for the service, accommodation, convenience or safety of the public. PPL St. No. 1 Supplemental at 5, 7, 11-12; *see also*, PPL St. No. 1 at 6.

11. PPL Electric's witness on remand explained how the restructuring meets the "necessary or proper for the service of the public" standard set forth by the Commonwealth Court to be applied on remand. PPL St. No. 1 Supplemental at 5, 7, 11-12.

DISCUSSION

Legal Standard

Section 1102(a) of the Public Utility Code, 66 Pa. C.S. § 1102(a), permits a public utility to undertake certain actions only upon Commission approval evidenced by a certificate of public convenience. Among the activities that require Commission approval is the following:

- (3) For any public utility or an affiliated interest of a public utility . . . 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(a)(3). When a certificate of public convenience is required under Section 1102, pursuant to Section 1103(a) of the Public Utility Code, 66 Pa. C.S. § 1103(a), the Commission may issue the certificate 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 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.” 66 Pa. C.S. § 1103(a).

In general, the Pennsylvania Supreme Court has determined 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) (York); *see also*, Popowsky v. Pa. Pub. Util. Comm’n, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (2007) (Popowsky) (when addressing the issue of affirmative public benefits “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”).

However, in this case, PPL seeks approval of an intercompany restructuring in which PPL would interject two new Delaware holding companies between PPL and its current parent, PPL Corporation. On appeal of the Commission’s April 25, 2019 Opinion and Order, the Commonwealth Court conducted an extensive analysis and affirmed the Commission’s decision that a certificate of public convenience was necessary pursuant to Section 1102(a)(3) for the restructuring proposed by PPL in the application. PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm’n, Docket No. 624 C.D. 2019 (unreported opinion filed October 27, 2020) at slip op. 16 (PPL Commonwealth Court Order). However, the Commission reversed the Commission regarding whether PPL was required to demonstrate a substantial affirmative benefit to the public in order to have the certificate of public convenience issued. In doing so, the Court, among other things, distinguished between the issuance of a certificate of public convenience

when there is a merger of two or more public utilities and when there is an internal restructuring of a utility, as is the case here. *Id.* at slip. Op. 22. The Court remanded the proceeding back to the Commission so that the Commission could “formulate the specific criteria or factors to be used in assessing whether [PPL’s] proposed internal restructuring is ‘proper’ for servicing the public with electricity and deserving of a [certificate of public convenience].” *Id.* at 24.

Finally, with regard to the legal standard applied in this case, the parties submitted a settlement of all issues. Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. Pa. Pub. Util. Comm’n v. City of Lancaster – Bureau of Water, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011) (Lancaster). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. *Id.*, *citing*, Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996) (Warner); Pa. Pub. Util. Comm’n v. CS Water & Sewer Assocs., 74 Pa. PUC 767 (1991). In addition, the Commission has held that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. Pa. Pub. Util. Comm’n v. MXenergy Elec. Inc., Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

It is against this legal backdrop that the settlement will be viewed.

Settlement Terms

In the settlement, the parties agreed to resolve all outstanding issues. The relevant terms of the settlement are as follows, with the original paragraph numbering provided in the settlement:

31. The Settlement Parties agree that, based on the particular facts and circumstances of this case and the record, including PPL Electric's Supplemental Testimony submitted on remand, the Proposed Restructuring set forth in PPL Electric's Application filed on October 16, 2017, meets the "proper" standard of Section 1103 and should be approved, and that the requested certificate of public convenience should be issued. The Settlement Parties further agree that it is not necessary in this proceeding to develop a precedential standard of review. Therefore, the Settlement Parties ask that the Commission, in its final order, include a statement that its decision in this case is not precedential and should not be cited as precedent in any future proceedings except as necessary to implement its final order.

Settlement at 4-5. The settlement is conditioned upon the standard conditions found in most settlements. For example, if the Commission modifies the settlement, any petitioner may elect to withdraw from the settlement and proceed with litigation and, in such event, the settlement will be void and of no effect. Id. at 5. Furthermore, the settlement is made without any admission against or prejudice to any position which any petitioner may adopt in the event of any subsequent litigation of these proceedings or any other proceeding. Id. The settling parties also agreed that the settlement should not constitute or be cited as precedent in any other proceeding, except to the extent required to implement the settlement. Id.

In essence, the parties agreed that the application as filed, and as discussed in the written testimony, satisfies the standard articulated in the PPL Commonwealth Court Order and that the "specific criteria or factors" to be established for such transactions can be addressed in another proceeding.

Public Interest Analysis

As noted above, the benchmark for determining whether a settlement should be approved is whether the proposed terms and conditions are in the public interest. *See, Lancaster, Warner, supra.* In the settlement, the parties did not state why the settlement is in the public interest but, instead, referenced their respective statements in support of the settlement attached to the settlement to present their reasons why the settlement is in the public interest.

PPL

In its statement in support of the settlement, PPL noted that the settling parties have reviewed PPL's supplemental testimony submitted on remand and agree that, based on the particular facts and circumstances of this case, the proposed restructuring as set forth in the application meets the necessary or proper standard set forth in Section 1103 of the Public Utility Code and the requested certificate of public convenience should be issued. PPL further provided that the fact that the settlement is unopposed is, in and of itself, strong evidence that the settlement is reasonable and in the public interest. PPL added that the settlement is in the public interest because the proposed restructuring benefits PPL and its customers, noting in particular the availability of additional earnings and cash flow for the funding of capital projects and improved ability to raise capital in public markets on favorable terms. PPL added:

The foregoing settlement provision is in the public interest and should be approved. The settlement provision resolves the issues of whether the Proposed Restructuring meets the necessary or proper standard and whether the Commission should issue a certificate of public convenience for the Proposed Restructuring. The Settlement is in the public interest because the settlement requests that the Commission approve the Proposed Restructuring, and as PPL Electric's witnesses have demonstrated, PPL Electric and its customers will benefit from the Proposed Restructuring.

PPL's Statement in Support of Joint Petition for Settlement, p. 5. PPL then notes that the restructuring will benefit PPL's customers and investors because it will allow PPL to more efficiently and prudently manage its finances, specifically its cash flow and tax liabilities. Id. at 6.

PPL noted various specific benefits of the proposed transaction, such as: appropriately managing tax liabilities decreases tax expense which improves earnings, cash flow and financial strength; additional earnings and cash flow can be used to fund capital projects, allow subsidiaries to retain more earnings and support payment of dividends to investors; and a financially stronger PPL will provide a more competitive position to attract and raise debt and equity from capital markets and maintain credit ratings and improve credit metrics to provide access to capital at lower costs resulting in lower rates to customers. PPL then noted the various

benefits of holding companies identified in the PPL Commonwealth Court Order and noted that the proposed restructuring is consistent with the examples provided, quoting the Commonwealth Court as stating that “the proposed internal reorganization would not have a detrimental effect on the public, but instead, could be advantageous to the public due to the possibility that the Utility would be more fiscally sound and secure.” Id. at 7-8.

PPL concluded its statement in support by stating that “the evidence of record clearly demonstrates that the proposed restructuring is proper for the service of the public and should be approved, as evidenced by the issuance of a certificate of public convenience.” Id. at 8.

OSBA

In its statement in support of the settlement, OSBA discusses the PPL Commonwealth Court Order arguing that PPL need only establish, and the Commission need only find, that granting a certificate of public convenience would be proper for the service of the public. The OSBA added that “the Commonwealth Court ... decided that the affirmative public benefit standard does not apply to the corporate restructuring proposed by the *Application*,” noting that the Commonwealth Court explained that “the standard is ill suited and unworkable for internal reorganizations.” OSBA’s Statement in Support of the Joint Petition for Settlement, p. 3. The OSBA then stated that “[t]here is no record evidence that the corporate restructuring proposed by the *Application* is ‘necessary ... for the service accommodation, convenience or safety of the public,’” noting that PPL’s witness “readily admits, the corporate restructuring proposed by the application is mainly focused on reducing tax liabilities for PPL.” Id. at 4. OSBA then concludes:

The OSBA has found no record evidence that the corporate restructuring proposed by the *Application* is *improper*. Specifically, after a full review of the record evidence presented in this case, the OSBA has concluded that the tax avoidance strategy set forth in the *Application* meets the “proper” standard of Section 1103(a) as articulated by the Commonwealth Court.

Id. at 5. (emphasis in original).

I&E

In its statement in support of the settlement, I&E stated that the settlement is in the public interest because it meets all the legal and regulatory standards necessary for approval. I&E noted that, although it did not submit testimony in this case, it did conduct an investigation into PPL's application and determined that litigation of the case was not warranted. I&E also noted that no party challenged any of the averments made in PPL's supplemental testimony regarding the benefits of the proposed restructuring. Next, I&E noted that the resolution of this case does not necessitate the development of a precedential standard of review for the award of a certificate of public convenience to intercompany restructuring. I&E concluded that, based on its analysis of the filing, the settlement is in the public interest because the provisions adequately protect the interests of all parties affected.

Disposition

The joint petition for settlement will be recommended for approval in its entirety without modification because it is in the public interest and supported by substantial evidence. In particular, the settlement is consistent with the PPL Commonwealth Court Order, *supra*, and Commission policy that encourages settlement, Lancaster, Warner. As an initial matter, a discussion of the PPL Commonwealth Court Order is appropriate.

First, the Commonwealth Court held that the Commission did not err in determining that PPL's proposed restructuring would require approval and a certificate of public convenience for purposes of Section 1102(a)(3) of the Public Utility Code. PPL Commonwealth Court Order at 16. In making this determination, the Court determined, among other things, that the proposed restructuring would ultimately transfer all of the shares of PPL's stock from PPL Corporation to Newco 2, a "different entity" altogether, that would receive all of the voting interest and stock of PPL. Id. at 8. The Commonwealth Court added that "as the [Commission's] Statement of Policy elucidates, the fact that a new entity has obtained a controlling interest in stock is the paramount and dispositive factor in the inquiry and considerations such as 'remoteness' or 'tier' of the transactions are immaterial." Id. at 9, *quoting*, 52 Pa.Code § 69.901(b)(1), (2). The Commonwealth Court also added that by owning

all of the shares of PPL and possessing a controlling interest, Newco 2, the would-be immediate parent company, would acquire direct and/or indirect authority to manage, direct or oversee, and ultimately govern the management and policies of PPL. Id. The Commonwealth Court also stated that the Commission’s interpretation and application of the phrase “transfer of stock” is entitled to administrative deference. Id. at 11.

Second, the Commonwealth Court held that the Commission was not bound to apply the substantial affirmative public benefit test enunciated in City of York and Popowsky which requires the demonstration of a substantial, affirmative public benefit standard required for the issuance of a certificate of public convenience in cases involving Sections 1102 and 1103 of the Public Utility Code. Id. at 23, *citing*, York and Popowsky. In doing so, the Commonwealth Court detailed the extensive history before the Pennsylvania Supreme Court and the Commonwealth Court where that standard was established and reaffirmed. Id. at 17-21. The Commonwealth Court observed that both York and Popowsky were merger applications and that “this observation is extremely critical because, in the unique and specific context when there is a proffered merger between two utility companies at the parent level or otherwise, there are overarching and serious concerns about the potential for attaining monopolistic power, which could have an adverse effect on consumer rates.” Id. at 18.

The Commonwealth Court noted, as well, the impact on this standard of the introduction of competition to the electric industry. Id. at 18-19. The Commonwealth Court stated:

And, given the Commission’s regulatory role and oversight with respect to a merger’s effect on competition in the marketplace, it makes complete sense that our Supreme Court would engraft an ‘affirmative public benefit’ standard into the statute and develop an analytical framework that focuses on competitive effectiveness, while taking into account the rate prices that will inure to consumers. This is especially true considering that when dealing with utilities in the merger scenario, if the thrust of a proffered merger, on balance, would result in anticompetitive behavior, then public utilities could resort to the monopolistic and/or monopsonistic practices of the antiquated past, potentially resulting in unreasonable increases in consumer prices and harm to the public.

Id. at 21. The Commonwealth Court then distinguished the circumstances present in PPL’s proposed restructuring by noting that the “concerns and dangers associated with anticompetitive behavior are not present, or at least not present to a degree that is reasonably comparable to those that could occur in the situation of a merger.” Id. The Court added that “holding companies have traditionally been created for internal structural advantages, namely in order to receive shelter from legal liability, obtain tax benefits and facilitate strategic corporate finance objectives.” Id. at 22 (citations omitted).

As a result, the Commonwealth Court added that “it would be very difficult, if not impossible, for [PPL] to establish an affirmative and substantial benefit to the public [in this case] as that concept has been employed by our Supreme Court when there has been a proposed merger between two or more public utilities.” Id. at 22. The Commonwealth Court stated:

In this situation, a less demanding evidentiary burden is warranted – one that does not mandate an appraisal of the effects of competition in the marketplace, yet is consistent with the plain language of the statute, and pays due consideration to the public. Therefore, the Court concludes that, contrary to the Commission’s understanding, the Commission was not bound to apply the test enunciated in York and Popowsky, and we reverse the Commission on this point.

Id. at 23. The Commonwealth Court added that PPL “need only establish – and the Commission need only find – that granting a [certificate of public convenience] would be ‘proper for the service ... of the public’” and left it to the “sound discretion of the Commission to formulate the specific criteria or factors to be used in assessing whether [PPL’s] proposed internal restructuring is ‘proper’ for servicing the public with electricity and deserving of a [certificate of public convenience].” Id. at 24. The Commonwealth Court remanded the case to the Commission to “undertake this inquiry and determine whether [PPL] is entitled to a [certificate of public convenience] pursuant to the above-mentioned standard.” Id.

With that legal framework in mind, the case was remanded to the Commission and the parties restarted litigation. In doing so, PPL presented testimony of Andrew W. Elmore that was admitted into the record of this remanded proceeding by stipulation. In that testimony, Mr. Elmore testified regarding how the proposed restructuring meets the standard set forth by the

Commonwealth Court and is proper for the service of the public. Mr. Elmore began by noting that “Newco 1 and Newco 2 are simply holding companies for tax and finance purposes.” PPL St. 1 Supplemental at 5. Mr. Elmore added that “the proposed restructuring will allow PPL Corp. to manage its tax liabilities in a prudent manner and facilitate efficient management of cash flows between corporate entities subject to different taxing authorities.” Id. at 6. Mr. Elmore testified that “all of the major investor owned gas and electric utilities in Pennsylvania are part of holding company structures, and these structures were approved by the Commission as in the public interest,” noting the utilization of Delaware holding companies, among other things, as a tax planning tool. Id. at 7-9.

Mr. Elmore then specifically referenced the standard set forth in PPL Commonwealth Court Order. Mr. Elmore testified:

Q. Is PPL EU’s proposed restructuring consistent with the examples provided by the Commonwealth Court?

A. Yes. The proposed restructuring is typical of internal reorganizations undertaken by non-regulated businesses that PPL must compete with for capital in the public markets. The cash flow and tax management reasons for the proposed restructuring align with the Commonwealth Court’s examples of traditional reasons for internal business reorganizations. In fact, the Commonwealth Court recognized that PPL EU’s reasons for the proposed restructuring “duplicate or mimic” the cash flow and tax management objectives that are common in internal business reorganizations.

Id. at 10, *citing*, PPL Commonwealth Court Order at 22. Mr. Elmore added that the proposed restructuring will allow PPL to more efficiently and prudently manage its finances, specifically its cash flow and tax liabilities and enhance the available means for PPL to make cash contributions for purposes of funding capital projects. Id. at 23. Mr. Elmore also testified regarding earnings, credit metrics and PPL and its customers as reasons why the proposed restructuring satisfies the Commonwealth Court’s “proper” standard. Id. at 23-24.

In response to that testimony, the parties agreed that the application as filed satisfies the Commonwealth Court’s “proper” standard established in PPL Commonwealth Court

Order. Although the settlement does not “formulate the specific criteria or factors to be used in assessing whether [PPL’s] proposed internal restructuring is ‘proper,’” as the Commonwealth Court directed, the parties also agreed as part of the settlement that the settlement would not be cited as precedent in other cases, effectively leaving the issue of specific criteria or factors to be used in assessing whether an internal restructuring is “proper” for another day.

In light of the Commonwealth Court’s decision, I recommend that the Commission find that the settlement proposed on remand is in the public interest and should be adopted in its entirety without modification. Since the proposed transaction is an intercompany transaction, and does not involve, for example, the merger of two utilities, then the “proper” standard applies. The record evidence as detailed by PPL witness Elmore demonstrates that the proposed internal restructuring is “proper” under the terms as discussed by the Commonwealth Court. This includes the tax and finance purposes discussed by Mr. Elmore, as well as managing tax liabilities, facilitating efficient cash flow management, increasing cash contributions to fund capital projects, lower cost of capital and other financial ramifications that are “proper” corporate financial management. It is also not unreasonable that the parties agreed that the task of formulating the specific criteria or factors to be used in assessing whether a proposed internal restructuring is “proper” be left for another case.

In addition to all of these individual factors that support approving the settlement as being in the public interest, the settlement is also in the public interest because of general benefits of agreeing to a settlement. The settlement will save the parties from expending substantial time and expense involved with further litigation. Although the parties already fully litigated this case, including the appeal, additional costs on remand could have included additional rounds of pre-served testimony, hearings, briefs, exceptions and possible additional appeals. Avoiding such expenditures minimizes the costs that might ultimately be passed on to the ratepayers, and also conserves the resources of all other parties involved in these proceedings and Commission resources as well.

The settlement should be approved as being in the public interest because the parties have engaged in extensive discovery and other litigation-related efforts in order to properly investigate and resolve the issues presented. These efforts demonstrate that the initial

filings and the responses to the filings have been thoroughly vetted and considered by all concerned parties. The settlement is also the result of extensive and fruitful negotiations between all the parties and represents what each party believes to be a fair and reasonable compromise. This is of particular note as the parties in this matter have diverse and competing interests yet were able to reach a settlement on all issues in this case.

The settlement is supported by substantial evidence. On appeal, decisions of the Commission will be examined to determine if they are supported by substantial evidence. 2 Pa.C.S. § 704. The parties submitted a Joint Stipulation for the Admission of Evidence when the settlement was submitted on May 14, 2021. In that stipulation, the parties agreed to the admission of Mr. Elmore's pre-served written supplemental direct testimony filed by PPL which was accompanied by the necessary witness verification. The inclusion of that pre-served testimony, along with the original testimony admitted in the underlying proceeding, supports adopting the settlement.

As a result, the settlement will be recommended for approval without modification because it is in the public interest, consistent with applicable appellate precedent and supported by substantial evidence.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, this application proceeding. 66 Pa. C.S. §§ 1102, 1103.
2. A certificate of public convenience is required for any public utility to begin to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory than that authorized. 66 Pa. C.S. § 1102(a)(1).
3. Section 1102(a) of the Public Utility Code permits a public utility to undertake certain actions only upon Commission approval evidenced by a certificate of public convenience. 66 Pa. C.S. § 1102(a).

4. Among the activities that require Commission approval is any public utility or an affiliated interest of a public utility acquiring 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(a)(3).

5. When a certificate of public convenience is required under Section 1102, pursuant to Section 1103(a) of the Public Utility Code, the Commission may issue the certificate 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.” 66 Pa. C.S. § 1103(a).

6. A certificate of public convenience was necessary pursuant to Section 1102(a)(3) for the restructuring proposed by PPL in the application. PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm’n, Docket No. 624 C.D. 2019 (unreported opinion filed October 27, 2020) at slip op. 16.

7. In the specific context when there is a proffered merger between two utility companies at the parent level or otherwise, there are overarching and serious concerns about the potential for attaining monopolistic power, which could have an adverse effect on consumer rates. PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm’n, Docket No. 624 C.D. 2019 (unreported opinion filed October 27, 2020) at slip op 18.

8. Concerns and dangers associated with anticompetitive behavior are not present in an internal organizational restructuring, or at least not present to a degree that is reasonably comparable to those that could occur in the situation of a merger. PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm’n, Docket No. 624 C.D. 2019 (unreported opinion filed October 27, 2020) at slip op. 21.

9. Holding companies have traditionally been created for internal structural advantages, namely in order to receive shelter from legal liability, obtain tax benefits and facilitate strategic corporate finance objectives. PPL Elec. Utils. Corp. v. Pa. Pub. Util.

Comm'n, Docket No. 624 C.D. 2019 (unreported opinion filed October 27, 2020) at slip op. 22 (citations omitted).

10. PPL need only establish – and the Commission need only find – that granting a certificate of public convenience for its proposed restructuring would be proper for the service of the public. PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm'n, Docket No. 624 C.D. 2019 (unreported opinion filed October 27, 2020) at slip op. 24.

11. Commission policy promotes settlement. *See* 52 Pa. Code § 5.231.

12. A settlement lessens the time and expense that the parties must expend litigating a case and, at the same time, conserves precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. *See* 52 Pa. Code § 69.401.

13. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. Pa. Pub. Util. Comm'n v. York Water Co., Docket No. R-00049165 (Order entered Oct. 4, 2004); Pa. Pub. Util. Comm'n v. C.S. Water & Sewer Assocs., 74 Pa. PUC 767 (1991).

14. Parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. Pa. Pub. Util. Comm'n v. MXenergy Elec. Inc., Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

15. The settlement and its proposed terms and conditions are in the public interest and, therefore, should be approved without modification.

