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File #: 2507/140069

July 30, 2009

James J. McNulty  
Secretary  
PA Public Utility Commission  
Commonwealth Keystone Building  
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PO Box 3265  
Harrisburg, PA 17105-3265

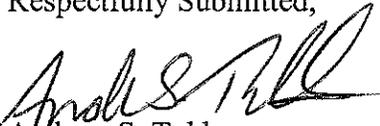
**RE: Petition of PPL Electric Utilities Corporation for Approval of an Energy Efficiency and Conservation Plan - Docket No. M-2009-2093216**

Dear Secretary McNulty:

Enclosed, for filing, is the original Motion of PPL Electric Utilities Corporation for a Protective Order in the above-referenced proceeding.

As indicated on the certificate of service, copies have been provided to the parties in the manner indicated.

Respectfully Submitted,



Andrew S. Tubbs

AST/jl

Enclosures

cc: Honorable Susan D. Colwell

## 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).

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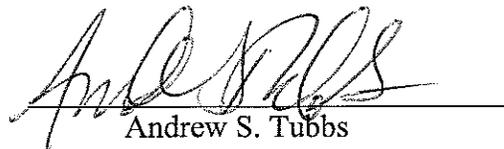
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Date: July 30 2009

  
Andrew S. Tubbs

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities :  
Corporation for Approval of an Energy : Docket No. M-2009-2093216  
Efficiency and Conservation Plan :

**MOTION OF PPL ELECTRIC UTILITIES  
CORPORATION FOR A PROTECTIVE ORDER**

**TO ADMINISTRATIVE LAW JUDGE SUSAN D. COLWELL:**

PPL Electric Utilities Corporation (“PPL Electric”) hereby requests that the attached Protective Order be entered in the above-captioned proceeding pursuant to the provisions of 52 Pa. Code § 5.423(a). In support thereof, PPL Electric represents as follows:

1. On July 1, 2009, PPL Electric filed the above-captioned Petition with the Pennsylvania Public Utility Commission (“Commission”), seeking approval of an Energy Efficiency and Conservation Plan (“EE&C Plan” or “Plan”). The filing was made pursuant to the Implementation Order of the Pennsylvania Public Utility Commission (the “Commission”) issued in Docket No. M-2008-2069887.<sup>1</sup> The EE&C Plan includes a broad portfolio of energy efficiency programs, conservation practices and peak load reductions, renewable technologies, and energy education initiatives. These integrated programs are designed to meet the goals established by Sections 2806.1 and 2806.2 of Act 129, 66 Pa. C.S. § 2806.1-2806.2.

2. Proprietary Information within the definition of 52 Pa. Code § 5.423 may be presented or requested during the course of this proceeding, which justifies the issuance of a Protective Order. For example, parties may seek information that is customarily treated as sensitive, proprietary, or highly confidential. Therefore, treatment of such information as set forth in the attached proposed Protective Order is justified because unrestricted disclosure of

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<sup>1</sup> *Energy Efficiency and Conservation Program Implementation Order*, Docket No. M-2008-2069887, entered on January 16, 2009 (“Implementation Order”), Reconsideration Order entered May 2, 2009.

such information would not be in the public interest. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.423 and in Administrative Law Judge or Commission Orders granting relief pursuant to said regulation.

3. Under 52 Pa. Code §§ 5.362(a)(7) and 5.423, the Office of Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of confidential commercial information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the confidential information. In applying this standard, relevant factors to be considered include: the extent to which disclosure would cause unfair economic or competitive damage; the extent to which the information may already be known by others; and the potential value of such information to the participant and the participant's competitors and trade partners. 52 Pa. Code §§ 5.423(a)(1) – (3).

4. The attached proposed Protective Order defines two categories of protected information. The first is "proprietary information," which is defined in Paragraph 3 of the attached proposed Protective Order as "those materials that customarily are treated by the party as sensitive or proprietary, which are not available to the public and, which if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury." The second is "highly confidential" information, which is defined in Paragraph 3 of the attached proposed Protective Order as "those materials that are of such a commercially sensitive nature among the parties or of such a private, personal nature that the producing party is able to justify a heightened level of confidential protection with respect to those materials." Clearly, protecting this type of information from disclosure is appropriate.

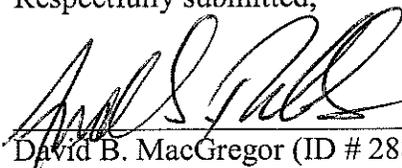
5. Paragraph 11 of the attached proposed Protective Order protects against overly broad designations of protected information by giving all parties the right to “question or challenge the confidential or proprietary nature of the Proprietary Information.”

6. Limitation on the disclosure of proprietary information will not prejudice the rights of the participants, nor will such limitation frustrate the prompt and fair resolution of this proceeding. The proposed Protective Order balances the interests of the parties, the public, and the Commission.

7. The attached proposed Protective Order will protect the confidential information while allowing the parties to use such information for purposes of the instant litigation.

WHEREFORE, for all the foregoing reasons, PPL Electric Utilities Corporation requests that Administrative Law Judge Susan D. Colwell grant this Motion and issue the attached Protective Order.

Respectfully submitted,



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Of Counsel:

Post & Schell, P.C.

Date: July 30, 2009

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities :  
Corporation for Approval of an Energy : Docket No. M-2009-2093216  
Efficiency and Conservation Plan :

**PROTECTIVE ORDER**

Upon consideration of the Motion for a Protective Order that was filed by PPL Electric Utilities Corporation (“PPL Electric”) on \_\_\_\_\_, 2009;

IT IS ORDERED THAT:

1. The Motion is hereby granted with respect to all materials and information identified in Paragraphs 2 and 3 below, which have been or will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceeding and all proceedings consolidated therewith. All persons previously or hereafter granted access to the materials and information identified in Ordering Paragraphs 2 and 3 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. The materials or information subject to this Protective Order are all correspondence, documents, data, information, studies, methodologies and other materials which a party or an affiliate of a party furnishes in this proceeding pursuant to Commission rules and regulations, discovery procedures, testimony or oral examination, or provides as a courtesy to a party to this proceeding, which are claimed to be commercially valuable information for which reasonable measures have been taken to keep confidential, and which are designated “PROPRIETARY INFORMATION” or “HIGHLY CONFIDENTIAL” (hereinafter collectively referred to as “Protected Information”). When a statement or exhibit is identified for the record, the portions thereof that constitute Protected Information shall be appropriately designated as such for the record.

3. This Protective Order applies to the following materials:

(a) The parties may designate as “PROPRIETARY INFORMATION” those materials that customarily are treated by the party as sensitive or proprietary, which are not available to the public and, which if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury;

(b) The parties may designate as “HIGHLY CONFIDENTIAL” those materials that are of such a commercially sensitive nature among the parties or of such a private, personal nature that the producing party is able to justify a heightened level of confidential protection with respect to those materials. Such Highly Confidential Information shall include, but is not be limited, the following: (i) such Proprietary Information under the Public Utility Confidential Security Information Disclosure Protection Act, Act of November 29, 2006, P.L. 156, 35 P.S. §§ 2141.1 *et seq.*; (ii) analytical tools and models used by PPL Electric or its consultants to develop the EE&C Plan; and (iii) competitive strategies or service alternatives.

4. Protected Information produced in this proceeding shall be made available to the Commission and its Staff (including the Office of Trial Staff), the Office of Consumer Advocate, the Office of Small Business Advocate, and any other party solely for use in this proceeding. For purposes of filing, to the extent that Protected Information is placed in the Commission’s report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Protected Information is placed in the Commission’s testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Order. Public inspection of Protected Information shall be permitted only in accordance with this Protective Order.

5. Protected Information shall be made available to counsel of record in this proceeding pursuant to the following procedures:

(a) “PROPRIETARY INFORMATION” To the extent required for participation in this proceeding, a party’s counsel may afford access to Proprietary Information made available by another party (“the producing party”) to the party’s expert(s), subject to the following restrictions:

(i) Such experts may not hold any of the following positions with any competitor of the producing party or its agents: (a) an officer, board member, stockholder, partner, owner, or an employee, who is primarily involved in the pricing, development, and/or marketing of products or services that are offered in competition with those of the producing party; or (b) an officer, board member, stockholder, partner, owner of any affiliate of a competitor of the producing party. Provided, however, that any expert shall not be disqualified on account of being a stockholder, partner, or owner unless his/her interest in the business constitutes, in the view of the affected producing party, a significant potential for violation of the limitations of permissible use of the Proprietary Information.

(ii) If a party’s independent expert, another member of the independent expert’s firm or the independent expert’s firm generally also serves as an expert for, or as a consultant or advisor to a competitor or any affiliate of a competitor of the producing party or its agents, said independent expert must: (1) advise the producing party of the competitor’s or affiliate’s name(s); (2) make reasonable attempts to segregate those personnel assisting in the expert’s participation in this proceeding from those personnel working on behalf of a competitor or any affiliate of a competitor of the producing party; and (3) if segregation of such personnel is impractical, the independent expert shall give to the producing party written assurances

acceptable to the producing party that the lack of segregation will in no way jeopardize the interests of the producing party. The producing party retains the right to challenge the adequacy of the written assurances that its interests will not be jeopardized.

(iii) Any information provided under this provision may be used only for and to the extent that is necessary for participation in this proceeding; any person obtaining information disclosed through this provision may not use that information to gain any commercial advantage and any person obtaining information may not forward it to any person.

(b) “HIGHLY CONFIDENTIAL” Where information is asserted to be Highly Confidential Information, it will be made available for inspection and review as provided for in this protective order and not copying except as specified herein. The producing party shall provide counsel for the OCA, OTS and OSBA (individually “public advocate” and collectively the “public advocates”) a copy of such Highly Confidential Information, provided that it shall not be copied, except for the public advocate counsel, and the public advocates’ in-house staff or independent consultants, in accordance with the protocols set forth below and shall be returned as provided for in this Protective Order. Such Highly Confidential Information may be provided by a public advocate to its eligible independent consultants (as defined in 52 Pa. Code § 5.423(d)) or to eligible in-house staff who are assisting counsel with the preparation or presentation of the public advocate’s case in these proceedings, provided that such consultants or in-house staff execute and return the acknowledgment attached to this Protective Order to the producing party.

(c) Competitive Duty Restrictions. Proprietary or Highly Confidential Information shall not be made available to any employee or agent of a competitor of the producing party whose duties include the marketing, sale, or purchase of electricity; management

responsibility regarding, or supervision of any employee whose duties include the marketing, sale, or purchase of electricity for a competitor of the producing party; the provision of consulting services for a competitor of the producing party regarding the marketing, sale, or purchase of electricity; or management responsibility regarding other strategic business activities in which use of market sensitive information could be reasonably expected to cause competitive harm to the producing party (collectively, "Competitive Duties"). In the event that any person who has had access to Proprietary or Highly Confidential Information subsequently is assigned to perform any Competitive Duties, such person shall immediately dispose of any Proprietary or Highly Confidential Information in his/her possession or any information derived therefrom and shall continue to comply with the requirements of this Protective Order with regard to the Proprietary or Highly Confidential Information to which such person previously had access.

(d) No other persons may have access to the Proprietary or Highly Confidential Information except as authorized by agreement of the parties, or order of the Commission or of the presiding Administrative Law Judge. Any request for an agreement or order to permit an unauthorized person to receive or review Proprietary or Highly Confidential Information shall be subject to the following conditions:

(i) the party who employs or has retained the person in question must certify in writing to the affected producing party that the certifying party's ability to participate effectively in this proceeding would be prejudiced if it was unable to rely on the assistance of the particular person;

(ii) the party claiming such prejudice must identify by name and job title the particular person required and must describe the person's duties and responsibilities for

the requesting party and justify why access to the Proprietary or Highly Confidential Information should be granted;

(iii) the party claiming such prejudice must receive prior written consent to share Proprietary or Highly Confidential Information from the affected producing party;

(iv) the party claiming such prejudice shall abide by any additional limitations on the sharing of such Proprietary or Highly Confidential Information established by the affected producing party; and

(v) the party claiming such prejudice must acknowledge in writing that any other use of Proprietary or Highly Confidential Information shall constitute a violation of an order of the Commission. Such agreement by the producing party shall not be unreasonably withheld, delayed, or conditioned.

(e) No person who may be entitled to receive, or who is afforded access to any Proprietary or Highly Confidential Information shall use or disclose such information for the purposes of business or competition, or any purpose other than the preparation for and conduct of this proceeding or any administrative or judicial review thereof.

6. Prior to making Proprietary or Highly Confidential Information available to any person as provided in Paragraph 5 of this Protective Order, counsel shall deliver a copy of this Order to such person and shall receive a written acknowledgment from that person in the form attached to this Order and designated as "Appendix A." Counsel shall promptly deliver to the producing party a copy of the executed acknowledgment form.

7. A producing party shall designate data or documents as constituting or containing Proprietary or Highly Confidential Information by affixing an appropriate proprietary stamp or

typewritten designation on such data or documents. Where only part of data compilations or multi-page documents constitutes or contains Proprietary or Highly Confidential Information, the producing party shall designate only the specific data or pages of documents that constitute or contain Proprietary or Highly Confidential Information.

8. The party will consider and treat the Protected Information as within the exemptions from disclosure provided in the Pennsylvania Right to Know Law, Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104, effective January 1, 2009, until such time as the information is found to be a public record.

9. Any public reference to Proprietary or Highly Confidential Information by counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary or Highly Confidential Information to fully understand the reference and not more. The Proprietary or Highly Confidential Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

10. Part of any record of this proceeding containing Proprietary or Highly Confidential Information, including but not limited to all exhibits, writings, testimony, cross examination, argument and responses to discovery, and including reference thereto as mentioned in Paragraph 9 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary or Highly Confidential Information is released from the restrictions of this Order, either through the agreement of the parties or pursuant to order of the Administrative Law Judge, the Commission or appellate court.

11. The parties affected by the terms of this Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary or Highly Confidential

Information; to question or challenge the admissibility of Proprietary or Highly Confidential Information; to refuse or object to the production of Proprietary or Highly Confidential Information on any proper ground, including but not limited to relevance, materiality, or undue burden; to seek an order permitting disclosure of Proprietary or Highly Confidential Information beyond that allowed in this Order; and to seek additional measures of protection of Proprietary or Highly Confidential Information beyond those provided in this Order. If a challenge is made to the designation of a document or information as Proprietary or Highly Confidential, the party claiming that the information is Proprietary or Highly Confidential retains the burden of demonstrating that the designation is necessary and appropriate.

12. Unresolved challenges arising under Paragraph 11 shall be decided on petition by the presiding officer or the Commission as provided by 52 Pa. Code § 5.423(a). All such challenges will be resolved in conformity with existing rules, regulations, orders, statutes, precedent, etc., to the extent that such guidance is available.

13. Within thirty (30) days from completion of this proceeding, including any administrative or judicial review, upon request of the producing party, all copies of all documents and other materials, including notes, which contain any Proprietary or Highly Confidential Information shall be immediately returned to the party furnishing such Proprietary or Highly Confidential Information. In the alternative, parties may provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary or Highly Confidential Information have been destroyed.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Administrative Law Judge  
Susan D. Colwell

**APPENDIX A**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities :  
Corporation for Approval of an Energy : Docket No. M-2009-2093216  
Efficiency and Conservation Plan :

TO WHOM IT MAY CONCERN:

The undersigned is the \_\_\_\_\_ of \_\_\_\_\_ (the retaining party).

The undersigned has read and understands the Protective Order issued in the above captioned proceedings, which Order deals with the treatment of information designated as "PROPRIETARY INFORMATION" or "HIGHLY CONFIDENTIAL." The undersigned agrees that any Proprietary or Highly Confidential Information shall be used or disclosed only for purposes of preparation for, and conduct of the above captioned proceedings, and any administrative or judicial review thereof, and shall not be disclosed or used for any other purposes whatsoever.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
EMPLOYER

DATE: \_\_\_\_\_