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January 5, 2011

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

**VIA ELECTRONIC FILING**

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

Dear Secretary Chiavetta:

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

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

Very truly yours,

McNEES WALLACE & NURICK LLC

By   
Shelby A. Linton-Keddie

Counsel to the PP&L Industrial Customer Alliance

SLK/km

c: Administrative Law Judge Dennis J. Buckley (via E-mail and Hand Delivery)  
Administrative Law Judge Elizabeth Barnes (via E-mail and Hand Delivery)  
Office of Special Assistants (via Hand Delivery w/ Word version on CD)  
Certificate of Service

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**CERTIFICATE OF SERVICE**

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

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Dated this 5<sup>th</sup> day of January, 2011,  
at Harrisburg, Pennsylvania.

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## **I. INTRODUCTION**

On September 15, 2010, purportedly in accord with the Pennsylvania Public Utility Commission's ("PUC" or "Commission") annual reporting requirements articulated in the June 24, 2010, and September 1, 2010, Secretarial Letters as well as the Commission's October 26, 2009, Order at Docket No. M-2009-2093216, PPL Electric Utilities Corporation ("PPL" or "Company") submitted a Petition for Approval of Changes to its Act 129 Energy Efficiency & Conservation Plan ("EE&C Plan" or "Plan"). Despite making over 20 modifications to the EE&C Plan, the Company's September 15, 2010, Petition only included the two proposed modifications which PPL believed require prior Commission approval.

On October 15, 2010, the PP&L Industrial Customer Alliance ("PPLICA") submitted a letter indicating that it had no Comments to the Company's September 15 Petition; however, upon review of PPL's October 20, 2010, EE&C Stakeholder Presentation, which included a number of changes that were only submitted as an appendix to the Annual Report and outside of the Petition for Approval of Changes to its Act 129 EE&C Plan, PPLICA filed Comments in opposition to this procedure and, among other things, in opposition to the Company's unilateral decision to increase the peak load reduction in the Load Curtailment Program by 50 MW at a cost of \$3 million.

Pursuant to the abbreviated procedural schedule in established in this proceeding, PPLICA filed a Main Brief on November 30, 2010, and a Reply Brief on December 3, 2010. In general, PPLICA's Main and Reply Briefs addressed PPL's inappropriate unilateral modifications to its EE&C Plan outside of Commission review and approval, with specific emphasis on PPL's failure to conduct an analysis and formally update its assumptions regarding the Time-of-Use ("TOU") Program and opposing PPL's unilateral 50 MW increase to the Load Curtailment Program at an additional cost of \$3 million for its Large Commercial and Industrial ("C&I")

customers. On December 17, 2010, Administrative Law Judges ("ALJs") Elizabeth H. Barnes and Dennis J. Buckley issued a Recommended Decision ("R.D.") in this proceeding.

PPLICA generally supports the ALJs' R.D. Specifically, PPLICA generally agrees with and does not oppose the ALJs' following recommendations: (1) that PPL's proposal to allocate all Compact Fluorescent Lighting Program sales, savings and costs to the residential sector should be granted; (2) that PPL's proposal to reclassify certain "common costs" and "direct program costs" should be granted; (3) that PPL should be required to file a black-lined version of its EE&C Plan updating, reconciling and adjusting data and text, including an updated Total Resource Cost ("TRC") test for the Load Curtailment Program; and (4) that PPL should be required to request Commission review and approval regarding proposed modifications that may affect customer classes regardless of whether an individual program's previously "approved budget" is altered. See generally R.D. pp. 19-20.

It is critical that all Electric Distribution Company ("EDC") modifications to an EE&C Plan be submitted in the Annual Petition (or an interim Petition ) to ensure that interested parties have the ability to review the modifications, request information from the EDC regarding the basis for and impact of the modifications prior to the submission of Comments and, if the modifications are objectionable, have a meaningful opportunity to oppose the modifications consistent with due process. The extremely abbreviated time frames and process followed in this proceeding, which required parties to argue over both procedural issues regarding what modifications must be submitted for Commission review and the substance of the modifications that were omitted from PPL's September 15 Petition, severely limited parties' ability to provide substantive comments on the modifications, except what could be elicited through cross-examination of PPL's witnesses at the evidentiary hearing. Important information regarding the

cost of the 100 MW peak load reduction for the Load Curtailment Program originally sought by PPL pursuant to the approved EE&C Plan, the cost of the incremental 50 MW that PPL seeks to add to the program, whether other options were seriously and adequately explored, and the process to obtain the CSP quotes for the additional 50 MW was all elicited by requiring PPL to provide testimony, answer discovery and make available its witness for cross-examination. Notably, answers elicited through cross-examination of a witness during an evidentiary hearing are part of the formal record that must be relied upon and considered, regardless of how many parties present witnesses.<sup>1</sup>

PPLICA files these Exceptions to address the R.D.'s conclusions that (1) not including all of the proposed modifications to the EE&C Plan in the September 15 Petition and concurrent black-line was "not a fatal flaw resulting in a recommendation to deny the Petition" (see R.D. at 12) and (2) the modifications to the Load Curtailment Program, which will result in an additional \$3 million in costs to Large C&I customers are reasonable and should be approved (see R.D. at 19).<sup>2</sup> As explained more fully below and in both PPLICA's Main and Reply Briefs, PPL's unilateral modifications, if allowed, circumvent the plain language of Act 129, the Commission's October 26, 2009, Order as well as the June 24 and September 1, 2010, Secretarial Letters that outlined the procedure for EE&C Plan modifications. Additionally, the Company has failed to conduct an analysis to substantiate its anticipated assumptions regarding EE&C Plan program underperformance and has admittedly failed to conduct any formal analysis to achieve additional peak load reductions other than significantly increasing the peak load reduction target and

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<sup>1</sup> See 52 Pa. Code § 1.8. As defined in the Commission's regulations, "Formal Record" includes "The pleadings and submittals in a matter or proceeding, a notice or Commission order initiating the matter or proceeding, and if a hearing is held, the following: the designation of the presiding officer, transcript of hearing, exhibits received in evidence, offers of proof, motions, stipulations, subpoenas, proofs of service, references to the Commission and determinations made by the Commission thereon, certifications to the Commission, and anything else upon which action of the presiding officer or the Commission may be based."

<sup>2</sup> Rather than responding to every recommendation contained in the R.D., PPLICA's Exceptions only respond to issues necessitating an additional response.

associated costs for the Load Curtailment Program. As a result, PPLICA requests that the Commission reject the R.D.'s recommendation that would approve PPL's unilateral modifications to the Load Curtailment Program.

## II. EXCEPTIONS

### A. Exception No. 1: The R.D. Erred when Recommending Approval of the Modifications to the Load Curtailment Program That Increase the Peak Load Reduction Target by 50 MW at a Cost of \$3 Million to Large C&I Customers.

In this proceeding, PPLICA has thoroughly explained not only the Commission's clear directives and General Assembly's clear intent to have the Commission, not Electric Distribution Companies ("EDCs"), make decisions regarding modifications to individual EE&C Plans, but also why the modification proposed by PPL to increase the peak load reduction target in the Load Curtailment Program by 50 MW at a cost of \$3 million increases costs to Large C&I customers and is inappropriate (or, at minimum, premature). Per the plain language of Act 129, such modifications are inappropriate absent a prior Commission finding that other EE&C programs will underperform and Commission review of a revised EE&C Plan that describes the "actions to be taken to offer substitute measures or to increase the availability of existing measures" in order to achieve an EDC's required reductions. See generally PPLICA M.B.; PPLICA R.B.; see also 66 Pa. C.S. § 2806.1(b)(2)-(3).

Although the R.D. was correct in concluding that the Company too narrowly interpreted the October 26, 2009, Order when deciding which modifications require Commission approval, (see R.D. at 8-12) the R.D. unfortunately finds that not including all the modifications to the EE&C Plan in the Company's September 15 Petition for Modification and accompanying black-line was "not a fatal flaw resulting in recommendation to deny the Petition." R.D. at 12. Further, the R.D. posits that "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 [to increase the peak load reduction target by 50 MW at a cost of \$3 million] should be approved." R.D. at 13. Specifically, the R.D. states:

Mr. Cleff testified that the peak load reductions in the Load Curtailment Program have been increased from 100 MW to 150 MW based upon bids from C[urtailment] 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 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 that \$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.

R.D. at 13. Next, the R.D. continues its explanation and states (1) "PPLICA did not offer evidence to refute Mr. Cleff's testimony regarding the additional \$3 million cost;" (R.D. at 14) (2) "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 . . . therefore large C&I customers would be paying what the Commission already found reasonable" (Id.) and (3) "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 the EE&C Plan, and do not impact the cost allocation between customer sectors, the proposed changes [to increase the peak load reduction target by 50 MW at a cost of \$3 million and to defer the program launch dates for the Load Curtailment and Direct Load Control Programs from January 2010 to late 2010/early 2011] are satisfactory." R.D. at 15-16. As explained in detail below, PPLICA disagrees with each of these assertions.

When concluding its explanation of this issue, the R.D. states:

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 on 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 these reasons, we recommend approving PPL's proposed modification to its Load Curtailment Program.

R.D. at 16. PPLICA acknowledges that the EE&C Plan "is a new endeavor that is based upon forward-looking estimates and projections" that will need to be revised and updated based on actual experience; however, in this instance, the Company has impermissibly circumvented Commission review and approval in order to unilaterally implement a program modification that it knew since April, 2010, that at least one stakeholder (coincidentally, the stakeholder that would be forced to pay \$3 million for the modification in question) objected. Tr. at 67. Such actions should neither be allowed nor condoned.

While PPLICA understands the Company's desire for "leeway and flexibility" when monitoring its EE&C Plan progress, Act 129 and the modification procedure outlined by the Commission in the October 26, 2009, Order gives an EDC flexibility to submit a Petition at any

time requesting modification of its EE&C Plan, while also preserving interested parties' due process rights and the Commission's power to review and amend Commission prior PUC orders.

While the R.D. appears to give weight to the Company's argument that part of the rationale for granting PPL's ability to freely modify its EE&C Plan is because the Company faces a mere possibility of paying a one-time penalty if PPL is unable to achieve the required reductions within the statutory timeframe, the Commission must not lose sight of the fact that prior to PPL incurring any penalty (if at all), PPL's ratepayers are being forced to pay \$246 million dollars for this EE&C Plan. See PPLICA R.B. at 11. Although participation in the Company's EE&C programs is voluntary (see PPLICA M.B. at 28; PPLICA R.B. at 11), paying the EE&C Surcharge is not. As a result, before approving any EE&C Plan modification, especially ones that will have a direct cost impact on PPL customers, the Commission must ensure that the modification as well as the resulting rate impact are just and reasonable. See PPLICA R.B. at 11 (citing 66 Pa. C.S. § 1301). As explained more fully below, PPL has not demonstrated that the modification to increase the peak load reduction target by 50 MW at a cost of \$3 million in the Load Curtailment Program is just and reasonable. Accordingly, the Commission should reject the R.D.'s recommendation that this modification be allowed.

**(1) Allowing PPL to Unilaterally Modify Its Load Curtailment Program to Address Purported Anticipated Shortfalls in Other EE&C Programs Is Counter to the Plain Language of the Commission's October 26, 2009, Order and Act 129.**

As explained by the Company in its October 20, 2010, Stakeholder Presentation and Mr. Cleff's Direct Testimony submitted in this proceeding, the Company has increased the projected peak load reductions in the Load Curtailment Program from 100 MW to 150 MW based on bids from Conservation Service Providers ("CSPs"). See PPLICA Cross Examination Exhibit No. 2; PPL St. No. 5 at 28. This modification, which would cost Large C&I customers approximately

\$3 million if allowed by the Commission, is purportedly in response to the Company's unsubstantiated concerns of "projected shortfalls in other programs." See PPL St. No. 5 at 29, 30.

As explained by Mr. Cleff:

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

In addition, the peak load reductions from energy efficiency measures (such as appliances, lighting, HVAC equipment, etc.) in other programs are lower than expected and are relatively uncertain because of changes in the TRM [technical resource manual] that tend to decrease savings and peak load reductions (compared to the TRM that was in effect when the Company's EE&C Plan was approved). Also, it is uncertain whether net-to-gross adjustments will apply, further reducing energy and peak load savings. Therefore, to make up for these expected shortfalls, PPL Electric must increase peak load reductions from other programs in order to meet its peak load compliance target by September 2012. The Load Control Program was identified as an appropriate measure because we were able to obtain the original forecast peak reduction for this program at substantially less than the projected cost. We have determined that we can obtain 50 MW of additional peak load reductions with no increase in the amount of dollars originally budgeted for this measure.

PPL St. No. 5 at 29-30.

Notably, however, the Company has not yet submitted its updated TOU assumptions for Commission review and approval. See Tr. at 46. This delay is likely due to the fact that PPL has not conducted any analysis to determine whether its updated assumptions are correct. See Tr. at

47. As explained more fully in PPLICA's Main Brief, PPL's unilateral modification of its EE&C Plan in order to address anticipated shortfalls in its EE&C programs is counter to the plain language of the Commission's October 26, 2009, Order and Act 129. Specifically, PPLICA explained as follows:

Because Act 129 requires the Commission to direct an EDC "to modify or terminate part of its approved plan if, after an adequate period for implementation, the Commission determines that an energy efficiency or conservation measure will not achieve the required reductions in consumption in a cost-effective manner," October 26 Order (citing 66 Pa. C.S. § 2806(b)(2) (emphasis added)), PPL's updated assumptions must be submitted to the Commission for review. According to Act 129, it is only after the Commission determines that part of an EE&C Plan should be modified or terminated that an EDC can submit a revised plan describing how the shortfall should be addressed. Specifically, Section 2806.1(b)(3) provides:

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

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

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

PPLICA M.B. pp. 16-17 (emphasis in original). Further examination of the Commission's October 26, 2009, Order confirms PPLICA's interpretation above.

In the October 26, 2009, Order, the PUC specifically declared that "the General Assembly authorized the Commission, not the EDC, to make decisions in regard to modifying an approved Act 129 Plan." PPLICA R.B. at 7 (citing October 26 Order at 92). Further explaining this statutory obligation, the Commission stated:

Section 2806.1(b)(2) expressly states that the "Commission shall direct" an EDC to modify or terminate any part of its approved plan if, after an adequate period for implementation, "the Commission determines that an energy efficiency or conservation measure will not achieve the required reductions in consumption in a cost-effective manner." 66 Pa. C.S. § 2806(b)(2). Section 2806.1(b)(3) sets forth the action an EDC is required to take in response to a Commission direction to modify or terminate part of the approved plan. Specifically, the EDC is required to submit a revised plan describing the actions to be taken, to offer substitute measures, or to increase the availability of existing measures in the plan to achieve the reductions in consumption. 66 Pa. C.S. § 2806.1(b)(3).

Id. (citing October 26 Order at 92-93). Accordingly, PPL's position that it only had to submit certain modifications for Commission review and approval should be rejected. At minimum, PPL's attempt to unilaterally modify the Load Curtailment Program in response to perceived underperformance of the TOU, which also was not submitted to the Commission for review under Section 2806.1(b)(2), and other EE&C Plan programs should be rejected as statutorily prohibited.

**(2) Counter to the R.D.'s Conclusion, the Company Failed to Meaningfully Explore Alternatives to Achieve Additional Peak Load Reduction Other Than Increasing the Peak Load Reduction Target and Costs to Large C&I customers in the Load Curtailment Program.**

As summarized above, the R.D. determined that the Company "examined other alternatives to increasing peak load reductions" before making its decision to increase the peak load reduction target for the Load Curtailment Program. R.D. at 13. When reaching this conclusion, however, the R.D. either discounts or overlooked the record evidence presented by PPLICA, which established that PPL has yet to conduct an analysis to confirm the projected underperformance of its TOU and other EE&C Programs, and the fact that the Company's

purported "examination of other alternatives" was informal and primarily conducted during the course of this proceeding to provide post hoc justification for the proposed expansion of the Load Curtailment Program, some six months after PPL sought pricing information for an additional 50 MW. As explained in PPLICA's briefs:

First, despite the fact that Mr. Cleff includes statements regarding the TOU program like "the number of shopping customers will be much higher than expected" and that "the current projection is less than 25,000 participants," during the evidentiary hearing, Mr. Cleff was unable to articulate the amount of shopping that was expected and conceded that the Company has not conducted any type of analysis to confirm that its revised expectations for the TOU program are realistic. Second, despite the Company's clear expectation that the TOU Program will significantly underperform, the Company has admittedly not proposed any changes to modify the EE&C Plan to reflect its revised assumptions.

Third, when making the decision to increase the Load Curtailment Program, PPL failed to adequately examine other options. As determined during the evidentiary hearings, the Company projected since approximately last April that its TOU Program would not meet expectations. In addition, since at least April, 2010, PPL contemplated increasing the peak load reduction target for the Load Curtailment Program. However, upon coming to this conclusion, other than seeking informal pricing requests "sometime during the last three to six months" for the direct load control program regarding an extra 50 MW of peak load reduction, the Company made pricing comparisons to other programs (i.e., CFL and Efficient Equipment) for additional peak load reductions only within the last month. Additionally, the Company did not conduct any formal analysis to determine whether it would be cost-effective to achieve a total 50 MW reduction from a combination of programs (i.e., Direct Load Control, CFL and/or Efficient Equipment).

See PPLICA M.B. pp. 13-14; PPLICA R.B. at 17 (internal citations to PPL testimony and the hearing transcript omitted). Because PPL has admittedly not yet conducted any analysis to determine whether its updated assumptions about its EE&C Plan's underperformance are correct and the Company has not seriously investigated other alternatives in addition to increasing and expanding the Load Curtailment Program to "make-up" any projected shortfall, the Commission should require the Company to conduct a formal analysis to accurately update its assumptions in order to allow the PUC to determine whether the projected shortfall (if any) can be achieved in a

more cost-effective manner that spreads peak load reductions among multiple EE&C programs and customer classes, rather than relying on only one program and one class for approximately 50% of the EE&C Plan's peak load reduction. The modification to increase the peak load reduction target for the Load Curtailment Program should not be allowed without first conducting a formal investigation and analysis of other alternatives. The R.D. erred in concluding that a sufficient investigation occurred.

**(3) Counter to the R.D.'s Assertions, If The Load Curtailment Program is Increased by 50 MW at a Cost of \$3 Million, the Actual Impact to Large C&I Customers Well Exceeds the \$2,500 Per Customer Estimate Provided by the Company.**

Before reaching the conclusion that the modifications to the Load Curtailment Program as proposed by the Company are just and reasonable, the R.D. states in part that "PPLICA did not offer evidence to refute Mr. Cleff's testimony regarding the additional \$3 million cost." R.D. at 14. Specifically, the R.D. states:

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 four 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.

Id. This conclusion, however, overlooks the clear record evidence provided by PPLICA that the actual impact to individual Large C&I customers will greatly exceed the \$2,500 estimate provided by the Company.

First, and as conceded by PPL witness Cleff during the evidentiary hearing, the \$2,500 figure was merely an estimate, assuming that all customers pay the same amount. Tr. at 50. Notably, however, Mr. Cleff further acknowledged that Large C&I customers do not pay the same amount, because instead of collecting EE&C costs for the Large C&I class on a per

customer basis, Large C&I EE&C costs are collected on a "per kilowatt of peak load capacity basis." Id. As included in both PPLICA's Main and Reply Briefs, upon reviewing actual pricing and load information for PPL's Large C&I customers provided by the Company in on the record data requests, the actual **additional** cost for the class average Large C&I customers on Rate Schedules LP-5 and LP-6 as a result of these modifications, if approved, ranges anywhere from \$17,000 to \$37,000 over the life of the EE&C Plan, with some customers paying over \$180,000.

As explained in PPLICA's Reply Brief:

While the Company contends that the amount of an extra \$3 million for Large C&I customers averages \$2,500 per customer, footnote 12 in PPLICA's Main Brief states that the average actual impact to Large C&I customers is as follows: The average customer on Rate Schedule LP-5 will pay an extra \$17,361.78 over the 41 months of the plan ( $\$0.058 \times 7,301 \text{ kW} \times 41 \text{ months}$ ), while the average customer on Rate Schedule LP-6 will pay an extra \$37,367.89 over the 41 months of the plan ( $\$0.058 \times 15,714 \text{ kW} \times 41 \text{ months}$ ). The customer with the largest PLC on Rate Schedule LP-5 will pay an extra \$186,527.94 ( $\$0.058 \times 78,439 \text{ kW} \times 41 \text{ months}$ ).

PPLICA R.B. n.3 at 11 (citing PPLICA M.B. n. 12 at 12). The data underlying these calculations was provided by the Company as a response to an on the record data request, which was entered into the evidentiary record as PPLICA Cross Examination Exhibit No. 3. As illustrated above, counter to the R.D.'s assertions, PPLICA did offer evidence to refute Mr. Cleff's testimony that the additional \$3 million cost would result in a cost of \$2,500 per Large C&I customer over a period of four years.

Further, and consistent with PPLICA's argument in Section II(A)(2), PPLICA disagrees with the R.D.'s assertions that this \$2,500 amount, even if accurate "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." As explained earlier in these Exceptions, the Company has admittedly not conducted any formal analysis regarding its projected program underperformance and has not meaningfully explored other options other than increasing the peak load reduction target in the Load Curtailment Program by 50 MW.

**(4) Even If the Additional Costs Associated with Increasing the Peak Load Reduction Target for the Load Curtailment Program by 50 MW Stays Within the Originally Proposed Program Budget Approved by the Commission, This Fact Does Not Establish That Large C&I Customers Would Be Paying an EE&C Surcharge Rate That is Reasonable.**

It is undisputed that the cost for increasing the peak load reduction target for the Load Curtailment Program from 100 MW to 150 MW is \$3 million. Tr. at 55. However, despite acknowledging that the cost for this program as modified would be an additional \$3 million, the Company claims, and the R.D. appears swayed by the argument that "in the end 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." R.D. at 14 (citing PPL M.B. at 29-30; OCA R.B. at 3-4). PPLICA disagrees.

As acknowledged by the R.D., when PPL's original EE&C Plan was approved, it was "a new endeavor . . . based upon forward-looking estimates and projections which ought to be revised and updated based on actual experience and data." R.D. at 16. Although the Commission approved a tentative budget and levelized EE&C surcharge amounts, there is no indication that the PUC, without evaluating actual data after the Plan's implementation as part of the Annual review process, predetermined that the originally budgeted amounts were automatically reasonable for the life of the Plan. See, e.g., the October 26, 2009, Order at pp. 74-75, in which the Commission addresses OTS's concern that "due to the fact that all proposed costs are based on budgeted amounts and that this is the first time an EE&C Plan has been filed,

all costs that are tentatively approved should continue to be subject to review." As can be seen in the October 26 Order, the Commission specifically indicates that "the annual review . . . will include an evaluation of the reasonableness of all program costs and their allocation to the applicable customer classes." October 26 Order at 74 (citing Implementation Order at 38). Accordingly, any assertion that the original approval of tentative budgets by the Commission was a definitive finding that the costs for the life of the EE&C Plan are reasonable is incorrect.

Further, the position that the originally approved EE&C budgets are "reasonable" overlooks the fact that EE&C surcharges are reconcilable. Budgeted amounts previously approved for individual EE&C Programs during the initial litigation of this Plan are not open credit lines that must be fully used by a utility. Rather, these budgeted amounts will be reconciled to actual expenditures to ensure that ratepayers pay only what is necessary to implement approved EE&C programs. If the approved 100 MW Load Curtailment Program can be implemented at a lower cost than originally budgeted (\$11.5 million instead of the \$14.5 million originally budgeted), then Large C&I customers should be made whole during the reconciliation process. EE&C programs are funded directly by ratepayers. As a result, ratepayers should benefit if programs cost less; not be deprived of reimbursement if the Company can find other ways to use the money (i.e., by unilaterally increasing peak demand reduction targets of a single program). See PPLICA M.B. at 12.

**(5) Any Reliance on The Argument That Increasing the Peak Load Reduction Target for the Load Curtailment Program Should Be Accepted Because the Company Intends on Entering into Contracts with CSP(s) at or near December 31, 2010, Should Be Rejected.**

During this proceeding, the Company has asserted its desire to enter into and submit CSP contract(s) for the Load Curtailment Program to the PUC on or about December 31, 2010. See R.D. at 13 (citing PPL St. No. 5 at 31; Tr. at 60). Regardless of the Company's articulated

desire, any reliance on the argument that increasing the peak load reduction target by 50 MW at a cost of \$3 million should be accepted because the Company is currently actively attempting to finalize its CSP contracts must be rejected. As clearly indicated in the Commission's October 26, 2009, Order, there are no time constraints on when an EDC can file a Petition for Modification to its EE&C Plan. Specifically, the Commission's October 26, 2009, Order provides:

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. The petition shall be served on all Parties participating in the EDC's Act 129 Plan proceeding. If the EDC believes that the need for modification of its plan is immediate, the EDC can request expedited consideration of its petition. However, procedures for rescission and amendment of Commission orders must be followed to amend that Order and to assure due process to all affected parties.

October 26, 2009, Order at 93. As indicated above, an EDC, at any time, can file a Petition to Modify its EE&C Plan; moreover, an EDC can, at the same time, request expedited consideration of its Petition. PPL contemplated at least since April, 2010, its desire to make the modifications in the Load Curtailment Program (as well as majority of the other modifications) contained in its Appendix its Annual Report. See Tr. at 65; see also PPLICA Cross Examination Exhibit No. 1. However, despite its desire to modify at least one of its EE&C programs, the Company intentionally waited until its Annual Report was due to submit this modification to the

Commission, notably without submitting any analysis or a Petition to modify its current EE&C Program underperformance assumptions at the same time. As explained above in Section (II)(A)(1), per the plain language of Act 129, the Commission (not the EDC) must first make a finding that programs will underperform before approving a modification to address this underperformance. Because this procedure has not occurred and is, therefore, in violation of the clear directives in Act 129, PPL's unilateral modification to increase the peak load reduction target by 50 MW at a cost of \$3 million for the Load Curtailment Program must be rejected.

**(6) Counter to the R.D.'s Conclusion, the Modifications to the Load Curtailment Program at Issue Here Impact the Projected Cost of the Program, Impact the Projected Cost of the EE&C Plan, Impact the Projected Savings of the Program and the EE&C Plan, and Impact the Cost Allocation between Customer Sectors.**

Finally, PPLICA takes issue with the R.D.'s conclusion that the modifications to the Load Curtailment Program "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." R.D. pp. 15-16. Specifically, and as explained in PPLICA's Main Brief:

Increasing the peak load reduction target for the Load Curtailment Program by 50 MW (1) impacts the projected cost of the program by \$3 million; (2) accordingly, impacts the projected cost of the EE&C Plan by \$3 million; (3) impacts the projected savings of a program by 50 MW; (4) impacts the projected savings of the EE&C Plan by 50 MW (especially since PPL has not filed for a reduction in the TOU assumptions); and (5) impacts the cost allocation between customer sectors because as a result of the updated TOU assumptions, residential class EE&C costs will be lowered and, as a result of the additional 50 MW in the Load Curtailment Program, Large C&I customers will be subject to an additional \$3 million in costs that would not be needed if the incremental 50 MW were not added.

PPLICA M.B. pp. 13-14. As illustrated above, the modifications to the Load Curtailment Program that have been made by the Company (not the Commission) and potentially approved by the R.D. are inappropriate. As clearly stated in the Commission's October 26, 2009, Order:

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

October 26, 2009, Order at 92.

PPL has unilaterally acted in a way that, if allowed, would foist an additional \$3 million dollar cost on Large C&I customers while concurrently lowering costs to residential customers once it submits updated TOU projections and budget, and would make a single EE&C program (and customer class) responsible for approximately 50% of the Plan's total peak load reduction target. Because this modification is purportedly necessary to make up for other EE&C Plan shortfalls and results in an increase in costs for Large C&I customers, it is precisely the type of modification that the General Assembly contemplated that requires formal Commission review and approval before implementation. See 66 Pa. C.S. §§ 2806.1(b)(2),(b)(3). Until the Company performs and submits to the Commission an analysis based on actual data and participation in order to allow the PUC to make a finding that certain EE&C Programs will underperform and that the proposed modification to increase the peak load reduction target for the Load Curtailment Program is necessary, reasonable and appropriate, the Load Curtailment Program should not be modified at this time.

**III. CONCLUSION**

**WHEREFORE**, the PP&L Industrial Customer Alliance respectfully requests that the Pennsylvania Public Utility Commission:

- (a) Reject the Recommended Decision regarding approval of the modification to the Load Curtailment Program that would increase the peak load reduction target by 50 MW at a cost of \$3 million; and
- (b) Take any other actions as deemed necessary and appropriate.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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