



GOVERNOR'S OFFICE OF GENERAL COUNSEL

November 30, 2010

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Honorable Rosemary Chiavetta, Secretary
Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: PPL Electric Utilities Corporation
Energy Efficiency and Conservation Plan
Docket No. M-2009-2093216

Dear Secretary Chiavetta:

Please find for filing the Main Brief on behalf of the Commonwealth of Pennsylvania, Department of Environmental Protection in the above referenced matter. Copies have been served on all parties listed on the enclosed Certificate of Service.

Sincerely,

Kurt E. Klapkowski
Assistant Counsel

Enclosures

cc: Service List



**COMMONWEALTH OF PENNSYLVANIA
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 :

**MAIN BRIEF OF THE COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

I. Introduction

Pursuant to the November 12, 2010 Second Prehearing Order of Administrative Law Judges Dennis J. Buckley and Elizabeth H. Barnes and 52 Pa.Code § 5.501, the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) files this Main Brief in the above captioned matter.

Act 129 of 2008 became effective November 14, 2008 and requires electric distribution companies (“EDCs”) with more than 100,000 customers to develop and implement energy efficiency, conservation and peak demand reduction plans in accordance with an Energy Efficiency and Conservation Program developed by the Pennsylvania Public Utility Commission (“Commission”). 66 Pa.C.S. §§ 2806.1 (a),(b) and (l). These plans are to reduce electricity consumption by 1% by May 31, 2011 and 3% by May 31, 2013. 66 Pa.C.S. § 2806.1 (c). Additionally, the plans are to reduce peak demand by 4.5% by May 31, 2013. 66 Pa.C.S. § 2806.1 (d). Through its Energy Efficiency and Conservation Program Implementation Order at Docket No. M-2008-2069887 (“EEC Implementation Order”), the Commission established the process by which the required Act 129 plans would be reviewed and approved and further clarified the requirements of Act 129.

II. Procedural History

On July 1, 2009, PPL Electric Utilities Corporation (“PPL”) filed its Petition for Approval of an Energy Efficiency and Conservation Plan (“original EEC Plan”) with the Commission. The Commission approved PPL’s EEC plan on October 26, 2009 (“Approval Order”). The Commission issued Secretarial Letters on June 24, 2010, and September 1, 2010, providing further guidance on the submission of Annual EEC Plan Reports and requests for modification of approved EEC Plans, respectively.

On September 15, 2010, PPL submitted its EEC Plan Annual Report. In addition, on that date PPL filed a Petition to Amend (“Petition” or “Amended EEC Plan”) its approved EEC Plan. The Petition only requested approval for two changes – a change to the approved Compact Fluorescent Lighting (“CFL”) Program and a re-allocation of certain costs from direct costs to common costs. On October 20, 2010, PPL held an EEC Plan Stakeholders Meeting where additional changes to the EEC Plan were described. On November 4, 2010, the Commission issued a Secretarial Letter transferring the proceeding to the Office of Administrative Law Judge for further proceedings. A hearing on the Petition was held in Harrisburg, PA on November 17.

III. Description of PPL’s EEC Plan

PPL’s original EEC Plan included 14 energy efficiency and demand reduction programs to meet Act 129’s energy conservation and peak demand reduction requirements. Original EEC Plan at 1. The total budget for these programs is approximately \$246 million. Original EEC Plan at 2.

The changes included in the Amended EEC Plan primarily relate to cost allocation. Because of certain data issues, PPL is requesting to change the allocation of costs relating to its CFL Program from mixed between residential and small commercial and industrial customers to solely allocated to residential customers. The second change

shifts approximately \$6.5 million in costs from “direct” costs to “common” costs. This change moves the cost allocation from specific EEC programs to broadly applicable charges.

In addition to the changes outlined in the Petition, the actual EEC Plan contains additional changes not included in the Petition or the Amended EEC Plan filed with the Commission. As a single example, pages 78 through 83 of the Amended EEC Plan discuss the Residential Sector Renewable Energy Program. The Amended EEC Plan shows no change to this section. On page 81 of the Amended EEC Plan provided by PPL in response to Interrogatories submitted by the PPL Industrial Customer Alliance, however, the company shows two relatively significant changes to this program. First, this version of the Amended EEC Plan indicates that the company will be placing caps on the available incentives for installation of a solar photovoltaic array (“PV”) or a ground-source heat pump for both residential and “institutional” customers. Second, this version of the Amended EEC Plan indicates that applicants for PV rebates who also received rebates from the Department are not eligible for the program after January 28, 2010, and that the PV portion of the program is fully subscribed as of May 2010. The Department also notes that these provisions are not paralleled in the sections of the Amended EEC Plan addressing the small and large commercial and industrial sectors.

IV. Summary of Argument

The Department’s main brief addresses a single legal issue: the extent to which Commission review and approval of changes to EEC Plans is required. The Department believes that PPL viewed the Commission’s jurisdiction and the 2009 Approval Order much too narrowly in its Petition. As a result, the company did not submit an Amended EEC Plan that reflects all of the changes to its EEC Plan. The Commission should not

approve PPL's Amended EEC Plan unless it accurately reflects all of the changes the company is making to the plan.

V. Argument

The Department is raising a single legal issue in this brief relating to the scope of the Commission's jurisdiction to review and approve modifications to EEC Plans submitted by EDCs to comply with the provisions of Act 129. The Department's position is a simple one – that the Commission retains broad jurisdiction to review and approve modifications to EEC Plans approved through Commission Order under both Act 129 and the Commission's EEC Implementation Order. At a minimum, EDCs should be required to submit annual updates to their EEC Plans that reflect all of the changes made to the approved EEC Plan so the Commission can have an opportunity to review those changes and determine if the changes comply with the statute and Order.

In its Approval Order, the Commission stressed that section 2806.1(b) of Act 129 required the Commission to direct modification or termination of all or a portion of an EEC Plan if it determined that the required reductions would not be achieved in a cost-effective manner. 66 Pa.C.S. § 2806.1(b), pp. 92-93 of the Approval Order. It is difficult to see how the Commission could carry out this responsibility without a complete Amended EEC Plan to review.

The Commission also stressed that because the EEC Plans would be approved by Commission Order, the procedures for rescission and amendment of such Orders would apply to EEC Plans. Approval Order at 93, 66 Pa.C.S. § 703(g). Again, it is difficult to see how the procedures for rescission and amendment could be carried out if the EDCs are permitted to determine which changes the Commission should review and which changes the Commission should not review.

PPL appears to rely on a specific statement in the Approval Order relating to changes the Commission explicitly indicated would be subject to review in claiming that the broader changes to the EEC Plan do not require Commission review. In the Approval Order, the Commission indicated that EDCs could not “shift program funds within a customer class, or between customer classes without prior Commission approval.” Approval Order at 92. Stating that such changes must have prior Commission approval does not exclude any other changes from Commission review, however.

Several parties, including PPL, the Office of Consumer Advocate, the Office of Small Business Advocate and the Department, all made detailed suggestions for how to judge which changes would require Commission review. The only specific suggestion addressed directly by the Commission in the Approval Order was the Office of Consumer Advocate’s, which the Commission rejected as unnecessary given the requirement that PPL work with the statewide evaluator to determine the proper scope of detail needed to evaluate the progress of the EEC Plan.

Because the Commission was silent on other matters in the Approval Order but did not indicate that only the changes listed required prior Commission review, the Department believes that PPL should be required to provide a completely updated and amended EEC Plan and the Commission can determine whether or not review is necessary.

VI. Conclusion

For foregoing reasons, the Department respectfully requests that the Commission deny PPL's Petition to Amend its EEC Plan and order PPL to re-submit the Amended EEC Plan as proposed in the ordering paragraphs provided below.

VII. Proposed Conclusion of Law

1) Act 129, the Commission's EEC Implementation Order and the Commission's Approval Order require PPL to submit an Amended EEC Plan that reflects all modifications to the Original EEC Plan.

VIII. Proposed Ordering Paragraphs

IT IS ORDERED THAT PPL REVISE ITS EEC PLAN IN THE FOLLOWING MANNER AND RESUBMIT IT FOR APPROVAL WITHIN 30 DAYS OF THIS ORDER

1) PPL shall submit a complete Amended EEC Plan indicating all changes from the EEC Plan approved in the Commission's October 26, 2009 Order approving PPL's Original EEC Plan.

Respectfully submitted,



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Dated: November 30, 2010

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing documents, the Main Brief of the Commonwealth of Pennsylvania, Department of Environmental Protection, upon parties of record in this proceeding in accordance with the Administrative Law Judges Dennis J. Buckley and Elizabeth H. Barnes' Second Prehearing Order dated November 12, 2010 and the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner upon the persons listed below:

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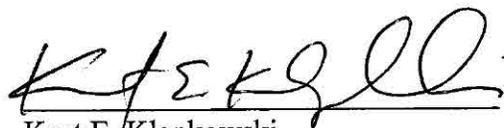
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