



Four Penn Center  
1600 John F Kennedy Blvd.  
Philadelphia, PA 19103  
215-587-1000 Main  
215-587-1444 Main Fax  
www.postschell.com

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David B. MacGregor

dmacgregor@postschell.com  
215-587-1197 Direct  
215-320-4879 Direct Fax  
File #: 161074

October 22, 2015

***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: Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation  
Docket No. R-2015-2469275**

**Petition of PPL Electric Utilities Corporation for Waiver of the Distribution system  
Improvement Charge Cap of 5% of Billed Revenues - Docket No. P-2015-2474714**

**Reply to Exceptions of PP&L Industrial Customer Alliance**

Dear Madam Secretary:

PPL Electric Utilities Corporation (“PPL Electric”) herein submits this Reply to the Exceptions of the PP&L Industrial Customer Alliance (“PPLICA”) in the above-referenced, consolidated matters. For the reasons explained below, PPL Electric respectfully requests that the Pennsylvania Public Utility Commission (“Commission”) deny PPLICA’s Exceptions and adopt without modification the Recommended Decision issued by Administrative Law Judge Susan D. Colwell (“ALJ”).

On March 31, 2015, PPL Electric filed Supplement No. 179 to PPL Electric’s Tariff – Electric Pa. P.U.C. No. 201, proposing changes to PPL Electric’s retail distribution base rates designed to produce an increase in revenues based upon data for a fully projected future test year ending December 31, 2016.<sup>1</sup> Various parties intervened and actively participated in PPL Electric’s base rate case. PPLICA filed a Complaint on behalf of various industrial customers, including the

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<sup>1</sup> On April 23, 2015, the Commission issued an Order suspending Supplement No. 179 until January 1, 2016, unless permitted by Commission Order to become effective at an earlier date.

National Railroad Passenger Corporation (“Amtrak”). As a result of extensive settlement discussions, the active parties were able to reach a full settlement that resolved all of the issues and concerns raised by the active parties, including Amtrak.

On September 3, 2015, a Joint Petition for Settlement of All Issues (“Settlement”) was submitted to the presiding ALJ, along with statements in support by certain parties. PPLICA executed the Settlement on behalf of Amtrak. However, neither PPLICA nor Amtrak submitted statements in support of the Settlement.

In addition to resolving all of the issues and concerns raised by the active parties, the Settlement expressly provides as follows:

62. ... The Settlement is made without any admission against, or prejudice to, any position that any Joint Petitioner may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

63. The Joint Petitioners acknowledge that the Settlement reflects a compromise of competing positions and does not necessarily reflect any Joint Petitioner’s position with respect to any issues raised in this proceeding. The terms and conditions of the Settlement are limited to the facts of this specific case and are the product of compromise for the sole purpose of settling this case. This Settlement is presented without prejudice to any position which any of the Joint Petitioners may have advanced and without prejudice to the position any of the parties may advance on the merits of the issues in future proceedings. This Settlement does not preclude the Joint Petitioners from taking other positions in proceedings of other public utilities under Section 1308 of the Public Utility Code, 66 Pa.C.S. § 1308, or any other proceeding.

64. If the ALJ adopts the Settlement without modification, the Joint Petitioners waive their right to file Exceptions.

(See Settlement ¶¶ 62-64 (emphasis added))

The ALJ’s Recommended Decision was issued by Secretarial Letter dated October 5, 2015. Therein, the Recommended Decision found and concluded that the Settlement is in the public interest and recommended that it be adopted without modification.

Notwithstanding the foregoing, on October 13, 2015, PPLICA filed a letter with the Commission taking exception to certain statements in the Recommended Decision. Specifically, PPLICA takes exception to the following statement in the Recommended Decision:

The history of how Rate Schedule LPEP has evolved and the very significant savings Amtrak has received as a result of being on Rate Schedule LPEP is explained in PPL Electric Statement No. 4-R, pp. 30-32.

(Recommended Decision, p. 44) According to PPLICA, the Recommended Decision fails to reflect that Amtrak disputes this statement and therefore the Recommended Decision should be clarified to avoid uncertainty and to provide a full account of the record. PPLICA's exception to this limited statement in the Recommended Decision is improper, without merit, and should be denied for several reasons.

Importantly, PPLICA has waived the right to file any exceptions to the Recommended Decision. PPLICA signed the Settlement on behalf of Amtrak. Pursuant to Paragraph 64 of the Settlement, "[i]f the ALJ adopts the Settlement without modification, the Joint Petitioners waive their right to file Exceptions." In this case, it is clear that the Recommended Decision adopted the Settlement without any modification. Accordingly, PPLICA has unequivocally agreed to waive the right to file exceptions to the Recommended Decision. For this reason alone, PPLICA's Exceptions to the Recommended Decisions should be denied.

Allowing PPLICA to submit and for the Commission to consider exceptions in light of the express waiver language of the Settlement would set a very bad precedent in the context of settled cases. Under PPLICA's theory, parties to a settlement would be able to disregard and take actions contrary to the express terms and conditions agreed to in a settlement. Such a result would be contrary to the public interest and inconsistent with the Commission's policy encouraging settlements. *See* 52 Pa. Code § 5.231. PPL Electric submits that, in order to preserve the integrity of the settlement process, parties should be obligated to abide by all of the express terms and conditions agreed to in a settlement. In this case, PPLICA clearly agreed to the waiver language of the Settlement and, its letter in lieu of exceptions should be rejected.

PPLICA attempts to avoid the waiver language of the Settlement by stating that it "does not except to the findings in the [Recommended Decision]," and that it is only seeking "clarification of the record." PPLICA's argument, however, ignores that the waiver of exceptions agreed to in the Settlement is contingent only on a single action occurring -- the ALJ adopting the Settlement without modification. Stated otherwise, the only conditions under which a party to the Settlement may file exceptions are (i) if the ALJ does not adopt the Settlement or (ii) if the ALJ adopts the Settlement with modifications. PPLICA's apparent disagreement with the statement in the Recommended Decision provides no basis for its exception.

In addition to violating the waiver language of the Settlement, the entire basis for PPLICA's Exceptions is contrary to the Settlement. In a footnote, PPLICA states that it takes exception to the Recommended Decision "out of concern that, absent the clarification herein, the language in the [Recommended Decision] addressing Amtrak's savings on Rate LPEP could be cited with prejudice." However, as PPLICA concedes in its Exceptions, the Settlement expressly provides that it is "presented without prejudice to any position which any of the Joint Petitioners may have advanced and without prejudice to the position any of the parties may advance on the merits of the issues in future proceedings." (Settlement ¶ 63) PPLICA's "concern" is clearly addressed and resolved by the Settlement.

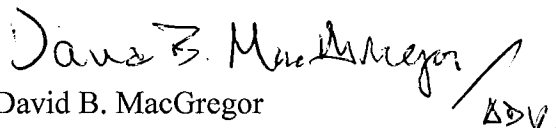
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Furthermore, the statement at issue in the Recommended Decision is not a finding of fact or conclusion of law as suggested by PPLICA. Indeed, a review of the Recommended Decision reveals that it was merely summarizing PPL Electric's position in support of its original proposal to increase the rates in Rate Schedule LPEP. All recommended and initial decisions routinely cite to the parties' positions to "tee up" the issue to be addressed. However, this does not mean the summaries of the parties' positions are somehow findings of fact or conclusions of law. In this case, it is clear from the Recommended Decision that the statement regarding the savings Amtrak received as a result of being on Rate Schedule LPEP is PPL Electric's position, not a finding or conclusion of the Recommended Decision.

PPLICA asks the Commission to modify the Recommended Decision to include a statement that PPLICA does not agree with PPL Electric's statement that Amtrak has received significant savings under Rate Schedule LPEP. PPLICA's request is improper for the many reasons explained above. Moreover, PPLICA's request is entirely unnecessary. According to PPLICA, the reason it requests a modification of the Recommended Decision is to clarify the record. However, PPLICA overlooks that its testimony and exhibits were admitted to and made part of the record without objection. Thus, PPLICA's opposition to PPL Electric's position is already part of the record in this case and, therefore, there is no need for a "clarification of the record" as suggested by PPLICA.

A settlement reflects a carefully balanced compromise of the competing interests of the parties to that settlement. Although Commission policy promotes settlements, parties clearly are not required to agree to settlement terms they oppose. However, where parties have entered into a settlement, they should honor the terms they agreed to in the settlement. In this case, PPLICA has on behalf of Amtrak clearly agreed to the terms of the Settlement. PPLICA's action in filing exceptions to the Recommended Decision is in direct violation of the Settlement as explained above, and is completely at odds with the spirit and purpose of settlement. Such conduct should not be sanctioned by this Commission by permitting PPLICA to file and for the Commission to consider PPLICA's Exceptions in this case. For the reasons explained above, PPLICA Exceptions to the Recommended Decision are improper, without merit, and should be denied.

Sincerely,

  
David B. MacGregor

DBM/ctw

cc: Honorable Susan D. Colwell  
Certificate of Service

## CERTIFICATE OF SERVICE

**Docket Nos. R-2015-2469275 & P-2015-2472714**

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 and FIRST CLASS MAIL

Darryl A. Lawrence, Esquire  
Lauren M. Burge, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1923

Richard A. Kanaskie, Esquire  
Gina L. Lauffer, Esquire  
Bureau of Investigation & Enforcement  
PO Box 3265  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
Harrisburg, PA 17105-3265

Steven C. Gray, Esquire  
Sharon Webb, Esquire  
Office of Small Business Advocate  
300 North Second Street, Suite 202  
Harrisburg, PA 17101

Joseph L. Vullo, Esquire  
Burke Vullo Reilly Roberts  
1460 Wyoming Avenue  
Forty Fort, PA 18704  
*Commission on Economic Opportunity*

Richard Koda  
Koda Consulting  
409 Main Street, Suite 12  
Ridgefield, CT 06877  
*Office of Consumer Advocate*

Patrick M. Cicero, Esquire  
Elizabeth R. Marx, Esquire  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
*CAUSE-PA*

Glenn A. Watkins  
Technical Associates, Inc.  
9030 Stony Point Parkway, Suite 580  
Richmond, VA 23235  
*Office of Consumer Advocate*

Joseph Otis Minott, Esquire  
Ernest Logan Welde, Esquire  
Benjamin Z. Hartung, Esquire  
Clean Air Council  
135 S. 19<sup>th</sup> Street, Suite 300  
Philadelphia, PA 19103  
*Clean Air Council*

Robert D. Knecht  
Industrial Economics Incorporated  
2067 Massachusetts Avenue  
Cambridge, MA 02140  
*Office of Small Business Advocate*

David C. Parcell  
President and Senior Economist  
Technical Associates, Inc.  
9030 Stony Point Parkway, Suite 580  
Richmond, VA 23235  
*Office of Consumer Advocate*

Roger D. Colton  
Fisher, Sheehan & Colton  
34 Warwick Road  
Belmont, MA 02478  
*Office of Consumer Advocate*

Eric Joseph Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112

Kenneth L. Mickens, Esquire  
316 Yorkshire Drive  
Harrisburg, PA 17111-6933  
*Sustainable Energy Fund*

John Costlow  
President  
Sustainable Energy Fund  
1005 Brookside Road, Suite 210  
Allentown, PA 18106  
*Sustainable Energy Fund*

Adeolu A. Bakare, Esquire  
Pamela C. Polacek, Esquire  
McNees Wallace & Nurick LLC  
100 Pine Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120  
*PP&L Industrial Customer Alliance*

Joseph Otis Minott, Esquire  
135 S. 19<sup>th</sup> Street, Suite 300  
Philadelphia, PA 19103  
*The Alliance for Solar Choice*

David R. Wooley, Esquire  
Keyes, Fox & Wiedman LLP  
436 14<sup>th</sup> Street, Suite 1305  
Oakland, CA 94612  
*The Alliance for Solar Choice*

Jacob Schlesinger, Esquire  
Keyes, Fox & Wiedman LLP  
1400 16<sup>th</sup> Street  
16 Market Square, Suite 400  
Denver, CO 80202  
*The Alliance for Solar Choice*

Daniel Clearfield, Esquire  
Deanne M. O'Dell, Esquire  
Sarah Stoner, Esquire  
Echert Seamans Cherin & Mellott, LLC  
213 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
*KEEA Energy Efficiency Alliance*

Mark C. Szybist, Esquire  
1152 15<sup>th</sup> Street NW, Suite 300  
Washington, DC 20005  
*Natural Resources Defense Council*

Michael Panfil  
1875 Connecticut Avenue, N.W.  
Washington, DC 20009  
*Environmental Defense Fund*

John Finnigan  
128 Winding Brook Lane  
Terrace Park, OH 45174  
*Environmental Defense Fund*

Heather M. Langeland  
200 First Avenue, Suite 200  
Pittsburgh, PA 15222  
*Environmental Defense Fund*

VIA FIRST CLASS MAIL

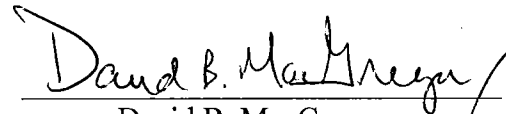
Cathleen A. Woomert  
81 Maple Ridge Road  
Millville, PA 17846

Michael B. Young  
185 Constitution Avenue  
Wilkes Barre, PA 18706-4152

Mr. D. Wintermeyer  
1406 Carlisle Road  
Camp Hill, PA 17011

Joseph McAndrew  
85 West Chestnut Street  
Macungie, PA 18062

Date: October 22, 2015

  
\_\_\_\_\_  
David B. MacGregor

ABK