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| **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** | |
| Public Meeting held May 24, 2012 | |
| Commissioners Present:  Robert F. Powelson, Chairman  John F. Coleman, Jr., Vice Chairman  Wayne E. Gardner  James H. Cawley  Pamela A. Witmer | |
| Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan | Docket No. M-2009-2093216 |

**OPINION AND ORDER**

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**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition of PPL Electric Utilities Corporation (PPL) for Approval of its Act 129 Energy Efficiency and Conservation (EE&C) Plan filed February 2, 2012 (Petition). By this Petition, PPL requests Commission approval of modifications to its Plan last approved by Opinion and Order entered May 6, 2011, at the above-captioned docket (*May 6, 2011 Order*). Attached as Appendix A to the Petition is version of the “EE&C Plan” (Revised Plan) that reflects the proposed changes to the Plan last approved by the *May 6, 2011 Order* (May 2011 Plan).

Also before the Commission is a Joint Petition for Settlement (Settlement) filed by PPL, the PP&L Industrial Customer Alliance (PPLICA) and the Sustainable Energy Fund of Central Eastern Pennsylvania (SEF) on April 30, 2012. The Settlement resolves the issues raised by PPLICA and SEF with respect to the modifications proposed in the Revised Plan.

# I. Background and History of the Proceeding[[1]](#footnote-1)

Act 129 of 2008 (Act 129) was signed into law on October 15, 2008, and 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 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).

Pursuant to Act 129, PPL filed its initial Plan with the Commission on July 1, 2009. By Opinion and Order entered October 26, 2009, at this docket (*October 2009 Order*), the Commission approved PPL’s plan subject to specific modifications. In response to the *October 2009* *Order,* PPL filed a revised black-lined plan which was approved by Opinion and Order entered February 17, 2010 at this Docket (*February 2010 Order*).

On September 15, 2010, PPL filed a petition to modify certain provisions of its plan. By Opinion and Order entered January 28, 2011, at this Docket (*January 2011 Order*), the Commission approved specific modifications, but deferred approval on some proposed modifications until PPL filed a revised plan that included all plan modifications made subsequent to the plan approved by the *February 2010 Order.* On February 28, 2011, PPL submitted a revised black-lined plan which was approved by the *May 6, 2011 Order* (May 2011 Plan).

As stated *supra*, by its Petition, PPL requests that the Commission approve changes to its May 2011 Plan as reflected in the Revised Plan submitted as Appendix A to the Petition. Comments on the Plan were filed by the Office of Consumer Advocate (OCA), Pennsylvania Communities Organizing for Change d/b/a Action United, Inc. (PCOC), PPLICA and SEF on March 5, 2012. Reply Comments were filed by PPL on March 26, 2012.

In their respective Comments, PPLICA and SEF requested an investigation and hearings on specific modifications set forth in the Petition and Plan. By Secretarial Letter issued April 10, 2012, the Commission granted the request of PPLICA and SEF and referred the matter to the Office of Administrative Law Judge (OALJ) for further proceedings. The OALJ was directed to proceed in a manner that the Administrative Law Judge (ALJ) could certify the record to the Commission by May 1, 2012. Since all Parties to this proceeding had an opportunity to file Comments and Reply Comments on the Petition and the Plan, the proceedings before the ALJ were limited to those issues for which PPLICA or SEF had requested an investigation and hearing.

By Hearing Notice dated April 16, 2012, an initial hearing was scheduled for April 25, 2012, in Harrisburg. Subsequently, on April 17, 2012, ALJ Elizabeth H. Barnes issued a Scheduling Order which, *inter alia*, established a procedural schedule culminating in the deadline for Main Briefs of May 1, 2012.

On April 20, 2012, PPL, PPLICA and SEF notified ALJ Barnes that they reached a settlement in principle that resolved the outstanding issues in this proceeding. PPL, PPLICA and SEF indicated that they shared the terms of the proposed settlement with the other parties to this proceeding and they requested that the procedural schedule for this proceeding be suspended. On April 23, 2012, ALJ Barnes issued a Cancellation Notice for the initial hearing scheduled for April 25, 2012.

On April 30, 2012, PPL, PPLICA and SEF (Joint Petitioners) filed the Settlement, a Statement in Support of the Settlement (Statement in Support), and a Stipulation for Admission into Evidence. The Joint Petitioners aver that the Settlement resolves all of the issues raised by PPLICA and SEF with respect to the proposed modifications to the Plan. The Joint Petitioners represented that the Commission’s Bureau of Investigation and Enforcement, the OCA, the Office of Small Business Advocate, PCOC, Richards Energy Group, Inc., and Eric Epstein, *pro se,* have indicated that they do not object to the Settlement. Settlement at 1.

On April 30, 2012, ALJ Barnes issued an Order Certifying the Record to the Commission. Accordingly, the following documents were admitted into the evidentiary record: (1) the Petition and Appendices A and B; (2) Comments of PPLICA; (3) Comments of SEF and (4) Reply Comments of PPL.

# Description of the Overall Plan

PPL’s May 2011 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[[2]](#footnote-2)
      11. Low-income E-Power Wise
      12. Commercial and Industrial Custom Incentive Program
      13. HVAC Tune-up Program
      14. Load Curtailment Program

Revised Plan at 10.

As discussed*, infra*, PPL proposes to eliminate the ENERGY STAR® New Homes Program and remove Time of Use Rates from the May 2011 Plan. PPL also proposes to expand the Compact Fluorescent Light Program and rename it the Residential Lighting Program. *Id*.

PPL explains that, in order to meet the requirements of Act 129,[[3]](#footnote-3) its Revised Plan is designed to meet the following targets:

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

*Id*. at 11. PPL projects that the programs in the proposed Revised Plan will exceed these targets and will result in a total energy savings over the four program years of approximately 1,275,740 MWh/yr. and a peak load reduction of approximately 350 MW during the 2012 program year*. Id*. at 32.

PPL’s Revised Plan is also designed to comply with the designated spending cap of 2% of its 2006 annual revenue for each year of the four-year Plan. 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.* at 11. The actual budget presented in the proposed Revised Plan projects total costs of $245 million. *Id*. at 35.

# Commission Review of Minor and Non-Minor EE&C Plan Modifications

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 Act 129 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 Commission further addressed the procedures for plan modifications in the *October 2009 Order*. By Order entered June 10, 2011, at Docket No. M-2008-2069887 (*June 2011 Order*) the Commission, *inter alia*, established an expedited review process to approve minor changes to Act 129 EE&C plans (minor changes) and clarified the process for the review and approval of all other (non-minor) changes to Act 129 EE&C plans. The EE&C plan changes that qualify as minor changes are:

* The elimination of a measure that is underperforming or has exhausted its budgeted amount.
* The transfer of funds from one measure to another measure within the same customer class.
* A change in the conditions of a measure, such as the addition of new qualifying equipment or a change in the rebate amount that does not increase the overall costs to that customer class.

*June 2011 Order* at 20.

In order to expedite the implementation of minor plan changes, the Commission delegated the authority to review and approve minor changes to the staff of its Bureau of Technical Utility Services[[4]](#footnote-4) with the assistance of the Law Bureau (Commission Staff). The *June 2011 Order* set forth the following procedure for the submission and review of minor plan changes:

* EDCs are directed to file with the Secretary and serve on the [OCA], the Office of Small Business Advocate (OSBA), the [Bureau of Investigations and Enforcement (BI&E)][[5]](#footnote-5) and all parties of record any proposed minor EE&C Plan changes. The filing must clearly state that it is to be reviewed under the expedited review process for approving proposed minor changes to an EDC’s Act 129 EE&C Plan. EDCs are directed to file sufficient documentation to support the proposed minor EE&C Plan change, to include, but not limited to, the affected pages of the plan, a redlined version of the affected pages and an explanation of how the proposed minor changes affect the previously approved plan. In addition, we direct the EDCs to post a complete redlined version of its proposed plan on its website for public inspection upon filing.
* All interested parties are directed to file comments on the proposed minor EE&C Plan changes within 15 days after the proposed minor EE&C Plan changes have been filed with the Secretary.
* All interested parties are directed to file reply comments within 25 days after the proposed minor EE&C Plan changes have been filed with the Secretary.
* Commission Staff are directed to issue a Secretarial Letter approving, denying, or transferring to the [OALJ] for hearings, some or all of the proposed minor EE&C Plan changes, along with an explanation, within 35 days after the proposed minor EE&C Plan changes have been filed with the Secretary. Commission Staff have the discretion to extend this consideration period by an additional 10 days.
* Parties are directed to file within 10 days after service of the Secretarial Letter petitions for appeal from actions of the staff in accordance with 52 Pa. Code § 5.44.
* Staff is directed to deny, without prejudice, any proposed changes that do not fall within this definition of minor EE&C Plan change.

*June 2011 Order* at 18-20.

The *June 2011 Order* also clarified the procedure for the review and approval of non-minor changes as follows:

EDCs seeking approval of changes that do not fit within the Minor EE&C Plan change criteria listed above must file a petition requesting that the Commission rescind and amend its prior order approving the plan in accordance with 52 Pa. Code §§ 5.41 (relating to petitions generally) and 5.572 (relating to petitions for relief). This petition should explain the specific reasons supporting the requested modifications, evidence supporting the modifications to the plan and cost recovery mechanism. This petition shall be served on all parties, who will have 30 days to file comments, an answer or both. All parties will then have 20 days to file replies, after which the Commission will determine whether to rule on the changes or refer the matter to an [ALJ] for hearings and a recommended decision.

This procedural schedule shall apply to all petitions for approval of an EE&C Plan change, other than petitions seeking review under the expedited review process for approving proposed minor EE&C plan changes, to include Petitions filed at times other than those proposed during the annual review process. This procedural schedule supersedes the procedural schedule set forth in 52 Pa. Code §§ 5.41, 5.61 and 5.572, as well as our Opinion and Order in *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans* at Docket Nos. M‑2009‑209222, M-2009-2112952 and M-2009-2112956 (entered March 18, 2011) at 3. We are taking this step to reduce confusion and limit the number of procedural schedules applicable to petitions seeking review of changes to EE&C Plans.

*June 2011 Order* at 20-21*.*

Through its Petition, PPL requests approval of fifty-six minor modifications and six non-minor changes and to its May 2011 Plan. Petition at 1. PPL states that although the Commission established a bifurcated process for approving minor and non-minor EE&C plan modifications, PPL has submitted both its proposed minor and non-minor modifications in a single petition. PPL avers that, by filing a single petition, PPL can utilize a single black-line plan that better illustrates the collective impacts of all of the changes proposed by PPL. PPL also requests that both the minor and non-minor changes be reviewed under the procedures for non-minor changes established in the *June 2011 Order*. *Id*. at 5.

We concur with PPL’s request to consider both the minor and non-minor changes together under the procedure for non-minor changes. As indicated in the *January 2011* *Order*, the Commission cannot adequately review an EE&C plan if the plan only contains a subset of the changes that the EDC intends to implement. *January 2011* *Order* at 19.By reviewing all of the changes proposed by PPL through a single petition, a single revised plan and a single review process, the Parties and the Commission can assess the impact of proposed changes on the total plan budget and the total energy savings and peak demand reductions projected by PPL.

# Proposed Modifications to PPL’s Plan

In its Petition, PPL describes fifty-six minor modifications and six non-minor changes to its Plan. Petition at 15-38. Comments were submitted on twelve minor modifications and four non-minor modifications. Below is a summary of the forty-four minor modifications and the two non-minor modifications that were *not* addressed in the Comments. Descriptions of the modifications that were addressed in the Comments are presented in the next section, *infra*. The modifications are numbered and titled consistent with the way they are presented in the Petition.

## Minor Modifications

In its Petition, PPL has grouped the fifty-six minor modifications by the three conditions that qualify a plan modification as a minor change: (1) elimination of a measure that is underperforming or has exhausted its budgeted amount; (2) the transfer of funds from one measure to another within a customer class and (3) the change in the conditions of a measure. Below, we have summarized the forty-four uncontested proposed minor modifications:

### Elimination of a Measure

**2. Discontinue Rebate for ENERGY STAR® Light Fixtures**

In the Residential Efficient Equipment Incentive Program, PPL offers incentives up to $10 for the installation of ENERGY STAR® light fixtures. PPL proposes to discontinue the rebate due to low participation levels, high costs, and low savings. Petition at 15. Revised Plan at 73-78.

**7. Discontinue Rebate for Time Clocks**

In the Small C&I and Large C&I Efficient Equipment Incentive Programs, PPL offers rebates up to $100 for time clocks and timers that reduce operating hours by at least 20%. PPL proposes to discontinue this measure because time clocks, *inter alia*, are the baseline for recent code changes, and therefore, would have no Act 129 EE&C savings. Petition at 17. Revised Plan at 159-163,   
190-192.

**8. Discontinue Some Efficiency Levels for Heat Pumps and Central Air Conditioners**

PPL offers rebates ranging between $150 and $250 for the installation of heat pumps with a Seasonal Energy-Efficiency Rating (“SEER”) of 14.5 and air conditioning units with SEERs of 14.5 and 15 in the Residential Efficient Equipment Incentive Program. PPL proposes to eliminate these measures because it has received few applications for these units and because central air conditioning has limited energy savings. PPL states that it wants to encourage customers to strive for SEERs that are higher than 14 and 15. Petition at 17. Revised Plan at 73-78.

**9. Discontinue Demand Control Defrost**

PPL proposes to discontinue demand control defrost (commercial refrigeration) as an eligible measure in the Small C&I Efficient Equipment Incentive Program. PPL offers rebates of $85 per case door. PPL explains that there have been no requests for this measure as of December 2011 and there is not an approved TRM savings protocol for this measure. PPL states that this measure will still be eligible for an incentive under the C&I Custom Incentive Program. Petition at 17. Revised Plan at 157-163.

**10. Discontinue Rebate for Chiller Pipe Insulation**

PPL proposes to discontinue the rebate for chiller pipe insulation in the Small C&I and Large C&I Efficient Equipment Incentive Programs because heating, ventilation, and air conditioning codes now require this insulation and incremental savings is negligible. PPL currently offers a rebate of $1.60 per linear foot. PPL states that this measure will still be eligible for an incentive under the C&I Custom Incentive Program if customers want to exceed minimum insulation levels. Petition at 17. Revised Plan at 157-163, 190-192.

**11. Discontinue Rebate for Cooling Tower Two-Speed Fan Motor**

PPL proposes to discontinue the rebate for Cooling Tower Two-Speed Fan Motor in the Small C&I and Large C&I Efficient Equipment Incentive Program due to the fact that there is no customer participation and relatively low savings for a commercial measure. PPL submits that the savings specified in the TRM are only 6% of the savings originally estimated for this measure in PPL’s initial EE&C Plan. PPL currently offers a rebate of $1 per ton to replace a one-speed motor. PPL states that this measure would still be eligible for an incentive in the C&I Custom Incentive Program. Petition at 18. Revised Plan at 157-163, 190-192.

**12. Discontinue Rebate for Programmable Thermostats**

PPL proposes to discontinue the rebate programmable thermostats in the Residential, Small C&I, and Large C&I Efficient Equipment Incentive Programs. PPL states that, for commercial thermostats, the Statewide Evaluator (SWE) did not approve PPL’s proposed Technical Reference Manual (TRM) savings protocol, and therefore, the savings are zero unless treated as a custom measure in the C&I Custom Incentive Program. For residential thermostats, PPL points out that the existing TRM protocol applies only to central air conditioning and electric resistance heat. PPL submits an incentive is not currently available for central air conditioning because savings are negligible. For electric resistance heat, PPL avers that customer interest is low in the rebates up to $50 and verification of the installation is too costly and would be intrusive. Petition at 18. Revised Plan at 73-78, 157-163, 190-192.

**13. Revise Bonus Rebate Structure for Energy Assessment & Weatherization Program**

PPL proposes to discontinue the rebate of up to $100 for air infiltration sealing in the Residential Energy Assessment & Weatherization Program because it has limited savings and would require costly pre- and post-blower door tests, at a cost of approximately $250 to $500 per test, to determine the savings. Petition at 18. Revised Plan at 85-89.

**Transfer of Funds within a Customer Class**

**15. Transfer Funds from the Large C&I Portion of the Efficient Equipment Incentive Program to the Large C&I Portion of the C&I Custom Incentive Program**

PPL proposes to reallocate approximately $10 million of Large C&I direct program costs from the Efficient Equipment Incentive Program to the Custom Incentive Program. PPL explains that this transfer has no net impact on the total costs allocated to the Large C&I sector but will increase energy savings because custom projects tend to provide greater savings than prescriptive projects (e.g. lighting). PPL notes that participation by Large C&I customers has been more heavily weighted toward the Custom Incentive Program. Petition at 19. Revised Plan at 35-37, 262-272.

**Adding a Measure or Changing the Conditions of a Measure**

**17. Reduce Projected Participation, Savings, and Costs for the Small C&I Sector**

PPL proposes to reduce the projected participation and savings for the Small C&I sector for most measures in the Efficient Equipment Incentive Program and the C&I Custom Incentive Program. PPL states that the overall Small C&I savings reduction is approximately 267,000 MWh/yr. (44%) and 37 MW (44%) and the overall Small C&I cost reduction is approximately $1 million (1%). PPL explains that the cost will not decrease in the same proportion as energy and demand savings because it requires increased incentives and costs to reach and encourage this sector to participate, including a shift from custom measures to prescriptive measures. PPL also explains that it initially estimated the savings from the Small C&I sector based on the portion of energy consumption from that sector because it did not have time to conduct a market potential study. PPL states that its revised projections are based on actual results from the first two program years. PPL notes that its actual results are relatively consistent with the actual results of other Pennsylvania EDCs. Petition at 20-21. Revised Plan at 35-37, 262-272.

**20. Adjust Participant Level and Savings for Behavior & Education Program**

PPL proposes to increase the participation levels from 25,000 to 104,000 customers and increase the projected savings from 18,100 MWh to 23,505 MWh for the program with no additional cost. PPL also proposes to reduce the life of the measure to one year. Petition at 23. Revised Plan at 35-37, 130-136.

**21. Change Projected Participation & Savings for Appliance Recycling Program; Reduce Total Projected Program Savings and Costs**

PPLoffers a $35 incentive to recycle a working refrigerator or freezer and a $25 incentive for a window air conditioner in the Residential Appliance Recycling Program. PPL proposes to reduce the number of projected appliances from 69,600 to 57,500 to reflect more realistic targets. PPL also proposes to reduce the per-unit savings to conform to 2011 and 2012 TRM changes. PPL estimates that program savings are reduced about 40,000 MWh/yr. and the costs of the program will decline by about $1.8 million. Petition at 23. Plan at 35-37, 97-104.

**22**. **Add Ductless Heat Pumps**

PPL proposes to add residential ductless heat pumps as an eligible measure in the Efficient Equipment Incentive Program because they were approved in the 2011 and 2012 TRMs. PPL proposes to offer incentives ranging between $100 and $200 per 12,000 Btu/hr. PPL explains that these additions provide more options for customers and the savings can be determined from the TRM instead of the more costly custom protocols. Petition at 23. Revised Plan at 73-78.

**23.** **Add and Modify Measures in Compact Fluorescent Lighting Campaign Program and Rename the Program**

PPL proposes to expand the eligible products in the Compact Fluorescent Lighting Campaign program to include residential light-emitting diodes (LEDs) and other efficient lighting technologies to stimulate their use and to expose customers to those technologies. Accordingly, PPL proposes to change the name of the program to “Residential Lighting.” PPL submits that this proposal does not increase the cost of this program. Petition at 23. Revised Plan at 90-96.

**24.** **Add C&I LED Lighting**

PPL states that LEDs for C&I customers were added to the 2011 TRM and PPL proposes to add LED lighting to the Efficient Equipment Incentive and Custom Incentive Programs. The proposed rebates will be $0.10 per KWh and will be available to either new construction or retrofit projects. Petition at 24.

**25. Add Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps**

PPL explains thatpackaged terminal air conditioners and packaged terminal heat pumps were added to the TRM and PPL proposes to add these options as eligible measures in the Efficient Equipment Incentive Program. Petition at 24. Revised Plan at 156.

**26. Add Heat Pump Water Heaters to WRAP and adjust WRAP Projected Savings and Participation**

PPL proposes to add heat pump water heaters as an eligible measure for low-income WRAP. Based on actual participation rates during the first two program years, PPL is also adjusting the estimated energy savings, participation rates and program costs. PPL explains that, since savings and costs per project are higher than originally estimated, the number of jobs (participants) is reduced to stay on budget. As a result, PPL is increasing WRAP savings from approximately 18,695 MWh/yr. to approximately 21,000 MWh/yr. and proposes to reduce the projected participant levels from approximately 23,590 to 14,590. There is no change in forecasted total program cost as a result of these modifications. Petition at 24. Revised Plan at 37-39, 137-143, 265-266.

**27. True-Up Projections of Peak Load Reductions from Energy Efficiency Measures**

PPL proposes to decrease the projected peak load reduction by approximately 10 MW from the energy efficiency measures/programs to reflect current results, trends and changes to the TRM. Petition at 24-25.

**28. Change Rebate and Estimated Participation Level for ENERGY STAR® Refrigerators**

PPL proposes to reduce the rebate for ENERGY STAR® refrigerators from $50 to $25 and increase the expected number of units in the Efficient Equipment Incentive Program from 21,860 to approximately 52,000. PPL explains that as of December 2011, there were approximately 40,000 rebates for refrigerators. PPL states that the lower rebate reflects the fact that the market for energy efficient refrigerators is well established and it will help to slow participation by the Residential sector as it approaches its projected total savings and cost budget. PPL finds it necessary to continue to offer a smaller rebate because it helps identify refrigerators for recycling and keeps less efficient refrigerators from becoming secondary units or from being disposed of improperly. Petition at 25. Revised Plan at 73-76.

**29. Change Eligibility Requirements for LED Traffic Lights**

PPL proposes to streamline rebates and change the eligibility requirements for LED traffic lights in the GNI (Government, Non-Profit and Institutional) Efficient Equipment Incentive Program. The proposed changes would provide a $25 or $30 rebate, depending on the size of the light, for red and green lights. PPL explains that the rebates for yellow LED lights are being discontinued because they have no savings. PPL also proposes to limit the availability of the rebates to LED lights that replace incandescent traffic lights. PPL explains that there would be no rebate if a LED traffic light/bulb replaces another LED traffic light/bulb because there would be no savings. Petition at 25. Revised Plan at 207.

**30. Change Eligibility Requirements for Lighting Power Density Reduction (New Construction Lighting)**

PPL proposes to change the minimum required lighting power density (LPD) reduction versus code from 15% to 5% in the Efficient Equipment Incentive Program. PPL explains that this threshold is more consistent with practices of other Pennsylvania EDCs and other states. PPL avers that the 5% threshold is sufficient to ensure the customer affirmatively decides to exceed code requirements, and not simply exceed them by accident by an incidental amount (such as 0.1%). PPL also proposes to cap the rebate at 50% of equipment cost to prevent excessive incentives. PPL submits that, to conform with changes to the 2011 TRM, PPL will allow the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) whole building method as an alternative to the space-type method of determining savings. Petition at 25.

**31. Change Estimated Participation Level for Room Air Conditioners**

PPL proposes to reduce the expected number of rebates for installing an ENERGY STAR® room air conditioner in the Residential Efficient Equipment Incentive Program from approximately 38,000 to approximately 9,000 to reflect current participation. PPL avers that there is no reason to increase incentives beyond the current $25 or to promote this measure more aggressively to increase participation because savings are minimal. PPL explains that it also considered discontinuing the rebate because per-unit savings is very low (59 kWh/yr. per air conditioner), which is slightly more than the savings from one CFL. PPL submits it will continue this rebate because it benefits low-income customers who are likely to continue to buy room air conditioners, and PPL wants to encourage customers to buy ENERGY STAR® rated units. Petition at 26. Revised Plan at 73-75.

**32. Change Eligible Motor Efficiencies & Rebates**

PPL proposes to increase the minimum motor efficiencies in the C&I Efficient Equipment Incentive Program to align to revised industry standards that became effective December 2010, and were updated in the TRM. The efficiencies and incentives will be presented on PPL’s E-power web site. Petition at 26. Revised Plan at 157.

**33. Change Residential LED Lighting Eligibility**

PPL proposesto clarify that the prescriptive rebate for LED fixtures or retrofit kits in the Efficient Equipment Incentive Program applies to residential use only. PPL states that the C&I LED lighting will be covered in the PPL’s C&I Custom Incentive Program or through C&I lighting rebates at $0.10 per kWh/yr. in the Efficient Equipment Incentive Program. PPL explains that it has initiated this change because savings for residential and C&I lighting are determined differently per the TRM. PPL also explains that a specific TRM protocol was developed for the residential fixture so a residential customer does not have to complete the complex Pennsylvania Lighting Spreadsheet for an LED fixture. Petition at 26.

**34. Clarify Rebates Caps**

PPL proposes a general clarification for all programs and measures, except for the C&I Custom Incentive Program, that rebates paid cannot exceed the cost of the measure. PPL submits that this limitation was implied, but was not specifically delineated in the May 2011 Plan. In the C&I Custom Incentive Program, the rebate cap is unchanged and cannot exceed fifty percent of the project cost. *Id*.

**37. Change Rebate for De-Lamping**

PPL proposes to change the rebate structure in the C&I Efficient Equipment Incentive Program for lighting retrofits that include de-lamping. Instead of one $50 incentive, PPL proposes five incentives ranging from $30 to $50 based on the number of lamps removed and length of the lamps. PPL explains that this modification will better align rebates with the savings. Petition at 27. Revised Plan at 159.

**38. Change Eligibility Requirements for Maximum Number of Air Conditioners in Appliance Recycling Program**

PPL proposes to increase the maximum number of recycled air conditioners per customer eligible for the $25 incentive from two to four in the Appliance Recycling Program. PPL explains that change is being proposed based on experience and information received from customers that customers often have more than two air conditioners. PPL states that in, select situations, such as multi-family housing units with master metering, PPL will allow more than four room air conditioners. PPL submits that this change should assist PPL Electric to make-up certain peak load reductions that are being decreased in other measures. Petition at 27. Revised Plan at 100-104.

**39. Increase Projected Participation/Savings for Large C&I**

PPL proposes to increase projected Large C&I energy savings by approximately 91,000 MWh/yr. to reflect actual participation and anticipated projects as of June 1, 2011, the date when trade allies and customers were notified of the project reservation requirements. PPL states that the increased savings is mostly in the C&I Custom Incentive Program. PPL submits that projects are overcommitted compared to the initial projections in the May 2011 Plan and PPL does not want to cancel any current reservations. PPL also submits that the additional savings will help to offset reductions in the Small C&I sector. PPL explains that the revised estimated average for Large C&I savings has decreased from approximately $0.21/kWh per year to approximately $0.126/kWh per year, allowing PPL to fund more projects within the current budget. Petition at 27-28. Revised Plan at 33-33.

**40. Increase Projected Participation and Savings for Compact Fluorescent Lighting Program; Reduce Projected Cost**

PPL proposes to increase projected savings in the Compact Fluorescent Lighting (CFL) Campaign program by approximately 100,000 MWh/yr. and decrease the projected cost of this program approximately $2.5 million. PPL explains that customer demand is high for the program and CFLs are very cost-effective. PPL submits that the additional savings will help to offset reductions in the Small C&I sector. Petition at 28. Revised Plan at 95.

**41. Change Rebate Structure for T5, T8, and High Performance T8 Lighting**

PPL proposes to change the rebate structure from $5 to $19 per fixture to $1 to $6 per lamp for T5, T8, and high performance T8 lighting in the C&I Efficient Equipment Incentive Program. PPL explains that the proposed per lamp rebates are better aligned to actual savings than the existing per fixture rebates. Petition at 28. Revised Plan at 159.

**42. Change Occupancy Sensor Rebate**

PPL currently provides a rebate of up to $45 for an occupancy sensor (OS). PPL proposes to provide the current rebate for passive infrared or ultrasonic sensors and create a new rebate of up to $25 for OS used in conjunction with daylighting (DL) controls. PPL explains that the rebate for an OS coupled with DL controls is being lowered because the customer would still receive a separate rebate for the DL control. PPL also explains that the savings for lighting simultaneously controlled by an occupancy sensor and daylighting controls are less than the individual savings from OS and DL separately. PPL submits that lowering the rebate better aligns the incentive with the savings. Petition at 28. Revised Plan at 158-159.

**43. Change Eligibility Requirement for C&I Wall & Ceiling Insulation**

PPL proposes to change the eligibility requirement in the C&I Efficient Equipment Incentive Program for Wall and Ceiling Insulation for existing structures from “current ASHRAE standard +R11” to “a minimum of R11 and must meet or exceed ASHRAE.” PPL also proposes to revise eligible space conditioning types in the Efficient Equipment Incentive Program and the Residential Assessment and Weatherization Program. PPL explains that these changes are being made to align with the HVAC baseline efficiencies of the 2011 TRM. Petition at 28. Revised Plan at 84-85, 159.

**44. Change Eligibility Requirement for T5 and T8 Light Fixtures**

PPL proposes to change the eligibility requirement for the incentive to install T8 or T5 light in the Efficient Equipment Incentive Program from “Must replace T12 (lamp & electronic ballast)” to “Replace fixture with T5 or T8 lamps and ballast.” PPL explains that this change will enable customers wishing to replace other types of inefficient fixtures to participate. Petition at 29. Revised Plan at 159.

**45. Clarify Eligibility Requirement for Display Cases**

PPL proposes to clarify the eligibility requirement for the $40 per unit incentive for refrigerated display cases in the Efficient Equipment Incentive Program. The proposed modification includes changing “High Efficiency” on the rebate chart to “see incentive application for details.” PPL explains that the new standards are aligned with requirements of the 2011 TRM. Petition at 29. Revised Plan at 158.

**46. Clarify Eligibility for Energy Assessment & Weatherization Audit Rebate**

PPL proposes to clarify eligibility for the Residential Energy Assessment and Weatherization Program. The proposed modification includes changing the language for the audit rebate eligibility requirement from “air conditioning or electric heat” to “central air conditioning or main source electric heat.” PPL explains that this change is being proposed because savings for measures implemented as a result of audit recommendations are negligible in the absence of central air conditioning or electric primary heating systems. For example, PPL submits that savings are negligible when individual spaces are conditioned with room air conditioners, electric baseboards or space heaters. Petition at 29.

**47. Change Classification of WRAP and E-Power Wise Measure Costs and Incentives**

PPL explains that, in accordance with the Commission’s *2011 Total Resource Cost Test Order* at Docket No. M-2009-2108601 (Order entered August 2, 2011), the cost of direct install measures for WRAP and E-Power Wise should be classified as “CSP Direct Program Costs,” not “incentives.” PPL submits that it had been classifying these costs as “incentives” in its quarterly and annual reports. PPL states that it will make this proposed change effective for Program Year 3 and will not adjust the prior costs in its accounting systems, tracking systems, or reports. *Id.*

**48. General Text Revisions**

In addition to the specific changes delineated in the Petition,PPL proposes to update the text throughout the EE&C Plan to reflect current conditions. *Id.*

**49. Chiller Efficiency**

PPL proposes to change the efficiency requirements for chillers in the C&I Custom Incentive Program to conform to the 2011 TRM. These requirements will be presented on the rebate form on PPL’s E-power web site. Petition at 30. Revised Plan at 157.

**50. High Bay Lighting Eligibility Requirements**

PPL proposes to change eligibility requirements, in the Efficient Equipment Incentive Program, for T5 and T8 high bay fixtures. The modifications include changing “>125 watts” to “>100 watts,” and deleting the requirement to install fixtures in an area with ceiling height greater than 15 ft. PPL explains that these changes accommodate high efficiency fixtures that are less than 125 watts and recognize that fixtures are effective at heights less than 15 ft. PPL states that these less restrictive requirements will encourage increased participation in these measures, especially for the Small C&I sector. Petition at 30.

**51. Clarify Eligibility Requirements for Commercial CFLs**

PPL proposes to delete the requirement that commercial CFLs must be purchased after July 1, 2010, to be eligible for a rebate in the Efficient Equipment Incentive Program. PPL explains that this requirement created customer confusion, since all other measures in that program are retroactive to July 1, 2009. *Id.*

**52. Change Incentive for Pin-Based CFLs**

PPL proposes to change the rebate for pin-based CFLs from $30 per fixture to $30 per fixture for commercial customers and $5 per fixture for residential customers in the Efficient Equipment Incentive Program. PPL avers that these changes better align the incentives with the savings because the hours of use are lower for residential applications than commercial applications. *Id*.

**53. Increase Estimated Participation for Air Source Heat Pumps, Dishwashers, Clothes Washers, and Residential Lighting Retrofits**

PPL proposes to increase the estimated participation levels for these measures in the Efficient Equipment Incentive Program. PPL states that customers have shown more interest than estimated in the May 2011 Plan. The number of incentives for air source heat pumps is being increased from approximately 4,000 to approximately 16,500, dishwashers from approximately 7,000 to approximately 25,000 and clothes washers increased from approximately 2,000 to approximately 44,000. PPL also explains that it initially assumed there would be no residential lighting retrofits, but some residential customers have replaced lighting such as T-12 linear fluorescent fixtures. Petition at 30. Revised Plan at 76-77.

**54. Reduce Estimated Participation for Central Air Conditioners, ENERGY STAR® Light Fixtures, Programmable Thermostats, and High Efficiency Furnaces**

PPL proposes to decrease the estimated participation levels for these measures because customers have shown less interest than initially estimated. The number of incentives for central air conditioners is being reduced from approximately 6,000 to approximately 5,000, ENERGY STAR® light fixtures from approximately 42,000 to approximately 700. Programmable thermostats from approximately 10,000 to approximately 600, and high efficiency furnaces for RTS customers decreased from approximately 500 to approximately 300. *Id.*

**56. Add Direct Mail Option for the E-PowerWise Kits**

PPL proposes to add a direct mail option for E-PowerWise kits. PPL explains that it will mail, directly to qualified customers, energy conservation educational material and a card which the customer would return in order to receive an energy savings kit. The energy kits would include multiple energy-saving measures, such as, compact fluorescent lamps, faucet aerators, and high-efficiency shower heads, as well as instructions for proper installation. PPL states that customers will also be asked to complete and return a survey that documents their actions, which will be used to evaluate and report on program impacts. PPL submits that it is proposing the direct mailing program because community-based organizations, which assist in distributing the energy kits, are currently experiencing cuts in funding, leading to staffing reductions, agency closings, and the elimination of certain programs. PPL also states that this proposed change will have no impact on costs or savings for the program. Petition at 31-32.

## Non-Minor Modifications

Below we have summarized the two uncontested proposed non-minor modifications:

**1. Elimination of the TOU Program**

PPL proposes to delete the TOU Program from its EE&C Plan. PPL explains that, by Order entered on March 9, 2010,[[6]](#footnote-6) the Commission determined that to ensure that PPL Electric’s TOU Program is consistent with the Commission’s Default Service Policy Statement at 52 Pa. Code §§ 69.1801 *et seq*., it directed PPL to collect its TOU Program costs, and to credit the benefits, through its charges and credits to default service customers only. PPL submits that because the Commission has determined that TOU Program costs are to be recovered from default service customers, then any limited savings achieved from the TOU Program will not be counted toward PPL’s EE&C targets. Therefore, PPL is deleting the TOU Program from its May 2011 Plan. PPL states that, as part of its Default Service requirements, PPL will continue to offer time-of-use rates to all customers that have been provided with a smart meter. PPL notes that the TOU Program was initially expected to produce 61 MW of peak load reduction from 150,000 participants. PPL avers that despite the elimination of the TOU Program and the estimated peak load reductions from this program, PPL continues to expect to achieve its Act 129 compliance targets if the other proposed changes to its May 2011 Plan are implemented. PPL also states that the elimination of the TOU Program reduces the EE&C Plan portfolio cost by approximately $5.7 million. Petition at 32-33.

**6. Increase in Participation and Costs for Residential Portion of Renewable Energy Program**

PPL proposes to increase the number of units and total costs for residential photovoltaic (PV) and ground source heat pumps (GSHP) incentives due to the large number of applications that were received when the program opened. PPL explains that it could not equitably prioritize all the applications that were received. Consequently, PPL Electric accepted all applications up until PPL Electric notified the public that the residential portion of the program had closed. PPL submits that this higher participation increased the cost of the residential portion of the program by approximately $800,000 which resulted in a reallocation of costs among different customer classes within the confines of the existing budget. Petition at 38.

# Comments on PPL’s Plan

As noted, *supra*, Comments on the Revised Plan were submitted by PCOC, PPLICA, the OCA and SEF. Of the fifty-six minor modifications and six non-minor modifications outlined in the Petition, PPLICA and SEF requested that the Commission hold hearings and investigate twelve minor modifications and four non-minor modifications. Below is a summary of: (1) the sixteen contested modifications; (2) the Comments submitted by PPLICA and SEF; and (3) PPL’s response to those Comments. Like the preceding section, the modifications are numbered and titled consistent with the way they are presented in the Petition.

## A. PPLICA and SEF Comments on Minor Modifications

**1, 3 and 6. Discontinue Rebates for Dehumidifiers, Office Equipment, and Dishwashers and Clothes Washers.**

PPL proposes to discontinue the rebates for: (1) dehumidifiers in the Residential Efficient Equipment Incentive Program; (2) scanners, printers, and all other office equipment in the Small C&I Efficient Equipment Incentive Program; and   
(3) dishwashers and clothes washers in the Residential Efficient Equipment Incentive Program. PPL avers that actual participation in these three rebate programs has exceeded original targets, there is little or no savings associated with continuing the programs, the administrative and verification costs of these measures are relatively high and continuing these measures would require a funding reduction in other measures. Petition at 15-16.

SEF opposed the discontinuation of these rebates. SEF submits, *inter alia,* that these programs are cost-effective and the success of these programs belies the need to eliminate the rebates. SEF argues that continuing these measures is a better use of funds than the proposed expansion of the Residential Direct Load Control Program, *infra*. SEF avers that PPL has not offered any substantive documentation for the administrative and documentation costs. SEF Comments at 5-7.

In response to SEF’s Comments, PPL states that SEF’s attempt to connect certain rebates with the Direct Load Control Program is not appropriate since the rebates are intended to meet the energy conservation targets of Act 129 and the Direct Load Control program is designed for demand reduction. PPL explains that the Direct Load Control Program is not cost-effective because the measure has a one-year life and all of the up-front costs are amortized over one year. PPL notes that Act 129 does not require that every measure be cost-effective, just the entire portfolio of measures. PPL argues that the Direct Load Control Program is necessary to meet the peak load reduction targets established by Act 129. PPL Reply Comments at 15-18.

**4. Close Residential Portion of Renewable Energy Program.**

PPL proposes to close the residential PV and GSHP portions of the Renewable Energy Program because they were both fully subscribed and because the actual combined Total Resource Cost (TRC) benefit/cost ratio during the second program year was 0.33. The benefit/cost ratio was initially projected to be 1.1, as reflected in the May 2011 Plan. PPL also notes that the measure has relatively high free-ridership, which suggests that customers would have installed the measure in the absence of the rebate. Petition at 16. PPL Reply Comments at 18-19.

SEF points out that PPL launched the measure in March 2010, with a projected four-year participation rate of forty-five PV systems. SEF states that the program was closed two months later with 128 systems. SEF avers that these programs have been successful and more funds should be allocated to the measure. SEF argues, *inter alia*, that solar PV has an 82% peak coincident factor and it would be more cost-effective to offer a solar PV rebate program than to increase funding of the residential Direct Load Control Program which has a TRC benefit/cost ratio of 0.13. SEF Comments at 7-8.

SEF also disagrees with PPL’s assertion that the Solar PV systems have low cost-effectiveness. SEF states that during “the original EE&C Plan proceedings, SEF identified issues with PPL’s cost to benefit analysis” and PPL agreed that SEF’s calculations were correct. *Id*. at 9. SEF believes that a detailed examination is warranted and PPL’s assertion that the program has low cost-effectiveness should not be accepted on its face. *Id.*

**5. Close Government, Non-Profit, Institutional (GNI) Portion of Renewal Energy Program.**

PPL proposes to close the GNI portion of the Renewal Energy Program because this measure is fully subscribed, has reached its budget limit, has a low cost-effectiveness and has high free-ridership. Petition at 16. PPL Reply Comments at 20.

SEF questions, *inter alia*, whether this measure is actually fully subscribed as PPL stated in its Petition. SEF submits that PPL’s current Plan projected fifteen PV systems and 300 GSHPs for the GNI sector. SEF notes that prior to the closing of the program in December 2011, PPL provided assistance for eight PV systems and thirty-seven GSHPs. SEF acknowledges that the funding for the GSHP portion of the program was fully subscribed when the program was closed. However, SEF states that there is no mention of why the PV portion of the program was closed. SEF Comments at 9.

In its Reply Comments, PPL confirms that the funding for the entire program, including both the residential and GNI sectors is fully subscribed. PPL submits that “committed costs” as of February 28, 2012, total $5,640,000, which is over the $5,582,000 budgeted in the May 2011 Plan. PPL Reply Comments at 20.

**14. Consolidate CSP Cost Categories**.

PPL proposes to consolidate the CSP cost estimate breakdown in the EE&C Plan from two items (CSP Labor and CSP Materials/Supplies) to one item, CSP Costs. PPL explains that it manages each CSP budget at the aggregate level, and as long as the CSP is within its budget, the mix of costs in the two categories does not warrant tracking. PPL states that this change will not impact the costs of the Plan, just the manner in which they are reported in the Plan. Petition at 19.

SEF opposes the consolidation of the CSP cost estimates. SEF avers that the difference between CSP labor costs and CSP materials/supply costs provides valuable information to stakeholders in evaluating PPL’s EE&C Plan. SEF Comments at 10.

PPL argues that reporting CSP expenses by detailed cost categories such as labor and materials and supplies would require PPL to micromanage its contractors and would have limited benefit to PPL or stakeholders. PPL submits the most relevant details, as currently required by the Commission, are total costs, incentives, other non-incentive costs and participant costs. PPL notes that the SWE does not require the level of detail requested by SEF. PPL avers that the costs of breaking down labor and material/supply costs for reporting and Commission approval is not warranted every time the mix of costs changes, even though the total cost is within the budget. PPL Reply Comments at 21-22.

**16.** **Transfer Funds from the Small C&I Portion of the C&I Custom Incentive Program to the Small C&I Portion of the Efficient Equipment Incentive Program.**

PPL proposes to reallocate approximately $13 million of Small C&I program costs from the C&I Custom Incentive Program to the Efficient Equipment Incentive Program. PPL states participation from the Small C&I sector is much less than originally estimated and this reallocation will increase the likelihood that PPL will achieve the desired savings from this sector. PPL believes this change will increase energy savings because Small C&I customers will have more interest in the Efficient Equipment Program measures. PPL submits that the Efficient Equipment Incentive Program measures are typically much simpler, quicker and less costly to implement. Petition at 19-20.

SEF opposes the reallocation of the funds requested by PPL and recommends that those funds be transferred to the GNI portion of the Renewable Energy Program. SEF Comments at 10-11.

**18. Reduce the Projected Costs of the Large C&I Load Curtailment Program.**

PPL proposes to reduce the projected cost of the Large C&I Load Curtailment Program from approximately $15 million to approximately $11 million. PPL explains that the cost in the current EE&C Plan is an estimate made before PPL awarded the contract to the Conservation Service Provider (CSP) and the actual cost of that contract was lower than projected. PPL also explains that it removed an allowance of $2 million initially created as a contingency in case additional peak load reduction was needed. PPL states that it deleted the $2 million reserve in order to keep this Program within its current budget. PPL also reduced the energy savings from its peak load reduction program from 15,000 MWh/yr. to zero because it is not clear if these types of programs provide energy savings. Petition at 22.

In its Comments, PPLICA questions, *inter alia*, whether PPL still has some exposure in the event it potentially needs to acquire additional peak load reduction and whether the $2 million is an actual cost reduction or if PPL’s revised Plan has effectively exceeded the budget allotment for the Large C&I class. PPLICA also questions some inconsistencies in the projected peak load reductions presented in the Plan from the Large C&I class. PPLICA Comments at 7-9.

In its Reply Comments, PPL states that its exposure to the need to acquire additional peak load reduction is “relatively minor at this time” and provides explanations for the inconsistencies in the projected peak load reductions. PPL Reply Comments 8-11.

**19. Re-forecast HVAC Tune-up and Revise Incentives.**

PPL explains that the HVAC Tune-upProgram did not realize “material” savings and it stopped payments to the CSP. However, PPL will still allow HVAC contractors to provide measures to customers and receive rebates. PPL expects very few participants in Program Years 3 and 4, and proposes to reduce projected savings and costs for this measure. PPL is also proposing to reduce or eliminate incentives for some measures and allow customers to self-implement HVAC tune-up measures and receive the incentive directly. Petition at 22-23.

SEF opposes the proposed modification, and in the alternative, recommends that it be eliminated. SEF avers that the measure only serves to provide incentives for businesses that have not, or do not maintain their HVAC equipment. SEF argues that this “socialization of program costs” only serves to competitively disadvantage those customers that have properly maintained their equipment. SEF Comments at 11. SEF also notes that the projected TRC benefit-cost ratio for this measure has fallen from 5.54 to 0.52. *Id.*

In response to SEF’s Comments regarding the socialization of program costs, PPL avers, *inter alia*, that Act 129 requires all customers to pay the cost of Act 129 EE&C programs regardless of whether they participate because all customers will indirectly benefit through lower energy prices that result from the EE&C programs. PPL also explains that the TRC benefit-cost ratio has been reduced because this project has incurred most of its costs but very little of the expected benefits. PPL Reply Comments at 23-24.

**35. Change in Projected Participation for Heat Pump Water Heaters.**

PPL proposes to increase the projected number of rebates for heat pump water heaters from 230 to 3,200 in the Efficient Incentive Program. PPL avers that participation has exceeded expectations and this measure contributes significant per unit savings (1,884 kWh/yr.) to the Plan. Petition at 26.

SEF states that increased funding and participation should not be limited to electric heat pump water heaters, but should include other fuels, including solar thermal and natural gas. SEF avers that both of these measures have benefit-cost ratios greater than one. Comments at 11-12.

In response to SEF’s recommendation, PPL submits that a heat pump water heater has a benefit-cost ratio between 2.16 and 2.35, while solar water heating is not cost-effective with a benefit-cost ratio of 0.62. Citing the *October 2009 Order* and the Act 129 Fuel Switching Working Group Staff Report, dated April 30, 2010, at Docket M‑00051865, PPL argues that the Commission has left fuel switching incentives to the discretion of the EDCs. PPL states that it will consider this fuel switching measure in its post-2013 EE&C Plan. Reply Comments at 24-25.

**36. Change Rebate for Custom Incentive Rebate Technical Studies.**

PPL’s Revised Plan provides rebates for customers conducting comprehensive audits and feasibility studies under the C&I Custom Incentive Program. PPL proposes to change the rebates and eligibility requirements for the rebates. PPL also proposes to clarify that, for the purposes of determining the rebate cap for custom projects, only external costs will be included. Petition at 36.

PPLICA avers that the restriction for custom projects discriminates against larger C&I customers that have in-house energy management specialists, who are most knowledgeable about the customer’s operations and may be available at a lower cost. PPLICA recommends that the Commission “change” the restriction, or as an alternative, increase the cap on the actual project rebate, if a customer uses internal expertise to study and pursue a project. PPLICA Comments at 9-10.

In its Reply Comments, PPL argues that its intention is to reimburse customers for the incremental costs. PPL avers that these internal costs are “sunk costs” that either have already been incurred or are borne by the customer regardless of whether they conduct the technical study or perform work unrelated to Act 129. Therefore, PPL submits that when a technical study is performed by internal staff, the cost is not incremental. PPL Reply Comments at 11-12.

**55. Add a Small C&I Direct Install Option to the Efficient Equipment Incentive Program.**

PPL proposes to add a new measure, called Direct Discount Services, that would utilize its network of authorized contractors to market, propose, and install lighting and refrigeration measures for Small C&I customers. PPL submits that the contractor would process all required paperwork and receive the incentive directly, thereby minimizing the effort and cost outlay by the customer. PPL explains that this new option will accelerate participation by Small C&I customers who are having difficulty identifying efficiency improvements, funding the full costs of the measure, finding contractors and filling out rebate forms and completing other documentation. Petition at 31.

SEF argues that this modification should not be adopted without a demonstration that it is cost effective and that PPL has not broken out the costs of the new measure so it cannot be determined if the measure is cost effective. SEF Comments at 12.

PPL responds by stating that adding the Direct Install option has no impact on cost-effectiveness. With the exception of a slight difference in administrative costs, PPL states that the key elements of the cost-effectiveness calculation are the same regardless of whether the customer uses the Direct Install option or the standard option. PPL explains that the incremental cost of the measure and the total benefits of the measure will be the same regardless of the option utilized by the customer. PPL Reply Comments at 26.

## B. PPLICA and SEF Comments on Non-Minor Modifications

**2. Elimination of New Home Program.**

PPL proposes to eliminate the New Home Program because the new home market is not likely to rebound in time to produce material savings and the actual savings were lower than expected due to new building codes. PPL also points out that the measures in this program are also available to builders and homeowners in the Efficient Equipment Incentive Program. PP&L also proposes to reallocate the $2.7 million initially budgeted for the New Home Program into the Residential Efficient Equipment Incentive Program so there is no impact on the residential sector budget. PPL avers that the portfolio savings may increase slightly because funding will be used more efficiently in the Efficient Equipment Incentive Program. Petition at 33-34.

SEF opposes the elimination of the program because PPL has not provided any evidence showing the participation to date nor has it demonstrated any anticipated TRC benefit/cost ratios that result from the new building codes. SEF argues that PPL’s evidence is insufficient given the “long lived value” of home construction measures and the long lead time needed to influence developers. SEF points out that Act 1 of 2010 was signed into law on April 15, 2010, which removed the existing automatic implementation of new building codes. SEF Comments 14-15.

In its Reply Comments, PPL avers that it has provided sufficient rationale for eliminating this program including the fact that all of the same measures are available in the Efficient Equipment Incentive Program. PPL also notes that in the Petition it cited to a Joint Release by the U.S. Census Bureau and the Department of Housing and Urban Development regarding a decline in new housing. PPL Reply Comments at 26-27.

**3. The Addition of a CSP for the C&I and Institutional Portion of Efficient Equipment Incentive and Custom Incentive Program.**

PPL proposes to add a CSP for the C&I and Institutional Portion of Efficient Equipment Incentive and Custom Incentive Program. PPL submits that it is currently self-managing these Programs and is not getting a satisfactory level of participation from Small C&I and Institutional customers. PPL explains that a CSP will be able to initiate more direct contact with customers and trade allies and will have the technical expertise to help customers and trade allies identify, implement, and prepare supporting documentation for EE&C projects. Petition at 34-35.

PPLICA avers that the addition of the CSP would not benefit Large C&I customers. PPLICA recommends that the Commission investigate the effects of this proposal on Large C&I customers and deny the recovery of any portion of the expenses related to the addition of the CSP for Large C&I customers. PPLICA Comments   
at 11-12.

PPL responds that PPLICA’s comments should be rejected because, when a CSP supports a Small C&I customer, the costs are allocated to the Small C&I sector. PPL states that there is no cross subsidization of the C&I CSP’s costs to the Large C&I sector when the CSP is supporting Small C&I customers. PPL Reply Comments   
at 12-13.

**4. Adjustments to the Estimated Common Costs.**

Common costs are those that are applicable to more than one customer class or apply system-wide. Common costs are allocated to the individual customer classes based on the percentage of direct costs assigned to each customer class. PPL proposes to increase the level of common costs from $38 million to $43 million and change the allocation to the customer classes as follows:

|  |  |  |
| --- | --- | --- |
|  | Current | Proposed |
| Residential | 25.5% | 27.1% |
| Low-Income | 14.8% | 14.5% |
| Small C&I | 35.3% | 35.3% |
| Large C&I | 13.8% | 14.5% |
| GNI | 10.8% | 8.6% |

Petition at 37.

PPL explains that its common costs have increased for the following reasons:

* The projected costs of evaluation, measurement and verification (EM&V) increased from approximately $8.5 million to approximately $9.5 million. PPL explains that the current Plan underestimated the complexity of EM&V including frequency of TRM changes, the Audit Plan and formal quarterly and annual reporting.
* The projected costs for Plan development increased from approximately $1.5 million to approximately $3.3 million. PPL submits that the current Plan underestimated the frequency, formality and complexity of EE&C Plan revisions.
* The projected costs for the tracking system (Energy Efficiency Management Information System (EEMIS)) increased from approximately $4.8 million to approximately $6.0 million. PPL explains that the current Plan underestimated the complexity of EEMIS including the impact and frequency of TRM changes, the Audit Plan, formal quarterly and annual reporting and changes to the programs.
* The projected costs for items not subject to the Act 129 cost cap increased from approximately $4 million to approximately $5 million. These costs include the increase in the cost of the SWE’s contract to add the baseline study, the market potential study and the demand response study.

PPL also explains the allocation of common costs among the customer classes has changed as a result of: (1) changes in the allocation of direct costs among the customer classes resulting from proposed revisions to the Plan and (2) a true-up of actual expense from the first two program years because actual expenditures were different that the current Plan. Petition at 35-37.

PPLICA avers that the increase in the percentage of common costs attributable to the Large C&I class is due in large part to many cost reductions which do not flow to Large C&I customers such as the $5 million total cost reduction from the elimination of the Time-of-Use Program. PPLICA recommends that the Commission investigate PPL’s claimed expenses for prudence and modify the allocation of common costs in accordance with any adjustments to PPL’s direct costs. PPLICA points out that if any of its recommended changes to the Revised Plan are adopted by the Commission, adjustments need to be made to direct and common costs allocated to the Large C&I customer class. PPLICA Comments at 12-13.

In response to PPLICA’s Comments, PPL states that, if it knew in July 2009 what it knows now, the original Plan would have included common cost estimates much closer to those in the Petition. PPL Reply Comments at 13-15.

**5. Increase in the Projected Cost of the Direct Load Control Program**.

PPL proposes to increase the cost of the Direct Load Control Program from approximately $11 million to approximately $12 million because the cost in the May 2011 Plan is an estimate that was prepared before the contract was awarded for this Program’s turnkey CSP. PPL also proposes to change the projected participation levels between sectors which include: no allocation to the low income sector (PPL is not income-qualifying participants), a reduction to small C&I customers and an increase in the residential sector. Petition at 37-38.

SEF recommends that the increased funding be denied and that the funds be spent elsewhere, consistent with SEF’s other recommendations. SEF states that the period of time that load may be controlled under this Program is “incongruent” with the on-peak period recently proposed in PPL’s Time-of-Use Program. SEF also points out that the TRC benefit/cost ratio for residential customers falls to 0.13 with the increased funding proposed by PPL. SEF Comments at 13-14.

In response to SEF’s Comments, PPL explains that the peak hours selected for the Direct Load Control Program are designed to reduce the top 100 hours of peak demand during the summer of 2012, as required by Act 129. PPL states that the on peak and off peak periods for the Time of Use Program are not part of the EE&C Plan and are “established for a different purpose.” PPL Reply Comments at 28-31.

## SEF’s Proposed Plan Addition - Small C&I On-bill Financing

SEF notes that PPL is reducing the projected participation, savings and costs for the Small C&I sector for most measures in the Efficient Equipment Incentive Program and Custom Incentive Program. SEF recommends that PPL initiate an on-bill financing program whereby PPL recovers the costs of projects by retaining a portion of the savings that customers realize on their monthly bills. SEF explains that it advanced this proposal in PP&L’s original EE&C proceeding and offered to provide capital for the program. SEF believes this proposal would increase participation because it would eliminate barriers such as the upfront costs, the lengths of payback periods and the uncertainty over the actual realization of savings.

In its Reply Comments, PPL points to its position in its initial EE&C proceeding where it argued, *inter alia*, that financing of conservation/load management measures should be provided by those companies who have that core business, focus, infrastructure and expertise; and not by the EDCs. PPL also notes that, when the Commission addressed PP&L’s initial EE&C Plan in October 2009, the Commission directed that any issue associated with on-bill financing shall be referred to the Retail Market Working Group for discussion and reporting. *October 2009 Order* at 110. PPL also notes that the Commission has recently requested comments on on-bill financing as part of its consideration of Phase II of the Act 129 EE&C Plans at Docket No.   
M-2012-2289411. PPL Reply Comments at 31-33.

## Comments of the OCA

The OCA recognizes that the energy savings to be achieved by the Small C&I sector are smaller than PPL originally projected and the Residential and Large C&I customers have shown a greater interest in the energy efficiency programs. The OCA states that “[a]s a result, the Company states that the reduced Small [C&I] savings estimate requires an adjustment in the anticipated savings and cost contribution from the Small [C&I] sector to the Residential and Large [C&I] sector.” OCA Comments at 2. The OCA also states that “[b]ased on its analysis of the minor and non-minor proposed changes, the OCA submits that the end result for the Residential sector - a projected $2.8 million cost increase and the additional energy savings for residential customers - is not unreasonable at this time.” *Id*. at 2. The OCA concludes that it does not object to PPL’s modifications to its Plan for residential customers. *Id.* at 2-3.

## Comments of PCOC

PCOC acknowledges that PPL proposes to add heat pump water heaters as an eligible measure for low-income WRAP projects. PCOC also recognizes that PPL proposes to reduce its projected participation levels in Act 129 funded WRAP participants from 23,590 households to 14,590 households. PCOC notes that PPL representatives explained that the reduction of 9,000 households was due to the fact that PPL underestimated the number of households that would need “full-cost WRAP.” PCOC explains that full-cost WRAP is for low-income customers that use electricity for their primary heating source and require deeper, costlier measures. PCOC explains that, while it generally disfavors reducing the number of customers served by Act 129 funded weatherization services, serving fewer households more deeply will make a more significant impact both in terms of overall KWh savings as well as affordability. PCOC encourages PPL to continue to prioritize the provision of full weatherization measures for eligible households. PCOC Comments at 2-4.

# Discussion

## Burden of Proof

PPL bears the burden of proof as the party seeking affirmative relief from the Commission. 66 Pa. C.S. §§ 315, 332. To carry its burden of proof, PPL must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). 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, Inc. 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).

## Uncontested Modifications

Before we address the proposed Settlement, *infra*, we shall address the forty-four minor modifications and two non-minor modifications that were proposed by PPL, were not contested by PPLICA or SEF and were not addressed by proposed Settlement.

PPL is required by 66 Pa. C.S. §§ 2806.1(c) and (d) and our *Target Order* to achieve specific energy consumption and peak demand reduction targets during 2012 and 2013. Act 129 also provides that, if an EDC to fails to meet its targets, it will be subject to fines ranging between $1 million and $20 million. 66 Pa. C.S. § 2806.1(f)(2). PPL avers that the proposed modifications are both reasonable and necessary for PPL to successfully meet its 2012 and 2013 compliance targets. Petition at 9. As a result of our review of the forty-four minor modifications and two non-minor modifications outlined, *supra*, and the Comments filed in this proceeding, we find that the forty-six uncontested modifications satisfy the requirements of Act 129 and the Orders of the Commission related to the implementation of Act 129. Accordingly, we find that these modifications are in the public interest and should be approved.

## Terms of the Settlement

The Joint Petitioners state that they have agreed to the Settlement which resolves all issues among the Parties with respect to the proposed modifications set forth in PPL’s Plan. Specifically, the Settlement addresses the minor and non-minor modifications for which PPLICA and SEF requested an investigation and hearings. Settlement at 1.

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. However, the Commission must review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pa. PUC v. CS Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

Under the proposed Settlement, the Joint Petitioners recommend that PPL’s proposed Minor Modifications Nos. 1, 3, 4, 5, 6, 14, 16, 18, and 55; and Non-Minor Modifications Nos. 3, 4 and 5 be approved consistent with PPL’s Petition and Plan. The Joint Petitioners also recommend that Minor Modifications Nos. 19, 35 and 36; and Non-Minor Modification No. 2 be approved as amended, as follows:

### Minor Modification No. 19 - Reforecast HVAC Tune-up and Revise Estimates

As explained in the Petition, PPL Electric acknowledges that this program has not been successful and will not realize material savings. Therefore, PPL has stopped payments to the CSP but will still allow HVAC contractors to provide measures to customers and receive rebates. Petition at 22. Under the Settlement, the Joint Petitioners have agreed that PPL Electric may continue to allow HVAC contractors to provide measures to customers and to receive rebates. However, PPL Electric has agreed to no longer promote the HVAC Tune-Up Program to end-use customers and that it will close the program once the Commission-approved budget for the program has been exhausted. Settlement at 5.

The Joint Petitioners state that the Settlement strikes the appropriate balance between meeting customer needs and allowing PPL to use funds in an efficient manner. As noted by PPL in its Reply Comments, it expects very few requests for rebates under the HVAC Tune-Up Program in Program Years 3 and 4. Reply Comments at 23. However, the Joint Petitioners submit that the continued operation of the program will provide the existing HVAC contractors with an opportunity to use their testing equipment to provide useful tune-up services to end-use customers. Statement in Support at 7. We concur with the Joint Petitioners that the continued operation of the HVAC Tune-Up Program will allow some participants to take advantage of rebates within the remaining approved budget and is in the public interest.

### Minor Modification No. 35 - Change Projected Participation for Heat Pump Water Heaters

PPL proposes to increase the projected number of rebates for heat pump water heaters from 230 to 3,200 in the Efficient Equipment Incentive Program because actual participation has exceeded expectations and the measure contributes significant per unit savings. Petition at 26. Under the proposed Settlement, PPL is permitted to make its requested modification but PPL will add a solar thermal domestic hot water pilot program for up to fifty Residential Thermal Storage (“RTS”) customers. PPL agrees to conduct outreach to inform RTS and solar installers of the program. The Settlement also provides that RTS customers that installed solar thermal domestic hot water heaters after July 1, 2009 will be eligible for the program. Settlement at 5-6.

The Joint Petitioners submit that, by increasing the number of rebates under this measure, PPL will benefit from the significant per unit savings that the measure provides and will assist PPL in meeting its Act 129 obligations. The Joint Petitioners also aver that the proposed pilot program will enable PPL to test the potential savings and benefits to be achieved through the installation of solar thermal domestic hot water heaters. Statement in Support at 7-8. We concur with the Joint Petitioners that the results of the pilot program will be useful to PPL in planning for the potential Phase II of Pennsylvania’s EE&C Plans and the proposed amendment to the heat pump water heater incentive program should be adopted.

### Minor Modification No. 36 – Change Rebate for C&I Custom Incentive Program Technical Studies and Add Expiration Dates to Ensure Customers Can Implement the Project by May 2013.

In its Petition, PPL Electric proposes to change the rebate and eligibility requirements for C&I Custom Incentive Program technical studies. Among the modifications was a clarification that, for the purposes of determining the rebate cap for custom projects, only a customer’s external costs will be included. Petition at 36. Under the Settlement, PPL’s proposed changes would be approved. However, in preparing for a potential Phase II EE&C Plan, PPL has agreed to discuss with representatives of PPLICA potential modifications to rebate and eligibility requirements to reflect the costs incurred by a participating customer when in-house personnel are used to study and develop a project. Settlement at 6.

We find that this provision of the Settlement is in the public interest and should be adopted. The proposed resolution provides for the initiation of discussions that may determine whether a well-targeted incentive may be appropriate to induce C&I customers to expand the use of their internal resources.

### 4. Non-Minor Modification No. 2 – Elimination of the New Home Program

In its Petition, PPL proposes to eliminate the existing New Home Program. PPL explains, *inter alia*, that the new home market is not likely to rebound quickly enough to achieve material savings in Program Years 3 and 4 and that the measures in the New Home Program are also available in the Efficient Equipment Incentive Program. Petition at 33. In its Comments, the SEF opposes the elimination of the New Home Program. SEF Comments at 14-15.

Under the Settlement, PPL’s proposal to eliminate the New Home Program will be adopted. However, PPL has agreed to undertake educational outreach efforts to inform local builders and contractors of the existing programs and measures available to assist them and their customers. Settlement at 6. We concur with PPL that the elimination of the New Homes Program is in the public interest as the new home market is not likely to rebound quickly enough to achieve material savings in PPL’s Phase One EE&C Plan. Further, as explained by PPL, the per-home savings for this program are very low compared to the original estimates because new building codes that became effective in 2010 have reduced the savings that could be credited to the Act 129 EE&C Plans. Petition at 33. However, local builders and contractors may continue to implement measures through the Efficient Equipment Incentive Program while allowing PPL to avoid the additional administrative costs to implement the New Home Program. We note that PPL estimates that the elimination of the New Homes Program will result in approximately $2.7 million being reallocated to the residential portion of the Efficient Equipment Incentive Program. *Id*. at 34. Consequently, we find that the combination of the educational outreach efforts proposed under the Settlement with the lower administrative costs of eliminating the formal program should result in a more cost-effective means to serve the new home market.

### 5. SEF’s On-bill Financing Proposal

In its Comments, SEF recommended that PPL Electric and the Commission consider implementing an on-bill financing pilot program for Small C&I customers. SEF Comments at 16.

Under the Settlement, the Joint Petitioners have agreed that SEF’s proposal for PPL to implement an on-bill financing program for Small C&I customers not be adopted. Instead, the Joint Petitioners recommend that the issues associated with electric distribution companies providing on-bill financing be reserved for consideration by the Commission in its ongoing Act 129 EE&C Plan Phase II proceeding at Docket No.   
M-2012-2289411. Settlement at 6.

We concur with the Joint Petitioners that SEF’s proposal should be addressed in our ongoing investigation into a potential future phase of the EE&C Program. On May 10, 2012, the Commission entered a Tentative Implementation Order at Docket No. M-2012-2289411 (*Tentative Implementation Order*) that, *inter alia*, solicits comments on a number of issues related to the implementation of a potential second phase of the Commission’s EE&C Program. Among the issues under consideration is the inclusion of on-bill financing programs that require EDCs to partner with lending institutions to provide customers with low cost financing for energy efficiency projects. The Commission concurred that on-bill financing and repayment programs have the potential to overcome barriers to capital-intensive energy efficiency projects that would otherwise be unattainable for many customers within all sectors. However, the Commission stated that it does not have enough information to prescribe the implementation of on-bill financing of EE&C measures at this time. Accordingly, the Commission recommended that a working group be convened to explore the various models, identify possible financial partnerships and determine the feasibility of applying on-bill financing to each of the customer classes. *Tentative Implementation Order* at 22. Comments on the *Tentative Implementation Order* are due on June 25, 2012, and reply comments are due on July 6, 2012. *Id.* at 73.

# Conclusion

For the reasons set forth hereinabove, we conclude that the Settlement is in the public interest and should be adopted. As a result of our review of the Petition, the Revised Plan and the Comments filed in this proceeding, we find that the Revised Plan, as amended by the Settlement, is in the public interest and satisfies the requirements of Act 129 and the Orders of the Commission related to the implementation of Act 129 and PPL’s EE&C Plans. Therefore, PPL is permitted to implement the Plan, as amended by the Settlement. PPL shall file a revised Plan that reflects the changes contained in the Settlement within twenty days of the entry of this Opinion and Order. Because the changes to the Plan that result from the Settlement are limited, we shall not require PPL to file a separate black-lined version of the Plan that reflects those changes; **THEREFORE;**

**IT IS ORDERED:**

1. That the Joint Petition for Settlement filed by the PP&L Industrial Customer Alliance, the Sustainable Energy Fund of Central Pennsylvania and PPL Electric Utilities Corporation on April 30, 2012, is approved without modification.
2. That the Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan filed on February 2, 2012, is granted in part, and denied in part, consistent with this Opinion and Order.
3. That PPL Electric Utilities Corporation shall file with this Commission and serve on all parties of record in this proceeding a revised Energy Efficiency and Conservation Plan consistent with the modifications contained in the Joint Petition for Settlement within twenty (20) days of the entry of this Opinion and Order.
4. That upon the entry of this Opinion and Order, PPL Electric Utilities Corporation is permitted to implement any portion of its Energy Efficiency and Conservation Plan that was not modified by the terms of the Joint Petition for Settlement.
5. That following a written notification from the Commission’s Bureau of Technical Utility Services that the revised Energy Efficiency and Conservation Plan is in compliance with this Opinion and Order and the terms of the Joint Petition for Settlement, PPL Electric Utilities Corporation may implement the entire Energy Efficiency and Conservation Plan.
6. That any directive, requirement, disposition, or the like contained in the body of this Opinion and Order or the Joint Petition for Settlement, which is not the subject of an individual Ordering Paragraph, shall have the full force and effect as if fully contained in this part.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: May 24, 2012

ORDER ENTERED: May 25, 2012

1. More complete descriptions of: (1) Act 129; (2) the Commission’s various Act 129 proceedings; (3) PPL’s prior EE&C Plans; and (4) the Commission’s review and approval of PPL’s prior EE&C Plans were set forth in our Opinions and Orders at this docket entered October 26, 2009, February 17, 2010, January 28, 2011 and May 6, 2011. [↑](#footnote-ref-1)
2. Winter Relief Assistance Program [↑](#footnote-ref-2)
3. Specific energy savings and demand reduction requirements were established for each EDC in our Opinion and Order entered March 30, 2009 at Docket No. M-2008-2069887, *In re*: *Energy Consumption and Peak Demand Reduction Targets (Target Order)* at 3 and 5*.*  [↑](#footnote-ref-3)
4. In addition to the Law Bureau, the *June 2011 Order* delegated the authority to review and approve minor changes to the staff of the Bureau of Conservation, Economics and Energy Planning (CEEP) with the assistance of the Bureau of Fixed Utility Services (FUS). Effective August 11, 2011, the functions of CEEP and FUS were merged under a new Bureau of Technical Utility Services. *See, Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) (*August 2011 Order*). [↑](#footnote-ref-4)
5. The *June 2011 Order* designated that minor EE&C plan revisions be filed with the Office of Trial Staff (OTS). Pursuant to the *August 2011 Order*, the functions of the OTS were transferred to the new Bureau of Investigation and Enforcement. [↑](#footnote-ref-5)
6. *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-2009-2122718 (Order Entered March 9, 2010). [↑](#footnote-ref-6)