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September 9, 2009

**VIA ELECTRONIC FILING**James J. McNulty, Secretary  
PA Public Utility Commission  
400 North Street, Keystone Bldg., 2<sup>nd</sup> Fl.  
P.O. Box 3265  
Harrisburg, PA 17105-3265Re: Petition of PPL Electric Utilities Corporation for Approval of an  
Energy Efficiency and Conservation Plan; Docket No. M-2009-2093216

Dear Secretary McNulty:

Enclosed please find the original, Reply Brief of Amicus Curiae Independent Oil and Gas Association of Pennsylvania in Support of Natural Gas Substitution Measures, which was electronically filed in the above-referenced matter today. As evidenced by the attached Certificate of Service, the parties of record have been served in the manner indicated.

If you have any questions regarding this filing, please contact me at your convenience.

Very truly yours,

  
Kevin J. MoodyKJM/jls  
Enclosure

cc: Certificate of Service (w/enc)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of the foregoing Reply Brief on the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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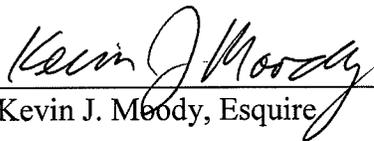
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Petition of PPL Electric Utilities :  
Corporation for Approval of an Energy : Docket No. M-2009-2093216  
Efficiency and Conservation Plan :

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**REPLY BRIEF  
OF  
AMICUS CURIAE  
INDEPENDENT OIL AND GAS ASSOCIATION OF PENNSYLVANIA  
IN SUPPORT OF  
NATURAL GAS SUBSTITUTION MEASURES**

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## **I. INTRODUCTION**

As permitted by 52 Pa. Code § 5.502(e), the Independent Oil and Gas Association of Pennsylvania (“IOGA”) as *amicus curiae* submits this reply brief in response to the position of the Department of Environmental Protection (“DEP”) and the Office of Consumer Advocate (“OCA”) that natural gas substitution measures do not qualify as “energy efficiency and conservation measures” as defined in Act 129.<sup>1</sup> IOGA supports the position of the UGI Distribution Companies that natural gas substitution measures that have demonstrated sustainable, long-term electric usage reduction opportunities for retail customers constitute energy efficiency and conservation measures under Act 129. IOGA takes no position on whether any particular electricity-to-gas substitution ( or switching) measure, beyond that which PPL Electric Utilities Corporation (“PPL”) has proposed, should be presently included in PPL’s Act 129 Plan or, alternatively, addressed in a separate proceeding.

## **II. INTEREST OF AMICUS CURIAE**

IOGA is a non-profit trade association representing Pennsylvania independent natural gas producers and marketers. IOGA’s members produce, transport and market their Pennsylvania Appalachian natural gas production to Pennsylvania natural gas distribution companies (“NGDCs”) and to Commission-licensed natural gas suppliers (“NGSs”) for use by Pennsylvania retail customers. IOGA’s members also include NGSs that transport and market their own Pennsylvania Appalachian production, as well as the production of other companies, to Pennsylvania retail customers.

As independent producers and marketers of low cost, energy efficient Pennsylvania Appalachian natural gas, IOGA has an obvious interest in the production and use of natural gas.

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<sup>1</sup> DEP Main Brief (MB) at 4, 8; OCA MB at 16.

The Commission is well aware that the use of Pennsylvania-produced natural gas not only provides efficiency and cost savings to Pennsylvania customers, it also provides significant economic development and jobs to Pennsylvania. But the promotion of these interests and the electricity demand and consumption reductions required by Act 129 are not mutually exclusive. As shown in the brief of the UGI companies, there can be no reasonable dispute that natural gas is a more efficient end-use fuel than electricity, even when the electricity is generated by natural gas.<sup>2</sup> Accordingly, IOGA's interest in natural gas production and usage to help decrease electricity usage is consistent with electricity reduction requirements of Act 129 and, thus, is also in the public interest. As the UGI Distribution Companies point out, although electricity-to-gas substitution measures enable more use of natural gas at the end use level, these types of measures "will actually result in less natural gas usage at the source [*i.e.*, at the generation level]."<sup>3</sup>

### **III. DESCRIPTION OF EDC PLAN**<sup>4</sup>

As applicable to the issue IOGA is addressing, PPL has proposed one gas substitution measure in its Act 129 Plan – the Efficient Equipment Incentive Program which includes cash incentives to convert electric space heating systems to high efficiency gas furnaces. This program is limited to residential customers currently on Rate Schedule RTS.

### **IV. SUMMARY OF ARGUMENT**

Programs that enable customers to switch from less efficient usages of electricity to more efficient usages of natural gas for space heating, water heating and appliances are "energy efficiency and conservation measures" as defined in Act 129. If the Commission declines to

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<sup>2</sup> UGI Distribution Companies MB at 12 – 17; *see also*, [http://www.naturalgas.org/overview/uses\\_electrical.asp](http://www.naturalgas.org/overview/uses_electrical.asp) (Electric Generation Using Natural Gas).

<sup>3</sup> *Id.* at 22.

<sup>4</sup> This reply brief uses the same format as the parties' main briefs.

require such programs in PPL's plan in this abbreviated proceeding, the Commission should make clear that it is not because these programs are excluded from the scope of Act 129.

## V. ARGUMENT

### A. Act 129 Conservation and Demand Reduction Requirements

1.-5. Not applicable; IOGA takes no position on these issues.

### 6. Issues Relating To Individual Conservation And Demand Reduction Programs

DEP opposes the one limited gas substitution measure included in PPL's Act 129 Plan on the basis that fuel switching is not an "energy efficiency and conservation measure" as defined in Act 129.<sup>5</sup> While this one measure is acceptable to the OCA, provided that spending is initially limited and funds instead directed to programs that maximize annual energy consumption savings per dollar spent, the OCA's position is essentially the same as DEP's: "Fuel switching is not a measure that contributes to the efficiency of the underlying electric equipment in the home. . . . [The expected electricity consumption reductions] result from removing electric equipment from the home, not from improving the efficiency of the electric equipment or the ability to conserve usage from existing electric equipment."<sup>6</sup>

This position appears not to be consistent with the statutory definition of "energy efficiency and conservation measures" in Act 129 and the applicable principles of statutory construction. The Commission implicitly rejected this position in its Technical Reference Manual ("TRM") Order. The Commission should expressly reject this position in this proceeding.

Act 129 defines "energy efficiency and conservation measures" as follows:

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<sup>5</sup> DEP MB at 4, 8.

<sup>6</sup> OCA MB at 16.

(1) Technologies, management practices or other measures employed by retail customers that reduce electricity consumption or demand if all of the following apply:

- (i) The technology, practice or other measure is installed on or after the effective date of this section at the location of a retail customers.
- (ii) The technology, practice or other measure reduces consumption of energy or peak load by the retail customers.
- (iii) The cost of the acquisition or installation of the measure is directly incurred in whole or in part by the electric distribution company.<sup>7</sup>

The definition then lists examples of energy efficiency and conservation (“EE&C”) measures according to: (1) fuel source (solar panels, geothermal heating); (2) application (energy efficient windows, doors, lighting and appliances; insulation; reflective roof coverings; and energy efficient heating and cooling equipment on systems; and (3) activity (retrofitting exit signs, high bay fluorescent lighting and pedestrian/traffic signals). The definition concludes with “other technologies, practices or measures approved by the commission.”<sup>8</sup>

The overriding statutory requirements are that “energy efficiency and conservation measures” must be employed by retail customers and reduce the customer’s electricity consumption or demand.<sup>9</sup> The three conditions in subparagraphs (i), (ii) and (iii) of the definition actually impose only two additional conditions, one relating to the time and place of installation [66 Pa. C.S. § 2806.1(m)(1)(i)] and the other requiring some cost to be incurred by the electric utility [66 Pa. C.S. § 2806.1(m)(1)(iii)]. The condition in subparagraph (ii) merely restates the overriding general requirement of the reduction of consumption or peak demand.

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<sup>7</sup> 66 Pa. C.S. § 2806.1(m) (emphasis added).

<sup>8</sup> *Id.*

<sup>9</sup> 66 Pa. C.S. § 2806.1(m).

In view of the fact that natural gas is a more efficient end-use fuel than electricity,<sup>10</sup> energy efficient equipment and appliances powered by natural gas and used for space heating, water heating and clothes drying, for example, clearly qualify as “energy efficiency and conservation measures” under the statutory definition. DEP ignores the overriding statutory requirements and instead incorrectly focuses on the illustrative list of examples as the controlling statutory provisions.

The list is merely illustrative of the various types of technologies, practices and measures that qualify as “energy efficiency and conservation measures” – the list does not supersede the general requirements. Nonetheless, the list encompasses efficient natural gas powered equipment, systems or appliances in the terms “energy efficient heating and cooling equipment or systems and energy efficient appliances.” DEP’s argument that natural gas powered equipment, systems or appliances are not included within the scope of Act 129 because the Act is concerned with reductions in electricity consumption or peak demand does not adequately focus on the specific statutory language or the applicable principles of statutory construction.

The term “energy” is not defined in Act 129 or elsewhere in the Public Utility Code. Undefined words in a statute are construed according to their common and approved usage, or plain and ordinary meanings,<sup>11</sup> and dictionaries are generally used to determine the meaning of undefined words.<sup>12</sup> The Statutory Construction Act also provides that “[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the

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<sup>10</sup> UGI Distribution Companies MB at 12-17.

<sup>11</sup> 1 Pa. C.S. § 1903; *Com. v. Johnson*, 612 A.2d 1382 (Pa.Super. 1992).

<sup>12</sup> *Delmarva Power & Light Co. v. Com.*, 870 A.2d 901, 910 (Pa. 2005); *Philadelphia Eagles Football Club, Inc. v. City of Philadelphia*, 823 A.2d 108, 127 (Pa. 2003) (Per Nigro, J., with two justices concurring and two justices concurring in result), *reargument denied*.

General Assembly” and that “[e]very statute shall be construed, if possible, to give effect to all its provisions.”<sup>13</sup> Moreover, the plain meaning of clear and unambiguous terms cannot be ignored under the pretext of pursuing what is alleged to be the spirit of the statute.<sup>14</sup> In the context of Act 129, the plain and ordinary meaning of “energy” is “usable power (as heat or electricity); *also*: the resources for producing such power.”<sup>15</sup> Thus, the plain and unambiguous meaning of the term “energy” in the context of “energy efficient heating and cooling equipment or systems and energy efficient appliances” includes efficient equipment, systems or appliances powered by natural gas. The plain and unambiguous meaning of these terms is not limited to efficient electric equipment, systems or appliances.

The Commission has implicitly concluded this in two orders. In its Technical Reference Manual (“TRM”) Order, the Commission deferred a determination whether gas substitution or switching measures are “standard energy efficiency measures” that should be included in the TRM’s estimated deemed annual energy savings calculations, or treated as “custom measures” that are “too complex or unique” to be included in the TRM.<sup>16</sup> In its Total Resource Cost

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<sup>13</sup> 1 Pa. C.S. § 1921(a).

<sup>14</sup> 1 Pa. C.S. § 1921(b); *Luther P. Miller, Inc. v. Underground Storage Tank Indemnification Bd.*, 965 A.2d 398, 404 n.7 (Pa.Cmwlth. 2009); *Pennsylvania Retailers' Associations v. Lazin*, 426 A.2d 712 (Pa.Cmwlth. 1981) (court may not ignore express language of a statute).

<sup>15</sup> Merriam Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/energy>.

<sup>16</sup> *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources – Technical Reference Manual Update (“TRM Order”)*, M-00051865, Order entered June 1, 2009, at 9; TRM at 1 (“The Technical Reference Manual (“TRM”) was developed to measure the resource savings from standard energy efficiency measures.”), 7 (“Custom measures are considered too complex or unique to be included in the list of standard measures provided in the TRM.”).

(“TRC”) Test Order, the Commission included a formula for the calculation of energy savings that result from fuel substitution.<sup>17</sup>

PPL has shown its agreement that electricity-to-gas substitution measures are “energy efficiency and conservation measures” as defined in Act 129 by arguing in the TRM proceeding that “fuel switching should be treated as a custom measure”<sup>18</sup> and by proposing in its Act 129 Plan a program with cash incentives for switching from electric to gas.<sup>19</sup>

Accordingly, in this proceeding the Commission should explicitly affirm its prior determinations (and PPL’s position) that electricity-to-gas substitution measures are “energy efficiency and conservation measures” as defined in Act 129. The Commission should make clear that if it declines to require such additional programs in PPL’s plan in this abbreviated proceeding, it is not because these programs are excluded from the scope of Act 129, but because of other considerations.

7. Proposals for improvement of PPL’s EDC plan

Not applicable; IOGA takes no position on this issue.

**B. Cost Issues**

1. Not applicable; IOGA takes no position on this issue.

**2. Cost Effectiveness/cost-benefit issues**

IOGA’s position on these issues is set forth above in Section V.A.6.

3.-4. Not applicable; IOGA takes no position on these issues.

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<sup>17</sup> *Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test*, M-2009-2108601, Order entered June 23, 2009, Appendix at i-ii.

<sup>18</sup> *TRM Order* at 9.

<sup>19</sup> IOGA notes that PECO also proposed an electricity-to-gas substitution measure in its Act 129 Plan., and that Allegheny Power’s Act 129 Plan includes a program that accommodates an electricity-to-gas substitution measure. UGI Distribution Companies MB at 8.

**C. CSP Issues**

Not applicable; IOGA takes no position on these issues.

**D. Implementation and Evaluation Issues**

Not applicable; IOGA takes no position on these issues.

**E. Other Issues**

IOGA takes no position on other issues.

**VI. CONCLUSION**

For the reasons set forth above, IOGA requests that the Commission reaffirm that efficient natural gas equipment, systems or appliances that reduce retail customers' electricity consumption or peak load come within the plain and unambiguous terms of Act 129's definition of "energy efficiency and conservation measures."

**VII. PROPOSED ORDERING PARAGRAPH**

1. Natural gas substitution or switching measures that reduce customers' electricity consumption or peak demand are "energy efficiency and conservation measures" under Act 129.

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