



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

September 24, 2010

M-2010-2179796

ERIC EPSTEIN
4100 HILLSDALE ROAD
HARRISBURG PA 17112

PPL Electric Utilities Corporation Universal Service
and Energy Conservation Plan for 2011-2013

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on September 23, 2010 adopted an Order in the above entitled proceeding.

An Order has been enclosed for your records.

Very truly yours,

A handwritten signature in cursive script that reads "Rosemary Chiavetta".

Rosemary Chiavetta
Secretary

Encls.
Cert. mail
MH

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held on September 23, 2010

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
John F. Coleman Jr.
Wayne E. Gardner
Robert F. Powelson

PPL Electric Utilities Corporation
Universal Service and Energy
Conservation Plan for 2011-2013

Docket No. M-2010-2179796

ORDER

BY THE COMMISSION:

On June 1, 2010, PPL Electric Utilities Corporation (“PPL” or “the Company”) filed the above-captioned Universal Service and Energy Conservation Plan (“Plan”) in accordance with the Commission’s regulations at 52 Pa. Code § 54.71 - § 54.78.

On July 12, 2010, Eric Joseph Epstein (“Mr. Epstein”) filed a Petition to Intervene in this proceeding, and on July 13, 2010, the Sustainable Energy Fund of Central Eastern Pennsylvania (“SEF”) likewise filed a Petition to Intervene. In their respective petitions, which are discussed in greater detail below, Mr. Epstein and SEF raised a number of issues with regard to PPL’s proposed Plan. Also, on July 29, 2010, the Office of Consumer Advocate (“OCA”) filed a Notice of Intervention. Upon review, we grant the Petitions to Intervene. Additionally, because issues of genuine fact were raised in the Petitions, we will re-assign PPL’s Plan to the Office of Administrative Law Judge for hearing and issuance of a recommended decision.

DISCUSSION

Procedural History

On December 28, 2009, PPL filed a Tariff Supplement, Supplement No. 80 to Tariff Electric-Pa. P.U.C No. 201 (“Supplement No. 80”), in response to an Order of Administrative Law Judge Susan D. Colwell.¹ The Order directed PPL to file the tariff supplement, which contains the continuation of the Company’s reconcilable Universal Service Rider (“USR”), in order to comply with a Settlement² in PPL’s 2007 base rate proceeding.³ PPL’s USR is a reconcilable tariff mechanism under which the Company collects certain expenses associated with the universal service programs⁴ provided by PPL to qualifying residential customers.

Mr. Epstein and SEF filed Petitions to Intervene in the Supplement No. 80 proceeding, in response to PPL’s proposal to continue its annual reconciliation of the USR. In an Order entered on April 26, 2010,⁵ we granted Mr. Epstein’s and SEF’s Petitions to Intervene. However, in granting the Petitions, we noted that the issues raised by Mr. Epstein and SEF go beyond the question of whether the annual reconciliation provision should be continued and raise a variety of concerns related to PPL’s overall universal service plan, including matters such as program design, budget, implementation

¹ *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-00072155, Order entered December 7, 2009.

² *Joint Stipulation for Settlement of Rate Investigation*, filed August 30, 2008 at Docket No. R-00072155, Page 8, Paragraph 25(e).

³ *Pennsylvania Public Utility Commission et al. v. PPL Electric Utilities Corporation*, Docket No. R-00072155, Opinion and Order entered December 6, 2007.

⁴ PPL’s universal service programs are 1) its customer assistance program known as On Track, and 2) its low income usage reduction program known as the Winter Relief Assistance Program (“WRAP”).

⁵ *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-2009-2149789, Order entered April 26, 2010.

and evaluation. We determined that the more appropriate forum for Mr. Epstein and SEF to raise these issues is upon the filing of PPL's Universal Service and Energy Conservation Plan. We also directed PPL to serve copies of its Plan on Mr. Epstein, SEF and the OCA.

PPL's Proposed Universal Service and Energy Conservation Plan

On June 1, 2010, PPL filed its Universal Service and Energy Conservation Plan for 2011 to 2013, in accordance with the Commission's regulations at 52 Pa. Code §§ 54.71 – 54.78. In submitting the Plan, PPL served the Commission's Bureau of Consumer Services and the OCA. PPL did not serve the Plan on Mr. Epstein or SEF, despite being directed to do so in our April 26, 2010 Order in PPL's Supplement No. 80 Proceeding. After this deficiency in service was realized by PPL, which PPL characterizes as an "administrative oversight," PPL served copies of its Plan to Mr. Epstein and SEF before July 14, 2010. Because Mr. Epstein and SEF have not been deprived of any due process rights or have otherwise been prejudiced, we deem PPL's error to be harmless.

For reasons described more fully below, we will not address the substance of PPL's Plan at this time.

Petitions to Intervene

Based on our April 26, 2010 Order in PPL's Supplement No. 80 Proceeding, Mr. Epstein and SEF both filed Petitions to Intervene in this proceeding, raising a number of issues and arguments in opposition to PPL's Plan.

Mr. Epstein is a residential customer of PPL and has participated as an active party in numerous PPL proceedings, including the Company's 2007 base rate proceeding⁶ and 2009 reconcilable universal service rider tariff supplement proceeding.⁷ In his Petition to Intervene, Mr. Epstein asserts that his evaluation of PPL's Plan reveals the following issues:

- a. PPL's metrics for evaluating the efficacy of CAP and On Track are ineffective and arbitrary.
- b. PPL's Key Performance Indicators for customer service, customer satisfaction, and service reliability are ineffective and arbitrary.
- c. PPL's administrative costs may be excessive.
- d. PPL has stated that some of the expenditures under the Work by Outsiders category are being performed by organizations associated with PPL Corporation. PPL also stated its affiliates are providing administrative services. In both instances, "double dipping" and excessive costs need to be evaluated.
- e. Shutoffs of electric service to PPL customers are excessive, arbitrary, and have resulted in systemic challenges to public health including several fatalities.
- f. Data projections for th[e] [Universal Service Rider] filing are based on outdated census material from 2000. PPL needs to recompute its assumptions based on 2008 data points.

⁶ *Pennsylvania Public Utility Commission et al. v. PPL Electric Utilities Corporation*, Docket No. R-00072155, Opinion and Order entered December 6, 2007.

⁷ *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-2009-2149789, Opinion and Order entered April 26, 2010.

Epstein Petition to Intervene at 6-7. Mr. Epstein requests that the Commission grant him full party status in PPL's Universal Service and Energy Conservation Plan proceeding.

SEF is a Pennsylvania corporation established at the conclusion of PPL's Electric Restructuring proceeding,⁸ and pursuant to the terms of the Joint Settlement⁹ filed in that proceeding. SEF states in its Petition to Intervene that its mission is to promote and invest in energy efficiency, renewable energy and energy education in order to provide opportunities and benefits for PPL ratepayers, including low-income ratepayers. SEF has participated as an active party in numerous PPL proceedings, including the Company's 2007 base rate proceeding and 2009 reconcilable universal service rider tariff supplement proceeding.

SEF describes its concerns regarding PPL's Plan as follows:

Of particular concern to SEF in PPL's proposed 2011-2013 Universal Service and Energy Conservation Plan is the complete removal of solar water heating from its WRAP program. Its current WRAP program incorporates the commitment to solar water heating as part of WRAP, which is not subject to the Commission's payback criteria, as noted in its 2007-2010 plan . . . While SEF in the USR docket noted that PPL had failed to adequately follow through on its commitment to offer solar water heating as a standard WRAP measure, it now proposes to cease this aspect of WRAP all together.

SEF Petition to Intervene at 5.

⁸ *Application of Pennsylvania Power & Light Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, et al.*, Docket No. R-00973954, Final Order entered August 13, 1998.

⁹ *Joint Petition for Full Settlement of PP&L, Inc.'s Restructuring Plan and Related Court Proceedings*, filed August 12, 1998 at Docket No. R-00973954.

SEF's intervention is necessary to insure the development of a complete record on the reasonableness of PPL abandoning its commitment to solar water heating for low-income customers and increasing the promotion of electric systems over renewable measures.

SEF Petition to Intervene at 7. SEF requests that the Commission grant it full party status in this proceeding, and that the Commission assign this matter to the Office of Administrative Law Judge and hold hearings on PPL's proposed Plan.

Finally, as noted above, the OCA filed a Notice of Intervention in this proceeding. The OCA raised no specific issues with respect to PPL's proposed Plan, but stated that its intervention was filed to ensure that the Company's Plan reasonably meets the needs of PPL's low-income customers and complies with the Commission's directives regarding universal service and energy conservation issues.

Resolution

Our review of the Petitions to Intervene filed by Mr. Epstein, SEF and the OCA, as well as the responsive pleadings filed by PPL, demonstrates that there is a genuine issue of material fact about the methods PPL used to collect its data, the costs associated with its universal service programs and whether PPL's WRAP program sufficiently uses renewable energy measures.

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. PUC*, 479 A. 2d 10 (Pa. Cmwlth. 1984). However, this requirement is satisfied when the parties are accorded notice and an opportunity to be heard.

When material contested facts are present, due process ordinarily requires an oral hearing rather than a “paper” hearing. *Diamond Energy, Inc. v. Pa. P.U.C.*, 653 A.2d 1360, 1366-67 (Pa. Cmwlth. 1995); *see George v. Pa. P.U.C.*, 735 A.2d 1282, 1288 (Pa. Cmwlth. 1999), *petition for allowance of appeal denied*, 758 A.2d 1202 (Pa. 2000) (evidentiary hearing not required prior to order permitting divestiture of assets where party does not object to actual divestiture and order provides for subsequent evidentiary hearing to resolve material factual issues in dispute); *West Penn Power v. Pa. P.U.C.*, 659 A.2d 1055, 1062-63 (Pa.Cmwlth.1995), *petition and cross-petition for allowance of appeal denied*, 674 A.2d 1079 (Pa. 1996); K. C. Davis, *Administrative Law Treatise*, §§ 12:2, 14:1-14:3 (1979-80).

For this reason, we will transfer PPL’s Universal Service and Energy Conservation Plan for 2011-2013 and the related pleadings to the Office of Administrative Law Judge for hearing and issuance of a recommended decision.

CONCLUSION

In light of the above analysis, the Commission finds that PPL’s Universal Service and Energy Conservation Plan for 2011-2013, including, but not limited to its Winter Relief Assistance Program, and the pleadings filed thereto raise genuine issues of fact and that due process requires that the matter be transferred to the Office of Administrative Law Judge for hearing; **THEREFORE**,

IT IS ORDERED:

1. That the Petition to Intervene filed in this proceeding by Eric Joseph Epstein is hereby granted.

2. That the Petition to Intervene filed in this proceeding by the Sustainable Energy Fund of Central Eastern Pennsylvania is hereby granted.

3. That the Petition to Intervene filed in this proceeding by the Office of Consumer Advocate is hereby granted.

4. That the PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan (2011-2013), filed on June 1, 2010 at Docket No. M-2010-2179796, shall be transferred to the Office of Administrative Law Judge for hearing and issuance of a Recommended Decision.

5. That a copy of this Order shall be filed at Docket No. M-2010-2179796 and served upon PPL Electric Utilities Corporation, the Office of Trial Staff, the Office of Consumer Advocate, the Office of Small Business Advocate, Eric Joseph Epstein and the Sustainable Energy Fund of Central Eastern Pennsylvania.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: September 23, 2010

ORDER ENTERED: September 24, 2010