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November 30, 2010

BY HAND

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
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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 is the original Main Brief of PPL Electric Utilities Corporation in the above-referenced proceeding.

Copies have been provided to the persons in the manner indicated on the certificate of service.

Respectfully Submitted,


Andrew S. Tubbs

AST/skr

Enclosures

cc: Honorable Elizabeth Barnes
Honorable Dennis J. Buckley
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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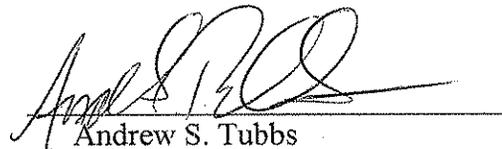
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Date: November 30, 2010


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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities
Corporation for Approval of Changes to its
Act 129 Energy Efficiency and
Conservation Plan

Docket No. M-2009-2093216

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I. INTRODUCTION

In this proceeding, PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) filed a petition for approval of certain changes to its Act 129 Energy Efficiency and Conservation Plan (“Petition”) with the Pennsylvania Public Utility Commission (“Commission”). In the Petition, PPL Electric proposed two modifications to its currently effective Act 129 Energy Efficiency and Conservation Plan (“EE&C Plan”): (1) a change to its Compact Fluorescent Lighting Program (“CFL Program”); and (2) a change to the classification of direct and common costs. PPL Electric has presented substantial evidence that the two proposed modifications are reasonable and necessary, and no party has presented any evidence to the contrary or argued that the Commission should not implement the proposed modifications. The two proposed modifications presented in the Company’s Petition, and summarized below, should be approved as the changes are reasonable and necessary for PPL Electric’s EE&C Plan to successfully meet its Act 129 obligations. For ease of reference, the two proposed modifications, along with the supporting testimony, are summarized in Section IV.B., below.

While the participants in this proceeding have not challenged the two modifications proposed in the Petition, they have raised other issues. PPL Electric responds to each of these issues in Section IV, below. A Summary of Argument is presented in Section III.

II. PROCEDURAL HISTORY

On July 1, 2009, PPL Electric filed its EE&C Plan with the Commission pursuant to Act 129 and various related Commission orders. The PPL Electric EE&C Plan proceeding was docketed by the Commission at Docket No. M-2009-2093216. The Commission approved PPL Electric’s EE&C Plan, with modifications, on October 26, 2009, in *Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan*, Docket No.

M-2009-2093216 (Order Entered October 26, 2009) (“*EE&C Order*”).¹ PPL Electric’s EE&C Plan includes a broad portfolio of energy efficiency, conservation practices and peak load reductions, and energy education initiatives. PPL Electric’s portfolio of programs is designed to provide customer benefits and to meet the energy saving and peak load reduction goals set forth in Act 129.

These programs are the key components of a comprehensive electric energy efficiency initiative designed to achieve the 1,146,000 MWh of reduced energy consumption and 297 MW of peak demand reductions required by Act 129. The EE&C Plan is a comprehensive portfolio of energy efficiency, conservation practices and peak load reductions, renewable technologies and energy education initiatives.

Specifically, the portfolio consists of fourteen programs. The EE&C Plan is a new endeavor that is based on forward looking estimates and projections. The size and scope of the EE&C Plan has created various implementation challenges. These challenges are compounded by the fact that estimates and projections tend to shift as actual experience is gained. For example, the Time of Use Program (“TOU Program”) was expected to produce 61 MW of peak load reduction (from 150,000 participants); however, actual experience indicates that it will likely achieve no more than 10 MW. Moreover, all of the EE&C Plan programs are voluntary, which makes it very difficult to predict how many customers will participate and at what level. Furthermore, it is difficult to predict the level of rebate required to induce customer participation. All of these factors, and others, culminate in the reality that over the course of the four-year EE&C Plan, many things are going to change. PPL Electric is the party that bears the risk of penalties in the event of non-compliance with the mandates of Act 129. Therefore, PPL Electric

¹ The EE&C Plan was further revised by *Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093216 (Order Entered February 17, 2010).

needs substantial discretion to manage its EE&C Plan to respond to the above-mentioned variables in order to have any realistic chance of meeting the requirements of Act 129.

The Commission and parties recognized these issues in the prior phase of this proceeding, and in fact the issue of what changes to the EE&C Plan would require Commission approval was fully litigated by the parties and decided by the Commission. Specifically, in approving PPL Electric's EE&C Plan, the Commission established a process for the Company to follow to request modifications to its approved plan. Further, the Commission specifically defined the types of modifications that would and would not require prior Commission approval. Specifically, the Commission stated that, "[w]ith 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." *EE&C Order*, p. 92. This finding is consistent with the Commission's statement that, "...PPL is the Party that bears the risk of penalties in the event of non-compliance with the mandates of Act 129. We will not micro-manage the Company's compliance efforts." *EE&C Order*, p. 88.²

Pursuant to the Commission's *EE&C Order*, PPL Electric identified two proposed modifications to its currently effective EE&C Plan which require prior Commission approval under the standard enunciated by the Commission in the *EE&C Order*. As more fully explained in the Company's Petition, PPL Electric requests Commission approval to modify two aspects of its EE&C Plan: (1) a change to its CFL Program; and (2) a change to the classification of direct and common costs. These modifications were identified by the Company through the operation of its EE&C Plan during the past year.

² See also, *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093218 (Order Entered October 23, 2009), p. 96 (stating that the Commission will not micro-manage compliance efforts).

On September 15, 2010, pursuant to Section 5.41 of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.41, and consistent with the Commission's annual reporting requirements in its June 24, 2010 Secretarial Letter at Docket No. M-2008-2069887 ("Secretarial Letter"), PPL Electric requested to modify its EE&C Plan previously approved by the Commission in the above-captioned proceeding. In addition, consistent with the Commission's orders, the Company filed its Act 129 EE&C Program Year 1 Annual Report ("PY1 Annual Report"). The PY1 Annual Report, *inter alia*, provided a summary of other modifications to the EE&C Plan for which prior Commission approval was not required.

On October 5, 2010, the Office of Small Business Advocate ("OSBA") filed an Answer to PPL Electric's Petition. On October 15, 2010, comments were filed by the UGI Distribution Companies³ and the Pennsylvania Communities Organizing for Change ("PCOC").⁴ The PP&L Industrial Customer Alliance ("PPLICA") filed a letter on October 15, 2010, indicating that it would not be filing any comments. Subsequently, on October 19, 2010, PPLICA filed comments. Additionally, a Petition to Withdraw Intervention was filed by the Association of Community Organizations for Reform Now ("ACORN") on October 18, 2010.

On November 4, 2010, PPL Electric filed a Reply to the Answer of OSBA and the Comments of the UGI Distribution Companies, PCOC and PPLICA ("PPL Electric Reply"). Additionally on November 4, 2010, the Company filed an Answer to the Petition to Intervene of PCOC. Also on November 4, 2010, Administrative Law Judges Dennis J. Buckley and Elizabeth

³ The UGI Distribution Companies consist of UGI Utilities, Inc. - Gas Division, UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc.

⁴ On October 18, 2010, PCOC filed a petition to intervene and comments in the above-captioned proceeding and explained that its October 15, 2010 filings were rejected by the e-filing system and, therefore, it was resubmitting the pleadings in accordance with instructions received from the Commission's Secretary's Bureau.

H. Barnes (“the ALJs”) issued a Prehearing Conference Order scheduling the Initial Prehearing Conference for November 12, 2010, and establishing a hearing schedule in this matter.

On November 10, 2010, PCOC filed an Amended Petition to Intervene. On November 12, 2010, the OCA filed a Response in Support of PCOC’s Intervention. Also on November 12, 2010, PPL Electric filed an Answer to the Amended Petition to Intervene of PCOC.

The Initial Prehearing Conference in this case was held on November 12, 2010. At the Initial Prehearing Conference, and as memorialized in the Second Prehearing Conference Order, the ALJs granted PCOC’s Petition to Intervene. Additionally, ACORN’s Petition to Withdraw filed on October 18, 2010, was granted.

On November 15, 2010, PPL Electric distributed the direct testimony of Mr. Peter D. Cleff, PPL Electric St. 5,⁵ to all active parties in this proceeding. An evidentiary hearing was held on November 17, 2010.

III. SUMMARY OF ARGUMENT

In the *EE&C Order*, the Commission identified EE&C Plan revisions that require Commission approval. Specifically, Commission approval is required to: (1) shift EE&C Plan program funds within a customer class, (2) shift EE&C Plan program funds between customer classes, and (3) discontinue a program. Consistent with the Commission’s *EE&C Order*, PPL Electric identified two proposed modifications to its currently effective EE&C Plan that fit within the categories specified by the Commission. The proposed modifications concern a change to the CFL Program and a change to the classification of certain direct and common costs. PPL Electric has presented evidence that the two proposed modifications are reasonable and necessary, and no party has presented any evidence to the contrary or argued that the

Commission should not permit PPL Electric to implement the proposed changes. Therefore, the two proposed modifications should be approved.

At least one party in this proceeding apparently believes that certain other changes to the EE&C Plan that do not shift program funds within a customer class, shift funds between customer classes, or constitute a discontinuation of a program require prior Commission review and approval. This argument should be rejected because it is inconsistent with the plain language of the *EE&C Order*. Moreover, such an argument runs contradictory to the Commission's determination that it will not micro-manage the Company's Act 129 compliance efforts. Micro-management of each program and/or individual measures (via the need to approve every change) would be inconsistent with the *EE&C Order* and would be unreasonable, as it would deny PPL Electric the ability to respond quickly to events and opportunities that could both assist in achieving energy saving and peak load reduction goals or events that could hinder achieving the goals prescribed by Act 129. PPL Electric is the party that bears the risk of penalties in the event of non-compliance with the mandates of Act 129. It should be given substantial discretion to manage the EE&C Plan in order to have a realistic chance of meeting the requirements of Act 129 and should not be subject to the type of micro-management advocated by certain parties in this proceeding.

This concern is not abstract or hypothetical. One of the changes to PPL Electric's EE&C Plan discussed in its Annual Report relates to the Large C&I Load Control Program. The changes proposed by PPL Electric do not affect the overall EE&C program in any way. Moreover, these changes do not shift any costs within a customer class or among customer classes and do not involve termination of a program. Despite this fact, PPLICA has engaged in

⁵ PPL Electric has identified Mr. Cleff's testimony as PPL Electric St. 5 because the Commission has carried over the original docket number from the earlier phase of the EE&C Plan proceeding. PPL Electric filed four statements

substantial discovery and cross-examination and presumably briefing on the Load Control Program, relating to when the program will begin, the timing of the proposed load reductions, details as to the bidding process and bid evaluation, effects on individual Large C&I customers, changes to the benefit/cost ratio, detailed contract review, etc. This is precisely the kind of micro-management of EE&C plans that the Commission has clearly rejected and demonstrates in concrete terms why PPLICA's position should be rejected.

PPL Electric respectfully requests that the ALJs apply the plain language of the *EE&C Order* establishing the categories of changes that require Commission approval, find that only the two modifications proposed by PPL Electric require Commission approval; and approve the two unconstested modifications presented in the Company's Petition.

IV. ARGUMENT

A. **The Commission Has Specifically Identified EE&C Plan Revisions That Require Commission Approval**

1. **The Commission Has Previously Determined That Approval Is Only Required for Modifications That Shift Program Funds Within A Customer Class, And Between Customer Classes And For The Discontinuance Of A Program**

In the *EE&C Order*, the Commission determined those EE&C Plan revisions that require Commission approval. The Commission held in the *EE&C Order* that, "...PPL is the Party that bears the risk of penalties in the event of non-compliance with the mandates of Act 129. We will not micro-manage the Company's compliance efforts." *EE&C Order*, p. 88. In addition, the Commission stated that:

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

in that case earlier phase of this proceeding, including one by Mr. Cleff, which was Statement No. 1. *See Tr.*, p. 39.

authorized the Commission, not the EDC, to make decisions in regard to modifying an approved Act 129 Plan.

EE&C Order, p. 92. Moreover, in describing the required contents of EDC's petition to modify an approved plan, the Commission stated that:

The EDC's petition should explain the specific reasons supporting its requested modifications to its approved plan, i.e., the shifting of funds between programs or customer classes, the discontinuation of a program, etc.

EE&C Order, p. 93. Consistent with this, the Commission also stated that PPL Electric "may not shift EE&C Plan program funds within a customer class, or between customer classes, without prior Commission approval." *EE&C Order*, Ordering Para. No. 34. Language similar to that quoted above was also included in other EE&C plan orders.⁶

Therefore, while the Commission noted in the *EE&C Order* that mid-course changes to the EE&C Plan require approval, it limited the required approvals to certain categories, as illustrated in the quoted items above and in the relevant ordering paragraph. Therefore, according to the *EE&C Order*, and as applicable here, PPL Electric needs Commission approval

⁶ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans*, Docket Nos. M-2009-2092222, M-2009-2112952 and M-2009-2112956 (Order Entered February 26, 2010), p. 17 ("Even though we approved the evaluation provisions in the Revised Plans, we agreed with the OSBA that the Revised Plans must be modified to acknowledge that an EDC cannot shift program funds within a customer class, or between customer classes, without prior Commission approval."); *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans*, Docket Nos. M-2009-2092222, M-2009-2112952 and M-2009-2112956 (Order Entered October 28, 2009), p. 126 ("Regarding the DEP's concerns about plan adjustments outside the annual review process, 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."); *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093218 (Order Entered October 23, 2009), p. 98 ("Regarding DEP's concerns about plan adjustments outside the annual review process, 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."); *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), p. 42 ("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.").

to: (1) shift EE&C Plan program funds within a customer class, and (2) shift EE&C Plan program funds between customer classes. Additionally, the Commission contemplated that the discontinuation of a program requires approval. *See EE&C Order*, p. 93. However, PPL Electric has not proposed to discontinue a Commission-approved program; therefore, that category is not applicable in this proceeding. Consistent with the Commission's *EE&C Order*, PPL Electric identified two proposed modifications to its currently effective EE&C Plan that fit within the categories outlined by the Commission in the *EE&C Order*. These two proposed modifications are the subject of the Company's Petition.

The assertion that any change to the EE&C Plan requires Commission approval is directly contrary to and in contravention of clear and controlling precedent regarding PPL Electric's EE&C Plan. The Commission specified the limited categories of changes that require Commission approval, and PPL Electric has fully complied with that determination.

While the Commission did make certain broad generic statements with regard to changes to the EE&C Plan in the Secretarial Letter,⁷ such statements must be read and interpreted within the context of, and giving deference, to the findings in the *EE&C Order*, in which the Commission approved PPL Electric's EE&C Plan. To give any generic statement regarding what changes require Commission approval precedent over the *EE&C Order* would equate to reversing a prior Commission order on the merits with no indication that the Commission intended to do so and without opportunity for notice or comment by interested parties. The only reasonable way to view any generic statements in the Secretarial Letter on the changes that

⁷ See June 24, 2010, Secretarial Letter, Docket No. M-2008-2069887.

require Commission approval is to interpret them as only applying to those changes for which the Commission has stated Commission approval is required in the *EE&C Order*.⁸

Additionally, the assertion that any change to the EE&C Plan requires Commission approval is illogical because, if that were the case, then Ordering Paragraph No. 34 and the discussion regarding shifting program funds (*EE&C Order*, pp. 92-93) would be superfluous and unnecessary. Instead of clarifying what changes required Commission approval, the order approving the EE&C Plan would just have said all changes need approval. However, the Commission wisely did not choose that course of action and, instead, specified what modifications require Commission approval. Moreover, the Commission's willingness to list the changes that must be addressed in a petition to modify an Act 129 plan supports the premise that the Commission intended to limit the types of modifications that require Commission approval. If the Commission had intended to require every modification to be approved, then the *EE&C Order's* discussion of the required contents of a petition to modify a plan would have simply said that a petition should contain specific reasons for any modification. However, the Commission chose to list the items it expected to be discussed in a petition to modify an Act 129 plan, consistent with the categories of modifications that require Commission approval discussed in the *EE&C Order*.

The *EE&C Order* also is logical and practical from a policy and implementation perspective. It obviously would be unreasonable to require an EDC to seek Commission approval for every small change to an Act 129 plan, which is why the Commission limited the

⁸ Similarly, in the *EE&C Order*, the Commission noted with regard to changes to the cost recovery mechanism that PPL Electric would need approval of any mid-course changes to the Plan that it intends to make. *EE&C Order*, p. 114. Taken out of context this statement in the *EE&C Order* could be viewed a generic statement as to the changes that need Commission approval. However, this discussion in the *EE&C Order* (both in the text and the ordering paragraph) concerns the Act 129 Compliance Rider and the fact that Commission approval would be required to change the rider in the tariff.

types of modifications that need approval. It is hard to imagine the procedural nightmare that would ensue if each EDC had to seek Commission approval for every small change before it could be implemented.⁹ In the *EE&C Order*, the Commission struck the proper balance when it established the categories of changes that require Commission approval. It is a proper balance because limited resources are not wasted on lengthy reviews of each small change, thereby avoiding a constant flow of petitions for approval for each and every minor change or update to Commission-approved plans.

As noted above, PPL Electric bears the risk of penalties in the event of non-compliance with the mandates of Act 129. 66 Pa. C.S. § 2806.1(f). To require that every change be approved by the Commission would hinder PPL Electric's ability to manage all of the EE&C Plan's various programs effectively and timely in order to comply with Act 129. PPL Electric should be free, consistent with the *EE&C Order*, to implement its EE&C Plan programs and individual measures in a way that it believes is the most effective for success. The Commission's micromanagement of each program and/or individual measures (via the need to approve every change) would both be inconsistent with the *EE&C Order*, as discussed above, and would be unreasonable, as it would deny PPL Electric the ability to respond quickly to events and opportunities that could both assist in achieving energy saving and peak load reduction goals or events that could hinder achieving the goals prescribed by Act 129. PPL Electric St. 5, p. 15; PPL Electric Reply, p. 7.

⁹ A hint at what would happen can be found in this case and PPLICA's cross-examination on the Load Curtailment Program. Where PPLICA examined when the program will begin, the timing of the proposed load reductions, details as to the bidding process and bid evaluation, effects on individual Large C&I customers, changes to the benefit/cost ratio, detailed contract review, etc. PPLICA also addressed these issues in various data requests. PPLICA's conduct here clearly, is an effort to micro-manage the EE&C Plan and demonstrates why the Commission chose not to require approval of all modifications.

The EE&C Plan is a new endeavor that is based on forward looking estimates and projections, and PPL Electric should, consistent with the *EE&C Order*, have the ability to revise and update its plan based on actual experience in order to achieve the Act 129 mandates. Moreover, the complexity of the EE&C Plan, the fact that the EE&C Plan was based on estimates that were inevitably going to change over time and with experience (particularly where there is a new program for which there is little experience) and the completely voluntary nature of the various programs support the practical reality that EDCs should have the ability to revise their plans based on actual experience in order to achieve the Act 129 mandates. The EE&C Plan includes a range of energy efficiency and demand response programs that include every customer segment. It is a comprehensive portfolio of energy efficiency, conservation practices and peak load reductions, renewable technologies and energy education initiatives that consist of fourteen programs. PPL Electric has adopted protocols to effectively monitor progress toward meeting the EE&C Plan goals, to detect problems quickly, and take corrective action, and to continually and quickly adjust the EE&C Plan prospectively over time. EE&C Plan § 1.2.1.4. “However, the [EE&C Plan’s] ability to meet the projected targets is ultimately a function of consumers’ ability and willingness to participate in programs.” *Id.*

The EE&C Plan is a complex endeavor, with hundreds if not thousands of component parts and every single one is an estimate for a voluntary and previously untested program. EDCs must be nimble and flexible in implementing these programs if they are to have any chance of success. This sentiment is embodied by the Commission’s commitment that it would not micromanage the EE&C Plan. Moreover, it recognizes the fact that EDCs are subject to penalties if the mandates are not met, and if an EDC fails to achieve the required reductions in consumption in 66 Pa.C.S. § 2806.1, the responsibility to achieve the reductions in consumption

is transferred to the Commission. 66 Pa.C.S. § 2806.1(f). Therefore, some level of flexibility is appropriate. That is why the Commission specifically defined the types of changes that require Commission approval.

2. The Commission's Prior Determination In The *EE&C Order* As To What Changes Require Commission Approval Is Binding In This Proceeding

As explained above, the Commission previously determined, in the *EE&C Order*, what changes require prior Commission approval. This determination is binding in this later phase of the same docket. The Commission's findings in the *EE&C Order* are binding both pursuant to statute and the doctrine of collateral estoppel, and as a result, the parties in this proceeding are not free to re-litigate the Commission's prior determinations in this docket. Pursuant to 66 Pa.C.S. § 316 "[w]henver the commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review." Therefore, the final determinations in the *EE&C Order* are binding here. *See e.g., Peoples Natural Gas Co. v. Pennsylvania Public Utility Com.*, 116 Pa. Commw. 512, 542 A.2d 606, *affirmed by* 523 Pa. 370, 567 A.2d 642 (1989) (the Commission abused its discretion by failing to apply and be bound by Section 316).

Moreover, under the doctrine of collateral estoppel, once there is a final decision on the merits, *i.e.*, the *EE&C Order*, all parties are barred from re-litigating the findings of the Commission. Collateral estoppel applies if (1) the issue decided in the prior case is identical to one presented in the later case; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with a party in the prior case; (4) the party or person privy to the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior proceeding; and (5) the determination in the prior proceeding was

essential to the judgment. See, e.g., *City of Pittsburgh v. Zoning Board of Adjustment of City of Pittsburgh, Zullo and Dale*, 522 Pa. 44, 55, 559 A.2d 896, 902 (1989); *Schubach, Philadelphia Marine Trade Association v. International Longshoreman's Association*, 453 Pa. 43, 308 A.2d 98 (1973). All of the five elements of collateral estoppel are present here, and therefore, it is applicable in this proceeding. First, the issue decided in the *EE&C Order* is identical to one here -- what revisions to the EE&C Plan require Commission approval. *EE&C Order*, p. 92. Second, the *EE&C Order* was a decision on the merits. Third, parties in this phase of the proceeding participated in the proceeding that culminated with the *EE&C Order*.¹⁰ Fourth, the parties have had a full and fair opportunity to litigate the issue in the prior phase of this docket. Fifth, the determination in the prior proceeding was essential to the judgment as the Commission devoted an entire section of the *EE&C Order* to the issues of how to evaluate the EE&C plan and following those evaluations what changes need to the plan require Commission approval. *EE&C Order*, p. 92.

B. Proposed Modifications To The EE&C Plan.

Consistent with the categories specified in the *EE&C Order*, and as discussed in the preceding section, PPL Electric identified two proposed modifications to its currently effective EE&C Plan which require prior Commission approval. As more fully explained in the Company's Petition, PPL Electric requests Commission approval to modify two aspects of its EE&C Plan: (1) a change to its CFL Program; and (2) a change to the classification of certain direct and common costs. The two proposed modifications (1) shift EE&C Plan program funds within a customer class and (2) shift EE&C Plan program funds between customer classes. PPL Electric has presented evidence that the two proposed modifications are reasonable and

¹⁰ PCOC is the successor to ACORN which was involve in the earlier phase.

necessary and no party has presented any evidence to the contrary or argued that the Commission should not permit PPL Electric to implement the proposed changes. Therefore, the two proposed modifications presented in the Company's Petition should be approved as the changes are reasonable and necessary for PPL Electric's EE&C Plan to successfully meet its Act 129 obligations.

The ALJs in this proceeding have discretion to address this threshold issue and can resolve this proceeding by, first, applying the plain language of the *EE&C Order* establishing the categories of changes that require Commission approval and finding that only the two proposed modified changes need to be resolved; and, second, by finding in PPL Electric's favor on the two proposed modifications presented in the Company's Petition because no party has contested them.

1. Allocation Of CFL Program Sales To Multiple Customer Sectors

All PPL Electric customer sectors are eligible to purchase discounted CFLs from retail stores under PPL Electric's CFL Program. PPL Electric St. 5, p. 4; PPL Electric Petition, p. 5. Under the CFL Program, customers receive a discount at the point of sale and PPL Electric does not know the specific customers who purchase those discounted CFLs because there are no rebate forms or applications like most other programs. *Id.* Therefore, PPL Electric does not know the specific customers who purchase those discounted CFLs. *Id.* In its EE&C Plan, PPL Electric allocated approximately 17% of projected CFL sales (kWh/yr savings and program costs) to the low-income residential sector and approximately 5% to the Small C&I sector. *Id.* PPL Electric proposes to eliminate the allocation of CFL Program sales, savings, and costs to multiple customer sectors. PPL Electric St. 5, p. 5; PPL Electric Petition, p. 5. Instead, PPL Electric proposes to allocate all CFL Program sales, savings and costs to the residential customer

sector since sales to residential customers (non low-income and low-income) are likely to account for more than 95% of total CFL sales under this program. *Id.*

2. Allocation Of CFL Sales To The Low-Income Residential Customer Sector

PPL Electric originally allocated CFLs sales to the low-income residential sector because it believed that there was a low-income energy reduction compliance target (kWh). PPL Electric St. 5, pp. 5-6; PPL Electric Petition, p. 8. Therefore, for compliance purposes, PPL Electric believed it needed to specifically track and verify CFL Program sales and savings for low-income customers who purchased discounted CFLs from participating retailers. *Id.* However, subsequent to the filing of the Company's original EE&C Plan, the Commission clarified that the low-income compliance target was based on the number of measures available to low-income customers, not a percentage of the total kWh/yr reductions. *Id.* Therefore, an allocation to the low-income sector is no longer necessary for compliance purposes.

In addition, PPL Electric does not attempt to quantify or allocate low-income customer participation in any other non low-income program. PPL Electric St. 5, p. 6; PPL Electric Petition, p. 8. Low-income customers are eligible to participate in any PPL Electric EE&C program that is open to residential customers and all costs associated with low-income and non low-income customer participation in EE&C programs are recovered from the same sector – residential customers. Those programs include Efficient Equipment, Residential Energy Assessment and Weatherization, CFL, Appliance Recycling, Direct Load Control, Renewable Energy, Time of Use, Energy Efficiency & Behavior, New Homes, and Custom. Because PPL Electric does not attempt to quantify or allocate low-income customer participation in those programs, there is no benefit to single out low-income participation in the CFL Program. *Id.*

3. Allocation Of CFL Sales To The Small C&I Customer Sector

The allocation to the Small C&I customer sector was an attempt, based on feedback from stakeholders during the development of the Company's EE&C Plan, to categorize savings and costs, because some Small C&I customers may purchase PPL Electric-discounted CFLs from retail stores. PPL Electric St. 5, p. 7; PPL Electric Petition, p. 9. However, during the implementation of its energy efficiency tracking system and CFL Program, PPL Electric determined it would not be feasible to allocate CFL sales (savings and costs) to multiple customer sectors for several reasons. *Id.*

First, CFL savings for non-residential customers must be calculated using a different method than for residential customers, and it is not possible to obtain much of the information (such as the customer's baseline light fixture, the type of building and space in which the CFL is installed, what type of lighting controls exist, etc.) required to calculate C&I CFL savings for a retail discount/upstream buy-down type CFL Program because the specific customers are not known. *Id.*

The Commission's Technical Reference Manual ("TRM") prescribes how savings are determined for residential CFLs and for C&I lighting (new construction and lighting retrofits). PPL Electric St. 5, p. 8; PPL Electric Petition, p. 9. For residential CFLs, savings are determined based on the difference in wattage between the CFL and its equivalent incandescent bulb (the incandescent typically has four times the wattage) multiplied by 3 burn time hours per day (deemed value for all residential CFLs) multiplied by a fully deemed installation rate (84%). Therefore, to determine the savings for each residential CFL, PPL Electric needs to know the quantity of each bulb and its differential wattage. *Id.* Both of those "open variables" are provided by the CFL Program's Conservation Service Provider ("CSP"). *Id.*

For C&I lighting retrofits, savings are determined based on the difference between the wattage of the new fixture (bulb) and the specific, existing fixture (bulb) that the new fixture replaces. PPL Electric St. 5, p. 8; PPL Electric Petition, pp. 9-10. The existing fixture is referred to as the “baseline.” The wattage of each new and baseline light is determined from the PA Lighting Form (spreadsheet) and the customer must provide the bulb wattage, fixture type, type of lighting controls (switch, occupancy sensor, etc.), number of bulbs, facility/building type (education, grocery, hospital, restaurant, office, warehouse, etc.), type of heating or cooling in the facility, and other information on the PA Lighting Form. PPL Electric cannot obtain any of the baseline information required to compute savings because the specific customers in the CFL Program are not known and it is not possible to obtain that information from a customer (or to complete a PA Lighting Form) at the retail store when they purchase the CFL. *Id.*

For C&I new construction lighting, savings are determined based on the difference between lighting power density (“LPD”), watts per square foot, of the new light compared to the code required LPD for the specific building and space type. PPL Electric St. 5, p. 9; PPL Electric Petition, p. 10. To determine the LPD, the customer must provide information such as the type of building, type of space (office, hallway, auditorium, warehouse, etc.), square footage of the building and space, type of lighting controls, and other information about the location where the lights are installed. PPL Electric cannot obtain any of the information required to compute LPD savings because the specific customers in the CFL Program are not known and it is not possible to obtain that information from a customer at the retail store when they purchase a CFL. *Id.* Therefore, it is not possible to calculate or verify savings in accordance with the Commission’s TRM for CFLs purchased by C&I customers as part of the retail-discount CFL Program. *Id.*

Second, even if PPL Electric were able to estimate the savings for each C&I CFL, it cannot reasonably estimate the allocation percentage (the portion of CFL Program sales attributable to C&I customers). PPL Electric St. 5, p. 9; PPL Electric Petition, pp. 10-11. Since the specific participants in the CFL Program are not known and cannot be determined, it is not possible to estimate or verify the allocation percentages. Also, estimates of the percentage of C&I CFL sales are not available from retailers. *Id.*

Third, even if PPL Electric could estimate the allocation percentage, it would be technically and administratively complex, if not impossible, to properly track. PPL Electric St. 5, p. 9; PPL Electric Petition, p. 11. To ensure consistency between formal savings reports and the underlying raw transactional data recorded in PPL Electric's tracking system, the allocation of CFL sales must be recorded at the transactional level (a unique CFL transaction would have to be designated as "residential" or "C&I") when recorded in PPL Electric's tracking system. The allocation cannot be done by an after-the-fact adjustment in reports. That transactional data is for each specific CFL bulb and includes the SKU number, quantity sold, type of base/socket, bulb style, number of bulbs per pack, wattage per bulb, wattage of equivalent incandescent bulb, manufacturer, retail store, discount, and other information. The CFL Program CSP has no feasible way to do this allocation at the transactional level. *Id.*

For the reasons set forth above, PPL Electric proposes to allocate the sales, savings, and costs of the CFL Program to the residential sector. The Company's current EE&C Plan anticipated only modest participation rates (5%) by the Small C&I sector. PPL Electric St. 5, p. 5; PPL Electric Petition, p. 11. Therefore, the Company does not view this change in allocation as a significant modification. *Id.* Specifically, the Company's proposed modified approach shifts approximately \$800,000 of projected costs from the Small C&I customer sector to the

residential sector. *Id.* That is approximately a 1.3% increase in total projected cost for the residential sector and a 0.9% reduction in total projected cost for the Small C&I sector, compared to the approved EE&C Plan. *Id.* These cost changes are well within the normal band of estimating uncertainty for the EE&C Plan. There is no impact on the projected total cost or total savings of the CFL Program or the EE&C Plan as a whole. *Id.*

4. Changes To The Cost Allocation Method Related To “Direct Program Costs” And “Common Costs”

“Direct program costs” are those expenditures directly associated with a specific energy efficiency program. PPL Electric St. 5, p. 10; PPL Electric Petition, p. 12. Some examples of direct program costs are: a rebate paid to a customer for an energy efficiency measure in a program; and a program CSP’s labor and material charges to implement a program (such as the Appliance Recycling Program). *Id.*

“Common costs” are expenditures that apply to many, if not all, programs “across the board” and cannot be reasonably and directly assigned to a specific program. *Id.* Some examples of common costs are: the development of the EE&C Plan; the development, implementation and operation of the energy efficiency tracking system; evaluation, measurement and verification of savings; performance and progress reporting; general management; and legal support. *Id.*

Some types of expenditures are very difficult to categorize with reasonable accuracy because they apply to a subset of programs, but not in a way that is easily attributable to each program. Examples include the Administrative CSP, who handles customer inquiries and applications for many programs, and marketing and advertising programs. PPL Electric St. 5, p. 10; PPL Electric Petition, p. 12.

During the detailed design and implementation of its EE&C programs and development of program cost tracking systems and processes, PPL Electric identified several revisions to how it classified certain “common costs” and “direct program costs,” as compared to the assumptions in the initial EE&C Plan. PPL Electric St. 5, p. 11; PPL Electric Petition, p. 13. The net effect of the proposed reclassifications shifts approximately \$6.5 million from the “direct program cost” category to the “common cost” category. While shifting between “common” and “direct” costs does not change the projected cost of the EE&C Plan as a whole, it does result in minor cost changes between customer sectors. In accordance with the EE&C Plan, common costs are allocated to each customer sector using an allocation factor equal to the percentage of the EE&C costs directly assigned to each customer sector to the total of EE&C costs directly assigned to all customer sectors. Using this approach, the proposed shift in direct and common costs results in a relatively minor cost shifting (less than 2.5%, compared to the original EE&C Plan) between customer sectors. PPL Electric St. 5, pp. 11-12; PPL Electric Petition, p. 13. Those cost changes between customer sectors are well within the normal band of estimating uncertainty for the EE&C Plan. Shifting between common and direct cost categories does not impact the benefit-cost ratio of the portfolio and has a minor impact (improvement) on the benefit-cost ratio of some programs because of the lower direct cost of some programs (common costs are excluded from the cost-effectiveness test at the program level; common costs are only addressed at the portfolio level). The impact of the proposed changes to direct program costs and each sector’s allocation of common costs are illustrated in Table 5a of PPL Electric’s EE&C Plan submitted on September 15, 2010. PPL Electric St. 5, p. 12; PPL Electric Petition, p. 13.

The following is a summary of the reclassifications that affect the “common” and “direct” cost categories:

EDC Labor, Material and Supplies:

- In the EE&C Plan, all EDC labor, material, and supplies were defined as common costs. In actuality, some EDC costs will be direct and some will be common.
- EDC labor, material, and supplies that directly support a program will be charged directly to the applicable program. For example, when the PPL Electric Program Manager for the Appliance Recycling Program is working on that program, the cost will be reflected as a direct cost to that program. EDC labor, material, and supplies that do not directly support a program will be treated as a common cost. For example, when a PPL Electric employee is performing evaluation, measurement, and evaluation or is preparing the quarterly progress report for the Commission, that cost will be reflected as a common cost to all programs. EDC labor, material, and supplies for the tracking system will similarly be considered a common cost.
- The net impact of changes in this category is a shift of \$3.7 million from common costs to direct costs.

General Marketing:

- PPL Electric's general marketing (excludes marketing by turnkey program CSPs) was assumed to be a direct program cost in the EE&C Plan but will now be treated as a common cost because it is not feasible to separately determine and allocate charges to each specific program.
- The net impact of changes in this category is a shift of \$8.8 million from direct costs to common costs.

Administrative CSP:

- The Administrative CSP was assumed to be a direct program cost in the EE&C Plan for Efficient Equipment, Energy Assessment & Weatherization, Renewable Energy, Residential New Construction, and Custom program. However, the Administrative CSP will now be a common cost because it is not feasible to specifically assign every call, task, etc., to a specific program.
- The net impact of changes in this category is a shift of \$1.5 million from direct costs to common costs.

PPL Electric St. 5, pp. 12-13; PPL Electric Petition, p. 14.

For the reasons set forth above, PPL Electric proposes to treat some EDC labor, material, and supplies as direct costs and some as common costs. PPL Electric also proposes to treat

general marketing costs as a common cost. PPL Electric proposes to treat Administrative CSP costs as a common cost.

C. Revisions To The EE&C Plan Which Do Not Require Commission Approval

As discussed above, the Commission specified what revisions to the EE&C Plan require Commission approval. However, there is at least one party, and maybe more, that apparently believe that the other changes included in the annual report submitted to the Commission also require prior Commission review and approval. In anticipating this potential argument, PPL Electric has provided the appropriate legal standard for addressing the issues in Section IV.A. Due to the short procedural schedule, PPL Electric also submitted testimony regarding these additional changes. If the ALJs and the Commission decide that only the two proposed modifications presented in the Company's Petition require approval, those changes can be reviewed and granted or rejected. If the ALJs and the Commission determine that the broader review and approval is required, a record has been developed to permit this broader review.

In presenting this additional evidence, however, PPL Electric does not intend to waive its primary position, discussed above, that only the two proposed modifications presented in the Company's Petition require approval. Additionally, to the extent that the Commission were now to reverse its prior order and determine that prior approval is required for other changes, such requirement should only be implemented prospectively. It should not apply to this proceeding because such a change would be fundamentally inconsistent with the prior Commission order upon which PPL Electric relied in preparing its Petition. *See EE&C Order*, p. 92; PPL Electric St. 5, p. 15.

To the extent that the ALJs or the Commission wishes to review these additional changes in this proceeding, each change is fully described in PPL Electric St. 5, pp. 16-31. Additionally, these changes are briefly summarized in Section IV.C.1., below. Furthermore, PPL Electric

anticipates certain parties in this proceeding will raise issues concerning the additional changes in their main briefs. Therefore in Section IV.C.2., PPL Electric summarizes and supports the additional changes that it anticipates may be opposed by the other parties.¹¹ To the extent that the other parties address changes not discussed below, PPL Electric will respond accordingly in its reply brief.

1. Implementation Changes To The EE&C Plan

The Company has implemented several changes to certain programs and individual measures that do not fall within the category of changes for which prior Commission approval is required. PPL Electric St. 5, p. 13. These implementation changes 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. PPL Electric St. 5, p. 14. Therefore, these implementation changes do not shift EE&C Plan program funds within a customer class or shift EE&C Plan program funds between customer classes. *Id.* Moreover, the implementation changes do not include the discontinuance of a program. *Id.* For these reasons, in accordance with the standards set forth in the Commission's order approving PPL Electric's EE&C Plan, PPL Electric does not believe that prior Commission approval of these changes is required. *Id.* Furthermore, the additional changes were discussed at the April 28, 2010 stakeholder meeting and at the October 20, 2010 stakeholder meeting. PPL Electric St. 5, p. 15. These changes were also identified as part of the Company's Act 129 EE&C Program Year 1 Annual Report ("PY1 Annual Report") to the Commission. PPL Electric St. 5, p. 15.

¹¹ PPLICA indicated that it may raise issues with the Custom Incentive Program; however, PPL Electric is not aware of PPLICA's exact concern. Regarding the Custom Incentive Program, PPL Electric clarified the rebate caps, clarified the definition for the term "year," added a requirement that incentives may not cover more than 50% of incremental costs and clarified the definitions for the terms "parent" and "site." PPL Electric St. 5, p. 21.

The implementation changes fall into five broad categories. PPL Electric St. 5, p. 16. The first category includes the fine-tuning of program rebate levels, energy efficiency measure descriptions, and eligibility requirements. *Id.* As illustrated in Exhibit PDC-1, there are 21 revisions that fall in to the first category. The second category includes measures added to the Efficient Equipment Program. *Id.* The third category includes measures deleted from the Efficient Equipment Program. The fourth category includes measures moved from the Efficient Equipment Program to the Custom Incentive Program. *Id.* The fifth category includes changes to program schedule milestones or changes to projected peak load reduction for the load curtailment measure. *Id.* The summary of the changes identified as part of the Company's PY1 Annual Report, along with an explanation for the changes, is Exhibit PDC-1. Moreover, Exhibit PDC-2 contains, for illustrative purposes, a redline of the EE&C Plan that incorporates the revisions discussed in Exhibit PDC-1.

2. Changes To The Load Curtailment Program.

PPLICA and one other party have raised issues regarding PPL Electric's plan to increase the expected peak load reductions in the Load Curtailment Program from 100 MW to 150 MW. *See* PPLICA Comment, p 5. The Load Curtailment Program provides incentive for customers who curtail their average load during summer peak periods.

PPL Electric originally projected peak load reductions of 100 MW for the Load Curtailment Program. However, the projected peak load reductions have been increased from 100 MW to 150 MW based on bids from CSPs. PPL Electric St. 5, p. 28; PPL Electric Reply, p. 8. The increase in the Company's projected peak load reductions will be obtained within the approved budget of the Load Curtailment Program and will provide peak load reductions necessary for the Company to achieve the reductions required by Act 129. Originally, the Load Curtailment Program had a budget of \$14,486,000 in order to obtain 100 MW, however it turns

out the Company can obtain 150 MW for the originally budgeted amount. Absent the increased peak load reductions from the Company's Load Curtailment Program, the Company will not likely be able to comply with its peak load reduction targets because of projected shortfalls in other programs and would be subject to monetary penalties of \$1 million to \$20 million. In addition, if the Company does not meet its goals under Act 129, the Act provides that the program must be taken over by the Commission. 66 Pa.C.S. § 2806.1(f).

Peak load reduction shortfalls are expected in other programs. For example, the TOU Program was originally 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. PPL Electric St. 5, p. 29. 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). *Id.* The number of shopping customers will be much higher than expected and customers will likely save more by shopping than by participating in the TOU Program. *Id.* The Company's original estimate of 150,000 participants in the TOU Program turned out to be too high, and the current projection for participation is less than 10,000 participants. *See Tr.*, p. 47. In fact, as of October 31, 2010, there are only 443 participants in the Company's TOU Program that was launched in June 2010. PPL Electric St. 5, pp. 29-30.

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 that tend to decrease savings and peak load reductions (compared to the TRM in effect when the Company's EE&C Plan was approved). PPL Electric St. 5, p. 30. Also, it is uncertain whether net-to-gross adjustments will apply, further reducing energy and peak load savings. *Id.* Therefore, to make up for those expected

shortfalls, PPL Electric must increase peak load reductions from other programs in order to meet its peak load compliance target by September 2012. *Id.* The Load Control Program was identified as an appropriate measure because the Company was able to obtain the original forecast peak reduction for this program at substantially less than the projected cost. PPL Electric determined that it can obtain 50 MW of additional peak load reductions with no increase in the amount of dollars originally budgeted for this measure.

PPL Electric investigated alternatives to increase peak load reductions from other programs or from new programs. PPL Electric St. 5, p. 31. Increasing projected peak load reductions from the Load Curtailment Program is the only feasible alternative and the only alternative to increase peak load reductions within the original approved cost budget. In April 2010, PPL Electric asked stakeholders for input and suggestions on how to increase peak load reductions in other programs. However, no suggestions were received from any stakeholder as of September 15, 2010. PPL Electric St. 5, p. 31.

“Overachieving” projected savings (compared to the approved EE&C Plan) within budget is common in other programs and does not trigger any requirement for Commission approval. PPL Electric Reply, p. 9. For example, PPL Electric may achieve greater savings than expected for heat pumps due to a different mix of sizes and efficiencies installed by customers than the assumptions in the EE&C Plan, or because program costs per heat pump are lower than expected and PPL Electric can provide rebates for more heat pumps than originally expected. *Id.* Similarly, PPL Electric may achieve greater savings than expected in its CFL Program if customers buy higher wattage CFLs than assumed in the EE&C Plan, or if the program costs per CFL are lower than expected (more CFLs can be discounted). *Id.* Therefore, if PPL Electric can achieve greater savings (peak load reductions) in the Load Curtailment Program than assumed in

the EE&C Plan, within budget, such excess savings should not require Commission approval. *Id.* Notably, these are the types of situations that the Commission said it would not micro-manage and these situations do not fit within the categories of modifications which require Commission approval, as discussed in the *EE&C Order*. *EE&C Order*, p. 88.

Greater peak load reductions will provide greater savings to all PPL Electric customers, regardless of whether they participate or do not participate in PPL Electric's Load Curtailment Program or other programs. PPL Electric Reply, p. 9. That is one of the fundamental objectives of Act 129 – the reduction of consumption and peak loads will, over time, lower wholesale and retail energy prices for all customers in Pennsylvania.

Moreover, participation in the Load Curtailment Program is voluntary; no customers are forced to participate. PPL Electric Reply, p. 9. Therefore, increasing the peak load reduction target for the program gives more customers a chance to participate in this program and receive incentives for voluntarily reducing their peak load. The “market” (*i.e.* the participants in the program) has the ability to decide if this program makes sense for the Load Curtailment Program target market. PPL Electric Reply, p. 9.

It is uncontested that PPL Electric is currently short on the level of demand reductions that it needs to comply with Act 129. PPL Electric has demonstrated through unrebutted evidence that its proposal is the least expensive way to get the additional megawatts needed to meet the requirements of Act 129 (see paragraph 2b on page 30 for a summary of the cost of alternatives). Indeed, this is the only way for the Company to meet the requirements and stay within the 2% cost cap. Therefore, there are only three solutions to this situation: (1) not implement the changes, which will cause PPL Electric to fail to comply with the Act 129 peak load reduction target, incur a penalty and require the Commission to take over the EE&C Plan;

(2) adopt different measures to obtain the peak load reductions, which would cause PPL Electric to violate the 2% cost cap, and there is some uncertainty whether it is feasible to attain greater peak load reductions from those measures because of market penetration or other market limitations; or (3) obtain the needed 50 MW at a clearly reasonable rate, stay within the cost cap, comply with Act 129 and have the Large C&I class pay no more than already approved by the Commission. The preferred solution is self-evident and should be approved. Additionally, no party in this proceeding has presented any alternatives nor provided any evidence to the contrary and there is, therefore, no evidentiary record upon which to reject PPL Electric's proposal.

a. Launching Of The Direct Load Control Program And The Load Curtailment Program In Late 2010/Early 2011

The launching of the Direct Load Control Program and the Load Curtailment Program have been deferred from January 2010 to late 2010/early 2011. PPL Electric St. 5, p. 28. There is no benefit to launching these programs as originally scheduled. The CSP bidding process and contract awards have taken much longer than expected, partly because of changes to the TRM and the PUC-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.

b. Cost To Ratepayers

The difference between 100 MW and 150 MW of load curtailment is approximately \$3 million. On average, that amount equates to approximately \$2,500 per customer, over the 4-year EE&C Plan for 1,200 customers in the Large C&I sector. PPL Electric St. 5, p. 30. In the end, however, the Large C&I customers will pay no more than they were required to pay under the

original Commission-approved plan. Therefore, Large C&I customers are paying what the Commission has already found reasonable.

More importantly, it would cost significantly more than \$3 million to achieve the additional 50 MW of peak load reductions from other demand response measures. *Id.* pp. 30-31. For example, it would cost approximately \$10 to \$16 million to add 50 MW of direct load control, it would cost approximately \$18 million to add 30 MW of peak load reduction to the CFL Program and it would cost \$46 million to add 38 MW to the Efficient Equipment Program. All those options are clearly cost prohibitive within the Act 129 approved budget and are likely not feasible within the marketplace (market penetration limits). *Id.* Just as important, if the Company does not increase projected peak load reductions from the Load Curtailment Program, it will not likely meet its peak load compliance target. *Id.*

Nothing that PPL Electric plans to do with regard to the Load Curtailment Program changes any cost incurred by any rate class, including Large C&I. The Commission approved a certain level of costs to be allocated to the Large C&I class. If the changes are implemented that fact will remain exactly the same. Therefore, to the extent that the parties in this proceeding are seeking a rate decrease from what was already approved by the Commission, such claims should be rejected because in the end, the Large C&I customers, will pay no more than they were required to pay under the original Commission-approved plan.¹²

c. Procurement Of The Additional 50 MW

PPL Electric initially solicited bids from approximately 80 bidders for the 100 MW needed for the Load Curtailment Program. *Tr.*, p. 56. Bidders were asked to provide bids in

¹² PPLICA asked a number of data requests on the record regarding the cost to ratepayers. *Tr.*, p. 51. PPL Electric responded and ALJs left the record open until Monday, November 22, 2010 for PPLICA to move the responses into evidence if it wished to do so. *Tr.*, p. 78. PPLICA, however, chose not put the responses in the record by the close of the record.

increments of a minimum of 5 MW up to the maximum that they were willing to supply. *Id.* An independent entity was retained to review these bids and determine the least cost combination for the 100 MW. This result provided PPL Electric with a short list of candidates to focus on during detailed negotiations. During that process the short list of candidates was asked if any were willing to provide a quote for the entire 100 MW. PPL Electric then asked those that were willing to provide the full amount, what the price would be for 150 MW. PPL Electric then compared the prices received for the single source supply of the 150 MW block to the price resulting from re-evaluating the initial bids to supply 150 MW rather than 100 MW. Tr., pp. 57-58. The resulting analysis demonstrated that the single source price was significantly less than the price achieved from accepting a portfolio of smaller bids. *Id.*

Based on the information received at each phase of this process PPL Electric was confident that it was getting the best price for the most megawatts. To confirm this PPL Electric compared the final prices received from those willing to provide the entire 150 MW to the re-stacked smaller bids, and that process confirmed that the best price would be achieved by focusing on those willing to provide the larger block of megawatts. PPL Electric is currently negotiating the final scope of work, terms and conditions with a CSP(s) for this program and expects to finalize the contract and submit it to the Commission for approval by December 31, 2010. PPL Electric St. 5, at p. 31.

PPL Electric followed the Company's Pro Forma Request for Proposal Procedures that were submitted to the Commission for review on March 2, 2009 and by the Commission via Secretarial Letter dated April 1, 2009, at Docket No. M-2009-20093216. Further, upon selection of the Load Curtailment CSP or CSPs, PPL Electric and the will execute the Commission-

approved Proforma CSP Contract that was approved by the Commission via Secretarial Letter dated April 17, 2009, at this docket.

As Mr. Cleff explained, there was no reason to rebid for the incremental 50 MW. PPL Electric already had a portfolio of small bids in hand that totaled more than 150 MW. Tr., p. 57-59. To determine the cost of obtaining 150 MW from this broader group of suppliers PPL Electric simply re-stacked the bids to produce 150 MW, instead of 100 MW. *Id.* Moreover, not all of the potential bidders were willing to supply the 100 MW, so there was no reason to believe that they would want to supply 150 MW. Therefore, rebidding would have been pointless and would have caused substantial delay in finalizing the program.

V. ISSUES RAISED IN THE COMMENTS.

In addition to the issues discussed above, certain parties raised issues in filed comments. PPL Electric responded to these issues in its November 12, 2010 Reply and does not anticipate that these issues will be discussed during the briefing stage of this proceeding. However, out of an abundance of caution, the Company's position on these additional issues is summarized below.

A. Multi-Family Properties And Low-Income Customers

The Comments of the Pennsylvania Communities Organizing for Change ("PCOC Comments") filed on October 18, 2010, included two recommendations. The first concerns specific measures targeted to multi-family properties and the second concerns the low-income customers and the CFL Program. The Company fully responded to the recommendations made by the PCOC in the PCOC Comments in PPL Electric's Reply (pp. 16-18) and in the Testimony of Mr. Cleff (pp. 34-35).

In summary, PCOC encouraged PPL Electric to include specific measures targeted at multi-family properties providing affordable housing to low-income families. PCOC Comments,

pp. 2-3. PCOC maintains that multi-family property measures could be combined with Department of Energy and Pennsylvania Housing Finance Authority weatherization efforts. *Id.* PPL Electric notes that the current Commission-approved EE&C Plan includes programs available to multi-family properties, and this is unchanged in the EE&C Plan filed on September 15, 2010. PPL Electric Reply, p. 16; PPL Electric St. 5, p. 34. Multi-family properties are eligible to participate in any program open to the multi-family property's underlying rate class (typically residential or Small C&I) and are eligible for the Low-Income Sector programs. PPL Electric Reply, p. 16; PPL Electric St. 5, p. 34. Additionally, the current EE&C Plan states that PPL Electric has established formal relationships with non-profit and community outreach organizations that provide complementary programs to customers in PPL Electric's service territory. *See Id.*; EE&C Plan, p. 187.

Regarding low-income customers and the CFL Program, in its comments PCOC encourages PPL Electric to ensure that low-income customers are receiving the intended benefits of the CFL program. As explained in PPL Electric's Reply (pp. 17-18) and in the Testimony of Mr. Cleff (p. 35), low-income customers will receive the intended benefits (*i.e.*, discounted CFLs and energy savings) under the CFL program. *All* PPL Electric customer sectors, including low-income customers, are eligible to purchase discounted CFLs from retail stores under PPL Electric's CFL Program. Petition, p. 5; PPL Electric Reply, p. 17; PPL Electric St. 5, p. 35. Low-income customers will continue to receive the energy savings benefits under the CFL program as encouraged by PCOC. Therefore, because the EE&C Plan addresses the concerns raised by PCOC regarding multi-family properties and low-income customers no modifications to the EE&C Plan are necessary.

B. Data Regarding Fuel Switching

The UGI Distribution Companies' Recommendations for Plan Improvements ("UGI Recommendations") filed on October 15, 2010, raised limited issues concerning the submission of information regarding EE&C program recipients who converted from gas appliances or equipment to electric appliances and equipment. The Company fully responded to the UGI Distribution Companies' assertions, in PPL Electric's Reply (pp. 10-12) and in the Testimony of Mr. Cleff (p. 32). Consistent with the EE&C Order, the Company does track program participants who convert from gas appliances to electric appliances; however, PPL Electric did not include this information in the Company's PY1 Annual Report. PPL Electric Reply, p. 11; PPL Electric St. 5, p. 32. PPL Electric is currently analyzing the information that it has collected on switching and will report the results to the Commission. *Id.*

Unfortunately, some of the information provided by customers regarding the conversion from gas appliances or equipment to electric appliances or equipment was contradictory and requires significant verification, including site visits and interviews with customers. *Id.* For example, numerous customers reported switching from gas appliances to electric appliances, but also stated they have no access to gas, and others customers reported switching to electric appliances that have no gas equivalent (such as a clothes washer or dishwasher). Once these data collection issues have been addressed, PPL Electric will report the information required by Ordering Paragraph No. 33 of the EE&C Order and the EE&C Plan (pp. 49, 78, 128) to the Commission. *Id.* The information will be included in a supplement to the PY1 Annual Report or as part of the Program Year 2, 2nd quarter report. PPL Electric St. 5, p. 32; PPL Electric Reply, p. 11.

C. The Reporting Of Incentive Costs

In its Answer filed on October 5, 2010, OSBA objected to the fact that PPL Electric did not reconsider, and report on, the magnitude of the incentives in the EE&C Plan. OSBA Answer, p. 3. The Company fully responded to OSBA's assertions in PPL Electric's Reply (pp. 13-15) and in the Testimony of Mr. Cleff (pp. 33-34). In summary, the Commission's order approving the EE&C Plan did not require the Company to reconsider, and report on, the magnitude of the incentives in the manner advocated by the OSBA in the OSBA Answer. PPL Electric St. 5, p. 33; PPL Electric Reply, p. 13. Moreover, this issue was addressed in the previous phase of this proceeding. In the *EE&C Order*, the Commission found that, "PPL's commercial measures comply with the requirements of Act 129. The OSBA suggestion that incentives be reviewed on an on-going basis is well-taken, and PPL has agreed to the same." *EE&C Order*, p. 31. PPL Electric monitors and reviews the progress of its programs regularly to determine effectiveness. PPL Electric St. 5, p. 33. Progress evaluation is a part of this process and will have as one of its elements the effectiveness of incentive amounts to motivate, but not over-incentivize, customers to participate in programs offered under the Plan. *Id.* If incentive amounts are found to be too low or too high, then PPL Electric will adjust the incentives accordingly. *Id.* Regardless, PPL Electric believes its incentives for Small C&I customers are too low, and not too high (or excessive), as OSBA appears to believe. PPL Electric St. 5, p. 33. OSBA's objections raised in its Answer should be dismissed because PPL Electric's EE&C Plan complies with Act 129 and the Company has analyzed and evaluated its incentive consistent with PPL Electric's proposal approved by the Commission in the *EE&C Order*.

D. Changes To The TRM

OSBA also expressed concern that PPL Electric "may not have modified its approved EE&C Plan to reflect changes to the [TRM] directed by the Commission." OSBA Answer, p. 3.

In response, PPL Electric notes that no changes are required to the EE&C Plan to reflect changes in the TRM. PPL Electric St. 5, p. 34; PPL Electric Reply, p. 15. Verified gross savings for each measure actually installed will be determined in accordance with the applicable version of the TRM in effect for each program year or in accordance with a Custom Measure Protocol if a measure is not included in the TRM. *Id.* Verified gross savings is the basis for compliance. Savings estimates in the approved EE&C Plan are based on planning assumptions and are not used for reporting actual savings (verified gross savings). *Id.*

VI. PROPOSED ORDERING PARAGRAPHS

1. The Petition of PPL Electric Utilities Corporation for Approval of Changes to its Act 129 Energy Efficiency and Conservation Plan is granted.

2. PPL Electric's proposal to allocate all CFL Program sales, savings, and costs to the residential customer sector instead of allocating 5% to the Small C&I sector and 17% to the low-income sector is granted.

3. PPL Electric's proposal to reclassify certain "common costs" and "direct program costs" is granted.

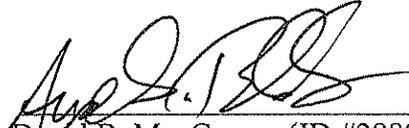
4. The two modifications regarding a change to the CFL Program and a change to the classification of direct and common costs proposed in the Petition of PPL Electric are the only changes that require Commission approval because the changes shift EE&C Plan program funds within a customer class and shift EE&C Plan program funds between customer classes. The changes identified as part of the Company's Act 129 EE&C Program Year 1 Annual Report to the Commission, as illustrated in Exhibit PDC-1, do not require Commission approval because they do not shift EE&C Plan program funds within a customer class, shift EE&C Plan program funds between customer classes, or discontinue a program.

5. The proceeding at Docket No. M-2009-2093216 shall be marked closed.

VII. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission approve the proposed modifications to the EE&C Plan, as described above and in the Petition filed on September 15, 2010.

Respectfully submitted,



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