**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2015-2469275

Office of Consumer Advocate, : C-2015-2475448

Office of Small Business Advocate : C-2015-2478277

PP&L Industrial Customer Alliance : C-2015-2480265

C. Wintermeyer : C-2015-2485827

Cathleen A. Woomert : C-2015-2484588

Michael B. Young : C-2015-2485860

:

v. : :

PPL Electric Utilities Corporation :

PPL Electric Utilities Corporation :

Petition for a Waiver of the Distribution : P-2015-2474714

System Improvement Charge Cap of 5% :

of Billed Revenues :

**ORDER GRANTING THE INTERVENTIONS OF THE ALLIANCE FOR**

**SOLAR CHOICE, THE CLEAN AIR COUNSEL, AND THE NATURAL**

**RESOURCES DEFENSE COUNCIL**

Fifth Prehearing Order

On March 31, 2015, PPL Electric Utilities Corporation (PPL Electric or Company) filed Supplement No. 179 to Tariff Electric – Pa. PUC No. 201, containing proposed changes in rates, rules, and regulations calculated to produce approximately $167.5 million in additional annual revenues based upon data for a fully projected future test year ending December 31, 2016. This proposed rate change represents an average increase in the Company's distribution rates of approximately 18.5%, which equates to an average increase in total rates (distribution, transmission, and generation charges) of approximately 3.9%. Supplement No. 179 was proposed to take effect on June 1, 2015. The filing was suspended by Commission Order entered April 23, 2015.

Formal complaints against this proposed tariff have been filed by: the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), PP&L Industrial Customer Alliance (PPLICA), D. Wintermeyer, Cathleen A. Woomert, and Thomas B. Young.

Petitions to intervene were filed by the Commission on Economic Opportunity (CEO), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the Clean Air Council, Sustainable Energy Fund (SEF), the Alliance for Solar Choice (TASC), and Eric Joseph Epstein. The Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance.

Motion for admission pro hac vice was filed by Joseph Minnott, attorney for the Alliance for Solar Choice, seeking admission for David R. Wooley and Jacob J. Schlesinger.

On April 22, 2015, a Notice was issued which scheduled the prehearing conference for Thursday, May 7, 2015. A prehearing conference order (First Prehearing Order) was also issued on April 22, 2015, which directed the litigating parties to file and serve their prehearing memos on or before Friday, May 1, 2015 on or before noon. Prehearing memos were filed by the following: PPL Electric, OCA, OSBA, I&E, PPLICA, CEO, SEF, Clean Air Council, TASC, CAUSE-PA, and Mr. Epstein.

The prehearing conference was held as scheduled on May 7, 2015. The following attended: David B. MacGregor, Esq., Paul E. Russell, Esq., and Christopher T. Wright, Esq., for PPL Electric; Darryl Lawrence, Esq., Hobart Webster, Esq., and Lauren Birge, Esq., for OCA; Richard Kanaskie, Esq., Gina L. Lauffer, Esq., and Kenneth R. Stark, Esq., for I&E; Steven C. Gray, Esq., for OSBA; Joseph Vullo, Esq., for CEO; Adeolu Bakare, Esq., for PPLICA; Kenneth L. Mickens, Esq., for SEF, Logan Welde, Esq., and Joseph O. Minott, Esq., for the Clean Air Counsel; Mr. Minott also appeared on behalf of the Alliance for Solar Choice, along with David R. Wooley, Esq.; Elizabeth Marx appeared on behalf of CAUSE-PA, and Mr. Epstein appeared pro se.

The petitions to intervene filed by CAUSE-PA, CEO, SEF, and Mr. Epstein were unopposed and were granted in the ordering paragraphs of the Scheduling Order.

Two petitions to intervene were opposed by the Company for lack of standing. The petition to intervene filed by the Clean Air Council faced the objections of the Company for failure to aver by name their members who are PPL Electric customers, and the petition to intervene filed by TASC faced the objections of the Company for failure to identify which members provide service within PPL Electric's service territory. Both TASC and the Clean Air Council were given five business days from the date of issuance of this Order to file and serve amended petitions with the requested information. The Company was given five business days from the date of the filing of the amended petitions to respond.

On May 12, 2015, Natural Resources Defense Council (NRDC) filed a Notice of Intervention. As notices of intervention can only be filed by statutory advocates, and all others must file either a petition or a complaint, the NRDC filing will be treated as a petition.

On May 13, 2015, the Clean Air Council filed its Amended Petition to Intervene, and on May 14, 2015, TASC filed its Amended Petition to Intervene. The time for filing a response has run, and no response has been filed. Counsel for PPL Electric indicated by email that no opposition would be filed to any of the three outstanding petitions to intervene. Therefore, the three petitions were granted by Order issued May 28, 2015.

On June 1, 2015, the Keystone Energy Efficiency Alliance (KEEA) Energy Education Fund filed a Petition to Intervene, and no party filed opposition to the Petition. Therefore, the Petition is ripe for disposition.

DISCUSSION

The KEEA Petition states that it has roughly 50 members[[1]](#footnote-1) that implement energy efficiency improvements in buildings across the Commonwealth, including in the service territory of PPL Electric. The Petition states further that the members' ability to continue to offer energy efficiency improvements will be directly impacted by the outcome of this proceeding if the result is to increase costs that negatively impact the ability of customers to avail themselves of the energy efficiency improvements that can be offered. Petition at 1.

Commission regulations provide:

**§ 5.72. Eligibility to intervene.**

(a) *Persons*. A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

(1) A right conferred by statute of the United States or of the Commonwealth.

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

(b) *Commonwealth*. The Commonwealth or an officer or agency thereof may intervene as of right in a proceeding subject to subsection (a)(1)—(3).

(c) *Supersession*. Subsections (a) and (b) supersede 1 Pa. Code § 35.28 (relating to eligibility to intervene).

52 Pa.Code § 5.72.

"The interest of a petitioner seeking intervention must be direct and immediate." [*Re Pennsylvania Power & Light Company*, 50 Pa. PUC 38, 40 (1976).](https://www.lexis.com/research/buttonTFLink?_m=5078c8bdce65b9df7770391072034e45&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2009%20Pa.%20PUC%20LEXIS%20246%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=8&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b50%20Pa.%20PUC%2038%2cat%2040%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=2&_startdoc=1&wchp=dGLzVzk-zSkAA&_md5=d5e6db824c37e5efc42b37779eb040ef)  
  
 To possess standing, a party must have an interest in the controversy that is distinguishable from the interest shared by other citizens. [Sierra Club v. Hartman, 529 Pa. 454, 605 A.2d 309 (1992)](https://www.lexis.com/research/buttonTFLink?_m=213dc75a8da2b4db48dafdbd1b6eb57a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b903%20A.2d%20117%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=58&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b529%20Pa.%20454%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=1ffdf6ec22b455e234f27a1f3718aa97). A party possesses standing if he has a "substantial, direct, and immediate interest" in the subject matter of the litigation. [Wm. Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975)](https://www.lexis.com/research/buttonTFLink?_m=213dc75a8da2b4db48dafdbd1b6eb57a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b903%20A.2d%20117%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=59&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b464%20Pa.%20168%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=94cef63fb336019adb37b14d9d2ca237).

An association, as a representative of its members, may have standing to bring a cause of action even in the absence of injury to itself; the association must allege that at least one of its members is suffering immediate or threatened injury as a result of the challenged action." [*Malt Beverages Distribs. Ass'n v. Pa. Liquor  [\*123]  Control Bd.*, 881 A.2d 37, 41 (Pa.Cmwlth. 2005)](https://www.lexis.com/research/buttonTFLink?_m=213dc75a8da2b4db48dafdbd1b6eb57a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b903%20A.2d%20117%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=63&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b881%20A.2d%2037%2c%2041%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=3758f8a7b8b86bb4ce770be178a7a1a2), petition for allowance of appeal denied, [586 Pa. 775, 895 A.2d 1264 (2006)](https://www.lexis.com/research/buttonTFLink?_m=213dc75a8da2b4db48dafdbd1b6eb57a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b903%20A.2d%20117%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=64&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b586%20Pa.%20775%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=450c0acbfd1dc4313f091873e067bb29);   
*The Unified Sportsmen of Pennsylvania v. The Pennsylvania Game Commission et al*., 903 A.2d 117 Pa.Cmwlth. 2006), 2006 Pa. Commw. LEXIS 397; *see also Pennsylvania Academy of Chiropractic Physicians v. Commonwealth of Pennsylvania, Department of State, Bureau of Professional & Occupational Affairs*, 564 A.2d 551 (Pa.Cmwlth. 1989) 1989 Pa. Commw. LEXIS 648.

Even in the absence of injury to itself, [however], an ass**o**ciation may have standing solely as the representative of its members. The possibility of such representational standing, however, does not eliminate or attenuate the constitutional requirement of a case or controversy. The association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit. So long as this can be established, and so long as the nature of the claim and of the relief sought does not make the individual participation of each injured party indispensable to proper resolution of the cause, the association may be an appropriate representative of its members, entitled to invoke the court's jurisdiction.

[*Warth v. Seldin*, 422 U.S. 490, 511, 95 S.Ct. 2197, 2211, 45 L.Ed.2d 343, 362 (1975)](https://www.lexis.com/research/buttonTFLink?_m=6cbe0fdd4195d96840e56187ef084eb0&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b290%20Pa.%20Super.%20365%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=11&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b422%20U.S.%20490%2c%20511%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=10&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=f1ff6c50fd42e6894d316b1e876da8a3) (citations omitted). See also [*Boston Stock Exchange v. State Tax Commission*, 429 U.S. 318, 97 S.Ct. 599, 50 L.Ed.2d 514 (1977)](https://www.lexis.com/research/buttonTFLink?_m=6cbe0fdd4195d96840e56187ef084eb0&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b290%20Pa.%20Super.%20365%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=12&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b429%20U.S.%20318%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=10&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=aaeb19f2c13d61e1b9039fb657baad11);  *[Tripps Park Civic Association v. Pa. Pub. Util. Comm'n](https://www.lexis.com/research/buttonTFLink?_m=6cbe0fdd4195d96840e56187ef084eb0&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b290%20Pa.%20Super.%20365%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=13&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b42%20Pa.%20Commw.%20317%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=10&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=10639743c7bd9fed05aee58ec9cdb1ea)*[, 415 A.2d 967 (Pa.Cmwlth. 1980)](https://www.lexis.com/research/buttonTFLink?_m=6cbe0fdd4195d96840e56187ef084eb0&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b290%20Pa.%20Super.%20365%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=13&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b42%20Pa.%20Commw.%20317%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=10&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=10639743c7bd9fed05aee58ec9cdb1ea); [*Concerned Taxpayers v. Commonwealth of Pennsylvania*, 382 A.2d 490 (Pa.Cmwlth.1978)](https://www.lexis.com/research/buttonTFLink?_m=6cbe0fdd4195d96840e56187ef084eb0&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b290%20Pa.%20Super.%20365%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=14&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b33%20Pa.%20Commw.%20518%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=10&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=aaf1e0c66089fe9b744bdb63e65049ae).

KEEA states that this proceeding's outcome could detrimentally impact KEEA's members in a number of ways. First, the proposal to increase PPL Electric's fixed charge "could reduce the financial incentive for building owners to save energy, generating a longer payback period for efficiency improvements. . ." In addition, the Commission's implementation of Act 129 energy efficiency and conservation programs may impact the KEEA members' ability to participate in those initiatives.

No opposition was filed to this petition to intervene, a prima facie case for standing exists, and the petition to intervene is granted.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Petition to Intervene filed by Keystone Energy Efficiency Alliance Energy Education Fund is granted.

Dated: June 22, 2015 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Susan D. Colwell

Administrative Law Judge

**R-2015-2469275 - PA PUBLIC UTILITY COMMISSION v.PPL ELECTRIC UTILITIES CORPORATION**

**Revised 6/22/2015**

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1. KEEA's membership list includes: AFC First Financial Corporation, AM Conservation Group, Calliope Communications, LLC, Clean Markets, CLEAResult, Conservation Consultants, Inc., Conservation Services Group, Delaware Valley Green Building Council, DNV-GL, EMC2 Development Corporation, EnergySavvy, EnerNOC, Encentiv Energy, Energy Coordination Agency, Franklin Energy Services, Honeywell Utility Solutions, ICF International, Lockheed Martin, MaGrann Associates, Nest, OPower, Pure Energy Coach, LLC, SmartWatt Energy, Inc., Strategic Energy Group, Sustainable Futures Communications, Warren Engineering, Willdan Energy Solutions. Petition at FN 2. [↑](#footnote-ref-1)