
Lindsay A. Berkstresser
Associate

lberkstresser@postschell.com
717-612-6021 Direct
717-731-1977 Direct Fax
File #: 167910

July 1, 2021

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

In accordance with the Recommended Decision issued on June 23, 2021, in the above-captioned proceeding, enclosed please find PPL EU Statement No. 1 SUPPLEMENTAL, the Supplemental Direct Testimony of Andrew W. Elmore, dated March 30, 2021, on behalf of PPL Electric Utilities Corporation. Copies are being provided per the Certificate of Service.

Respectfully submitted,



Lindsay A. Berkstresser

LAB/kl

Attachment

cc: Honorable Joel H. Cheskis
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

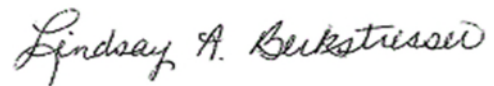
VIA E-MAIL ONLY

Steven C. Gray, Esquire
Office of Small Business Advocate
555 Walnut Street
Forum Place, 1st Floor
Harrisburg, PA 17101
sgray@pa.gov

Gina L. Miller, Esquire
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, PA 17120
ginmiller@pa.gov

Christy M. Appleby, Esquire
Darryl A. Lawrence, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
cappleby@paoca.org
dlawrence@paoca.org

Date: July 1, 2021



Lindsay A. Berkstresser

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Docket No. A-2017-2629534

SUPPLEMENTAL DIRECT TESTIMONY OF

Andrew W. Elmore

Date: March 30, 2021

1 **I. INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. My name is Andrew W. Elmore. My business address is Two North Ninth Street,
4 Allentown, Pennsylvania 18101.

5 **Q. What is your current position?**

6 A. I am employed by PPL Services Corporation. My current title is Vice President - Tax.

7 **Q. Please describe your primary responsibilities in that position.**

8 A. I am responsible for overseeing the tax affairs of PPL Corporation and its affiliates.

9 **Q. Please describe your educational and professional experience.**

10 A. I graduated with a B.A. from the University of Massachusetts in 1989 and then earned a
11 J.D. from the University of Kentucky College of Law in 1993. After law school I practiced
12 labor and employment law in Providence, Rhode Island for 3 years and then worked in
13 international tax at Arthur Andersen in Boston, Massachusetts for four years and then
14 Deloitte in Boston for an additional 4 years. I subsequently worked at United Technologies
15 Corporation in Hartford, Connecticut for 3 years. I then worked at Zimmer Corporation in
16 Warsaw, Indiana as the Director of International Tax for 5 years prior to joining PPL in
17 2011. I started at PPL as the Director of international tax and, in 2016, assumed the role
18 of Director – tax reporting and compliance and was appointed Vice President – Tax in
19 2020.

20 **Q. Is your testimony intended to provide expert legal opinion?**

21 A. No, although I have a law degree, my primary expertise is in tax and finance matters. I am
22 testifying in my capacity as Vice President – Tax. I am offering my expert opinion that the
23 proposed restructuring is reasonable and appropriate and should be approved.

24

1 **Q. On whose behalf are you testifying?**

2 A. I am testifying on behalf of PPL EU in support of the Application for Approval of
3 Intercompany Restructuring at Docket No. A-2017-2629534.

4 **Q. Have you previously provided testimony in this proceeding?**

5 A. No.

6 **Q. Have you previously testified in other matters before the Pennsylvania Public Utility
7 Commission or any other regulatory commission?**

8 A. No.

9 **II. BACKGROUND**

10 **Q. Please briefly summarize the procedural history of this case.**

11 A. On October 6, 2017, PPL EU filed an Application for Approval of Intercompany
12 Restructuring requesting that the Commission approve its Proposed Restructuring. The
13 Proposed Restructuring would place two new holding companies between PPL
14 Corporation (the parent of PPL EU) and certain of its operating subsidiaries, including PPL
15 EU. The Office of Small Business Advocate (“OSBA”) opposed PPL EU’s Application.
16 After multiple rounds of testimony and briefing, Administrative Law Judges Joel H.
17 Cheskis and Benjamin A. Myers issued a Recommended Decision on September 11, 2018
18 recommending that the Commission deny the Application. On October 1, 2018, PPL EU
19 filed Exceptions to the Recommended Decision. On October 11, 2018, OSBA filed Reply
20 Exceptions. On April 25, 2019, the Commission issued an Order. In the April 25, 2019
21 Order, the Commission determined that 66 Pa. C.S. § 1102(a)(3) requires a certificate of
22 public convenience for the Proposed Restructuring.¹ The Commission also held that in

¹ *April 25, 2019 Order*, p. 36.

1 order to approve the Application, PPL EU must show that the Proposed Restructuring
2 would produce substantial affirmative public benefits pursuant to *City of York v. Pa. PUC*,
3 295 A.2d 825, 828 (1972).² The Commission concluded that the Proposed Restructuring
4 did not meet the substantial affirmative public benefits standard. By a 3-2 vote, the
5 Commission denied the Application.³ On May 24, 2019, PPL EU appealed the
6 Commission’s April 25, 2019 Order to the Commonwealth Court of Pennsylvania.

7 **Q. Can you please summarize the Commonwealth Court’s decision?**

8 **A.** On October 27, 2020, the Commonwealth Court issued an Order affirming in part and
9 reversing in part the Commission’s April 25, 2019 Order. The Commonwealth Court
10 agreed with the Commission that a certificate of public convenience is required for the
11 Proposed Restructuring pursuant to 66 Pa.C.S. § 1102(a)(3).⁴ However, the
12 Commonwealth Court concluded that the substantial affirmative public benefit standard
13 applied by the Commission is essentially an impossible standard for internal transactions
14 such as the Proposed Restructuring.⁵ The Commonwealth Court determined that the
15 correct standard for granting a certificate of public convenience is whether the Proposed
16 Restructuring is “proper.”⁶ Specifically, the Commonwealth Court determined that the
17 “necessary or proper” language in Section 1103(a) is disjunctive, and the Commission
18 should grant a certificate of public convenience if the Proposed Restructuring is proper for
19 the service of the public.⁷ The Commonwealth Court remanded the matter to the

² *April 25, 2019 Order*, p. 41.

³ *April 25, 2019 Order*, p. 46.

⁴ *Order on Appeal*, p. 16.

⁵ *Order on Appeal*, p. 22.

⁶ *Order on Appeal*, p. 24.

⁷ *Order on Appeal*, pp. 16-17, 23-24.

1 Commission to apply this standard in determining whether PPL EU should be granted a
2 certificate of public convenience for the Proposed Restructuring.

3 **Q. What is the purpose of your Supplemental Direct Testimony?**

4 A. PPL EU's prior testimony in this proceeding focused on the Commission's prior orders and
5 Policy Statement applying a "no harm" standard to internal restructurings that do not have
6 a fundamental effect on the management or operations of the utility. The purpose of my
7 Supplemental Direct Testimony is to demonstrate how the Proposed Restructuring meets
8 the standard set forth by the Commonwealth Court. In my Supplemental Direct Testimony,
9 I will explain why the Proposed Restructuring is proper for the service of the public.

10 **Q. Please briefly describe the Proposed Restructuring that PPL EU is proposing in this**
11 **proceeding.**

12 A. PPL EU's existing holding company structure was approved by the Commission in 1995.
13 *Application of Pennsylvania Power & Light Company for Approval, Pursuant to Chapter*
14 *11 of the Public Utility Code, of Certain Transactions in Connection with the Utility's*
15 *Establishment of a Holding Company Structure*, Docket No. A-110500F.206 (February 10,
16 1995). In approving PPL EU's holding company structure, the Commission found that the
17 proposed restructuring would not adversely affect the quality of service provided by the
18 utility to its customers nor its ability to provide that service at reasonable rates. In addition,
19 the Commission would continue to have access to the utility's books, records and financial
20 statements, as well as oversight of any affiliate transactions. Also, the utility's cost of
21 capital would be calculated on a standalone basis. Thus, the Commission concluded that
22 the formation of a holding company would not interfere with the Commission's ability to

1 establish just and reasonable rates and that the formation of a holding company was
2 necessary or proper for the service, accommodation, convenience or safety of the public.

3 Under PPL EU's approved holding company structure, PPL Corporation is the parent of
4 PPL EU and other subsidiaries and is a pure holding company. PPL EU is proposing to
5 modify its existing holding company structure to include two new Delaware holding
6 companies, PPL Subsidiary Holdings, LLC (Newco 1) and PPL Energy Holdings, LLC
7 (Newco 2) between PPL Corporation and PPL EU, thereby making PPL EU an indirect
8 subsidiary of PPL Corporation.

9 **Q. Will the two new holding companies change the management and operations**
10 **of PPL EU?**

11 A. No. Newco 1 and Newco 2 are simply holding companies for tax and finance
12 purposes. All of the management and operations personnel of PPL EU will remain at PPL
13 EU, and PPL EU will continue to raise debt capital and maintain credit ratings from rating
14 agencies. PPL Corp. will remain in control of PPL EU as the ultimate parent. As explained
15 below, however, the Proposed Restructuring will improve the financial condition of PPL
16 Corp. and its subsidiaries, including PPL EU, for the benefit of the public, including PPL
17 EU's customers and its investors.

18 **Q. Has PPL EU previously revised its holding company corporate structure?**

19 A. Yes. In 1999, PPL EU filed an application with the Commission requesting approval of
20 the transfer by CEP Group, Inc., now known as PPL Energy Funding Corporation, of its
21 100% stock ownership of CEP Commerce, Inc., now known as CEP Commerce, LLC,
22 ("CEP Commerce") to PPL EU. Pursuant to the transaction, CEP Commerce would
23 become a direct subsidiary of PPL EU and would perform certain financial and tax related

1 functions. The proposed transfer, which was part of an overall corporate realignment, was
2 proposed to provide PPL EU with the necessary flexibility to manage various financial
3 matters and tax obligations. On April 21, 2000, the Commission approved the transaction.
4 See *Application of PP&L, Inc., for approval of the transfer by the CEP Group, now known*
5 *as PPL Energy Funding Corporation, of its 100% ownership of CEP Commerce, Inc. to*
6 *PPL Electric Utilities Corporation*, Docket No. A-110500F0296 (April 21, 2000).

7 **Q. Why is PPL EU proposing additional changes to the corporate structure in this**
8 **proceeding?**

9 A. The Proposed Restructuring will allow PPL Corp. to manage its tax liabilities in a prudent
10 manner and facilitate the efficient management of cash flows between corporate entities
11 subject to different taxing authorities. The Proposed Restructuring reflects the fact that
12 PPL has grown significantly over the years and now includes investments in utilities
13 serving customers in Kentucky and Virginia, investments in renewable energy companies
14 and, recently announced dispositions of investments in the United Kingdom and a new
15 investment in a Rhode Island utility. All of these businesses are generally funded through
16 some combination of (1) debt (either issued at the entity level or by PPL's separate
17 financing company); (2) distributions of earnings from other businesses within the group;
18 and (3) earnings from operations at each entity or within each group. And while money
19 may well be fungible, the actual movement of cash within the group and among the
20 members and the character of those cash movements often creates tax risks that PPL, like
21 any other well-managed group of affiliated companies, must vigilantly manage. Such risks
22 include: (1) the recharacterization of a loan from a subsidiary to a parent as a dividend or
23 other distribution, (2) distributions from one entity to its parent being in excess of "earnings

1 and profits” and basis, thus giving rise to a capital gain, which may be taxable in some
2 states, and (3) withholding taxes on interest and dividends, at least in the international
3 cross-border context. Recognizing that cash must be mobilized within, and among the
4 members of an affiliated group, PPL has endeavored to mitigate these risks and, in large
5 measure, that risk mitigation occurs through well-designed and managed holding company
6 structures.

7 The utilization of Delaware holding companies in the structuring of affiliated groups is
8 quite common. All of the major investor owned gas and electric utilities in Pennsylvania
9 are part of holding company structures, and these structures were approved by the
10 Commission as in the public interest. PPL’s responsibility to its customers and
11 shareholders is to ensure that we responsibly mitigate tax costs and risks, while remaining
12 fully compliant with all applicable laws. Further, PPL is fully taxable in Pennsylvania,
13 Kentucky and other jurisdictions, both within and without the United States on its operating
14 income in those jurisdictions. However, the Company does not voluntarily subject itself
15 to additional tax burdens where there are lawful and appropriate means to reduce or
16 mitigate those burdens.

17 I would note that while this case has been pending PPL has implemented its Proposed
18 Restructuring for all subsidiaries except PPL EU, and as result, the tax basis in these other
19 entities has been “combined” in the Delaware holding company structure. The effect of
20 combining the tax basis in these entities is that future distributions of cash are now less
21 likely to be characterized as distributions in excess of basis, which, as noted above, could
22 create taxable capital gains. In my opinion, this is not appropriately characterized as tax
23 avoidance. Rather, it is sound tax planning. Moreover, the Restructuring achieved to-date

1 positions the PPL operating companies and finance company as “brother-sister” entities,
2 which mitigates the risk of loans among them be recharacterized as capital transactions.
3 This will facilitate the ability of the Delaware parent holding company to borrow and
4 contribute capital to the subsidiary companies to more appropriately and effectively
5 manage their capital structures and fund their capital spending.

6 **Q. Can you provide an example?**

7 A. As an example, the relevant organization structure, in brief, consisted of PPL Corporation
8 owning PPL Energy Funding Corporation (“PPL EF”), which owned, through a series of
9 U.S. and U.K. Holding companies, the U.K. operating companies. PPL EF previously also
10 owned PPL’s energy supply group, that was spun off in 2015. Following the spin-off, PPL
11 Corp’s tax basis in PPL EF was lower than PPL EF’s basis in the U.K. chain of
12 companies. Due to a number of fairly complex U.S. international tax rules, distributions
13 from the U.K. and through the holding company structure up the legal entity chain into and
14 through PPL EF and into PPL Corp. have been characterized as returns of capital or tax
15 basis. If this flow were to continue over a period of years, PPL Corporation’s tax basis in
16 PPL EF would be depleted and give rise to taxable capital gains. One means of mitigating
17 this exposure and still allowing for necessary cash distributions to PPL Corporation was to
18 consolidate the basis of PPL Corporation’s subsidiaries into the Delaware holding
19 companies. In turn, there should be more “capacity” to effectuate distributions of cash to
20 PPL Corp. and avoid unnecessary tax burdens that do not relate to our fundamental
21 operations. While PPL has announced the planned disposition of its U.K. investments, the
22 need for the Delaware holding company structure is not obviated by that
23 disposition. Management of the tax-efficient movement of cash is an ongoing issue and

1 the Proposed Restructuring remains very relevant. This is supported by the fact that we
2 have proceeded with the restructuring with both PPL EF and our Kentucky group and plan
3 to include our proposed acquisition of a Rhode Island utility in this structure.

4 **Q. Are there any other examples of common actions that businesses take to**
5 **appropriately manage tax liabilities within a holding company structure?**

6 A. In addition to the utilization of Delaware holding companies as a tax planning tool, PPL,
7 like many U.S. corporate taxpayers very commonly utilizes what are often referred to as
8 the “check-the-box” rules. These U.S. federal tax rules, which are followed by most states,
9 allow taxpayers to make an election designating the U.S. tax treatment or character of an
10 eligible company as a “corporation,” a “disregarded” company, or a partnership. These
11 elections allow taxpayers an expedient means of managing tax outcomes and managing
12 federal and state tax liabilities in an affiliated group of companies.

13 **III. PROPOSED RESTRUCTURING IS PROPER**

14 **Q. Did the Commonwealth Court provide any guidance as to what is “proper . . . for the**
15 **service of the public”?**

16 A. Yes. The Commonwealth Court stated that “[a]s a general guide, the customary dictionary
17 definition of ‘proper’ is being ‘adapted or appropriate to the purpose or circumstances; fit;
18 suitable.’”⁸ The Commonwealth Court also addressed the creation of holding companies
19 such as the ones that are the subject of the Proposed Restructuring. The Commonwealth
20 Court stated as follows: “Perhaps significantly, holding companies have traditionally been
21 created for internal structural advantages, namely in order to receive shelter from legal
22 liability, obtain tax benefits, and facilitate strategic corporate finance objectives.”⁹ The

⁸ *Order on Appeal*, p. 24 (citation omitted).

⁹ *Order on Appeal*, p. 22.

1 Commonwealth Court cited the following examples of how holding companies are
2 commonly and properly used in business: “[H]olding companies can provide subsidiaries
3 with a level of financial flexibility, including capital infusions, access to capital markets,
4 and in some cases, additional cash flow sources from other operations.”¹⁰ “[H]olding
5 companies can be advantageous from a tax perspective; by combining losses and gains
6 from different subsidiaries, all companies may benefit through reduction in tax
7 liabilities.”¹¹ Thus, something is “proper” if it is appropriate in a normal business context.

8 **Q. Is PPL EU’s Proposed Restructuring consistent with the examples provided by the**
9 **Commonwealth Court?**

10 A. Yes. The Proposed Restructuring is typical of internal reorganizations undertaken by non-
11 regulated businesses that PPL must compete with for capital in the public markets. The
12 cash flow and tax management reasons for the Proposed Restructuring align with the
13 Commonwealth Court’s examples of traditional reasons for internal business
14 reorganizations. In fact, the Commonwealth Court recognized that PPL EU’s reasons for
15 the Proposed Restructuring “duplicate or mimic” the cash flow and tax management
16 objectives that are common in internal business reorganizations.¹² In recognizing the
17 advantages of internal restructurings, the Commonwealth Court further stated that “the
18 proposed internal reorganization would not have a detrimental effect on the public, but
19 instead, could be advantageous to the public due to the possibility that Utility would be
20 more fiscally sound and secure.”¹³

¹⁰ *Order on Appeal*, p. 22 citing Douglas G. Smith, *Piercing the Corporate Veil in Regulated Industries*, 2008 B.Y.U. L. Rev., 1189 (2008).

¹¹ *Id.*

¹² *Order on Appeal*, p. 22.

¹³ *Order on Appeal*, p. 22.

1 **Q. Can you please explain how the Proposed Restructuring is proper for the service of**
2 **the public?**

3 A. The Proposed Restructuring will benefit the public in several ways. The Proposed
4 Restructuring will allow PPL Corp. to more efficiently and prudently manage its finances,
5 specifically its cash flow and tax liabilities. The Proposed Restructuring would also
6 enhance the available means for PPL Corp. to make cash contributions to PPL EU for
7 purposes of funding capital projects.

8 **Q. Will the Proposed Restructuring affect PPL Corp.'s earnings?**

9 A. The ability to appropriately manage tax liabilities decreases tax expense, all else equal.
10 Lowering expenses will improve PPL Corp.'s earnings, cash flow and financial strength.
11 PPL Corp.'s additional earnings and cash flow can be used for a variety of purposes,
12 including the funding of capital projects in its operating subsidiaries, including PPL EU,
13 allowing subsidiaries, including PPL EU, to retain more of their earnings, and to support
14 the payment of dividends to its public investors.

15 **Q. How will the Proposed Restructuring affect PPL Corp.'s credit metrics?**

16 A. A financially stronger PPL Corp. will provide a stronger foundation and more competitive
17 position to attract and raise debt and equity from the capital markets. The additional
18 earnings and cash flows will allow PPL Corp. to maintain its existing credit ratings and
19 potentially improving credit metrics will lower the cost of capital to PPL Corp. and to all
20 of its subsidiaries who benefit from capital raised at the parent level.

21 **Q. Will these benefits inure to the benefit of PPL Electric and its customers?**

22 A. Yes, they will. As explained above, a stronger PPL Corp. will permit the Company to
23 raise capital more efficiently and cost effectively. PPL Corp. itself is a pure holding

1 company and does not engage in any capital spending of its own. The capital it raises is
2 employed by its utility subsidiaries, including PPL Electric, to support capital projects
3 necessary for safe and reliable service to customers. In addition, PPL Electric, as noted
4 above, issues its own debt and has its own credit ratings. These ratings, however, are
5 directly impacted by the financial performance and financial health of its parent company,
6 PPL Corp. A financially stronger PPL Corp. helps PPL Electric support and maintain its
7 own credit ratings. Stronger credit ratings provide better access to capital at a lower cost.
8 This lower cost capital is part of PPL EU's revenue requirement and is reflected in lower
9 rates to customers.

10 **Q. In your non-legal opinion, does the Proposed Restructuring meet the proper**
11 **standard as set forth in the Commonwealth Court's Order?**

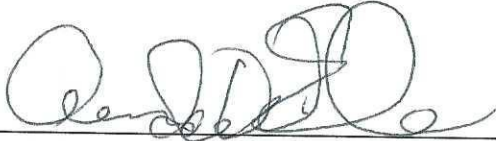
12 A. Yes. Applying the "proper" standard articulated by the Commonwealth Court to the record
13 evidence before the Commission, I believe that the Proposed Restructuring is "proper" for
14 the service of the public for all of the reasons that I have explained in my Supplemental
15 Direct Testimony.

16 **Q. Does that conclude your Supplemental Direct Testimony?**

17 A. Yes.

VERIFICATION

I, Andrew W. Elmore, Vice President – Tax for PPL Services Corporation, hereby state that the facts set forth in PPL EU Statement No. 1 SUPPLEMENTAL dated March 30, 2021, are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).



Andrew W. Elmore

Date:

JUNE 29, 2021