

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation :
for Approval of its Energy Efficiency and : M-2009-2093216
Conservation Plan :

RECOMMENDED DECISION

Before
Elizabeth H. Barnes
and
Dennis J. Buckley
Administrative Law Judges

I. INTRODUCTION

This Decision recommends that the Pennsylvania Public Utility Commission (Commission) approve the Petition of PPL Electric Utilities Corporation (PPL or Company) for Approval of its Energy Efficiency and Conservation Plan (EE&C Plan) as modified below. We further recommend PPL be directed to file a black-lined¹ version of its EE&C Plan updating, reconciling, and adjusting data and text in the EE&C Plan as a result of approval of the Petition and its modifications to the Plan. The black-lined version should include changes to its Load Curtailment Program, including a total resource cost test.

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) (*October 2009 Order*), the Pennsylvania Public Utility Commission (Commission)

¹ Black-lining shows changes in text from an old version of the EE&C Plan to the new. Black-lining is striking through the text that is being removed with a black, horizontal line, and double underlining new text. This enables the reader to quickly identify and compare the changes to text in the EE&C Plans.

approved with modification PPL's EE&C Plan, pursuant to Act 129 of 2008. The EE&C Plan was further revised by Commission Order entered on February 17, 2010.²

On September 15, 2010, PPL petitioned to modify the EE&C Plan that had been approved as modified on February 17, 2010. PPL also filed its Act 129 EE&C Program Year 1 Annual Report (Annual Report). Several parties filed answers and comments to the plan's update, and the Office of Small Business Advocate requested a hearing. Therefore, the Commission directed by Secretarial Letter dated November 9, 2010, that the matter be referred to the Office of Administrative Law Judge for a hearing and that a Recommended Decision be issued on or before December 20, 2010. A hearing was held before presiding Administrative Law Judges Elizabeth Barnes and Dennis Buckley (ALJs) on November 17, 2010.

II. PROCEDURAL HISTORY

A detailed history of this proceeding, together with that of our various Act 129 proceedings, was set forth in the *October 2009 Order*. Specifically, the *October 2009 Order* stated that in addition to the statutorily required annual report, which must be submitted by an EDC to the Commission for approval in accordance with 66 Pa. C.S. §2806(i) (1), the PUC "will permit EDCs and other interested stakeholders and statutory advocates to propose plan changes in conjunction with the EDC's annual report filing" *October 2009 Order* at 89 (citing January 26, 2009 *Implementation Order* at 24 (Docket No. M-2008-2069887)).

On June 24, 2010 and September 1, 2010, the Commission issued Secretarial Letters addressing the filing procedures for EDCs' Act 129 Annual Reports and proposed revisions to their EE&C Plans. The June 24, 2010 Secretarial Letter directed that EDCs submit their 2010 Act 129 annual reports and any proposed EE&C plan revisions by September 15, 2010. PPL submitted a Petition on September 15, 2010 requesting approval for two modifications to its EE&C plan. Specifically, the two changes included: 1) a change to its

² *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).

compact fluorescent lighting program; and 2) a change to the classification of direct and common costs.

On October 5, 2010, the Office of Small Business Advocate (OSBA) filed an Answer to PPL's Petition. On October 15, 2010, comments were filed by the UGI Distribution Companies and the Pennsylvania Communities Organizing for Change (PCOC). The PP&L Industrial Customer Alliance (PPLICA) first filed a letter on October 15, 2010, indicating that it would not be filing any comments. However, soon after a stakeholder meeting with PPL, PPLICA later filed comments on or about October 20, 2010. The Office of Trial Staff (OTS), Office of Consumer Advocate (OCA) and Pennsylvania Department of Environmental Protection (DEP) also filed comments. PPL filed a reply on November 4, 2010.

On November 12, 2010, the ALJs held a prehearing conference. A Second Prehearing Conference Order was issued on November 12, 2010, which granted the Pennsylvania Association of Community Organizations for Reform Now's (ACORN) petition to withdraw intervention. The Order further granted PCOC's petition to intervene in the proceeding over PPL's objection.

The Parties present at the hearing included: the Office of Trial Staff (OTS); the Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA); the Commonwealth of Pennsylvania, Department of Environmental Protection (DEP); PCOC; PP&L Industrial Customer Alliance (PPLICA); PPL; and Constellation NewEnergy, Inc. (Constellation). Although UGI Utilities, Inc. (UGI) filed comments on October 18, 2010, entitled *Recommendations for Plan Improvement* at this docket, UGI was not an active participant in that it did not appear at either the prehearing conference or the hearing in this matter.

On November 30, 2010, PPL, DEP, Constellation, and PPLICA filed main briefs. OCA, PPLICA, and PPL filed reply briefs on December 3, 2010.

III. DISCUSSION

In Commission proceedings, the proponent of a rule or order bears the burden of proof. 66 Pa. C.S. § 332(a). To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

In the instant case, PPL bears the burden of proving by a preponderance of evidence that its proposed modifications to its EE&C Plan are reasonable and designed to achieve the required reductions in consumption in a cost-effective manner within the meaning of Act 129, 66 Pa. C.S. § 2806(b).

IV. DESCRIPTION OF THE PROPOSED MODIFICATIONS TO THE REVISED PLAN

PPL's original EE&C Plan was described in detail in the *October 2009 Order* and its first modified plan is described in the *February 2010 Order*, and so will not be described in detail, here.

On September 15, 2010, PPL petitioned for Commission approval of certain changes to its Act 129 EE&C Plan. Specifically, PPL proposes two modifications to its current plan including: 1) a change to its Compact Fluorescent Lighting Program (CFL Program); and 2) a change to the classification of direct and common costs. PPL admits that it listed a number of minor changes to the plan, but determined that only two of the proposed changes required Commission pre-approval before implementation.³

³ This determination by PPL is in itself an issue which will be discussed below.

Specifically, in its Executive Summary of Proposed Modifications, September 15, 2010, PPL states that these two modifications do not impact the total projected cost of PPL's EE&C Plan, the total projected energy savings, or the total projected peak load savings. The changes are reasonable and necessary for PPL's EE&C Plan to successfully meet its Act 129 obligations.

Proposed Modification to PPL's CFL Program

PPL claims that it originally allocated approximately 17% of the projected CFL sales to the low-income residential sector and approximately 5% to the small commercial and industrial ("small C&I") sector. At that time it believed there was a low-income energy reduction compliance target. Therefore, PPL believed it needed to track and verify CFL Program sales and savings for low-income customers. However, subsequently, the Commission clarified that the low-income compliance target was based on the number of measures available to low-income customers, rather than a percentage of the total kilowatts per year (kWh/yr) reductions. Additionally, PPL does not quantify or allocate low-income customer participation in any other non low-income program. Therefore, an allocation to the low-income sector was no longer necessary for compliance purposes.

PPL claims that the allocation to the small C&I customer sector was an attempt, based upon feedback from stakeholders during the development of PPL's EE&C Plan, to properly categorize savings and costs, because some small C&I customers may purchase PPL Electric-discounted CFLs from retail stores. However, during its implementation phase, PPL decided that it is not feasible to allocate CFL sales (savings and costs) to multiple customer sectors for several reasons. First, CFL savings for non-residential customers are calculated using a different method than for residential customers, and it is not possible to obtain required information to calculate or verify savings for non-residential customers; and 2) the estimated allocation percentages used for ex-ante savings estimates would be extremely difficult to estimate with reasonable accuracy, and it will not be possible to verify the actual percentages for ex-post (verified) savings. Therefore, PPL proposes 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. Thus, costs to the low-income sector would be paid by all residential customers.

No parties objected to this proposed modification. Additionally, PPL sustained its burden of proof regarding this issue. There is substantial evidence to support this finding. We are persuaded by the testimony of PPL's witness, Peter D. Cleff, who testified that all PPL customer sectors are eligible to purchase discounted CFLs from retail stores under PPL's CFL Program. PPL St. 5, p. 4; PPL Petition, p. 5. We are persuaded by PPL's expert's uncontested testimony that under the CFL Program, customers receive a discount at the point of sale and PPL does not know the specific customers who purchase those discounted CFLs because there are no rebate forms or applications like most other programs.

In its EE&C Plan, PPL allocated approximately 17% of projected CFL sales to the low-income residential sector and approximately 5% to the small C&I sector. PPL proposes to eliminate the allocation of CFL Program sales, savings and costs to multiple customer sectors and instead allocate all sales, savings and costs to the class of residential customers since sales to residential customers are likely to account for more than 95% of CFL sales under the program. PPL St. 5, p. 5; PPL Petition, p. 5, Exhibit PDC – 1.

We are further persuaded by the testimony that low-income customers are eligible to participate in any PPL EE&C program open to residential customers including: 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. PPL does not track low-income participation in these programs; therefore, there is no benefit to single out low-income participation in the CFL program. *Id.* Finally, we are persuaded to find that it would be unduly burdensome on PPL to try to allocate CFL sales, savings, and costs to small C&I customers because the calculation involves input information such as customers' baseline light fixtures, types of buildings and spaces, and lighting controls, etc. and this information is not known to PPL. *Id.*

Neither OSBA nor OCA objected to this proposed modification to PPL's CFL program. Therefore, since the modification appears to be in substantial compliance with Act 129 and the Commission's prior Orders at this docket, we recommend the proposed modification to PPL's CFL program be approved.

Proposed Modification to Cost Allocation Method Related to "Direct Program Costs" and "Common Costs"

PPL proposes to shift approximately \$6.5 million from the "direct program cost" category to the "common cost" category. This shifting of costs does not change the overall projected cost of the EE&C Plan, but does result in changes in costs attributable to the different customer sectors. PPL claims that 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. These changes result in relatively minor cost shifting (less than 2.5% compared to the original EE&C Plan) between customer sectors. PPL argues those cost changes between customer sectors are well within the normal band of estimating uncertainty for the EE&C Plan. PPL further contends that the shifting between common and direct cost categories does not impact the benefit-cost ratio of the portfolio and has a minor impact on the benefit-cost ratio of some programs because of the lower direct cost of some programs.

No party has objected to either of the two proposed changes submitted by PPL for Commission review and approval. PPL avers its proposed changes are reasonable and requests they be approved by the Commission.

"Direct program costs" are those expenditures directly associated with a specific energy efficiency program. PPL St. 5, p. 10, PPL Petition, p. 12, Exhibit PDC-2. Some examples include: 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 (i.e. the appliance recycling program). *Id.*

“Common costs” are expenditures that apply to many programs “across the board” and are not directly attributable to one specific program. *Id.* Some examples of common costs are: the development of the EE&C Plan, development and operation of the energy efficiency tracking system, etc. *Id.* PPL identified several revisions to its classifications which shift approximately \$6.5 million from the “direct program cost” category to the “common cost” category. This shift does not change the projected cost of the EE&C Plan as a whole, but does result in minor cost changes between customer sectors within the normal band of estimating uncertainty for the EE&C Plan. PPL St. 5, pp. 11-12, PPL Petition, p. 13. The shifting in costs fall under the EDC Labor, Material and Supplies, General Marketing and Administrative CSP categories. PPL St. 5, pp. 12-13; PPL Petition, p. 14.

The parties representing different customer classes were present at the November 14, 2010 hearing, and no party objected to or offered evidence to refute Mr. Cleff’s testimony. Further, no party argued against this modification in its brief. As the shift in cost allocation does not appear to affect the overall cost of the EE&C Plan, and there being no objection from any customer class as to the change, we shall recommend approval of this modification.

Modification to PPL’s Load Curtailment Program

PPLICA initially filed a letter in response to the September 15, 2010, EE&C Plan update and annual report wherein PPLICA stated it had no objection to the two proposed modifications to PPL’s EE&C Plan. However, after a stakeholder meeting with PPL, during which PPL revealed additional details with respect to this proposed modification, PPLICA filed comments on or about October 20, 2010, objecting to other modifications to the Plan that were not mentioned in the Company’s initial proposed modifications to the Commission. Primarily, PPLICA contends that PPL’s proposal to defer the launch date for the load curtailment program until 2012 should have been submitted to the Commission for review and approval. Second, PPLICA argues that the Commission should not allow the Company to increase the load curtailment program by 50 MW because increasing peak load reduction targets of programs are modifications that should be submitted to the Commission for prior review and approval. Further, PPLICA argues that PPL failed to conduct any analysis regarding the Company’s

updated Time of Use (TOU) program assumptions or fully exploring other options. Therefore, increasing the peak load reduction target of the load curtailment program is inappropriate at this time.

PPLICA claims that any adjustments to the assumptions regarding the TOU program needed to be submitted to the Commission for review and approval, and PPL should be required to submit a complete copy of its revised EE&C plan to ensure that the Commission, interested parties and others have accurate information regarding the design, targets and costs of the plan. DEP joins in PPLICA's request that PPL be required to file another revised EE&C Plan black lining changes pertinent to the Load Curtailment Program. DEP believes PPL narrowly and erroneously construed the Commission's prior October 2009 Order to mean only a few specified modifications needed Commission approval.

PPLICA objects to a proposed change in the plan that purportedly decreases EE&C Plan costs for the residential class while increasing costs for the large C&I class. In its main brief, PPLICA argues that the result of increasing the peak load reduction target for the Load Curtailment Program by 50 MW and adjusting the assumptions for the TOU program will decrease EE&C Plan costs for the residential class and increase costs for the large C&I class. PPLICA Main Brief at 11.

We also note that in its Proposed Modifications, PPL offers clarifications, additions or corrections to various Tables. PPLICA ultimately did take issue with other modifications and argued they are of such importance that they fall within those items requiring Commission approval prior to implementation. Thus, a threshold issue presented in the instant case is what types of proposed modifications to PPL's EE&C Plan require Commission review and approval before implementation. PPL argues this issue has already been fully litigated and decided by the Commission whose plain language limits review to only specific changes involving the shifting of funds within or between customer classes. PPL Reply Brief, at 1 – 2. PPL claims that since the two proposed changes fall within the plain meaning of the *October 2009 Order*, and the other changes PPLICA raises do not fall within the plain meaning, that PPL

was under no duty to request Commission review and approval of certain other changes to its EE&C Plan. PPL Main Brief at 7- 10.

PPLICA and DEP argue that PPL's interpretation of the Commission's *October 2009 Order* is too narrow and inconsistent with Act 129 and other Commission directives. DEP argues that PPL is erroneous in relying on one statement in the October 2009 Order when that statement was not listing only those items which required approval, rather it was an example of a modification which needed approval, not to the exclusion of all other modifications. The Commission did not make a detailed list of modifications which required Commission approval to the exclusion of all other modifications. The Commission was not that explicit, and was in fact silent regarding other matters in the Order. PPLICA argues PPL's proposal to defer the launch date for the load curtailment program until 2012 should have been submitted to the Commission for Review and Approval. PPLICA further argues that the Commission should not allow the Company to increase the load curtailment program by 50 MW as it is an inappropriate measure when there has been no analysis regarding the Company's updated TOU program assumptions and other options were not fully explored. PPLICA contends this proposed change should have been submitted to the Commission for review and approval. Finally, PPLICA and DEP request PPL be required to submit a revised EE&C plan which is more specific and accurate regarding the design, targets and costs of the plan.

The Commission stated in its *October 2009 Order* in pertinent part:

Because the EDC's Act 129 Plan will be approved by Commission Order, procedures for rescission and amendment of Commission orders must be followed to amend that Order and to assure due process for all affected parties. See 66 Pa. C.S. § 703(g)(relating to fixing of hearing: rescission and amendment of orders). Accordingly, if the EDC believes that it is necessary to modify its Act 129 Plan, the EDC may file a petition requesting that the Commission rescind and amend its prior Order approving the plan. See 52 Pa. Code §5.41 (relating to petitions generally) and 5.572 (relating to petitions for relief).

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. The petition should also contain a request to modify its cost recovery mechanism. Evidence supporting the modification of the plan and the cost recovery mechanism shall be submitted with the petition.

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The Commission additionally specified as follows:

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

Id.

Finally, Ordering Paragraph No. 17 of the *October 2009 Order* encourages the use of stakeholder process to consider the need to make mid-course corrections to PPL's cost recovery mechanism; however, the Commission required PPL seek Commission approval of any mid-course changes to the Plan that it intends to make. *Id.* at 110, Ordering Par. No.17.

Based on the foregoing analysis, we agree with PPLICA and DEP that PPL's suggested interpretation of the Commission's *October 2009 Order* is too narrow. Even applying the plain language doctrine to the Order, the Commission clearly and unambiguously listed shifting of funds between programs or customer classes as an example, and the Commission also listed the discontinuation of a program as another example of a modification requiring review and approval, and used the abbreviation, "etc.," thus indicating that there were other modifications that could constitute modifications requiring Commission review and approval. The Commission was clear in Ordering Paragraph No. 17 that mid-course changes to the Plan should be submitted to the Commission for approval, and it did not confer upon PPL or any EDC the authority to unilaterally decide that an issue is not significant when challenged by stakeholders. While we understand that PPL does not want to become enmeshed in repeatedly seeking clarification from the Commission, in this case PPL took too much upon itself and erred on the side of under-inclusion in its petition for approval of proposed modifications.

Significantly, the Commission did not adopt PPL's proposal in the *October 2009 Order* regarding stakeholder and Commission involvement with revisions to EE&C Plans. PPL suggested at that time that PPL be permitted to notify the Commission of minor changes through quarterly and annual EE&C reports to the Commission. For major changes, PPL suggested it would notify stakeholders and the Commission, discuss these changes with stakeholders and seek appropriate Commission approval. PPL requested a major change be defined as one that will increase the cost of the program by more than \$5 million or more than 10%, whichever is greater. *Id.* at 89. The Commission never approved this request.

If the Commission had wanted to classify modifications into major and minor modifications, it could have done so in its *October 2009 Order*, but it chose not to. Neither did the Commission exclusively define a finite category of modifications requiring Commission review and approval to the exclusion of all other modifications. The fact that PPL chose to discuss with stakeholders its plans to expand and increase the Load Curtailment Program to achieve an additional 50 MW of peak load reductions, is indicative that PPL thought this was a major change. *See* PPLICA Cross Exhibit No. 2, slide 39, p. 20.⁴ We further find PPLICA's Cross-Examination Exhibit No. 1 and the testimony of Mr. Cleff that slide 35 in that cross examination exhibit states that changes need stakeholder input and acceptance, is indicative that PPL believed this was a major proposed change to its EE&C plan which required stakeholder input and approval. Tr. p. 66; PPLICA Cross Exhibit No. 1, p. 36. Mr. Cleff testified that PPL got stakeholder input and acceptance from all but one party. Tr. p. 68. Accordingly, the Company did not have acceptance from all stakeholders.

Although we would have preferred PPL to have included proposed modifications to its Load Curtailment Program in a black-lined version of the EE&C Plan and in its Petition, this error is not a fatal flaw resulting in a recommendation to deny the Petition. This is because of the additional uncontested testimony in support of the Load Curtailment Program as well as the persuasive arguments of PPL and OCA that the large C&I customers will not pay more for the proposed modification to the Load Curtailment Program. We recommend the Commission

⁴ The timing of the introduction of this slide to the stakeholders on October 20, 2010, which in turn moved PPLICA from agreement to objection, further underscores our concern with PPL's position that an EDC may unilaterally make decisions with respect to the significance of proposed changes.

direct PPL in future filings of this nature to err on the side of caution and provide notice and request Commission approval for proposed modifications to its Plan, especially those that may affect customer classes.

There appears to be substantial evidence in the form of testimony from Peter Cleff regarding the change to the Load Curtailment Program to support a finding that this modification should be approved. Mr. Cleff testified that the projected peak load reductions in the Load Curtailment Program have been increased from 100 MW to 150 MW based upon bids from Conservation Service Providers (CSPs). According to Mr. Cleff, these increased peak load reductions can be achieved within the original budget of the Load Curtailment Program and will provide more benefits to customers and a margin for compliance if other programs do not achieve their projected peak load reductions. PPL discovered it can obtain 150 MW for the originally budgeted amount to obtain 100 MW. PPL St. 5 at 30. PPL's expert Peter Cleff testified that the difference between 100 MW and 150 MW of load curtailment is approximately \$3 million, or approximately \$2,500 per customer over the 4-year EE&C Plan for 1,200 customers in the large C&I sector. He testified \$2,500 is minor considering these customers' typical monthly bills are hundreds of thousands of dollars or more. Also, it would cost significantly more than \$3 million to achieve 50 additional MW of peak load reductions from other demand response measures. Tr. pp. 49 -50, 53. Mr. Cleff stated that it is important for PPL to be able to do this because if it does not increase projected peak load reduction from the Load Curtailment Program, it will not likely meet its peak load compliance target. Finally, Mr. Cleff stated PPL is currently negotiating the final scope of work, terms and conditions with a CSP(s) for this program and PPL expects to finalize the contract and submit it to the PUC for approval by December 31, 2010. PPL St. No. 5, at 31; Tr. p. 60.

We are persuaded that PPL has examined other alternatives to increasing peak load reductions from other programs as well. Mr. Cleff testified that they did explore other alternatives, but decided that increasing projected peak load reductions from the Load Curtailment Program is the only feasible alternative and the only alternative within the original approved cost budget. Mr. Cleff further stated in April 2010, that PPL asked stakeholders for

input and suggestions on how to increase peak load reductions in other programs and no suggestions were made. This testimony was not refuted or rebutted by any other witness.

PPLICA argues that because PPL unilaterally decided to incur extra costs and increase the Load Curtailment Program target to 150 MW, PPL's shareholders should pay the difference for this unauthorized change. While it is true that page 154 of the Proposed Changes to the EE&C Plan, dated September 15, 2010, is not black-lined to reflect the change mentioned in Appendix 2 to the Program Year 1 Process Evaluation Report which was also filed on September 15, 2010, PPL did at least mention the change to the Load Curtailment Program putting interested parties on notice of the change at the same time of the filing of the petition for approval of modifications. Exhibit PDC- 1, p. 4.

Further, PPLICA did not offer evidence to refute Mr. Cleff's testimony regarding the additional \$3 million cost. According to Mr. Cleff, the additional \$3 million breaks down to an additional cost of \$2,500 per large C&I customer over a period of 4 years, which falls within a reasonable standard given Mr. Cleff's testimony that it would be much costlier to purchase the additional 50 MW separately and given the Company's forecast that adoption of the modification will lead to meeting its Act 129 target goals and not modifying the program may result in not meeting its Act 129 target standards. Tr. p. 55.

Additionally, there appears to be a fair probability that the large C&I customers will not have to pay anything more than what was already Commission approved in the original EE&C Plan. We are persuaded by PPL and OCA's claims that in the end 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 would be paying what the Commission already found reasonable. PPL Main Brief at 29-30. OCA Reply Brief at 3-4. Mr. Cleff testified that although PPL had not yet recalculated the total resource cost (TRC) for the Load Curtailment Program, it plans on updating its data numbers after the proceeding is closed and PPL knows the final decision on the EE&C Plan. Tr. p. 64. Therefore, we recommend directing PPL to refile an amended EE&C Plan within 60 days of the approval of their petition for modification.

Further, OCA filed a Reply Brief arguing PPL's proposal to increase its peak load reduction target from 100 MW to 150 MW will neither benefit the residential class nor harm the C&I class. OCA believes PPL's proposed change will not result in such cost-shifting because PPL has not proposed to reduce overall costs assigned to the residential class from the level in its original EE&C plan, nor has it proposed to increase overall costs assigned to the large C&I class from the level in its original EE&C Plan. The Company still proposes to spend the same budgeted amount of costs for its residential programs; however it will just achieve a lower level of savings from these programs. OCA Reply Brief, p. 3.

OCA claims that the difference in the cost of achieving 100 MW and 150 MW of load curtailment is approximately \$3 million. PPL St. No. 5 at 30. However, large C&I customers will not be subject to \$3 million in additional costs above the level originally assigned to them. Rather, PPL's proposal is to utilize the originally assigned budget for the large C&I class to provide additional benefits to those customers and achieve necessary peak demand reductions within the budgeted amount.

There appears to be a difference in interpretation of Mr. Cleff's testimony regarding change in costs. Tr. p. 46. However, we agree with OCA that Mr. Cleff did not expressly state that total costs assigned to the residential class would be reduced. This fact supports OCA's interpretation of the testimony and PPL's position.

PPL claims its CSP bidding process and contract awards have taken much longer than expected, partly because of changes to protocols for determining load reductions. Peak load reductions are not required before June 2012, so there is no benefit to pay incentives before the summer of 2012, and the CSP will have sufficient time to recruit customers and implement load reductions by the summer of 2012, if the contracts are awarded by January 2011. PPL St. 5, p. 28. Given this testimony and the fact that the Commission will be involved in approving the contract, we are persuaded that this is substantial evidence to support PPL's proposed modification of deferring the launch of the Direct Load Control Program and Load Curtailment Program from January 2010 to late 2010/early 2011. The original budget amount for the program will not change, and PPL now has historical information regarding its customers' TOU

participation, and PPL is reducing its expectations for peak load reductions in other areas. PPL still has the goal of reductions in mind, and that is consistent with the objectives of Act 129. Since these implementation changes do not impact the projected costs of the program, do not impact the projected cost of the EE&C Plan, do not impact the projected savings of the program or of the EE&C Plan, and do not impact the cost allocation between customer sectors, the proposed changes are satisfactory.

We agree with PPL that the EE&C Plan is a new endeavor that is based upon forward-looking estimates and projections which ought to be revised and updated based upon actual experience and data in order for an EDC to meet the mandated goals of Act 129. An EDC must be given some leeway in monitoring its progress towards meeting the EE&C Plan goals, to detect problems quickly, and to take corrective action and adjust the EE&C Plan over time. As the EE&C Plan is dependent upon the consumers' ability and willingness to participate in programs, some flexibility must be allowed as projections regarding customer participation are likely to change as time elapses. Further, Section 2806.1(f) provides that EDCs are subject to penalties if the Act 129 consumption reduction mandates are not met. For all of these reasons, we recommend approving PPL's proposed modification to its Load Curtailment Program.

Constellation NewEnergy, Inc.'s Request for Reissuance of Request for Proposals to CSPs

Constellation argues PPL's actions regarding proposed changes to the Load Curtailment Program are not consistent with the goal of Act 129, and the Commission should open an investigation into PPL's process for selecting and contracting with CSPs for PPL's Load Curtailment Program. Further, Constellation claims the Commission should reject PPL's proposal to increase the Load Curtailment Program without issuing a new request for proposals to all CSPs (not just a short list of 10). Constellation argues it was not fair for PPL to reduce the number of bids it considered from 80 to 10 before negotiating for 50 MW greater amount than the original RFP requested of 100 MW.

As PPL stated in its brief, it plans to file its negotiated contract that was acquired through a competitive bidding scenario by the end of this year for Commission review and

approval. On the surface, it appears the Company followed a competitive bidding arrangement in procuring bids, even though it narrowed its pool of bids from 80 to approximately 8-10 bidders to seriously consider for the procurement of 150 MW. The Commission will have an opportunity when the negotiated contract is submitted for approval to scrutinize the bidding process PPL employed in reaching its contract. Therefore, we tentatively find in favor of PPL on this issue.

UGI and PCOC's Comments

Although UGI Distribution Company filed comments on October 15, 2010 requesting data from PPL regarding the number of PPL's EE&C program recipients converting from gas appliances and equipment to electric appliances and equipment, UGI neither appeared at the pre-hearing conference nor at the November 17, 2010 hearing in this matter and did not offer their comments into the record. Therefore, UGI's comments will not be addressed. However, we note that PPL stated in its main brief that it is currently analyzing the information requested by UGI and will report the results to the Commission in the future. PPL Main Brief at 34.

PCOC also submitted comments on October 18, 2010, and although it was present at the pre-hearing conference of November 12 and hearing of November 17, 2010, PCOC did not move to admit its comments into the record. Therefore, we will not address the comments other than to note that PPL stated in its Main Brief that the company is fully responsive to the recommendations made by PCOC in its Comments and that low-income customers will receive the intended benefits of the CFL Program even with its changes. PPL Main Brief at 33.

OSBA's Answer

OSBA filed an Answer on October 5, 2010, objecting to the fact that PPL did not reconsider and report on the magnitude of the incentives in the EE&C Plan. We are persuaded by PPL's argument that its incentives for small C&I customers are reasonable as supported by the testimony of Mr. Cleff. PPL St. 5, p. 33. OSBA did not cross-examine Mr. Cleff at the

hearing, nor did it offer evidence to refute Mr. Cleff's testimony. Finally, OSBA expressed concern that PPL may not have modified its EE&C Plan to reflect changes to the TRM directed by the Commission. OSBA Answer, p. 3. We agree with PPL that no changes are required to the EE&C Plan to reflect changes in the TRM. PPL St. 5, p. 34. 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 upon planning assumptions and are not used for reporting actual savings. *Id.*

V. CONCLUSION

For the reasons set forth above, we recommend approving the Petition of PPL Electric Utilities Corporation for Approval of changes to its Act 129 Energy Efficiency and Conservation Plan as modified consistent with this Recommended Decision.

VI. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Petition of PPL Electric Utilities Corporation for Approval of changes to its Act 129 Energy Efficiency and Conservation Plan is granted.
2. That PPL Electric Utilities Corporation's proposal to allocate all Compact Fluorescent Lighting Program sales, savings, and costs to the residential customer sector instead of allocating 5% to the Small Commercial and Industrial sector and 17% to the low-income residential customer sector is granted.

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

4. That the two modifications regarding a change to the Compact Fluorescent Lighting Program and a change to the classification of direct and common costs proposed in the Petition of PPL Electric Utilities Corporation are found to be reasonable and in compliance with the intention of Act 129.

5. That the modification in the Load Curtailment Program to increase the load curtailment target to 150 MW is reasonable and in compliance with the intention of Act 129.

6. That within 60 days from the entry date of the Commission's Order approving PPL Electric Utilities Corporation's Petition, PPL Electric Utilities Corporation shall file a black-lined version of its Energy Efficiency and Conservation Plan updating, reconciling, and adjusting data and text, consistent with this Order.

7. That PPL Electric Utilities Corporation's black-lined version of its Energy Efficiency and Conservation Plan as referenced in Ordering Paragraph No. 6 shall include the changes to its Load Curtailment Program, including a total resource cost test.

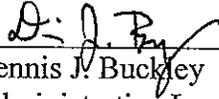
8. That within sixty (60) days of the entry date of the Commission's Order, that PPL Electric Utilities Corporation shall file any tariffs necessary, including supporting materials, implementing any revisions consistent with this Recommended Decision and the Commission's Order.

9. That in future filings of petitions to modify PPL Electric Utilities Corporation's Energy Efficiency and Conservation Plans, PPL Electric Utilities Corporation shall include a request for Commission review and approval regarding proposed modifications

which may affect the cost allocations among customer classes even when a program's approved budget is not altered.

Date: December 17, 2010


Elizabeth H. Barnes
Administrative Law Judge


Dennis J. Buckley
Administrative Law Judge