



17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
717-731-1970 Main
717-731-1985 Fax
www.postschell.com

Andrew S. Tubbs

atubbs@postschell.com
717-612-6057 Direct
717-731-1985 Fax
File #: 2507-140069

December 3, 2010

BY E-FILE

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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 Reply 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/jl

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).

VIA E-MAIL & FIRST CLASS MAIL

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

Allison Curtin Kaster
Office of Trial Staff
Commonwealth Keystone Building
400 North Street, 2nd Floor West
PO Box 3265
Harrisburg, PA 17105-3265
E-Mail: AKaster@state.pa.us

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

Thomas J. Sniscak
Kevin J. McKeon
Tori Giesler
Hawke McKeon & Sniscak LLP
100 North Tenth Street
PO Box 1778
Harrisburg, PA 17105
E-Mail: tjsniscak@hmsk-law.com
E-Mail: kjmckeon@hmslegal.com
E-Mail: tlgiesler@hmslegal.com
UGI Utilities, Inc. – Gas Division
UGI Penn Natural Gas, Inc. and
UGI Central Penn Gas, Inc.

Kurt E. Klapkowski
PA Department of Environmental Protection
400 Market Street, 9th Floor
Harrisburg, PA 17101-2301
E-Mail: kklapkowski@state.pa.us
PA Department of Environmental Protection

Craig R. Burgraff
Todd A. Stewart
Hawke, McKeon & Sniscak LLP
Harrisburg Energy Center
100 North Tenth Street
PO Box 1778
Harrisburg, PA 17105-1778
E-Mail: crburgraff@hmsk-law.com
E-Mail: TSSStewart@hmslegal.com
Sustainable Energy Fund for Central
Eastern PA

Pamela C. Polacek
Shelby A. Linton-Keddie
McNees, Wallace & Nurick
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
E-Mail: ppolacek@mwn.com
E-Mail: skeddie@mwn.com
PP&L Industrial Customer Alliance

Craig A. Doll
25 West Second Street
PO Box 403
Hummelstown, PA 17036
E-Mail: CDoll76342@aol.com
Richards Energy Group, Inc.

Daniel Clearfield
Kevin J. Moody
Carl R. Shultz
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
PO Box 1248
Harrisburg, PA 17108-1248
E-Mail: dclearfield@eckertseamans.com
E-Mail: kmoody@eckertseamans.com
E-Mail: cshultz@eckertseamans.com
Direct Energy Business, LLC

Mark C. Morrow
UGI Utilities, Inc.
460 North Gulph Road
King of Prussia, PA 19406
E-Mail: morrowm@ugicorp.com
*UGI Utilities, Inc. – Gas Division
UGI Penn Natural Gas, Inc. and
UGI Central Penn Gas, Inc.*

Kent D. Murphy
UGI Utilities, Inc.
460 North Gulph Road
King of Prussia, PA 19406
E-Mail: murphyke@ugicorp.com
*UGI Utilities, Inc. – Gas Division
UGI Penn Natural Gas, Inc. and
UGI Central Penn Gas, Inc.*

John K. Baillie
Citizens for Pennsylvania's Future
425 Sixth Avenue, Suite 2770
Pittsburgh, PA 15219
E-Mail: baillie@pennfuture.org
Citizens for Pennsylvania's Future

Frank Richards
Richards Energy Group
781 S. Chiques Road
Manheim, PA 17545
E-Mail: frichards@richardsenergy.com
Richards Energy Group, Inc.

Eric Joseph Epstein
4100 Hillsdale Road
Harrisburg, PA 17112
E-Mail: lechambon@comcast.net
Eric J. Epstein, Pro se

Carolyn Pengidore
President/CEO
ClearChoice Energy
1500 Oxford Drive, Suite 210
Bethel Park, PA 15102
E-Mail: Carolyn@ClearChoice-Energy.com
Comperio Energy d/b/a ClearChoice Energy

Harry S. Geller
Julie George
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101-1414
E-Mail: hgellerpulp@palegalaid.net
E-Mail: jgeorgepulp@palegalaid.net
*Pennsylvania Communities Organizing for
Change*

Christopher A. Lewis
Christopher R. Sharp
Blank Rome, LLP
One Logan Square
Philadelphia, PA 19103
E-Mail: Lewis@blankrome.com
E-Mail: Sharp@blankrome.com
*Field Diagnostic Services, Inc.
Constellation New Energy*

Ruben S. Brown, M.A.L.D.
President, The E Cubed Company, LLC
1700 York Avenue
New York, NY 10128
E-Mail: ruben.brown.ecubed.llc@gmail.com
The E-Cubed Company, LLC

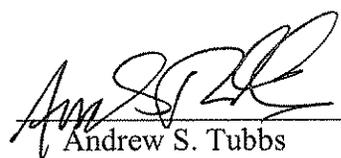
Kathleen M. Greely
Program Manager
PA Home Energy
Performance Systems Development
297 ½ Chestnut Street
Meadville, PA 16335
E-Mail: kgreely@psdconsulting.com
PA Home Energy

Steve Pincus
Assistant General Counsel
PJM Interconnection, LLC
955 Jefferson Avenue
Norristown, PA 19403
E-mail: pincus@pjm.com
PJM Interconnection, LLC

Peter J. Krajsa
Chairman and CEO
AFC First Financial Corporation
Great Bear Center at Brookside
1005 Brookside Road
PO Box 3558
Allentown, PA 18106
E-Mail: pkrajsa@afcfirst.com
*Keystone HELP Energy Efficiency Loan and
Rebate Program c/o AFC First Financial
Corporation*

Scott H. DeBroff
Alicia R. Duke
Rhoads & Sinon LLP
One South Market Square
12th Floor
PO Box 1146
Harrisburg, PA 17108-1146
E-Mail: sdebroff@rhoads-sinon.com
E-Mail: aduke@rhoads-sinon.com
EnerNOC, Inc.

Date: December 3, 2010



Andrew S. Tubbs

**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

**REPLY BRIEF OF
PPL ELECTRIC UTILITIES CORPORATION**

Paul E. Russell (ID #21643)
Associate General Counsel
PPL Services Corporation
Office of General Counsel
Two North Ninth Street
Allentown, PA 18106
Phone: 610-774-4254
Fax: 610-774-6726
E-mail: perussell@pplweb.com

David B. MacGregor (ID #28804)
Post & Schell, P.C.
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2808
Phone: 215-587-1197
Fax: 215-320-4879
E-mail: dmacgregor@postschell.com

Matthew J. Agen
Post & Schell, P.C.
607 14th Street N.W.
Washington, DC 20005-2006
Phone: 202-661-6952
Fax: 202-661-6953
E-mail: matthewagen@postschell.com

Andrew S. Tubbs (ID #80310)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-612-6057
Fax: 717-731-1985
E-mail: atubbs@postschell.com

Of Counsel:
Post & Schell, P.C.

Date: December 3, 2010

Attorneys for PPL Electric Utilities Corporation

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. SUMMARY OF ARGUMENT.....	1
III. ARGUMENT.....	4
A. THE TWO PROPOSED MODIFICATIONS PRESENTED IN THE COMPANY’S PETITION SHOULD BE APPROVED.....	4
B. PPLICA IS INAPPROPRIATELY SEEKS TO MICRO- MANAGE THE EE&C PLAN AND RELITIGATE THE COMMISSION’S PRIOR DETERMINATION IN THIS DOCKET	5
C. PPLICA MISINTERPRETS 66 PA.C.S. § 2806.1(B).....	9
D. REVISIONS TO THE EE&C PLAN WHICH DO NOT REQUIRE COMMISSION APPROVAL	11
1. Prior Commission Approval Is Not Required For PPL Electric To Defer The Start Date And Increase The Peak Load Reduction Target For The Load Curtailment Program	11
2. PPL Electric’s Decision To Obtain 150 MW Of Peak Demand Reduction From The Load Curtailment Program Is Reasonable And Appropriate And Should Be Approved.	13
3. The Cost Of The Load Curtailment Program Has Not Increased	16
4. The TRC Value For The Large C & I Load Curtailment Program Was Already Below One.....	17
5. PPLICA’s Assumption That The Initial Bids Submitted By CSPs For The Load Curtailment Program Were Based On Interrupting Usage In Multiple Years Is Incorrect.....	18
6. PPL Electric Is Not Proposing To Change The TOU Program In This Proceeding	19
7. Constellation’s Request That The Commission Should Reject PPL Electric’s Changes to the Load Curtailment Program And Open A Proceeding To Review PPL Electric’s CSP Contracting Process Should Be Denied	20

8.	The Issuance Of A New Request For Proposal For CSPs To Serve The Load Curtailment Program Is Unnecessary And Unreasonable.....	22
9.	Submission Of A Full Revised EE&C Plan	24
IV.	CONCLUSION	25

TABLE OF AUTHORITIES

Page

Pennsylvania Court Decisions

<i>Commonwealth v. Starr</i> , 541 Pa. 564, 664 A.2d 1326 (1995).....	7
<i>Great Valley School District v. Zoning Hearing Board</i> , 863 A.2d 74 (Pa. Cmwlth. 2004)	7
<i>The Mid-Atlantic Power Supply Association v. Pennsylvania Public Utility Commission</i> , 746 A.2d 1196 (Pa. Cmwlth. Ct. 2000).....	21, 22
<i>Pennsylvania Bureau of Corrections v. City of Pittsburgh</i> , 532 A.2d 12 (1987)	21, 22
<i>Peoples Cab Co. v. Pennsylvania Public Utility Comm'n</i> , 137 A.2d 873 (Pa. Super. 1958).....	5
<i>Sossong v. Shaler Area School District</i> , 945 A.2d 788 (Pa. Cmwlth. 2008).....	7
<i>Southwestern Bell Tel. Co. v. Pub. Serv. Com.</i> , 262 U.S. 276, 289.....	6
<i>William Peden v. Gambone Brothers Development Co.</i> , 748 A.2d 237 (Pa. Cmwlth., 2000)	7

Pennsylvania Statutes

66 Pa.C.S. § 316.....	6
66 Pa.C.S. § 2806.1(b)	<i>passim</i>
66 Pa.C.S. § 2806.1(b)(2)	<i>passim</i>
66 Pa.C.S. § 2806.1(b)(3)	<i>passim</i>
66 Pa.C.S. § 2806.1(c) and (d).....	9, 10
66 Pa.C.S. § 2806.1(f).....	6, 8

I. INTRODUCTION

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby submits this Reply Brief in response to the main briefs of the Commonwealth of Pennsylvania, Department of Environmental Protection (“DEP”), Constellation NewEnergy, Inc. (“Constellation”), and the PP&L Industrial Customer Alliance (“PPLICA”) filed on November 30, 2010, in the above-captioned proceeding. In its Main Brief, PPL Electric explained its positions on the issues pending before the Administrative Law Judges (“ALJs”) and the Commission. In so doing, the Company anticipated and responded to most of the arguments raised by DEP, Constellation and PPLICA. Nevertheless, it is appropriate for PPL Electric to respond to certain contentions advanced in the main briefs. In responding to DEP, Constellation and PPLICA, PPL Electric will minimize repetition of explanations provided in its Main Brief and will refer the ALJs and the Commission to its Main Brief for further explanations that previously have been provided.

II. SUMMARY OF ARGUMENT

The threshold issue presented in this proceeding is what types of changes to PPL Electric’s EE&C Plan must be reviewed and approved by the Commission. In addressing this issue, it is critical to understand that this precise issue has already been fully litigated and decided by the Commission and should not be subject to further review in this proceeding. Pursuant to the plain language of PPL Electric’s *EE&C Order*¹ only the following changes must be approved in advance by the Commission:

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

¹ *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”).

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

EE&C Order, p. 92. PPL Electric, all other parties and the ALJs should follow the *EE&C Order* unless and until it is changed by the Commission.

Relying on the *EE&C Order*, PPL Electric has sought approval for the two changes to its EE&C Plan which fall within the plain language of the *EE&C Order*. This requested approval is unopposed, supported by substantial un rebutted evidence and should be granted.

PPLICA proposes a fundamentally different and much broader standard for EE&C Plan changes which require Commission review and approval. Under PPLICA's approach, "there was no limitation by the Commission" on what changes require prior Commission approval, PPLICA M.B., p. 3. Indeed, in PPLICA's view, PPL Electric was required to seek prior Commission approval to prior to making any changes to the EE&C Plan. *See e.g.*, PPLICA M.B., pp. 2-3, 8, 10, 16.

The standard that PPLICA seeks the Commission to impose should be rejected for several reasons. First, as explained above, it is blatantly and obviously inconsistent with the plain language of the PPL Electric *EE&C Order* issued in a proceeding in which PPLICA was an active party.

Second, the PPLICA standard is grossly overbroad and would inevitably lead to absurd results. For example, applying its "standard" PPLICA argues at some length that PPL Electric has "changed" its residential time of use program ("TOU Program") and should have obtained prior Commission approval before doing so. In fact, PPL Electric has changed nothing with respect to the TOU Program. The TOU Program is a voluntary program which provides on-peak and off-peak pricing to customers who wish to participate. Participating customers who shift their time of use in response to these price signals will provide peak load reductions that PPL

Electric can use to meet its Act 129 peak demand reduction obligations. This program and PPL Electric's marketing of and support for it have not changed in any way. The only "change" is that, thus far, fewer customers have signed up for this program than originally anticipated. This is not a change to the program. It is simply a fact that the original estimate of customer participation (and associated peak demand reductions) has, thus far, turned out to be higher than actual participation. Yet, under PPLICA's standard this "change" would require prior Commission approval.

Similarly, PPLICA contends that PPL Electric's decision to spend its original Commission-approved budget amount on the Load Curtailment Program is a "change" requiring Commission approval because it will produce 150 MW of peak demand reductions instead the original estimate of 100 MW. Again, this is not a change to the program. It simply has turned out that the spending the original Commission-approved amount of money on this program will produce actual load reductions greater than originally estimated.

PPLICA's standard is, quite frankly, completely unworkable. PPL Electric's EE&C Plan contains hundreds if not thousands of estimates and projections. Every single one of these estimates will likely turn out to be "wrong" in the sense that actual results will differ from the original estimate. Under PPLICA's standard, every time actual experience turned out to be different than the original estimate PPL Electric would have to seek Commission "approval." Such review and approval would be pointless, would undoubtedly result in an administrative and regulatory nightmare, and cannot have been intended by the Commission or the General Assembly.

However, to the extent that the ALJs and the Commission determine to adopt a broader standard as to what changes require Commission approval, PPL Electric has presented extensive

evidence supporting these changes so that the ALJs and the Commission can review these changes in the context of this proceeding. The primary focus of the briefs is on the additional 50 MWs of peak load reductions which can be obtained at no additional cost from the Load Curtailment Program. In response to PPLICA's assertions, PPL Electric has presented un rebutted evidence that it needs these additional 50 MWs of peak load reductions to meet its Act 129 obligations, and that there is no other feasible cost effective way to achieve this additional reduction. Constellation raises several questions and requests a Commission investigation regarding the bidding and contracting process for the additional 50 MWs of peak demand reductions under the Load Curtailment Program. The Constellation proposals, on their face, clearly constitute just the type of "micro-management" which the Commission has already rejected. Moreover, the evidence is clear that rebidding for the additional 50 MW is unnecessary and indeed could result in a higher price for the additional 50 MW (due to changed market conditions) which would jeopardize PPL Electric's ability to comply with Act 129. In addition, Constellation's contract issues are premature as PPL Electric has already indicated that the final contracts will be submitted to the Commission for approval when they are finalized.

Finally, DEP's proposals regarding red-lining should be rejected in this proceeding, but the Company has agreed to submit the requested red lines in future annual updates to its EE&C Plan.

III. ARGUMENT

A. The Two Proposed Modifications Presented In The Company's Petition Should Be Approved.

As explained in PPL Electric's Main Brief, PPL Electric requests Commission approval to modify two aspects of its EE&C Plan. PPL Electric has presented un rebutted evidence that the two proposed modifications are reasonable and necessary. PPL Electric M.B., p. 14. More

importantly, no party has asserted that the Commission should not permit PPL Electric to implement the proposed changes. As explained in PPL Electric's Main Brief, the changes are reasonable and necessary for PPL Electric's EE&C Plan to successfully meet its Act 129 obligations and, therefore, should be approved.

B. PPLICA Is Inappropriately Seeks To Micro-Manage The EE&C Plan And Relitigate The Commission's Prior Determination In This Docket

PPLICA argues that any change to the EE&C Plan required prior Commission approval. *See e.g.*, PPLICA M.B., pp. 2-3, 8, 10, 16 (any proposed EE&C plan revisions require approval). PPLICA's proposal, on its face, is a transparent attempt to require the Commission to micro-manage virtually every aspect of PPL Electric's EE&C Plan. This effort should be rejected for several reasons.

First, as explained in PPL Electric's Main Brief (pp. 17-14), the precise issue of what changes to PPL Electric's EE&C plan require prior Commission approval has already been decided by the Commission. *EE&C Order*, p. 88 ("We will not micro-manage the Company's compliance efforts.") PPLICA's proposal is also inconsistent with many years of well-established precedent that the Commission is not authorized to manage the business affairs of public utilities.² Here, PPLICA would have the Commission not only act as a board of directors, but as managers of all of the details of PPL Electric's EE&C Plan. This is directly contrary to the proper role of the Commission and directly contrary to the *EE&C Order*. To adopt PPLICA's standard would result in the Commission managing every detail of the Company's EE&C Plan. For example, pursuant to PPLICA's argument, the following minor modifications

² The Courts have determined that the Commission is not a "super board of directors" and "[s]hould have an inquisitorial and corrective authority to regulate and control the utility in the field specifically brought within the commission's jurisdiction." *Peoples Cab Co. v. Pennsylvania Public Utility Comm'n*, 137 A.2d 873 (Pa. Super. 1958). In fulfilling its statutory responsibilities the Commission undertakes an after-the-fact review of the determinations of a public utility and its management. As the Commission "[m]ay regulate with a view to enforcing

identified by PPL Electric in Appendix 1 to its Annual Report would require prior Commission approval:

- Increasing the rebate for programmable thermostats in the Efficient Equipment Program changed from \$50 to “up to \$50” because the price of many thermostats is less than \$50 and PPL Electric will not reimburse participants for more than their total cost;
- Closing the PV portion of the Renewable Energy Program in March 2010 because it was fully subscribed;
- Adding “Energy Star” as a requirement for commercial ice makers in the Efficient Equipment Program; and
- Changing the eligibility rating of LED exit lighting in the Efficient Equipment Program from “5 watts” to “5 watts or less” because limiting exit signs to exactly 5 watts prevents a customer from getting an incentive for an exit sign that is less than 5 watts despite the fact that lower wattages save more energy.

PPL Electric St. 5, pp. 19-20. This is an absurd result. Indeed, pursuant to Act 129, only if the Company fails to achieve its peak load and electricity consumption targets, is the Commission permitted to assume control of an EDC’s EE&C plan. 66 Pa.C.S. § 2806.1(f).

As PPL Electric explained in its Main Brief (p. 13), 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 (66 Pa.C.S. § 316) and the doctrine of collateral estoppel. Accordingly, PPLICA cannot now relitigate the Commission’s prior determinations in this docket. PPL Electric M.B., p. 13.

Furthermore, this issue has already been decided and is now the law of the case. The Law of the Case Doctrine “has traditionally been used where a court has ruled on a question, that same court will normally not reverse that determination upon consideration of another phase of

reasonable rates and charges, it is not clothed with the general power of management incident to ownership.” *Id.* at 879 citing *Southwestern Bell Tel. Co. v. Pub. Serv. Com.*, 262 U.S. 276, 289, (1923).

the case.” *Great Valley School District v. Zoning Hearing Board*, 863 A.2d 74, 81 (Pa. Cmwlth. 2004) (quotation omitted). The doctrine is designed to promote judicial economy, uniformity of decision making, protect the settled expectations of the parties, maintain the consistency of the litigation and end the case. *Peden v. Gambone Brothers Development Co.*, 798 A.2d 305, 310 (Pa. Cmwlth. 2002) (citing *Commonwealth v. Starr*, 541 Pa. 564, 664 A.2d 1326 (1995)).

The issues related to what changes to the EE&C Plan require Commission approval were previously addressed in a fully litigated proceeding in which PPLICA participated. The Commission carefully examined the evidence and adopted the current standard in the *EE&C Order*. No parties appealed the Commission’s order adopting the current standard, and the time to file such an appeal has expired. In this proceeding, PPL Electric is not seeking to amend or otherwise change any aspect of the standard adopted in the *EE&C Order*. PPLICA has failed to identify any intervening change in the controlling law or the facts upon which the Commission previously decided this issue.³ For these reasons, the Commission’s prior order adopting the current review standard for modifications to PPL Electric’s EE&C Plan is the law of the case and PPLICA may not now advocate a different standard.

Additionally, to the extent that the Commission were now to reverse its prior order and determine that prior approval is required for all changes, such a 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.

³ *Sossong v. Shaler Area School District*, 945 A.2d 788, 793 (Pa. Cmwlth. 2008) (a “departure from the law of the case doctrine is allowed only in exceptional circumstances, where there has been an intervening change in the controlling law, a substantial change in the facts or evidence giving rise to the dispute in the matter, or where the prior holding was clearly erroneous or would create a manifest injustice if followed.”).

Moreover, PPLICA's standard of review ignores the reality that "PPL [Electric] is the party that bears the risk of penalties in the event of non-compliance with the mandates of Act 129," and if PPL Electric fails in this regard, the responsibility to achieve the reductions in consumption is transferred to the Commission. *EE&C Order*, p. 88; 66 Pa.C.S. § 2806.1(f). PPLICA essentially wants to impose its judgment on the Company and hinder PPL Electric's compliance effort when PPLICA has no risk or responsibility for compliance with Act 129.

Adoption of the PPLICA standard would inevitably lead to absurd results. PPLICA essentially asserts that any change to the EE&C Plan requires review and approval by the Commission. *See e.g.*, PPLICA M.B., pp. 2-3, 8, 10, 16. As explained by PPL Electric in its Main Brief (p. 7). PPLICA's approach would require every EDC to receive prior Commission approval for any deviation from an Act 129 Plan. It also would inevitably lead to absurd and wasteful results. For example, under PPLICA's standard, the fact that PPL Electric was able to acquire 100 MW for the Load Curtailment Plan at a cost less than that originally budgeted presumably would require prior Commission approval because it is a "change" to the Plan, i.e., PPL Electric spent less to obtain the 100 mw than it originally estimated. It is not clear what argument could be made against such a change. Perhaps someone would argue that PPL Electric acted improperly because it did not pay the fully budgeted price for the 100 MW? But, requiring Commission approval clearly would prevent PPL Electric from taking advantage of favorable market conditions and would preclude it from accepting an attractive offer and saving customers money unless and until it filed for and received Commission approval. It might also incent providers to bid the full budget price knowing that PPL Electric could not accept a lower price without going through a potentially lengthy Commission approval process.

C. PPLICA Misinterprets 66 Pa.C.S. § 2806.1(b)

PPLICA asserts that certain provisions of Act 129 prohibit PPL Electric from making any modification to its EE&C Plan without prior Commission approval. PPLICA M.B., pp. 12-13, 16-17. PPLICA's argument is without merit and should be rejected.

66 Pa. C.S. § 2806.1(b) establishes the duties of an EDC under Act 129. It requires each EDC to develop and file a plan with the Commission that meets various requirements and that the plan be implemented upon approval by the Commission. PPL Electric has developed, filed and implemented its Commission approved EE&C Plan. Section 2806.1(b)(2) provides that the Commission:

shall direct an electric distribution company to modify or terminate any part of a plan approved under this section if, after an adequate period for implementation, the commission determines that an energy efficiency or conservation measure included in the plan will not achieve the required reductions in consumption in a cost-effective manner under subsections (c) and (d).

66 Pa.C.S. § 2806.1(b)(2) (emphasis added). Subsections (c) and (d) stipulate the broad categories of consumption and peak demand reductions that each EDC is required to meet by 2011 or 2013, as applicable. Therefore, the plain meaning of Section 2806.1(b)(2) requires that the Commission first make a determination that a measure in an EDC's EE&C Plan will not achieve the required reductions in consumption, prior to directing an EDC to modify or terminate any part of its approved EE&C Plan. There has been no such finding by the Commission regarding PPL Electric's EE&C Plan. This provision therefore has no application to this proceeding.

Further, Section 2806.1(b)(3) provides that :

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) (emphasis added). Again, absent a Commission determination that an EDC will not meet the requirements of 66 Pa.C.S. § 2806.1(c) and (d), the obligations of an EDC pursuant to Section 2806.1(b)(3) are not implicated.

It is clear that PPLICA's argument that Sections § 2806.1(b)(2) and (3) prohibit PPL Electric from modifying the EE&C Plan absent Commission review and approval are based upon an erroneous interpretation of the statutory language. Indeed, when properly read Section 2806.1(b) only applies after the Commission determines that an EE&C Plan will not achieve the required reductions in consumption in a cost-effective manner pursuant to 66 Pa.C.S. § 2806.1(c) and (d). No such determination has been made, so the referenced provision clearly does not apply.

What is clear is that nothing in these sections prohibits PPL Electric from changing its EE&C Plan consistent with the standard establish in the *EE&C Order*. Although Sections 2806.1(b)(2) and (3) grant the Commission certain authority, nothing in Sections 2806.1(b)(2) and (3) prohibits an EDC from modifying the EE&C Plan, on its own accord and in conformance with Commission precedent, in order to meet the requirements of 66 Pa.C.S. § 2806.1(c) and (d). Indeed, Section 2806.1(1)(i)(J) provides that each EDC's EE&C Plan require an annual independent evaluation and "to the extent practical, [address] how the plan will be adjusted on a going-forward basis as a result of the evaluation." 66 Pa. C.S. § 2806.1(1)(i)(J). In approving PPL Electric's EE&C Plan in 2009, the Commission addressed the process by which the Company's plan will be adjusted on a going-forward basis – modifications resulting in a shift of program funds within a customer class, or between customer classes. PPL Electric has adhered

to the Commission's *EE&C Order* and sought the requisite approvals for modifications to its EE&C Plan. PPLICA's arguments should be rejected as they are contrary to a clear reading of both Act 129 and the Commission's order approving PPL Electric's EE&C Plan.

D. 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, PPLICA believes that the other changes included in the annual report submitted to the Commission also require prior Commission review and approval. 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. PPL Electric does not waive its primary position that only the two proposed modifications presented in the Company's Petition require approval.

If the ALJ's decide not to apply the standard established in the *EE&C Order* and decide that this issue is appropriately relitigated in this proceeding and determine that all changes to an EE&C Plan must be reviewed and approved by the Commission and that this revised standard should be applied in this case and not on a prospective basis, then the evidence of record clearly demonstrates that all of the changes to PPL Electric's EE&C Plan are reasonable and should be approved. The remainder of this brief examines those particular changes that are addressed in the main briefs of the opposing parties.

1. Prior Commission Approval Is Not Required For PPL Electric To Defer The Start Date And Increase The Peak Load Reduction Target For The Load Curtailment Program

PPLICA asserts that the Company should have submitted, for Commission review and approval, the deferral of the Load Curtailment Program start date and the increase in the peak

load reductions for the Load Curtailment Program. PPLICA M.B., pp. 8-10, 11-14. As fully explained in PPL Electric's Main Brief (p. 24) these 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 changes do not include the discontinuance of a program. *Id.* Therefore, under the standard specified in the *EE&C Order*, Commission approval is not required.

PPLICA asserts that 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, therefore Commission approval is required. PPLICA M.B., p. 9. PPLICA however, makes no attempt to explain how the deferral of the Load Curtailment Program (1) shifts EE&C Plan program funds within a customer class, (2) shifts EE&C Plan program funds between customer classes, or (3) discontinues a program. *EE&C Order*, p. 92, 93, Ordering Para. No. 34. Similarly, regarding the increase in the peak load reductions for the Load Curtailment Program, PPLICA asserts that this change has certain impacts, but does not apply the standard established by the Commission in the *EE&C Order*. PPLICA M.B., p. 14.

Instead, PPLICA simply ignores the standard established in the *EE&C Order* for changes that require Commission approval, misconstrues the standard used by PPL Electric to determine the EE&C Plan changes that required Commission approval, and then applies this misconstrued standard in a manner inconsistent with the *EE&C Order*. To be clear, the standard used by the Company was the standard articulated in the *EE&C Order*, which provides that 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. *EE&C Order*, pp. 92, 93, Ordering Para. No. 34. PPLICA incorrectly cites Mr. Cleff's description of the various implementation changes as the standard used by PPL Electric. PPLICA M.B., pp. 4,

7, 8, 13.⁴ PPL Electric reviewed the nature and effect of the changes and applied the correct standard articulated in the *EE&C Order* for changes that require Commission approval. Therefore, any assertion by PPLICA that PPL Electric used any other “test” to determine what changes to the EE&C Plan, other than that established in the *EE&C Order*, is incorrect. PPLICA M.B., p 13.

2. PPL Electric’s Decision To Obtain 150 MW Of Peak Demand Reduction From The Load Curtailment Program Is Reasonable And Appropriate And Should Be Approved.

In reviewing PPL Electric’s proposal to increase the peak demand reductions from the Load Curtailment Plan from 100 MW to 150 MW, it is important to understand the undisputed factual basis for PPL Electric’s decision. The unrebutted record evidence shows that PPL Electric must obtain additional peak load reductions from the Load Curtailment Plan if it is to have any reasonable chance of meeting its peak load compliance target in 2012. PPL Electric St. 5, pp. 30-31. Additional peak load reductions from the Load Curtailment Program are the only viable option to meet Act 129 requirements on a timely basis and within the cost cap established by the Act. PPL Electric St. 5, p. 31. Exhibit PDC-2 , p 167.

PPLICA claims that 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. PPLICA M.B., p. 15. This statement is incorrect and simply ignores the unrebutted record in this proceeding. The direct testimony filed in this proceeding states that, “PPL Electric investigated alternatives to increase peak load reductions from other programs or from new

⁴ In the Company’s Direct Testimony, Mr. Cleff stated that the “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. This was simply a generic description of the implementation changes and was not presented as the standard of review in this or any other proceeding. Neither PPL Electric nor PPLICA have the ability to change the standard previously announced by the Commission.

programs.” PPL Electric St. 5, p. 31; PPL Electric M.B., p. 27. As previously explained in testimony and in PPL Electric’s Main Brief, the Company examined many options such as increasing Direct Load Control (primarily residential customers), increasing CFL sales (primarily residential customers), and increasing participation in the Efficient Equipment Program (a mix of customer sectors). PPL Electric St. 5, p. 31; PPL Electric M.B., p. 29-30. PPL Electric concluded that increasing projected peak load reductions from the Load Curtailment Program was the only feasible alternative to increase peak load reductions within the original approved cost budget. *Id.* Neither PPLICA nor any other party presented any evidence to the contrary.

As PPL Electric explained, it would cost significantly more to achieve the additional 50 MW of peak load reductions from other demand response measures. PPL Electric St. 5, pp. 30-31; PPL Electric M.B., p. 29. The cost to increase peak load reductions in the Load Curtailment Program is \$3 million for 50 MW (*i.e.* \$60,000 per MW). The cost per MW in the Direct Load Control is \$200,000 to \$320,000. PPL Electric St. 5, p. 31; PPL Electric M.B., p. 29-30. The cost per MW in the CFL Program is \$600,000 (and that would increase more than 50% if proposed changes to the TRM are implemented). *Id.*; See also, *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources – Technical Reference Manual 2011 Update (2011 TRM Annual Update Tentative Order)* at Docket No. M-00051865 (Order Entered November 24, 2010). The cost per MW in the Efficient Equipment Program is \$1.2 million. PPL Electric St. 5, p. 31. All of these options, whether implemented singularly or in combination, are significantly more costly than changing the Load Curtailment Program and they may not be possible in the marketplace because of practical limitations.

PPL Electric first raised this issue with stakeholders in April 2010 and encouraged stakeholders to identify and recommend alternatives to increase peak load reductions, especially alternatives that are primarily limited to residential customers. PPL Electric St. 5, p. 31. No stakeholder, including PPLICA, suggested any alternatives from April through October. *Id.*

It also should be emphasized that, contrary to PPLICA's argument, the projected shortfall in the TOU Program is not the only reason PPL Electric has experienced a shortfall. PPL Electric St. 5, p. 29. Peak load reductions from energy efficiency measures (such as CFLs, appliances, lighting, HVAC equipment, etc.) in other programs are trending lower than expected and are relatively uncertain because of actual and pending changes to the Technical Reference Manual ("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. For example, the Commission is proposing to reduce savings from CFLs by approximately 40%. *See Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources – Technical Reference Manual 2011 Update (2011 TRM Annual Update Tentative Order)* at Docket No. M-00051865 (Order Entered November 24, 2010). That will reduce the peak load reduction contribution from CFLs by 40%. Also, not all energy efficiency measures contribute to peak load reductions equally.

Another example is direct load control of central air conditioners. The TRM in effect when the Company's EE&C Plan was approved had a fully deemed value for peak load reduction. *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources – Technical Reference Manual Update*, Docket No. M-00051865 (Order entered June 1, 2009) ("2009 TRM Order"). That measure was removed from the TRM altogether and the new method to determine peak load

reductions is expected to be the PJM Protocol, which is not a deemed value. The new method is dependent on actual weather conditions for the 100 peak hours and the actual cycling rate of the direct load control devices. *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources – Technical Reference Manual Update*, Docket No. M-00051865 (Order entered June 8, 2010). Unless the actual weather in summer 2012 is hotter than normal, the peak load savings will be less than the deemed value in the original TRM that was the basis for PPL Electric’s EE&C Plan. Therefore, it is difficult to accurately predict the mix of measures that customers will adopt and their resulting peak load contributions, thus creating some uncertainty.

3. The Cost Of The Load Curtailment Program Has Not Increased

At several points in its main brief PPLICA asserts that PPL Electric’s decision to increase the projected peak load reductions in its Load Curtailment Program (from 100 MW to 150 MW) will increase the program cost by \$3 million. *See, e.g., PPLICA M.B., p. 7.* This is a gross mischaracterization of the facts. PPL Electric explained in its Main Brief (pp. 25-56) that the total projected cost of the Load Curtailment Program has not increased compared to the approved budget for that program (*i.e.* the budget approved by the Commission). PPL Electric acknowledges that the cost of the Load Curtailment Program would be approximately \$3 million under the approved budget if the projected peak load reductions do not increase from 100 to 150 MW. However, completing the Load Curtailment Program under budget provides no value if PPL Electric does not achieve its peak load compliance target because PPL Electric’s customers do not get the full benefits associated with that peak load compliance target.

If there were a practical or reasonable way to achieve 50 MWs of additional peak load reductions from another method (other than Load Curtailment) for \$3 million or less, especially if those reductions came from residential customers, then PPL Electric would be willing to adopt

that method. PPL Electric St. 5, p. 31. However, as described in the Main Brief (p. 27) and above, PPL Electric and its stakeholders could not identify any feasible alternative changes to the Load Curtailment Program.

4. The TRC Value For The Large C & I Load Curtailment Program Was Already Below One

PLLICA takes issue with the fact that the Large C&I Load Curtailment Program Total Resource Cost ("TRC") value shows that it is not a cost-effective program. See PPLICA M.B. pp. 5, 7, 15. PPLICA explains that the TRC value of the Load Curtailment Program as approved by the Commission is only 0.68, and that when a TRC value is less than 1 its costs outweigh its benefits. See PPLICA M.B. p. 15. PPLICA asserts that "the Commission should question whether PPL should be placing such great emphasis on a program that fails to meet the basic cost-benefit test." PPLICA M.B. p. 16.

In response PPL Electric acknowledges that Load Curtailment Program, on a stand alone basis, was not cost-effective as originally presented in the approved EE&C Plan and this remains true under the revised plan. Further, it is anticipated that the benefit-cost ratio of the Load Curtailment Program will decrease if there are no curtailments before 2012 because the total cost of the program will remain the same, without any real benefits in 2010 and 2011 due to the fact that there are no curtailments in those years. However, the Load Curtailment Program must proceed (as originally approved and as revised) regardless of its cost-effectiveness because PPL Electric cannot meet its peak load reduction compliance target without the Load Curtailment Program (regardless of the whether this program expects 100 MW or 150 MW of peak load reductions). Moreover, it is important to emphasize that Act 129 does not require each individual program to be cost-effective. Act 129 requires the entire portfolio (*i.e.* all programs in aggregate) to be cost-effective.

Additionally, as PPL Electric noted in its Main Brief (p. 29), there is no reason to have curtailments in any year other than 2012. The summer of 2012 is the only period that peak load reductions apply; peak load reductions do not count in any other period. Curtailing load in 2010 and 2011 will significantly increase the cost of the Load Curtailment Program (far above the existing approved program budget per the approved EE&C Plan) for no reason.

Demand response type programs, such as the Load Curtailment Program, will likely not be cost-effective because of their high cost, a 1-year measure life, and how the avoided costs are determined (based primarily on installed-capacity values that are set 3 years in advance). Unlike energy efficiency measures, such as an efficient heat pump or lighting, a demand response program has a 1-year life and demand response incentives must be paid in each year that peak load reductions are required. With energy efficiency measures, the incentive (*i.e.* the rebate) is paid once and the benefits (*i.e.* the energy reductions) apply for the life of the measure .

5. PPLICA's Assumption That The Initial Bids Submitted By CSPs For The Load Curtailment Program Were Based On Interrupting Usage In Multiple Years Is Incorrect

PPLICA states that the initial bids submitted by CSPs for the Load Curtailment Program were based on interrupting usage in multiple years. PPLICA M.B., p. 9. PPLICA is incorrect. PPL Electric solicited Load Curtailment Program bids with multiple pricing options including interruptions in multiple years and interruptions only in 2012. *See* Tr., p. 62. The pricing for interruptions only in 2012 was, by far, the least cost option and is the basis of the contractual pricing. *Id.* If there are interruptions in 2010 and 2011 (in addition to the 2012 compliance year), then the cost of the Load Curtailment Program would be significantly greater than the approved budget.

6. PPL Electric Is Not Proposing To Change The TOU Program In This Proceeding

Throughout its main brief, PPLICA asserts that PPL Electric has changed or has proposed to change its TOU Program in this proceeding. PPLICA M.B. pp. 13, 16-17. PPLICA further maintains that any adjustments to the TOU Program should be submitted to the Commission for review and approval. PPLICA M.B. pp. 16-17. PPLICA is again incorrect. All of PPLICA's arguments are based on the false premise that the Company has changed its TOU Program. The number of participants in the voluntary TOU Program have, so far, turned out to be less than the number of participants projected originally. There has been no change to the TOU Program.

Furthermore, PPL Electric stated the following in its Petition filed on September 15, 2010:

Although not included as part of this Petition, PPL Electric notes that it does not expect to achieve the projected participation and peak load reductions (61 MW) for its Time of Use Program ("TOU Program") as shown in its original EE&C Plan. PPL Electric's TOU Program has been the subject of a separate proceeding and the Company is currently evaluating potential modifications to this program and the resulting impact on its EE&C Plan. The Company anticipates filing a separate request to modify its current TOU Program.

PPL Electric Petition, p. 4 n. 2. While the Company has acknowledged that participation in the TOU Program is expected to be less than the level shown in the EE&C Plan it has not conducted a full analysis. See Tr., p. 47. As noted above, PPL Electric is currently evaluating potential modifications to the TOU Program and the resulting impact on the EE&C Plan. Therefore any calls for PPL Electric to seek Commission approval for changes to the TOU Program are premature because PPL Electric has not proposed any such changes and are irrelevant because the Company has already stated that it anticipates filing a separate request to modify its current TOU Program. The Company's original estimate of 150,000 participants in the TOU Program has, thus far, 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. However, there has been, at this point, no "change" to the program.

7. Constellation's Request That The Commission Should Reject PPL Electric's Changes to the Load Curtailment Program And Open A Proceeding To Review PPL Electric's CSP Contracting Process Should Be Denied

Constellation requests that the Commission open a proceeding to review whether PPL Electric's contracting process with CSP(s) for its Load Curtailment Program met and will continue to meet the requirements of Act 129. Constellation M.B., p. 13. Constellation has offers no evidentiary support for this arguments other that to state that Mr. Cleff's testimony was unclear and to imply in a purely speculative manner that PPL Electric has not meet the requirements of Act 129. Constellation M.B., p. 11. As explained in PPL Electric's Main Brief (p. 31), the Company's Pro Forma Request for Proposal Procedures was submitted to the Commission for review on March 2, 2009 and was approved by the Commission via a Secretarial Letter dated April 1, 2009, at Docket No. M-2009-20093216. PPL Electric has followed the Commission-approved CSP contract procedures for all of its CSP contracts to date, including Load Curtailment Program CSP contract(s). PPL Electric will submit the Load Curtailment Program CSP contract(s) and bid analysis to the Commission for approval when those documents are prepared in late 2010/early 2011. As is the case for all CSP contracts, Commission approval of the contract is required and the contract includes as a condition specifying this requirement.

Constellation further requests that Commission reject PPL Electric's changes to the Load Curtailment Program until such time that the Commission can confirm that PPL Electric has acted prudently and in accordance with Act 129. Constellation M.B., p. 13. PPL Electric notes

that the Commission did not condition or delay its approval of PPL Electric's original EE&C Plan (all programs) pending the approval of other CSP contracts.⁵ Therefore, there is no reason for the Commission to condition or delay its approval of the Load Curtailment Program (with or without changes) until it approves that program's CSP contract. Constellation's request is completely inconsistent with the treatment of all other CSP contracts and should be rejected.

Moreover, Constellation's implication that PPL Electric has not complied with the requirements of Act 129 concerning selecting Load Curtailment Program CSP(s) is incorrect and totally unsupported by any record evidence. Constellation states that:

it is unclear whether any CSP has been or is being provided any "marketing advantage," whether any of the CSPs bidding on or negotiating to contract with PPL Electric has a "direct or indirect" affiliated interest with PPL Electric, or whether each CSP involved in the process - including, but not limited to, those on the short-list - was provided the appropriate opportunity to "competitively bid" to serve the final contract awarded through the process.

Constellation M.B., p. 9 (internal citations omitted). Constellation's assertions that PPL Electric not complied with the requirements of Act 129 should be rejected because they are baseless, incorrect and inappropriate. Constellation has presented no evidence to support these claims and cites to not evidence its in main brief. To the extent that Constellation believes PPL Electric violated the Company's Commission-approved RFP procedures, Constellation is required to introduce evidence of record to support such claims. *The Mid-Atlantic Power Supply Association v. Pennsylvania Public Utility Commission*, 746 A.2d 1196, 1200 (Pa. Cmwlth. Ct. 2000), *citing Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (1987) ("Mere bald assertions, personal opinions or perceptions do not constitute evidence.").

⁵ In the *EE&C Order* the Commission explained that due to the aggressive design and implementation schedule set forth in Act 129, EDCs were not expected to have all bids for and contracts with CSPs completed by the July 1, 2009 Plan filing. *EE&C Order*, pp. 75-76; *Implementation Order*, p. 25.

PPL Electric has and will fully comply with the requirements of Act 129 with regard to CSP contracting and will submit the Load Curtailment Program CSP contact(s) for Commission review. *See* 66 Pa.C.S. § 2806.l(a). Therefore, opening a proceeding to review PPL Electric's CSP contracting process is not necessary and Constellations request should be rejected.

8. The Issuance Of A New Request For Proposal For CSPs To Serve The Load Curtailment Program Is Unnecessary And Unreasonable

Constellation argues that the Commission should require PPL Electric to issue a new RFP for interested CSPs to bid on the revised load curtailment target product of 150 MW. Constellation M.B., p. 13. However, Constellation has not provided the ALJs or the Commission with a single piece of evidence to support its claim. *See The Mid-Atlantic Power Supply Association*, 746 A.2d at 1200; *Pennsylvania Bureau of Corrections*, 532 A.2d 12. Constellation has not because it cannot. As discussed above, PPL Electric has followed its Commission-approved Pro Forma Request for Proposal Procedures and the related Secretarial Letter.

There is no reason to rebid the Load Curtailment contract for 150 MW. Tr., 57-59. PPL Electric solicited load curtailment bids from over 80 curtailment service providers. Tr. 56. From the list of bidders that responded a short list of less than 10 entities was selected for further negotiations. PPL Electric inquired about the willingness of parties on the short list to supply the 100 MW; however, not all where interests. Based this response, PPL Electric had no reasonable basis to believe that parties which were not interested in supplying 100 MW would want to supply 150 MW. Tr., 57-59. Therefore, through this process PPL Electric identified those entities that were interest in supplying 150 MW and focused its negations on these entities that were willing to supply 150 MW. Rebidding at this stage would be pointless because PPL Electric has identified those entitles willing to supply 150 MW.

Moreover, Constellation's proposal to require PPL Electric to rebid the entire 150 MW of load reduction is particularly disturbing. The current load curtailment Request For Proposal ("RFP") process took a year to solicit bids and finalize the contract. *See* Exhibit PDC-2, p 170; Tr., 59. While PPL Electric would not expect that a second RFP process to take a year, it could take at least 3 to 6 months, and the second load curtailment CSP(s) will certainly be at a significant disadvantage in recruiting participants compared to the initial load curtailment CSP(s) due to the potential time lag. More importantly, if PPL Electric were to adopt Constellation's approach it would lose the price it obtained from the initial bidding process. Constellation speculates, without any evidentiary support, that this might produce a lower price, but it could also produce a higher price, increase costs to customers and jeopardize PPL Electric's ability to comply with Act 129. There is no assurance that a new solicitation would produce a lower overall price. PPL Electric cannot reasonably expect the original bidders to hold their prices open for an additional six months.

As noted above, PPL Electric is currently in final negotiations with CSP(s) relative to the Load Curtailment Program and the Company has not yet filed for Commission approval of a Load Curtailment Program CSP contract. Constellation is seeking to have the Commission interject itself into the Company's ongoing negotiations with potential CSPs based upon nothing more than an allegation by a party that has failed to present a single piece of evidence in the record to support its claim. Constellation's arguments are without merit and should be rejected in their entirety.

9. Submission Of A Full Revised EE&C Plan

The Department of Environmental Protection argues that PPL Electric should be required to provide a completely updated and amended EEC Plan. DEP M.B., pp. 4, 5;⁶ *see also*, PPLICA M.B., pp. 17-19. In response PPL Electric notes that Exhibit PDC-2 contains, a redline of the EE&C Plan that incorporates the implementation revisions discussed in PPL Electric St. 5, pp. 16-31 and Exhibit PDC-1. Updating the entire EE&C Plan, including all data, is time consuming and costly because the the data in the EE&C Plan is highly integrated and iterative. Updating the data requires a complete “bottom-up,” iterative re-forecast of all underlying estimates and a true-up for Program Year 1 actual data (compared to the estimates for Program Year 1 in the approved EE&C Plan). *See* Exhibit PDC-2, p. 51, 61, 66, 73, 110. Therefore, changing a single value, such as the estimated number of faucet aerators installed in a program, could change almost every table and hundreds of other numbers throughout the entire EE&C Plan . To minimize the cost and possible rework for updating the data in the EE&C Plan, the Company’s redline EE&C Plan in the Petition included narrative changes and an update to the data in a key table (Table 5a) that summarizes the overall impact of the two proposed changes in the Petition. Petition, p. 13. Exhibit PDC- 2 reflected the implementation changes that do not require commission approval. The Company will update the data tables after the Commission issues its Order on the Petition. *See* Exhibit PDC-2 , p (i).

Additionally, starting in 2011, PPL Electric commits to filing an updated and amended EE&C Plan (in blackline form), in the form submitted in Exhibit PDC-2, to illustrates all textual

⁶ DEP also asserts that the changes to implementation details to the Renewable Energy Program (rebate caps and coordination with DEP program rebates) are shown for the residential portion of the program, but not for the small and large commercial and industrial customer portion of the program. DEP M.B., p. 3. In response, PPL Electric notes that these changes are not shown for the small and large commercial and industrial customers because those customers are not eligible for the Renewable Energy Program. Exhibit PDC-2, p. 82 (“PPL Electric’s Renewable Energy program will be available to residential and government/non-profit sector customers.”).

changes to the EE&C Plan in conjunction with its annual report filing. However, PPL Electric, consistent with the Commission's *EE&C Order*, will only seek approval of those changes that require Commission approval consistent with the *EE&C Order* (pp. 92, 93, Ordering Para. No. 34).

IV. CONCLUSION

WHEREFORE, for all the foregoing reasons discussed in this Reply Brief and the Company's Main Brief, and the Petition filed on September 15, 2010 the proposed modifications to the EE&C Plan should be approved.

Respectfully submitted,



David B. MacGregor (ID #28804)
Post & Schell, P.C.
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2808
Phone: 215-587-1197
Fax: 215-320-4879
E-mail: dmacgregor@postschell.com

Paul E. Russell (ID #21643)
Associate General Counsel
PPL Services Corporation
Office of General Counsel
Two North Ninth Street
Allentown, PA 18106
Phone: 610-774-4254
Fax: 610-774-6726
E-mail: perussell@pplweb.com

Matthew J. Agen
Post & Schell, P.C.
607 14th Street N.W.
Washington, DC 20005-2006
Phone: 202-661-6952
Fax: 202-661-6953
E-mail: matthewagen@postschell.com

Andrew S. Tubbs (ID #80310)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-612-6057
Fax: 717-731-1985
E-mail: atubbs@postschell.com

Of Counsel:
Post & Schell, P.C.

Date: December 3, 2010

Attorneys for PPL Electric Utilities Corporation