



McNees
Wallace & Nurick LLC

100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Shelby A. Linton-Keddie
Direct Dial: 717.237.5459
Direct Fax: 717.260.1763
skeddie@mwn.com

November 30, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

**RE: Petition of PPL Electric Utilities Corporation for Approval of Changes to its Act 129
Energy Efficiency and Conservation Plan; Docket No. M-2009-2093216**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Main Brief of the PP&L Industrial Customer Alliance ("PPLICA") in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and Main Brief, and kindly return them to our messenger for our filing purposes.

Very truly yours,

McNEES WALLACE & NURICK LLC

By

Shelby A. Linton-Keddie

Counsel to the PP&L Industrial Customer Alliance

SLK/km

c: Administrative Law Judge Dennis J. Buckley (via E-mail and Hand Delivery)
Administrative Law Judge Elizabeth Barnes (via E-mail and Hand Delivery)
Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST-CLASS MAIL

Andrew S. Tubbs, Esq.
Post & Schell, P.C.
17 N. Second St., 17th Floor
Harrisburg, PA 17101
atubbs@postschell.com

Paul E. Russell, Esq.
Associate General Counsel
PPL Electric Utilities, Inc.
Two North Ninth Street
Allentown, PA 18108-1179
perussell@pplweb.com

James A. Mullins, Esq.
Tanya J. McCloskey, Esq.
Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923
jmullins@paoca.org
tmccloskey@paoca.org

Allison Kaster, Esq.
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105
akaster@state.pa.us

Sharon Webb, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
swebb@state.pa.us

Kurt E. Klapkowski, Esq.
Commonwealth of Pennsylvania
Department of Environmental Protection
RCSOB, 9th Floor
400 Market Street
Harrisburg, PA 17101-2301
kklapkovsk@state.pa.us

Harry S. Geller, Esq.
Julie George, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
hgellerpulp@palegalaid.net
jgeorgepulp@palegalaid.net

Christopher A. Lewis, Esq.
Christopher R. Sharp, Esq.
Blank Rome, LLP
One Logan Square
Philadelphia, PA 19103
lewis@blankrome.com
sharp@blankrome.com



Shelby A. Linton-Keddie

Counsel to PP&L Industrial Customer Alliance

Dated this 30th day of November, 2010, at Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation :
For Approval of Changes to its Act 129 Energy : Docket No. M-2009-2093216
Efficiency and Conservation Plan :

**MAIN BRIEF OF THE
PP&L INDUSTRIAL CUSTOMER ALLIANCE**

Pamela C. Polacek (I.D. No. 78276)
Shelby A. Linton-Keddie (I.D. No. 206425)
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300

Counsel to PP&L Industrial Customer Alliance

Dated: November 30, 2010

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I. INTRODUCTION

On October 15, 2008, Governor Rendell signed into law House Bill 2200, or Act 129 of 2008 ("Act 129" or "Act"). Among other things, Act 129 expanded the Pennsylvania Public Utility Commission's ("PUC" or "Commission") oversight responsibilities and set forth new requirements on Electric Distribution Companies ("EDCs").¹ In accordance with the Act, on July 1, 2009, PPL Electric Utilities Corporation ("PPL" or "Company") submitted a Petition for Approval of an Energy Efficiency and Conservation Plan ("EE&C Plan" or "Plan"), which was approved in part and rejected in part by Commission Order entered October 26, 2009 at Docket No. M-2009-2093216 ("October 26 Order").

As part of the October 26 Order, the Commission clearly stated that "[t]he General Assembly authorized the Commission, not the EDC, to make decisions in regard to modifying an approved Act 129 Plan."² Similarly, while the Commission encouraged "the use of a stakeholder process to consider the need for corrections to make mid-course corrections to [the Company's] cost recovery mechanism,"³ the Commission unambiguously ordered that it will "require PPL Electric Utilities Corporation to seek Commission approval of any mid-course changes to the Plan that it intends to make."⁴

The October 26 Order also noted that in addition to the statutorily required annual report, which must be submitted by an EDC to the Commission (*see* 66 Pa. C.S. § 2806.1(i)(1)), the PUC "will permit EDCs and other interested stakeholders and statutory advocates to propose plan changes in conjunction with the EDC's annual report filing." October 26 Order at 89 (citing January 26, 2009 *Implementation Order* at 24 (Docket No. M-2008-2069887) (emphasis added). With regard to the actual scope and content of the Annual Review process, the October 26 Order indicated that "it is the

¹ As articulated in the Act, only Electric Distribution Companies ("EDCs") with at least 100,000 customers are required to submit energy efficiency and conservation programs. *See* 66 Pa. C.S. § 2806.1, *et seq.*

² October 26 Order at 92.

³ *Id.* at 114.

⁴ *Id.*

Commission's intention to provide each of the EDCs with a Secretarial letter identifying issues that the Commission would like to see addressed as well [as] data the Commission needs to perform its review." October 26 Order at 75.

On June 24, 2010, and September 1, 2010, the Commission issued Secretarial Letters addressing the filing procedures for EDCs' Act 129 Annual Reports and proposed revisions to their EE&C Plans. Specifically, the PUC's June 24, 2010, Secretarial Letter "directs that EDCs submit their 2010 Act 129 annual report and any proposed EE&C plan revisions by September 15, 2010."⁵ Additionally, the Commission explained its interpretation of its January 16, 2009, *Implementation Order*,⁶ regarding annual reports and plan modifications as follows:

As set forth in the *Implementation Order*, the annual report and any proposed EE&C plan revisions are to be served on the Office of Consumer Advocate, the Office of Small Business Advocate and the Office of Trial Staff. The Commission will post the annual reports and any proposed EE&C plan revisions on the Commission's EE&C program web page. Any interested party can make a recommendation for plan improvements or object to proposed EE&C plan revisions within 30 days of the filing of the annual reports and proposed EE&C plan revision filings. Interested parties will have 20 days to file replies to any recommendations for plan improvements or objections to plan revisions, after which the Commission will determine whether to rule on the recommended changes or refer the matter to an ALJ for hearings and a recommended decision.⁷

Further, the September 1 Secretarial Letter specifically provided guidance to EDCs "regarding the format that the Commission expects EDCs to use for the presentation of proposed changes to Commission-approved plans." September 1 Secretarial Letter at 1 (emphasis added).

Specifically, the Commission articulated the following directive:

The Commission expects that an EDC proposing a change in its Commission-approved plan will file and serve a complete copy of its revised plan, in both hard copy and electronic format. The plan shall include an Executive Summary or other section that (a) briefly describes each proposed change, (b) states where each proposal can be found in the revised plan, and

⁵ June 24, 2010, Secretarial Letter, Docket No. M-2008-2069887, at 1 (emphasis added).

⁶ *Implementation Order*, Docket No. M-2008-2069887, Order entered Jan. 16, 2009.

⁷ June 24, 2010 Secretarial Letter at 2 (emphasis added) (internal citations omitted).

(c) indicates whether (and if so, how) each proposed change affects any other part(s) of the plan.

Id. (emphasis added). As explained above, the Commission's expectations were that EDCs would submit all changes to their EE&C Plans to the PUC in a filing separate from the Annual Report. In addition, all changes, regardless of whether they affect any other part(s) of the Plan were to be included in a complete copy of the revised plan. Notably, there was no limitation by the Commission that the only changes that were to be submitted are: (1) those that shift funds within or between customer classes or (2) those that propose to terminate a program.

Purportedly in compliance with both the October 26, 2009, Order at Docket No. M-2009-2093216 and the Commission's two Secretarial Letters, on September 15, 2010, PPL submitted a Petition to the Commission that requested "approval for two modifications to its EE&C Plan: (1) a change to its Compact Fluorescent Lighting Program; and (2) a change to the classification of direct and common costs."⁸ Upon review of what it believed were the only two proposed modifications to the Company's EE&C Plan, and in accordance with the Commission's June 24, 2010, Secretarial Letter, PPLICA filed a letter with the Commission on October 15, 2010, encouraging the PUC to "vigilantly review all of the Company's proposed changes to its cost allocation method related to the classification of 'Direct Program Costs' and 'Common Costs,' as well as the resulting interclass cost shifting and rate impacts associated with these changes."⁹ In addition, by its letter, PPLICA reserved its right to file Reply Comments in response to other parties' Comments or recommendations to the Company's Plan and to participate fully in any hearings scheduled in this matter.¹⁰

Shortly thereafter, in preparation of the Company's October 20, 2010, Act 129 EE&C Stakeholder Meeting, on October 18, 2010, PPL circulated a presentation (*see* PPLICA Cross

⁸ *Petition of PPL Electric Utilities Corporation for Approval of Changes to its Act 129 Energy Efficiency and Conservation Plan* at 2 (Sept. 15, 2010).

⁹ PPLICA Letter re *PPL Electric Utilities Corporation for Approval of Changes to its Act 129 Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093216, dated Oct. 15, 2010.

¹⁰ *Id.*

Examination Exhibit No. 2) that includes, among other things, PPL's explanation that the only two changes requiring PUC approval were filed with the Commission on September 15, 2010 (Slide 28) and lists more than 20 "minor changes to program implementation details" (Slides 31-39) that "include things such as the rebate amount, measure descriptions, add/delete a relatively minor measure within a program, and implementation dates for a measure/program." (Slide 32). These changes were apparently listed as an Appendix to PPL's Annual Report (*see* Exhibit PDC-1), but were not included in the black-lined plan submitted with its Petition to Amend the EE&C Plan on September 15, 2010. *See* Tr. at 75-76.

According to the Company's October 20, 2010 Stakeholder Presentation, "the changes summarized in this appendix were not included in PPL Electric's Petition to modify its EE&C Plan because they: Do not impact the projected cost of a program; Do not impact the projected cost of the EE&C Plan; Do not reduce the projected savings of a program; Do not reduce the projected savings of the EE&C Plan; [and] Do not impact the cost allocation between customer classes." (Slide 32). Notably, other utilities have submitted proposed Plan revisions that meet these requirements.

Moreover, on Slide 39 (and referenced earlier on Slide 20), the Company indicates, in part, that "the projected peak load reductions in the Load Curtailment Program have increased from 100 MW to 150 MW based on bids from CSPs. These increased peak load reductions can be achieved within the original budget of this program, will provide more benefits to customers, and will provide more margin for compliance if other programs do not achieve their projected peak load reductions." (Emphasis added). PPL chose to increase the peak load reduction target for the Large C&I Load Curtailment Program by 50 MW to offset the Company's expectation that the Residential Time of Use ("TOU") Program will dramatically underperform. The originally anticipated peak load reduction target for the Residential TOU Program was 61 MW, with 150,000 anticipated customer participants. *See* PPL St. No. 5 at 29. PPL now projects that less than 25,000 customers will participate achieving a demand reduction of 10 MW. *Id.* Like the change to the Large C&I Load

Curtailment Program, the changes to the Residential TOU Program were not included in the revised plan filed on September 15, 2010. Tr. at 75-76.

It is clear that all of the changes included in Appendix 1 of its Annual Report have not been submitted for Commission review and approval in contravention of the October 26, 2009, Commission Order approving PPL's EE&C Plan and the June 24, 2010, and September 1, 2010, Secretarial Letters outlining the process for submitting Plan revisions. It also is clear that PPL unilaterally decided to increase the size of the Large C&I Load Curtailment Program despite the fact that the Total Resource Cost ("TRC") value shows that this is not a cost-effective program.

II. PROCEDURAL HISTORY

As required by the PUC's June 24, 2010 and September 1, 2010 Secretarial Letters, on September 15, 2010, PPL submitted a Petition for Approval of Changes to its Act 129 EE&C Plan. As indicated above, the Company's September 15, 2010 Petition only included two proposed modifications which PPL believes are the only ones that require prior Commission approval.

On October 15, 2010, the PP&L Industrial Customer Alliance submitted a letter indicating that it had no Comments to the Company's September 15 Petition; however, upon review of PPL's October 20, 2010, EE&C Stakeholder Presentation, which included a number of changes submitted as an appendix to the Annual Report and outside of the Petition for Approval of Changes to its Act 129 EE&C Plan, PPLICA filed Comments in opposition to this procedure and to the Company's decision to increase the peak load reduction in the Load Curtailment Program by 50 MW.

A Prehearing Conference was convened by Administrative Law Judges ("ALJs") Barnes and Buckley on November 12, 2010. Consistent with the established schedule, PPL served the Direct Testimony and Exhibits of Peter D. Cleff on November 15, 2010. On November 17, 2010, ALJs

Barnes and Buckley presided over evidentiary hearings in Harrisburg. Pursuant to the procedural schedule, PPLICA hereby submits this Main Brief.¹¹

III. SUMMARY OF ARGUMENT

Throughout Orders and Secretarial Letters since the enactment of Act 129 and the approval of PPL's EE&C Plan, the Commission has articulated a process by which EDCs must submit proposed changes to EE&C Plans for Commission and other parties' review. As indicated above, the process clearly explained in the PUC's June 24, 2010, and September 1, 2010, Secretarial Letters indicates that any proposed EE&C Plan revisions should be submitted in conjunction with the EDC's Annual Report and should be included in a complete copy of the revised plan. Further, by noting that an EDC is to explain "whether (and if so, how) each proposed change affects any other part(s) of the plan," the PUC anticipated revisions would be made that could have a minimal overall effect on the Plan. As aptly articulated by the Commission in the September 1 Secretarial Letter, this procedure was established in order to alert other parties of proposed changes. *See* September 1, 2010 Secretarial Letter at 2.

In contravention of this process and after a myopic reading of the October 26 Order that tentatively approved its EE&C Plan, PPL believes that the only changes that are to be submitted for Commission approval are those that: (1) propose to shift program funds within a customer class; (2) propose to shift funds between customer classes; or (3) discontinue a program. *See* PPL Reply Comments at 4, 5; *see also* PPL St. No. 5. In accordance with this view, PPL only submitted two changes in its September 15 Petition and blacklined EE&C Plan, despite the fact that it had unilaterally made over 20 other revisions to its EE&C Plan. According to the Company, the only

¹¹ PPLICA's failure to address a specific proposal or recommendation by the Company to its EE&C Plan does not represent PPLICA's support for, or acquiescence to, such proposal. Further, PPLICA notes that the Company confirmed that any Curtailment Service Provider ("CSP") contract for the Load Curtailment Program with an option to extend post 2012 will be submitted for Commission approval and any residential costs related to residential use for the Custom Incentive Program will be assigned to residential class as part of the reconciliation process. As a result, PPLICA will not be addressing these issues within this brief.

implementation changes that need to be included for Commission review and approval are those that "impact the projected cost of a program; impact the projected cost of the EE&C Plan; impact the projected savings of a program; impact the projected savings of the EE&C Plan; and impact the cost allocation between customer sectors." PPL St. No. 5 at 14. As explained below, at least one of the Company's changes – increasing expected peak load reductions in the Load Curtailment Program from 100 MW to 150 MW because of the anticipated underperformance of the TOU Program – impacts the cost of a program; impacts the projected cost of the EE&C Plan; impacts the projected savings of a program; impacts that projected savings of the EE&C Plan and impacts the cost allocation between customer sectors. This change also usurps the Commission's power and statutory directive to modify EE&C Plans.

When discussing changes to the Plan, the Commission's October 26 Order specifically states that shifting program funds within or between customer classes without Commission approval constitutes a modification of an EDC's approved Plan. *See* October 26 Order at 92. The PUC then continues, "the General Assembly authorized the Commission, not the EDC, to make decisions in regard to modifying an approved Act 129 Plan." *Id.* By unilaterally modifying the EE&C Plan in this manner, the Company: (1) failed to submit all of its EE&C revisions required for Commission approval; (2) usurped the Commission's power to modify the EE&C Plan by unilaterally acting on its own outside of Commission review; and (3) deprived other parties of due process. Moreover, the TRC value for the Large C&I Load Curtailment Program as calculated in the original EE&C Plan proceeding is 0.68, which means that the program does not meet a cost-benefit analysis. PPL's decision increases the program costs to the Large C&I class by \$3 million. Accordingly, this change should be rejected or, alternatively, PPL's shareholders should pay the difference for this unauthorized, unreviewed unilateral change.

IV. ARGUMENT

A. **The Company's Proposal to Defer the Launch Date for the Load Curtailment Program Until 2012 Should Have Been Submitted to the Commission for Review and Approval.**

As explained in PPL Statement No. 5, one of the 20+ changes unilaterally made by the Company to PPL's EE&C Plan was to defer the Load Curtailment Program from January 2010 to late 2010/early 2011. As a result, curtailments (other than testing) will only occur in 2012. This revision was summarized by PPL Witness Peter Cleff as follows:

There is no benefit to launching th[is] program[] as originally scheduled. The CSP bidding process and contract awards have taken much longer than expected, partly because of changes to the T[echical] R[eference] M[annual] and the protocols for determining load reductions. Regardless, peak load reductions are not required before June 2012, so there is no benefit to pay incentives before the summer of 2012, and the CSP will have sufficient time to recruit customers and implement load reductions by the summer of 2012, if the contracts are awarded by January 2011.

PPL Statement No. 5 at 28.

This change, while not objectionable from a substantive standpoint, should have been submitted for Commission review and approval prior to its implementation. As explained during this proceeding, PPL believes that "minor changes that occur frequently, are on-going and that must be implemented very quickly" should be able to be implemented unilaterally by the Company, especially if such changes "do not shift EE&C Plan program funds within a customer class, shift EE&C Plan program funds between customer classes or result in the discontinuation of a program." *See* PPL Reply Comments at 7; see also PPL St. No. 5 at 2, 14. Despite this stance, the Company in explaining what changes should not be submitted also indicates what (in the Company's view) should be submitted for review and approval. Specifically, by stating that implementation changes that "do not impact the projected cost of a program; do not impact the projected cost of the EE&C Plan; do not impact the projected savings of a program; do not impact the projected savings of the EE&C Plan; and do not impact the cost allocation between customer sectors" do not need Commission

approval, it stands to reason that a modification that impacts (1) the cost of a program; (2) the cost of the EE&C Plan; (3) the projected savings of a program; (4) the projected savings of the EE&C Plan; and (5) cost allocation between customer sectors would need Commission approval.

Here, during evidentiary hearings the Company conceded "that pricing for interruptions in multiple years was significantly greater than interruptions in one year." Tr. at 62. Accordingly, deferring the launch date of the Load Curtailment Program until January 2011 impacts both the cost of this program and, correspondingly, the cost of the overall EE&C Plan. It appears that the initial bids submitted by Curtailment Service Providers ("CSPs") for this program may have been based, in part, on the assumption that participating customers would be interrupting usage in multiple years. See Tr. at 62. If this is correct, then the costs that the Large C&I class will bear for this program may be unnecessarily inflated.

Further, deferring the Load Curtailment Program's start date also has an effect on the Total Resource Cost ("TRC") test results of this program. As explained by Mr. Cleff during the evidentiary hearing, when the Company calculated the TRC value for the Load Curtailment Program, it was with the assumption that capacity savings would be achieved in years 2010-2012. See Tr. at 63. Accordingly, if there are no reductions for the Load Curtailment Program in 2010 and 2011 and originally proposed, it could change the TRC value of this program. See Tr. at 64. Because the numbers of the EE&C Plan are so interrelated, any TRC change in one program would also change the TRC value of the overall Plan. Therefore, in addition to impacting the cost of this program and the overall EE&C Plan, this change also affects the projected savings of the program and the EE&C Plan as a whole.

PPL, with the help of its consultant, chose to design and evaluate the Large C&I Load Curtailment Program with a requirement for customers to curtail usage in 2010, 2011 and 2012, rather than just 2012. As PPL's witness confirmed, that decision impacted the level of the bids that the Company received, as well as the TRC value of the program. Tr. at 62, 63-64. When the

Company decided to revisit that decision, it needed to submit the change to the Commission for approval, and to update the Plan itself.

B. The Commission Should Not Allow the Company to Increase the Load Curtailment Program by 50 MW.

As indicated in the Company's October 20, 2010, Stakeholder Presentation and Mr. Cleff's Direct Testimony, the Company has increased the projected peak load reductions in the Load Curtailment Program from 100 MW to 150 MW based on bids from Conservation Service Providers ("CSPs"). *See* PPLICA Cross Examination Exhibit No. 2; PPL St. No. 5 at 28. This modification, which would cost Large C&I customers approximately \$3 million if allowed by the Commission, is purportedly in response to the Company's unsubstantiated concerns of "projected shortfalls in other programs." *See* PPL St. No. 5 at 29, 30.

As explained by Mr. Cleff:

Peak load reduction shortfalls are expected in other programs. For example, the Time of Use Program ("TOU Program") was expected to produce 61 MW of peak load reduction (from 150,000 participants); however, it will likely achieve no more than 10 MW, leaving a shortage of 51 MW. The TOU Program is open only to customers who take default electric supply from PPL Electric (*i.e.*, customers who do not shop for their generation supply). The number of shopping customers will be much higher than expected and customers will likely save more by shopping than via TOU. The Company's original estimate of 150,000 participants in the TOU program turned out to be unrealistic, and the current projection is less than 25,000 participants. In fact, as of October 31, 2010, there are only 443 participants in the Company's TOU Program that was launched in June 2010.

In addition, the peak load reductions from energy efficiency measures (such as appliances, lighting, HVAC equipment, etc.) in other programs are lower than expected and are relatively uncertain because of changes in the TRM [technical resource manual] that tend to decrease savings and peak load reductions (compared to the TRM that was in effect when the Company's EE&C Plan was approved). Also, it is uncertain whether net-to-gross adjustments will apply, further reducing energy and peak load savings. Therefore, to make up for these expected shortfalls, PPL Electric must increase peak load reductions from other programs in order to meet its peak load compliance target by September 2012. The Load Control Program was identified as an appropriate measure because we were able to obtain the original forecast peak reduction for this program at substantially less than the projected cost. We have determined that we can obtain 50 MW of additional

peak load reductions with no increase in the amount of dollars originally budgeted for this measure.

PPL St. No. 5 at 29-30. This shift of the peak load reduction responsibilities from the Residential class program to the Large C&I class program impacts the costs that each class ultimately will pay through the reconcilable EE&C Surcharge. If the Large C&I target can be achieved at \$3 million less than originally projected, then, absent this change, that cost reduction will be flowed through to the Large C&I class. With the drastic scaleback of the TOU Program, any reduction in the expenditures for the TOU Program will be flowed through to the Residential class. This type of interclass shift of program targets and costs is precisely what the Commission should monitor and review in all EE&C Plans.

1. Increasing Peak Load Reduction Targets of Programs are Modifications that Should be Submitted to the Commission for Review and Approval.

The undeniable result of increasing the peak load reduction target for the Load Curtailment Program by 50 MW and adjusting the assumptions for the TOU program will decrease EE&C Plan costs for the residential class and increase costs for the Large C&I class. During evidentiary hearings, the Company agreed that because of its updated assumptions regarding the TOU Program, PPL anticipates that the cost of this program will be less than included in the current EE&C Plan. Tr. at 46. As a result, during the reconciliation process, the residential class will be credited for the reduction in the cost of the TOU Program if it less than the total residential collected cost. *Id.* In addition, PPL also agreed that the cost to obtain 100 MW of peak load reduction for the Load Curtailment Program is approximately \$11.5 million, while the additional 50 MW is approximately \$3 million. Tr. at 55. Accordingly, instead of performing the Load Curtailment Program at a cost of \$3 million under budget and receiving a refund during the reconciliation process, Large C&I

customers will not see any benefit if the Company's unilateral increase to the Load Curtailment Program is allowed to proceed.¹²

The budgeted amounts approved for EE&C Programs during the initial litigation of this Plan are not open credit lines that must be fully used by a utility. Rather, the budgeted amounts will be reconciled to actual expenditures to ensure that ratepayers pay only what is necessary to implement the approved programs. If the approved 100 MW Load Curtailment Program for Large C&I customers can be implemented at a lower cost than originally budgeted, then Large C&I customers should pay a reduced EE&C surcharge. EE&C programs are funded directly by ratepayers. As a result, ratepayers should benefit if programs cost less; not be deprived of reimbursement if the Company can find other ways to use the money (i.e., by unilaterally increasing peak demand reductions of a single program).

Because the practical result of this modification is that funds will be shifted between customer classes without prior commission approval, therefore constituting a modification of PPL's EE&C, the Company was required to submit this change to the Commission for review and approval. Specifically, the Commission explained what constitutes a modification in the October 26 Order:

With respect to changes to the plan, we find that an EDC cannot shift program funds within a customer class, or between customer classes without prior Commission approval. Doing so would constitute a modification of the EDC's approved plan. The General Assembly authorized the Commission, not the EDC, to make decisions in regard to modifying an approved Act 129 Plan.

Section 2806.1 (b)(2) expressly states that the "Commission shall direct" an EDC to modify or terminate any part of its approved plan if, after an adequate period for implementation, "the Commission determines that an energy efficiency or conservation measure will not achieve the required reductions in

¹² PPL calculates that the EE&C surcharge for the Large C&I class would decrease by \$0.058 per kW if the \$3 million in cost savings is flowed through to the Large C&I class. See PPLICA Cross Examination Exhibit No. 3, Response to PPLICA-II-1, PPLICA-II-2. The PLC billing determinants for the entire class range from 0 kW to 78,439 kW. The average customer on Rate Schedule LP-5 will pay an extra \$17,361.78 over the 41 months of the plan ($\$0.058 \times 7,301 \text{ kW} \times 41 \text{ months}$), while the average customer on Rate Schedule LP-6 will pay an extra \$37,367.89 over the 41 months of the plan ($\$0.058 \times 15,714 \text{ kW} \times 41 \text{ months}$). The customer with the largest PLC on Rate Schedule LP-5 will pay an extra \$186,527.94 ($\$0.058 \times 78,439 \text{ kW} \times 41 \text{ months}$).

consumption in a cost-effective manner.” 66 Pa. C.S. § 2806(b)(2). Section 2806.1(b)(3) sets forth the action an EDC is required to take in response to a Commission direction to modify or terminate part of the approved plan. Specifically, the EDC is required to submit a revised plan describing the actions to be taken, to offer substitute measures, or to increase the availability of existing measures in the plan to achieve the reductions in consumption. 66 Pa. C.S. § 2806.1(b)(3).

October 26 Order at 92-93. In this excerpt, the Commission clearly states that "the Commission, not the EDC, [is] to make decisions in regard to modifying an approved Act 129 Plan." Through PPL's unilateral action of adjusting assumptions in the TOU Program and, in response, increasing the peak load reduction target in the Load Curtailment Program, it usurped the Commission's power by unilaterally modifying its EE&C Plan without Commission review and approval. This action is counter to the General Assembly's intent and not statutorily permitted.

As indicated above, "the Commission will direct" an EDC to modify or terminate a part of the EE&C Plan "if, after an adequate period for implementation, the Commission determines that [a program] will not achieve required reductions." 66 Pa. C.S. § 2806(b)(2). While PPLICA acknowledges that PPL's TOU participation has been lower than expected to date, the TOU program only launched in June 2010, approximately 2 months after the Company had already decided that it desired to increase the peak load reduction target for the Load Curtailment Program. Because this modification involves \$3 million for Large C&I customers that would not be needed absent this change, and this modifications in response to PPL's currently unsubstantiated belief that other programs will not achieve required reductions, it requires Commission review and approval.

Further, even under PPL's own "test" for whether a change needs Commission approval, this change should have been submitted to the Commission as part of the September 15 Petition. As previously explained, PPL contends that revisions that "do not impact the projected cost of a program; do not impact the projected cost of the EE&C Plan; do not impact the projected savings of a program; do not impact the projected savings of the EE&C Plan; and do not impact the cost allocation between customer sectors" do not need Commission approval. Here, however, increasing

the peak load reduction target for the Load Curtailment Program by 50 MW (1) impacts the projected cost of the program by \$3 million; (2) accordingly, impacts the projected cost of the EE&C Plan by \$3 million; (3) impacts the projected savings of a program by 50 MW; (4) impacts the projected savings of the EE&C Plan by 50 MW (especially since PPL has not filed for a reduction in the TOU assumptions); and (5) impacts the cost allocation between customer sectors because as a result of the updated TOU assumptions, residential class EE&C costs will be lowered and, as a result of the additional 50 MW in the Load Curtailment Program, Large C&I customers will be subject to an additional \$3 million in costs that would not be needed if the incremental 50 MW were not added. Accordingly, this modification meets the Company's "test" for when a change needs Commission approval and results in added costs that would not be necessary without this change. This is precisely the type of modification that needs Commission approval before implementation should be allowed.

2. Without Conducting any Analysis Regarding the Company's Updated Time of Use Program Assumptions or Fully Exploring Other Options, Increasing the Peak Load Reduction Target of the Load Curtailment Program is Inappropriate at This Time.

In attempting to justify the need to increase the peak load reduction target for the Load Curtailment Program, there are a number of problems with the Company's analysis. First, despite the fact that Mr. Cleff includes statements regarding the TOU program like "the number of shopping customers will be much higher than expected" and that "the current projection is less than 25,000 participants," during the evidentiary hearing, Mr. Cleff was unable to articulate the amount of shopping that was expected and conceded that the Company has not conducted any type of analysis to confirm that its revised expectations for the TOU program are realistic. *See* Tr. at 44, 47. Second, despite the Company's clear expectation that the TOU Program will significantly underperform, the Company has admittedly not proposed any changes to modify the EE&C Plan to reflect its revised assumptions. Tr. at 46.

Third, when making the decision to increase the Load Curtailment Program, PPL failed to adequately examine other options. As determined during the evidentiary hearings, the Company projected since approximately last April that its TOU Program would not meet expectations. Tr. at 48. In addition, since at least April, 2010, PPL contemplated increasing the peak load reduction target for the Load Curtailment Program. See PPLICA Cross Examination Exhibit No. 1. However, upon coming to this conclusion, other than seeking informal pricing requests "sometime during the last three to six months" for the direct load control program regarding an extra 50 MW of peak load reduction, the Company made pricing comparisons to other programs (i.e., CFL and Efficient Equipment) for additional peak load reductions only within the last month. Tr. at 54-55. Additionally, the Company did not conduct any formal analysis to determine whether it would be cost-effective to achieve a total 50 MW reduction from a combination of programs (i.e., Direct Load Control, CFL and/or Efficient Equipment). Tr. at 55. Accordingly, rather than accepting the Company's "knee-jerk" reaction to shift 50 MW to the Large C&I class at cost of \$3 million, PPL should first be required to conduct a formal analysis to determine whether the TOU Program will underperform as expected and whether the projected shortfall can be achieved in a more cost-effective manner that spreads peak load reductions among multiple programs and multiple customer classes, rather than relying on only one program and one class.

Part of this analysis should analyze the TRC value of the Load Curtailment Program, both before and after PPL's revisions. As previously explained, the TRC value of the Load Curtailment Program as approved by the Commission is only 0.68. See Exhibit PDC-2 at 243. When a TRC value is less than 1, its costs outweigh its benefits. See Tr. at 63. As conceded by the Company, when in calculating the TRC value of 0.68, it was with the assumption that capacity savings would be achieved in years 2010 through 2012. *Id.* However, despite the fact that the Company has chosen to delay the Load Curtailment Program and increase the total peak load reduction of the program by 50 MW, PPL has not recalculated the TRC value for the Load Curtailment Program because "[the

Company hasn't] reconciled or made any adjustment to any of the data numbers in our plan as part of the redline yet and [PPL is] not required to do a cost effectiveness test yet." Tr. at 64. Rather than accepting this explanation from the Company, the Commission should question whether PPL should be placing such great emphasis on a program that fails to meet the basic cost-benefit test in the original analysis, especially when the Company has no idea of the cost-benefit results if its revisions to the Load Curtailment Program are implemented.

C. Any Adjustments to the Assumptions Regarding the Time of Use Program Need to be Submitted to the Commission for Review and Approval.

While PPL has clearly stated throughout this proceeding that it believes its original TOU Program assumptions were unrealistic (PPL St. No. 5 at 29), and, as a result, needs to increase the peak load reduction target for the Load Curtailment Program to make up this shortfall (*Id.*), the Company has not yet submitted its updated TOU assumptions for Commission review and approval. See Tr. at 46. Part of this delay is likely due to the fact that the Company has not yet conducted an analysis to determine whether its updated assumptions are correct. See Tr. at 47. Because Act 129 requires the Commission to direct an EDC "to modify or terminate part of its approved plan if, after an adequate period for implementation, the Commission determines that an energy efficiency or conservation measure will not achieve the required reductions in consumption in a cost-effective manner," October 26 Order (citing 66 Pa. C.S. § 2806(b)(2) (emphasis added)), PPL's updated assumptions must be submitted to the Commission for review. According to Act 129, it is only after the Commission determines that part of an EE&C Plan should be modified or terminated that an EDC can submit a revised plan describing how the shortfall should be addressed. Specifically, Section 2806.1(b)(3) provides:

If part of a plan is modified or terminated under paragraph (2), the electric distribution company shall submit a revised plan describing actions to be taken to offer substitute measures or to increase the availability of existing measures in the plan to achieve the required reductions in consumption under subsections (c) and (d).

66 Pa. C.S. § 2806.1(b)(3). In no place does the Act allow an EDC to modify a plan as PPL has done absent Commission review and approval.

In this instance, the Company is attempting to "pull the cart before the horse" by unilaterally imposing an additional \$3 million to Large C&I customers to increase the peak load reduction target for the Load Curtailment Program by 50 MW due to the purported belief that its TOU Program will underperform, yet PPL has not conducted any analysis to indicate whether such drastic actions are necessary. Moreover, without providing the Commission with an updated analysis and assumptions regarding the TOU Program, the Commission is unable to fulfill its statutory obligation to determine whether (1) the TOU Program will not achieve the required reductions and (2) whether PPL should be required to modify or terminate the TOU Program. Again, it is only after this analysis and action by the PUC that the EDC is required to submit a revised plan describing the actions to be taken, to offer substitute measures, or to increase the availability of existing measures in the plan to achieve the reductions in consumption. See 66 Pa. C.S. § 2806.1(b)(3). PPL, under the guise of a fear of being "micro-managed" by the Commission, seeks to circumvent this process and unilaterally modify its EE&C Plan without Commission review and approval. This action cannot be allowed or condoned by the Commission.

D. PPL Should Be Required to Submit a Complete Copy of its Revised EE&C Plan to Ensure that the Commission, Interested Parties and Others Have Accurate Information Regarding the Design, Targets and Costs of the Plan.

In addition to the modifications explained above that undeniably require Commission review and approval prior to implementation, PPL has made numerous other revisions to its EE&C Plan that purportedly "do not require Commission approval, including the reporting of the incentive costs, modifications to the EE&C Plan to reflect changes to the [TRM] and measures targeted to multi-family properties." PPL St. No. 5 at 2. Because, in the Company's view, these changes do not require Commission approval, other than listing these revisions in an Appendix to its Annual Report, PPL has not submitted a revised version of its EE&C Plan complete with all of these changes to the

Commission and other parties for review. Such action is counter to the Commission's clear and unambiguous directives in its June 24, 2010, and September 1, 2010, Secretarial Letters regarding an EDC's presentation of EE&C Plan changes.

The June 24, 2010, Secretarial Letter required that "EDCs submit their 2010 Act 129 annual report and any proposed EE&C Plan revisions by September 15, 2010." June 24 Secretarial Letter at

1. Similarly, the September 1, 2010, Secretarial Letter stated:

This Secretarial Letter is to provide guidance to EDCs regarding the format that the Commission expects EDCs to use for the presentation of proposed changes to Commission-approved plans. Specifically, the Commission expects than EDC proposing a change in its Commission-approved plan will file and serve a complete copy of its revised plan, in both hard copy and electronic format. The plan shall include an Executive Summary or other section that (a) briefly describes each proposed change, (b) states where each proposal can be found in the revised plan, and (c) indicates whether (and if so, how) each proposed change affects any other part(s) of the plan.

Changes proposed in the text of the plan previously approved by the Commission shall be shown by black-lining the pertinent text. Proposed changes in tables/charts shall be shown by black-lining, shading, or otherwise printing the table/chart in a manner that alerts the reader to the fact that changes are proposed.

September 1, 2010, Secretarial Letter at 1-2 (emphasis added). Importantly, neither of these letters directed EDCs to submit only those changes which an EDC believes require Commission approval. Instead, the letters collectively direct that any EDC changes to an EE&C Plan were to be included in a complete copy of a revised plan. Further, that complete copy was to include not only narrative changes, but also changes to tables and charts, as applicable. In its September 15 filing, PPL ignored these directives by submitting a blackline that only contains narrative changes to the two revisions it characterizes as needing Commission approval.

While the Company claims that, through Exhibit PDC-2, it has submitted a black-line that reflects all the changes PPL has unilaterally made to the EE&C Plan for Commission review, it is not correct. First, the Company concedes that the blackline included as Exhibit PDC-2 is for illustrative purposes only. *See* PPL St. No. 5 at 16. Second, while Exhibit PDC-2 does include some narrative

changes, none of the tables, charts, numbers or data have been updated. *See* Exhibit PDC-2 at ii. Without such changes, it cannot be considered a "complete copy" of the revised plan, as was required by the Commission. More troubling, however, is the fact that PPL believes it is permissible to pick and choose what revisions it can submit for the Commission's review. By withholding this information and not revising the EE&C Plan to include all of the changes in the EE&C Plan's program design and assumptions, it deprives the Commission, active parties to this proceeding and others that would like to reference a complete and current version of the Company's EE&C Plan for any reason of the opportunity to do so. As it stands, if reviewing either the blacklined EE&C Plan submitted by PPL on September 15, 2010, or the revised Plan as included in Exhibit PDC-2, the Commission would be reviewing a stale document. This defeats the purpose of conducting an EE&C Plan's annual review.

The intention of requiring EDCs to submit all proposed EE&C Plan revisions in a complete revised plan as part of the annual review process is so the Commission and other interested parties can refer to a single source document that has been updated since the Plan's implementation. When submitting the complete, revised source document, an EDC has an obligation to update its programs, measures, incentives, costs and savings based on current information. To allow PPL to shield itself from this obligation because doing so would allegedly require the Company to constantly update the document (see Tr. at 74) defeats the purpose of submitting revisions at all. The Commission and others should be confident that an updated EE&C Plan on file with the PUC is the most current and correct version. PPL should not be allowed to have one version of its EE&C Plan on file with the Commission while it actually operates from a different, more complete EE&C Plan. To date, PPL has failed to submit an accurate blackline of its EE&C Plan. Accordingly, the Commission must require PPL to submit a complete copy of its revised EE&C Plan (including updated tables, charts, etc.) as part of this proceeding.

V. CONCLUSION

WHEREFORE, the PP&L Industrial Customer Alliance respectfully requests that the Pennsylvania Public Utility Commission reject PPL's proposal to increase the Load Curtailment Program by 50 MW at a cost of \$3 million, require PPL to submit a complete copy of its revised EE&C Plan and take any other action as deemed necessary and appropriate.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 
Pamela C. Polacek (I.D. No. 78276)
Shelby A. Linton-Keddie (I.D. No. 206425)
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300

Counsel to PP&L Industrial Customer Alliance

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