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| **PENNSYLVANIA****PUBLIC UTILITY COMMISSION****Harrisburg, PA 17105-3265** |
| Public Meeting held January 27, 2011 |
| Commissioners Present:James H. Cawley, ChairmanTyrone J. Christy, Vice ChairmanJohn F. Coleman, Jr.Wayne E. GardnerRobert F. Powelson |
| Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan  | Docket No. M-2009-2093216  |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by PPL Electric Utilities Corporation (PPL) and by PP&L Industrial Customer Alliance (PPLICA), filed on January 5, 2011, to the Recommended Decision (R.D.) of Administrative Law Judges (ALJs) Elizabeth H. Barnes and Dennis J. Buckley, issued December 17, 2010, in the above-captioned proceeding. Pursuant to the Secretarial Letter issued September 1, 2010, Reply Exceptions were not permitted.

# I. Background[[1]](#footnote-1)

Governor Edward G. Rendell signed Act 129 of 2008 (Act 129) into law on October 15, 2008. The Act took effect thirty days thereafter on November 14, 2008. Act 129 has several goals including reducing energy consumption and demand. Act 129, *inter alia*, amended the Public Utility Code (Code), 66 Pa. C.S. §§ 101 *et seq*., to require the Commission to develop and adopt an Energy Efficiency and Conservation (EE&C) Program by January 15, 2009. The Commission’s EE&C Program is to include the following:

* A procedure for approving EE&C plans submitted by electric distribution companies (EDCs).
* A process to evaluate and verify the results of each plan and the program as a whole.
* A process through which recommendations can be made for the employment of additional consumption reduction measures.
* A cost recovery mechanism to ensure that measures approved are financed by the customer class that directly receives the energy and conservation benefits.

66 Pa. C.S. § 2806.1(a).

By Opinion and Order entered January 16, 2009, at Docket No. M-2008-2069887, *In re: Energy Efficiency and Conservation Program* (*Implementation Order*), the Commission established the standards that EE&C plans must meet and provided guidance on the procedures to be followed for submittal, review and approval of all aspects of EE&C plans. The *Implementation Order* stated:

Regarding approved plans, the Commission will permit EDCs and other interested stakeholders, as well as the statutory advocates, to propose plan changes in conjunction with the EDC’s annual report filing required by the Act at 66 Pa. C.S. § 2806.1(i)(1). The Commission will establish a deadline for the filing of annual reports by the EDCs following the approval of the EDCs’ plans in 2009. These annual reports are to be served on OCA, OSBA and OTS. The Commission will also post the annual reports on a web page dedicated to the EE&C program. The Commission and any interested party can make a recommendation for plan improvement or object to an EDC’s proposed plan revision within 30 days of the annual report filing. EDCs will have 20 days to file replies, after which the Commission will determine whether to rule on the recommended changes or refer the matter to an ALJ for hearings and a recommended decision. The Commission notes that, in addition to the above-described process, the Commission retains its statutory authority to conduct investigations and initiate statutory and regulatory compliance proceedings against jurisdictional utilities.

*Implementation Order* at 24*.*

On July 1, 2009, PPL filed its Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan (July 2009 Plan). The matter was assigned to Administrative Law Judge Susan D. Colwell (ALJ Colwell). By Order Certifying the Record dated September 14, 2009, ALJ Colwell provided a history of the proceeding; delineated the transcripts, statements and exhibits admitted into the record; and certified the record to the Commission for our consideration and disposition. By Opinion and Order entered October 26, 2009 (*October 2009 Order*), *inter alia*, we approved in part and rejected in part PPL’s July 2009 Plan and directed PPL to file a revised Plan within sixty days.

On December 17, 2009, PPL filed a revised EE&C Plan (December 2009 Plan). Following our review of the Comments and Reply Comments filed regarding the December 2009 Plan, we approved the December 2009 Plan by Opinion and Order entered February 17, 2010 (*February 2010 Order*).

By Secretarial Letter issued June 24, 2010 (*June 2010 Secretarial Letter*), the Commission provided updated guidance to the EDCs regarding the 2010 Act 129 annual reporting requirement. Specifically, for the EE&C plan year ending May 31, 2010, the Commission required the EDCs to submit their annual report and any proposed EE&C plan revisions by September 15, 2010. The Commission would accept recommendations for plan improvements, or objections to proposed changes in the plans, within thirty days. Interested parties could submit replies to plan recommendations or objections to proposed changes during the next twenty days. The *June 2010 Secretarial Letter* stated that the Commission would subsequently decide whether to refer the proceeding to the Office of Administrative Law Judge (OALJ) for hearing.

By Secretarial Letter issued September 1, 2010 (*September 2010 Secretarial Letter*), the Commission provided guidance to the EDCs regarding the format of revised EE&C plans, including a requirement that all changes to text and tables be reflected in a black-lined version of the EE&C Plan.

# II. Procedural History

On September 15, 2010, PPL filed: (1) its Petition for Approval of Changes to its Act 129 Energy Efficiency and Conservation Plan (Petition); (2) an Executive Summary of PPL’s Proposed Plan Modifications (Executive Summary); and (3) a black-lined copy of PPL Energy Company’s Energy Efficiency and Conservation Plan (September 2010 Plan), marked to show changes from the December 2009 Plan.

On October 5, 2010, the Office of Small Business Advocate (OSBA) filed an Answer to PPL’s Petition (OSBA Answer). The OSBA stated, *inter alia*, that in PPL’s September 2010 Plan, PPL has still not addressed the concerns that the OSBA expressed regarding the July 2009 Plan and the December 2009 Plan, with respect to the magnitude of incentives and subsidies offered to customers. OSBA Answer at 2-3. The OSBA requested that the September 2010 Plan be referred to the Office of Administrative Law Judge (OALJ) for hearing and a Recommended Decision. *Id*. at 4. By Secretarial Letter dated November 9, 2010, the Commission granted the OSBA’s request for hearings and assigned this matter to the OALJ for further proceedings.

On October 18, 2010, Pennsylvania Communities Organizing for Change (PCOC) filed a Petition to Intervene as well as Comments[[2]](#footnote-2) on PPL’s EE&C Plan. Also on October 18, 2010, the Pennsylvania Association of Community Organizations for Change Now (ACORN) filed a Petition to Withdraw.[[3]](#footnote-3) In its Petition, ACORN explained that, on April 1, 2010, it dissolved its status as a corporate entity and ceased to exist as an organization. ACORN further stated that PCOC is “a non-profit organization with a deep understanding of low-income communities and their unique utility related issues” and that low-income households will have “suitable representation” in this proceeding. ACORN Petition at 2.

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On October 15, 2010, Comments were filed by the UGI Distribution Companies (UGI) and PCOC. PPLICA 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 filed comments on or about October 20, 2010. On November 4, 2010, PPL filed a Reply to the Comments of PCOC, PPLICA, and UGI and the Answer of the OSBA.

On November 12, 2010, the ALJs held a prehearing conference. A Prehearing Conference Order was issued on November 12, 2010, which granted ACORN’s Petition to Withdraw . The Order further granted PCOC’s Petition to Intervene in the proceeding over PPL’s objection.

A hearing was held on November 17, 2010, in Harrisburg. The Parties present at the hearing included: the Office of Trial Staff (OTS); the Office of Consumer Advocate (OCA); the OSBA; the Commonwealth of Pennsylvania, Department of Environmental Protection (DEP); PCOC; PPLICA; PPL; and Constellation NewEnergy, Inc. (Constellation).[[4]](#footnote-4) PPL submitted into evidence a statement explaining the changes to its EE&C Plan and two exhibits: (1) Summary of Minor Changes to Program Year 1 Implementation Details; and (2) the September 2010 Plan. PPLICA submitted PPL’s materials from its April 28, 2010 and October 20, 2010 stakeholder meetings as two cross-examination exhibits.

On November 30, 2010, PPL, DEP, Constellation, and PPLICA filed Main Briefs (M.B.). OCA, PPLICA, and PPL filed Reply Briefs (R.B.) on December 3, 2010.

By Recommended Decision issued December 17, 2010, the ALJs, *inter alia*, recommended that the September 2010 Plan be approved. The ALJs also recommended that the Commission direct PPL to filed a revised Plan within sixty days reflecting all of the modifications to its Plan. R.D at 18-20.

Exceptions to the Recommended Decision were filed by PPL and PPLICA on January 5, 2011. Pursuant to the *September 2010 Secretarial Letter*, Reply Exceptions were not permitted.

# III. Description of the Plan

**A. Description of the Existing Plan**

PPL’s Plan contains the following fourteen programs designed to improve the efficiency of the energy consumption of its customers and/or reduce customers’ contribution to system peak load:

* + - 1. Efficient Equipment Incentive Program
			2. Residential Energy Assessment & Weatherization
			3. Compact Fluorescent Lighting Campaign
			4. Appliance Recycling Program
			5. ENERGY STAR® New Homes program
			6. Renewable Energy Program
			7. Direct Load Control Program
			8. Time of Use Rates
			9. Energy-Efficiency Behavior and Education
			10. Low-income WRAP
			11. Low-income E-Power Wise
			12. Commercial and Industrial Custom Incentive Program
			13. HVAC Tune-up Program
			14. Load Curtailment Program

September 2010 Plan at 1.

PPL explains that, in order to meet the requirements of Act 129, its Plan is designed to meet the following targets:

* 1% energy savings by 2011 = 382,000 MWh
* 3% energy savings by 2013 = 1,146,000 MWh
* 4.5% peak load reduction by 2013 = 297 MW.

*Id*. at 2.

PPL’s Plan is also designed to comply with the designated spending cap of 2% of its 2006 annual revenue. This equates to an average of $61.5 million per year for a total of about $246 million over the four-year duration of the Plan. *Id.*

## B. Description of the Proposed Changes

In its September 2009 Plan, PPL has proposed to make the following two changes to its Plan. As noted by the ALJs, no Party has objected to these changes. For the reasons discussed in the Recommended Decision, the ALJs have recommended that these proposed modifications to the Plan be approved. R.D. at 6 and 8.

**1. Compact Fluorescent Light (CFL) Program**

Under PPL’s CFL Program, customers from all rate classes are eligible to purchase discounted CFLs from retail stores. PPL explained that customers receive discounts at the point of sale and that PPL does not know the specific customers that purchased the discounted CFLs. PPL stated 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. PPL averred that, at that time, it believed there was a low-income energy reduction compliance target and that it 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 kilowatt hours per year (kWh/yr) reductions. In addition, PPL stated that it does not quantify or allocate low-income customer participation in any other non-low-income program. PPL argued that an allocation to the low-income sector was no longer necessary for compliance purposes. PPL Statement No. 5 at 4-6.

PPL also explained that the allocation of CFL sales to the small C&I customer sector was an attempt, based upon feedback from stakeholders during the development of PPL’s Plan, to properly categorize savings and costs, because some small C&I customers may purchase discounted CFLs from retail stores. PPL submitted that, during its implementation phase, PPL decided that it is not feasible to allocate CFL savings and costs to multiple customer sectors. PPL stated that savings for non-residential customers are calculated using a different method than for residential customers, and that it is not possible to obtain required information to calculate or verify savings for non-residential customers. Therefore, instead of allocating 5% of the CFL savings to the small C&I sector, PPL proposes to allocate all CFL Program sales, savings, and costs to the residential customer sector. *Id.*

**2. Change in Allocation of Direct Program Costs and Common Costs**

PPL explained that, during the detailed design and implementation of its Plan, it identified several revisions from its initial Plan in the manner in which it classified common and direct costs. PPL submitted that these revisions will shift approximately $6.5 million from the direct program cost category to the common cost category. PPL Statement No. 5 at 11.

PPL defines direct program costs as those expenditures directly associated with a specific energy efficiency program. PPL stated that examples of direct costs include: a rebate paid to a customer for an energy efficiency measure in a program, and a program conservation service provider’s (CSP) labor and material charges to implement a program (i.e., the appliance recycling program). PPL defines common costs as expenditures that apply to many programs across the board and are not directly attributable to one specific program. PPL stated that some examples of common costs are: the development of the EE&C Plan, and the development and operation of the energy efficiency tracking system. *Id* at 10*.*

PPL submitted that this cost reallocation 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 pointed out that, in accordance with its 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. PPL averred that, as a result, these changes result in relatively minor cost shifting (less than 2.5% compared to the original EE&C Plan) between customer sectors. *Id*. at 11-12.

# IV. 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 this case, PPL is asking the Commission for approval to make changes to its approved December 2009 Plan. PPL therefore bears the burden of proving, by a preponderance of the evidence, that the proposed modifications to its EE&C Plan result in a plan that continues to satisfy the requirements of Act 129 and the prior related Orders of the Commission.

We note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. [Consolidated Rail Corporation v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth., 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) see also, generally, [University of Pennsylvania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth., 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

**A. PPL Proposed Plan Modifications**

**1. Compact Fluorescent Light (CFL) Program**

As discussed, *supra*, PPL proposes to amend its CFL program so that in lieu of allocating approximately 17% of the projected CFL sales to the low-income residential sector and approximately 5% to the small C&I sector, all CFL sales will be allocated to the residential sector. We note that even though the accounting for this program has shifted to the residential sector, low-income customers and small C&I customers can still take advantage of the discounted CFLs. We also note that neither the OSBA nor the OCA objected to this proposed modification to PPL’s CFL program.

At our April 12, 2010 Public Meeting, the Commission adopted a Secretarial Letter at Docket No. M-2009-2146801 that, *inter alia*, released the Report of the Act 129 Low Income Working Group (LIWG Report) and adopted the recommendations contained in the LIWG Report. The LIWG Report, *inter alia*, contained data to determine the number of low-income measures each EDC must implement to meet the “proportionate number” criteria of Act 129. LIWG Report at 5-7. The LIWG Report also stated that EDCs must report on a quarterly basis, actual energy reductions from each customer sector, including the low-income sector, and each sector’s proportion of the total energy reductions. *Id*. at 8. PPL’s uncontradicted testimony explained that it does not know the specific customers who purchase discounted CFLs because the ratepayer’s identity is not known to the third-party vendor participating in the CFL program. PPL Statement No. 5 at 4. Consequently, it is not possible to track participation and corresponding energy reduction by customer class from the CFL program. Therefore, we will grant a waiver from the aforementioned reporting requirement for PPL’s CFL program as set forth in the September 2010 Plan.

As discussed, *infra*, by this Opinion and Order we are directing PPL to file a revised Plan within thirty days of the entry of this Opinion and Order. As part of its submission of its Revised Plan, PPL shall address whether other changes to its Plan are warranted to meet the provisions of the LIWG Report.

Since the proposed modification to the CFL program appears to be necessary because PPL cannot track the participation by the various customer classes and since the proposed modification does affect PPL’s ability to meet the requirements of Act 129 and the Commission’s prior Orders at this docket, we will adopt this proposed modification to PPL’s CFL program.

**2. Change in Allocation of Direct Program Costs and Common Costs**

Also, as discussed, *supra*, PPL proposes to reallocate about $6.5 million from direct costs to common costs. As indicated by the ALJs, Parties representing the various customer classes participated in this proceeding and none of the Parties raised any objections to either the proposed modification or PPL’s testimony in support of the change in cost allocation. R.D. at 8. Since this modification does not affect the overall program budget and only results in minor shifts in costs among the customer classes, it is hereby adopted.

**B. Commission Review and Approval of Plan Revisions**

As explained by the ALJs, PPLICA initially filed a letter in response to the September 2010 Plan 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 the proposed modifications to its Plan, PPLICA filed comments on or about October 20, 2010. In its Comments, PPLICA objected to other modifications to the Plan, as previously approved by the Commission, that were not mentioned in PPL’s proposed modifications to the Commission. R.D at 8.

The ALJs found that PPLICA’s objections to the modifications that were not included in the September 2010 Plan, raises the threshold issue of what changes to PPL’s Plan require Commission review and approval before implementation. *Id.* at 9. We agree.

In its Direct Testimony, PPL explained that, in the *October 2009 Order*, the Commission limited the changes to its Plan that require Commission approval to the following three categories: (1) modifications that shift program funds within a customer class; (2) modifications that shift program funds between customer classes; and
(3) discontinuation of a program. PPL stated that, consistent with the *October 2009 Order,* PPL determined that Commission approval was necessary for the two proposed modifications (discussed, *supra*) set forth in its September 2010 Plan. PPL Statement No. 5 at 14-15.

In its testimony, PPL outlined twenty-one revisions that were not reflected in the September 2010 Plan but were presented to the Commission as part of its EE&C Program Year 1 Annual Report. PPL stated that these changes fall into five categories: (1) “fine tuning” of rebate levels, measure descriptions and eligibility requirements; (2) measures added to the Efficient Equipment Program; (3) measures deleted from the Efficient Equipment Program; (4) measures moved from the Efficient Equipment Program to the Custom Program, and (5) changes to program schedule milestones or changes to projected peak load reduction. *Id*. at 16. PPL also explained that these changes were discussed at the April 28, 2010 and October 20, 2010 stakeholder meetings. *Id*. at 15.

PPL argued that it would be unreasonable for an EDC to need Commission approval for every small change to an Act 129 Plan. PPL averred that, *inter alia,* requiring every change to be approved by the Commission would hinder PPL’s ability to manage all of the Plan’s various programs effectively and timely in order to comply with Act 129. *Id*.

PPLICA argued that specific changes to PPL’s Plan, such as the deferral of the launch date for the Load Curtailment Program, the increase in the projected peak load reduction targets by 50 MW, and the adjustments to the time-of-use (TOU) assumptions, should be submitted for Commission review and approval.[[5]](#footnote-5) PPLICA M.B. at 8-17. PPLICA averred that PPL should not be allowed to have one version of its EE&C Plan on file with the Commission while it actually operated from a different, more complete Plan. PPLICA stated that, to date, PPL has failed to file an accurate black-line of its EE&C Plan with the Commission. *Id.* at 19. Both PPLICA and DEP recommend that the Commission require PPL to submit a completely updated copy of its revised EE&C Plan. PPLICA M.B. at 19; DEP M.B. at 5.

DEP argued that the Commission retains broad jurisdiction to review and approve modifications to EE&C plans approved through Commission Order under both Act 129 and the *Implementation Order*. DEP submitted that, at a minimum, EDCs should be required to submit annual updates to their EE&C Plans that reflect all of the changes made to the approved EE&C Plan so the Commission has an opportunity to review those changes and determine if the changes comply with the statute and Commission Orders. DEP averred that PPL’s interpretation of the Commission’s *October 2009 Order* is too narrow and is inconsistent with Act 129 and other Commission directives. DEP stated that PPL is erroneous in relying on one statement in the *October 2009 Order* when that statement was not listing all those items which required approval. Rather, that statement was an example of a modification which needed approval, not to the exclusion of all other modifications. DEP pointed out that the Commission did not make a detailed list of modifications which required Commission approval to the exclusion of all other modifications. DEP M.B. at 4-5.

In the *October 2009 Order*, we addressed the provision to be contained in PPL’s Plan to facilitate review by stakeholders and the Commission. With regard to Commission review and approval we stated:

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.

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).

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.

*October 2009 Order* at 92-93.

In addition, in Ordering Paragraph No. 17, the Commission provided the following direction:

17. That we encourage the use of a stakeholder process to consider the need for corrections to make mid-course corrections to PPL Electric Utilities Corporation’s cost recovery mechanism; however, we require PPL Electric Utilities Corporation to seek Commission approval of any mid-course changes to the Plan that it intends to make.

*Id.* at 114.

In the Recommended Decision, the ALJs agreed with PPLICA and DEP that PPL’s suggested interpretation of the Commission’s *October 2009 Order* is too narrow. They concluded that even applying the plain language doctrine to the Order, the Commission clearly and unambiguously listed the shifting of funds between programs or customer classes as an example of a change requiring Commission review and approval, and the Commission also listed the discontinuation of a program as another example of a modification requiring review and approval. The ALJs further noted that the Commission used the abbreviation, “etc.,” thus indicating that there were other modifications that could constitute modifications requiring Commission review and approval. The ALJs concluded that the Commission was clear in Ordering Paragraph No. 17 that mid-course changes to the Plan must be submitted to the Commission for approval, and Ordering Paragraph No. 17 did not confer upon PPL the authority to unilaterally decide that an issue is not significant when challenged by stakeholders. R.D. at 11.

In its Exceptions, PPL argues that the ALJs have misinterpreted the *October 2009 Order*. In addition, PPL argues that the ALJs’ reliance on Ordering Paragraph No. 17 should be rejected because the reliance on Ordering Paragraph No. 17 was based on an incorrect intrepretation of the *October 2009 Order*. PPL points to the following language on page 91 in the *October 2009 Order:*

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.

PPL argues that the use of “i.e.” indicates that the Commission is listing specific modifications that require approval. PPL submits that if the Commission were including these modifications as examples, it would have used “e.g.” In addition, PPL states that “etc.” refers to other modifications in the *October 2009 Order* and not an open-ended list of examples that could potentially include modifications which may need approval. PPL Exc. at 13-14.

We do not agree with PPL’s interpretation of the *October 2009 Order*. As stated in the portion of the *October 2009 Order* presented, *supra*, because the EDC’s Act 129 Plans are 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. Accordingly, if the EDC believes that it is necessary to modify its Act 129 Plan, the EDC must file a petition requesting that the Commission rescind and amend its prior Order approving the plan. *October 2009 Order* at 93. The Commission’s *October 2009 Order* and *February 2010 Order* approved all components of PPL’s Plan filed at that time. The Commission’s approval was not limited to specific aspects of the Plan. Consequently, as delineated in Ordering Paragraph No. 17 of the *October 2009 Order*, PPL is required to seek approval for any mid-course changes it intends to make.

PPL also argues in its Exceptions that requiring Commission approval for all mid-course corrections is unworkable. PPL explains that its Plan contains hundreds, if not thousands, of estimates and projections and that the actual results will likely differ from the original estimate. PPL avers that every time actual experience will turn out to be different from the original estimate, PPL would have to seek Commission approval. PPL submits that such review and approval would undoubtedly result in substantial administrative and regulatory burdens and cannot have been intended by the Commission or the General Assembly. PPL Exc. at 17-18.

We concur with PPL that it is not the Commission’s intention to micromanage EE&C plans and we recognize that the EDCs have a statutory requirement to meet specific energy consumption and peak demand reduction levels. However, we cannot adequately review and approve a comprehensive plan if the proposed changes described by the EDC reflect only a subset of the changes that an EDC intends to implement. Moreover, we cannot ignore our statutory requirements under Act 129, and the due process rights of the Parties, to address proposed changes to a Commission-approved Plan. Consequently, *all* proposed changes must be fully reflected in EE&C plans so they can be reviewed by the Commission and affected parties.

We do not share PPL’s position that the submission of revised Plans will result in substantial administrative and regulatory burdens. We expect that the EDCs will use some discretion to aggregate a number of plan changes developed over a period of time into a single plan revision submitted to the Commission for review and approval. We also do not expect that all Plan submissions will necessitate extensive litigation, particularly when there are no significant comments or objections.

**C. Changes to Large Commercial and Industrial (C&I) Load Curtailment Program and Residential Time of Use (TOU) Program**

In its Exceptions, PPLICA states that, at its October 2010 Stakeholder Meeting, PPL indicated that it was increasing the peak load reduction target for the large C&I Load Curtailment Program by 50 MW to offset PPL’s expectation that the Residential TOU Program will dramatically underperform. PPLICA points out that the changes to both programs were not included in the September 2010 Plan. PPLICA Exc. at 3-4. PPLICA states that the increase in the target large C&I Load reduction will cost Large C&I customers an additional $3 million. PPLICA argues that the shift in peak load reduction responsibilities from the Residential class to the large C&I class impacts the costs that each class will ultimately pay through the reconcilable EE&C Surcharge. PPLICA avers that this type of interclass shift of program targets and costs is precisely what the Commission should monitor and review in all EE&C plans. *Id*. at 10-11.

In their Recommended Decision, the ALJs state that, although they would have preferred PPL to have included proposed modifications to its Load Curtailment Program in a black-lined version of the September 2010 Plan and in its Petition, this omission is not a fatal flaw resulting in a recommendation to deny the Petition. R.D. at 12. The ALJs point to the persuasive arguments of PPL and the OCA that the Large C&I customers will not pay more for the proposed modifications to the Load Curtailment Program. The ALJs cited PPL testimony that PPL has examined other alternatives and it would cost significantly more than $3 million to achieve an additional 50 MW of peak load reductions from other demand response measures. *Id*. at 13. The ALJs also note PPL testimony that stated that, if PPL does not increase its peak load reduction from the Load Curtailment Program, it will likely not meet its peak load reduction target. *Id*. For these and other reasons presented on pages 12-16 of the Recommended Decision, the ALJs recommend that PPL’s proposed modification of the Load Curtailment Program be approved. *Id*. at 16.

While the ALJs have presented a thorough and well-reasoned recommendation regarding the proposed Load Curtailment Program, we are reluctant to approve plan changes that have not been fully integrated into a revised plan submitted to the Commission for review. The ALJs have recommended that PPL file a revised Plan within sixty days of the entry of this Opinion and Order that reflects all proposed changes to its EE&C Plan. Ordering Paragraph No. 6, R.D. at 19. We agree with the ALJs’ recommendation that PPL be required to file a revised plan, and we will address the proposed Load Curtailment Program and all other program changes that have not yet been approved by this Commission, following the submission of the revised Plan. We note that significant evidence and arguments have been presented in this proceeding regarding the proposed Load Curtailment Program. The Parties need *not* reintroduce this evidence or repeat these arguments in connection with the filing of a revised Plan. They are free, of course, to offer additional arguments, following the filing of the revised Plan.

The ALJs recommended that PPL file its revised Plan within sixty days of the entry of this Opinion and Order. In order to expedite this matter, we will order PPL to file its revised Plan within thirty days of the entry of this Opinion and Order. Interested parties may submit Comments within twenty days of the date the revised Plan is submitted. Reply Comments may be submitted within ten days of the date that Comments are due. The Commission shall consider the revised Plan and any Comments and Reply Comments as expeditiously as possible, consistent with due process.

**D. Contracts with CSPs for Load Curtailment**

Constellation averred that it is critical that each EDC seek CSPs to implement their load curtailment programs through an appropriately competitive request for proposals (RFP) process. Constellation M.B. at 4. Constellation explained that through data requests and cross examination, the Parties sought additional detail regarding PPL’s Load Curtailment Program and its procedures for entering into an agreement with one or more CSPs to meet its load curtailment targets. Constellation argued that little clarity was provided as to the reasons and prudency of PPL’s actions. In particular, Constellation stated:

. . . it is unclear whether any CSP has been or is being provided any "competitive 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 ... was provided the appropriate opportunity to "competitively bid" to serve the final contract awarded through the process.

*Id.* at 11 (notes omitted).

Constellation suggested that the Commission reject PPL’s proposed changes to its Load Curtailment Program until the Commission can confirm that PPL has acted prudently, and in accordance with Act 129, in contracting with CSPs.
*Id*. at 9-10.

PPL stated that it will submit the Load Curtailment CSP contract(s) and bid analysis to the Commission for approval in “late 2010/early 2011.” PPL R.B. at 20. The ALJs observed that the Commission will have an opportunity to scrutinize the bidding process as part of the Commission’s review of that filing and found in favor of PPL’s Load Curtailment Program. R.D. at 16-17. Constellation did not except to the ALJ’s recommendation.  We will therefore adopt the ALJs' recommendation.

Nevertheless, we note that we share Constellation’s concerns about the bidding process. We instruct Commission staff to carefully review the RFP process and resulting contracts when they are submitted for our review to ensure that the bid process was fair and open to all CSPs.

 **E. UGI Comments – Fuel Switching Data**

In its Comments, UGI submitted, *inter alia*, that in Ordering Paragraph
No. 33 of the *October 2009 Order*, the Commission adopted UGI’s proposal that customers switching from gas to electric appliances be tracked. UGI Comments at 2. Ordering Paragraph No. 33 states:

33. That UGI’s request to require Electric Distribution Companies to report the frequency of customers switching to electric appliances from gas appliances is granted.

UGI stated that it does not appear that PPL disclosed the information required by Ordering Paragraph No. 33 in its September 2010 Plan or any other publicly available document. UGI argued that the September 2010 Plan is deficient because it does not include a requirement to track EE&C program participants that convert from gas appliances to electric appliances. UGI requested that the Commission direct PPL to: (1) comply with Ordering Paragraph No. 33; (2) amend its Plan to provide for reporting of the gas to electric switching data; (3) explain how the information is tracked and verified; and (4) explain how the information will be made available. UGI Comments at 3-4.

In its Reply to the Comments (PPL Reply), PPL explained that the conversion data it is collecting contains contradictory information and requires significant verification. PPL stated that once the data collection issues have been addressed, this information will be provided in a supplement to the Program Year 1 (PY1) Annual Report or as part of the PY2, second quarter report. PPL averred that it plans to submit the data by January 31, 2011. PPL argued that no changes to its Plan are necessary since pages 49, 78, and 128 of the September 2010 Plan state that the data will be tracked and included in the annual report. PPL also stated that it will provide “detail” how the information was tracked and verified. PPL Reply at 11-12.

In their Recommended Decision, the ALJs observed that UGI did not appear at either the pre-hearing conference or at the November 17, 2010 hearing in this proceeding and did not offer their Comments into the record. Therefore, the ALJs did not address UGI’s Comments. However, the ALJs noted that PPL was analyzing the information requested by UGI and will report the results to the Commission in the future. R.D at 17.

We find that PPL is in compliance with Ordering Paragraph No. 33 of the *October 2009 Order*. The provisions in the September 2010 Plan delineate that: (1) PPL will track and report if a customer switches to electric appliances from gas appliances or from electric appliances to gas appliances; and (2) PPL will file this data in its annual report. Further, PPL is taking steps to overcome problems in data collection and anticipates it will submit the first set of data for PY1 in the very near future.

Nevertheless, upon further review, clarification of our *October 2009 Order* is appropriate at this time. The intent of our finding in the *October 2009 Order* was not to maintain as proprietary the level of fuel switching from a combustion appliance or equipment to an electric appliance or equipment within each EDC’s service territory. Accordingly, we shall clarify our *October 2009 Order* by requiring each EDC to include within its Act 129 Annual Report to the Commission, commencing with the 2011 Report, the same data provided to the SWE regarding fuel switching from a combustion appliance or equipment to an electric appliance or equipment within each Program Year and on a cumulative basis.

**F. PCOC Comments**

PCOC submitted Comments on October 18, 2010, and although it was present at the pre-hearing conference of November 12, 2010, 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 PPL 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 though the CFL Program will be reflected in the residential customer sector.
PPL M.B. at 33.

**G. OSBA Answer**

In its Answer, the OSBA argued that PPL did not reconsider and report on the magnitude of the incentives in the December 2009 Plan. OSBA Answer at 3. However, as noted by the ALJs, the OSBA did not cross-examine PPL’s witness, nor did it offer evidence to refute PPL’s testimony. R.D. at 17.

The OSBA also expressed a concern that PPL may not have modified its EE&C Plan to reflect changes to the TRM directed by the Commission. OSBA Answer at 3. PPL responded that no changes are required to its Plan to reflect changes in the TRM. PPL St. 5, p. 34. PPL explained that 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.* The ALJ’s concurred with PPL and we agree. R.D. at 18.

**V. Conclusion**

We concur with the Recommended Decision that the proposed changes reflected in *the September 2010 Plan* should be approved, and consequently, we will grant the Petition of PPL for Approval of Changes to its Act 129 EE&C Plan. However, we reaffirm our position presented in the *October 2009 Order* that *all* changes to PPL’s Plan must be submitted to the Commission for review and approval prior to implementation. Consequently, we direct PPL to file with the Commission, for its approval, a revised black-line version of its Plan that reflects all proposed changes to its Plan, as approved by this Commission to date, within thirty days of the entry of this Opinion and Order; **THREFORE:**

**IT IS ORDERED:**

1. That the Exceptions of PPL Electric Utilities Corporation, filed January 5, 2011, are denied.
2. That the Exceptions of PP&L Industrial Customer Alliance, filed January 5, 2011, are granted, in part, and denied, in part, consistent with this Opinion and Order.
3. That the Recommended Decision of Administrative Law Judges Elizabeth H. Barnes and Dennis J. Buckley, issued December 17, 2010, is adopted, as modified by this Opinion and Order.
4. That PPL Electric Utilities Corporation’s Petition for Approval of Changes to its Act 129 Energy Efficiency and Conservation Plan, filed September 15, 2010, is approved, consistent with this Opinion and Order.
5. That PPL Electric Utilities Corporation is permitted to implement its Energy Efficiency and Conservation Plan, as filed on September 15, 2010, consistent with this Opinion and Order.
6. That all proposed modifications to PPL Electric Utilities Corporation’s Energy Efficiency and Conservation Plan, as approved by this Commission up to the date of filing, shall be submitted to the Commission as a petition to modify this, or subsequent, Opinions and Orders addressing its Plan.
7. That PPL Electric Utilities Corporation shall file, with the Commission and all Parties of record in this proceeding, a black-line version of its Energy Efficiency and Conservation Plan reflecting all proposed modifications to its Plan, as approved by this Commission up to the date of filing, within thirty (30) days of the entry of this Opinion and Order.
8. That, as part of the revised Energy Efficiency and Conservation Plan flied pursuant to Ordering Paragraph No. 7, PPL shall address whether changes to its Plan are warranted to meet the provisions of the Commission’s Report of the Act 129 Low Income Working Group, released April 27, 2010, at Docket No. M-2009-2146801.
9. That interested parties may submit recommendations or comments on the revised Energy Efficiency and Conservation Plan to be filed, pursuant to Ordering Paragraph No. 7, within twenty (20) days of the submission of the revised Plan. Interested parties will have ten (10) days to file replies to any recommendations or comments.
10. That any directive, requirement or disposition contained in the body of this Opinion and Order, that is not the subject of a individual Ordering Paragraph, will have the same force and effect as if fully contained in this part.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: January 27, 2011

ORDER ENTERED: January 28, 2011

1. Descriptions of: (1) Act 129; (2) the Commission’s various Act 129 proceedings; (3) PPL’s previous EE&C Plans; and (4) the Commission’s review and approval of PPL’s initial EE&C Plan were set forth in our Opinions and Orders at this docket entered October 26, 2009, and February 17, 2010. [↑](#footnote-ref-1)
2. On October 18, 2010, PCOC re-filed its Petition and its Comments to correct an e-filing rejection of the documents it previously filed on October 15, 2010. [↑](#footnote-ref-2)
3. On October 18, 2010, ACORN re-filed its Petition to Withdraw to correct an e-filing rejection of the Petition it previously filed on October 15, 2010. [↑](#footnote-ref-3)
4. 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. [↑](#footnote-ref-4)
5. The issues regarding the modifications to the Load Curtailment Program and the increase in the peak load reduction target are discussed, *infra*. [↑](#footnote-ref-5)