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File #: 2507/140069

November 20, 2009

James J. McNulty
Secretary
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
PO Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary McNulty:

Enclosed for filing is the original Answer of PPL Electric Utilities Corporation to the Petition for Reconsideration of the Office of Small Business Advocate in the above-referenced proceeding.

Copies have been provided to the parties as indicated on the enclosed certificate of service.

Respectfully Submitted,

Andrew S. Tubbs

AST/jl

Enclosures

cc: Honorable Susan D. Colwell
Certificate of Service

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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Date: November 20, 2009



Andrew S. Tubbs

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION
TO THE PETITION FOR RECONSIDERATION OF
THE OFFICE OF SMALL BUSINESS ADVOCATE**

Pursuant to 52 Pa. Code § 5.572(e), PPL Electric Utilities Corporation (“PPL Electric” or “Company”), files this Answer to the Petition for Reconsideration (“Petition”) of the Office of Small Business Advocate (“OSBA”). In its Petition, OSBA requests three modifications to the Pennsylvania Public Utility Commission’s (“Commission”) October 26, 2009 Order approving, with modifications, PPL Electric’s Energy Efficiency and Conservation Plan (“EE&C Order”). Specifically, OSBA requests that the Commission: (1) recognize street lighting as a separate customer class for recovery of costs of the Company’s Energy Efficiency and Conservation Plan (“EE&C Plan”); (2) correct relevant ordering paragraphs to reflect the Commission’s decision requiring a separate line item for the small commercial and industrial (“Small C&I”) surcharge to recover PPL Electric’s EE&C Plan costs; and (3) direct PPL Electric to file a red-lined version of its revised EE&C Plan.

PPL Electric does not oppose OSBA’s requested modification regarding the separate line item for Small C&I customers. PPL Electric considers this to be an appropriate modification and consistent with the Commission’s EE&C Order. In addition, PPL Electric does not oppose OSBA’s requested modification requiring the Company to serve the Commission and the parties to this proceeding with a clean and a red-lined version of its revised EE&C Plan. It was the Company’s intention to submit clean and redlined versions as part of its filing by December 23, 2009. However, PPL Electric does oppose OSBA’s attempt to have the Commission direct the

Company to create a separate customer class for street lighting customers for Act 129 cost recovery purposes. This issue was not raised by the OSBA or any other party in this proceeding and there is no record evidence to support OSBA's request. PPL Electric answers each of the separately numbered paragraphs of the Petition as follows:

1. Admitted.
2. Admitted. By way of further response, on July 31, 2009, the Company filed an amended EE&C Plan pursuant to the Commission's June 23, 2009 Order, *Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test*, Docket No. M-2009-2108601.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted.
11. Admitted.
12. The averments set forth in Paragraph 12 of the Petition relate to or reference the Commission's EE&C Order, which speaks for itself. Any interpretation or characterization thereof is denied.
13. The averments set forth in Paragraph 13 of the Petition are requests for relief to which no responsive pleading is required. To the extent a response is deemed necessary, PPL Electric opposes establishing street lighting as a separate customer class for Act 129 cost

recovery purposes. However, PPL Electric does not object to clarifying the Commission's EE&C Order to reflect EE&C Plan costs for Small C&I customers as a separate line item on customers' bills. Further, the Company intends to file with the Commission and serve the parties to this proceeding with an original and a red-lined version of its revised EE&C Plan by December 23, 2009 and, therefore, does not oppose this request by OSBA.

14. Admitted. OSBA has accurately cited the Commission's standard for granting reconsideration as set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. PUC 553 (1982).

15. Admitted.

16. Denied. For the reasons set forth below, PPL Electric denies that OSBA's Petition for Reconsideration meets the standards set forth in *Duick*.

Contrary to OSBA's assertions, no party, including the OSBA, requested that PPL Electric establish a separate customer class for street lighting customers in this proceeding. Instead, OSBA requested that Government/Non-Profit customers be treated as a separate customer class by PPL Electric for cost recovery purposes. OSBA M.B., p. 13. In support of this request, OSBA referred to the Company's street lighting rate schedules as an example of OSBA's concern that the Small C&I class may be unduly burdened with paying for Act 129 costs associated with Government/Non-Profit EE&C Plan programs. OSBA St. No. 1, p. 4. However, at no time during the course of this proceeding did OSBA request that PPL Electric create a separate street lighting customer class for Act 129 cost recovery purposes. As noted by OSBA, its request that PPL Electric create a separate Government/Non-Profit customer class was rejected by the Commission in its EE&C Order. EE&C Order, p. 63. OSBA specifically states

in its Petition that it is not requesting that the Commission reconsider its decision on the Government/Non-Profit issue. Petition, p. 7.

It is improper for OSBA to request that the Commission “reconsider” an issue that was never raised in this proceeding. Had the OSBA wanted the Commission to consider whether PPL Electric’s street lighting customers should be treated separately for Act 129 cost recovery purposes, OSBA should have raised this issue during the course of this proceeding, presented evidence in support of its argument and requested relief in its main brief.¹ OSBA failed to do any of these things. Indeed, other than OSBA’s passing reference to PPL Electric’s street lighting customers in its direct testimony, the record in this proceeding is devoid of any evidence to support OSBA’s request for a separate street lighting customer class for cost recovery purposes. OSBA’s failure to raise this issue during the course of this proceeding precludes it from raising it for the first time in this Petition.² Moreover, by not raising this issue during the course of this proceeding, OSBA precluded PPL Electric from presenting evidence in response to OSBA’s argument.³ For these reasons, OSBA’s request that the Commission now direct PPL Electric to create a separate street lighting customer class for Act 129 cost recovery purposes must be rejected.

OSBA avers that the Commission’s “subsequent” decision in the PECO Energy Company (“PECO”) EE&C Plan proceeding supports its request that PPL Electric be directed to

¹ When parties have been ordered to file briefs and fail to include all the issues they wish to have reviewed, the issues not briefed have been waived. *Jackson v. Kassab*, 2002 Pa.Super. 370, 812 A.2d 1233 (2002), *appeal denied*, 573 Pa. 698, 825 A.2d 1261 (2003), *Brown v. PA Dep't of Transportation*, 843 A.2d 429 (Pa.Comm.w., 2004), *appeal denied*, 581 Pa. 681, 863 A.2d 1149 (2004).

² *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service Petition for Reconsideration of Duquesne Light Company Petition for Reconsideration of Constellation NewEnergy, Inc. and Constellation Power Source, Inc.*, Docket No. P-00032071, 2004 Pa. PUC LEXIS 42, *25 (Order entered October 5, 2004).

³ “For matters coming before an administrative agency, procedural due process, however, requires that a party be afforded reasonable notice of the issues raised and the agency’s rulings on those issues, so that the party has an opportunity to present any response or objection.” *Dee-Dee Cab, Inc. v. Pa. PUC*, 817 A.2d 593, 598 (Pa. Cmwlth. 2003), *appeal denied*, 836 A.2d 123 (Pa. 2003).

create a separate customer class for street lighting customers. Petition, pp. 5-6. Specifically, OSBA asserts that the Commission's approval of PECO's proposal to treat street lighting as a separate customer class for Act 129 cost recovery purposes supports its argument that the Commission direct PPL Electric to similarly create a separate street lighting customer class. Petition, p. 6. OSBA's reference to the PECO EE&C Plan is without merit. First, it is denied that the Commission's decision regarding PECO's EE&C Plan is relevant to this proceeding. Each EE&C Plan must be evaluated on its own merits, taking into account the specific facts and circumstances of each electric distribution company ("EDC"). Because PPL Electric and PECO developed their EE&C Plans to obtain each companies' required demand and consumption reductions, there are a variety of differences between PPL Electric's and PECO's EE&C Plans. The difference in classification of street lighting customers should not be highlighted as a basis for reconsideration. Second, PPL Electric notes that the Commission adopted orders for both PPL Electric's and PECO's EE&C Plans on October 15, 2009 with PPL Electric's EE&C Order being entered on October 26th and PECO's EE&C Order being entered on October 28th. Despite the difference in the entered dates, the Commission evaluated both of the companies' plans simultaneously and decided both cases at the same public meeting. Therefore, the Commission was fully aware of the variety of differences in the approved plans. Third, there is a fundamental difference between the PPL Electric and PECO EE&C Plans – PECO proposed, as part of its EE&C plan, to treat its street lighting customers as a separate class for cost recovery purposes.⁴ PPL Electric did not. The fact that the Commission adopted PECO's proposal to establish a separate customer class for street lighting customers, based upon the facts of that proceeding, is irrelevant to PPL Electric's EE&C Plan as approved and cannot serve as a basis for granting

⁴ See, *Petition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program*, Docket No. M-2009-2093215 (Order entered October 28, 2009), pp. 79-80.

OSBA's Petition. Fourth, as noted above, the record in PPL Electric's EE&C Plan proceeding is devoid of any evidence to support OSBA's assertion, in its Petition, that there is any need to create a separate street lighting customer class to mitigate cross-subsidization. Further, PPL Electric's inclusion of street lighting customers in its Small C&I customer class for Act 129 cost recovery purposes is consistent with the Commission-approved approach PPL Electric currently follows with other Section 1307 cost recovery mechanisms such as its competitive transition charge, intangible transition charge, transmission service charge and generation supply charge. OSBA provides no basis for changing this longstanding Commission approved approach.

Had OSBA wanted the Commission to consider this option, it was incumbent upon OSBA to raise the issue in PPL Electric's EE&C Plan proceeding and request such relief from the Commission. However, OSBA did not raise this issue in the proceeding and cannot do so after the record is closed, and the Commission has rendered its decision. OSBA's Petition must be rejected on this issue.

17. In response to Paragraph 17 of the Petition, PPL Electric states that, consistent with the Commission's EE&C Order, its Act 129 Compliance Rider will be reflected as a separate line item on the bills of both Large and Small C&I customers. Therefore, PPL Electric does not object to OSBA's proposed modification to Ordering Paragraph 15 of the EE&C Order.

18. In response to Paragraph 18 of the Petition, PPL Electric states that it was its intention to serve the Commission and all parties to this proceeding with both a clean and a red-lined version of its revised EE&C Plan. Therefore, PPL Electric does not object to this request, although it is questionable as to whether the request actually falls within the standards articulated for reconsideration under *Duick*.

19. In response to Paragraph 19 of the Petition, it is admitted that EDCs' EE&C plans must obtain a minimum of 10% of each EDC's required reductions in consumption and demand from units of Federal, State and local government, including municipalities, school districts, institutions of higher education and non-profit entities. 66 Pa.C.S. §2806.1 (b)(i)(G). With respect to OSBA's arguments in this proceeding, it is averred that OSBA's main and reply briefs speak for themselves. It is to be noted that the Commission specifically rejected OSBA's proposal that Government/Non-Profit customers be placed in a separate customer class for cost recovery purposes. PPL Electric reiterates that at no time during the course of this proceeding did OSBA request that PPL Electric be directed to recognize street lighting customers as a separate customer class for Act 129 cost recovery purposes.

20. In response to Paragraph 20 of the Petition, PPL Electric denies that its EE&C Plan may result in Small C&I customers subsidizing the required reductions in consumption and demand of other classes. By way of further response, the Commission expressly rejected the OSBA's argument determining that: (1) Government/Non-Profit customers are not treated as a separate customer class in the Company's tariff; (2) there is no evidence in this case to support separate treatment for EE&C cost recovery purposes; and (3) Section 2806.1(a)(10) of the Act simply requires EE&C measures to be financed by the same customer class that receives the direct energy and conservation benefits of those measures. EE&C Plan Order, p. 63.

21. In response to Paragraph 21 of the Petition, it is admitted that the Commission rejected OSBA's argument that PPL Electric be required to create a separate customer class for Government/Non-Profit customers. In further answer, PPL Electric's response to Paragraph 20 is incorporated herein by reference as if stated in its entirety.

22. The averments in Paragraph 22 of the Petition are denied to the extent that they allege that the Commission decided PECO's EE&C Plan after adopting PPL Electric's EE&C Order. In further answer, PPL Electric's response to Paragraph 16 is incorporated herein by reference as if stated in its entirety.

23. It is denied that the Commission's decision with respect to PECO's EE&C Plan is relevant to this proceeding. In further answer, PPL Electric's response to Paragraph 16 is incorporated herein by reference as if stated in its entirety.

24. In response to Paragraph 24 of the Petition, it is admitted that PPL Electric serves lighting customers under a number of different rate schedules. However, it is denied that creating a separate street lighting customer class for Act 129 cost recovery is needed to mitigate claimed cross-subsidization. Moreover, no evidence was presented to demonstrate the existence of such claimed cross-subsidization. In further answer, PPL Electric's responses to Paragraphs 16 and 20 are incorporated herein by reference as if stated in its entirety.

25. The averments in Paragraph 25 of the Petition are denied. Consistent with the Commission's decision to reject OSBA's argument for a separate customer class for Government/Non-Profit customers, there is no record evidence to support OSBA's request now to establish as separate street lighting customer class for Act 129 cost recovery purposes. The emphasized sentence in OCA's Petition is the sole record evidence related to street lighting customers. Such testimony was not presented to support a separate street lighting customer class, but instead was offered in support of OSBA's rejected proposal to establish a separate Government/Non-Project customer class. The testimony offers no proof, but mere speculation, about possible "disproportionate spending", and suggested only an "evaluation" of whether separation of lighting customers would be more "equitable." PPL Electric further notes that even

this modest suggestion was not pursued in OSBA's briefs. In further answer, PPL Electric's responses to Paragraphs 16 and 20 are incorporated herein by reference as if stated in its entirety.

26. Paragraph 26 of the Petition is a prayer for relief, to which no response is required. In further answer, PPL Electric's responses to Paragraphs 16 and 20 are incorporated herein by reference as if stated in its entirety. OSBA's request for a separate street lighting customer class for Act 129 cost recovery purposes must be denied.

27. Admitted.

28. In response to Paragraph 28 of the Petition, PPL Electric's response to Paragraph 17 is incorporated herein by reference as if stated in its entirety.

29. Admitted.

30. In response to Paragraph 30 of the Petition, PPL Electric's response to Paragraph 18 is incorporated herein by reference as if stated in its entirety.

31. In response to Paragraph 31 of the Petition, PPL Electric's response to Paragraph 18 is incorporated herein by reference as if stated in its entirety.

32. Paragraph 32 is a prayer for relief, to which no response is required.

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Office of Small Business Advocate's Petition for Reconsideration be denied in part and granted in part.

Respectfully submitted,

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