**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation :

for Approval of its Act 129 Phase II : M-2012-2334388

Energy Efficiency and Conservation Plan :

**FOURTH PREHEARING ORDER**

 In accordance with the provisions of 52 Pa. Code § 5.483, the purpose of this Order is to clarify my prior statements at the Prehearing Conference on December 10, 2012, with respect to "comments," filed with the Secretary of the Commission at this docket and the relationship of “comments” to the certified (evidentiary) record.

 On November 15, 2012, PPL Electric Utilities Corporation (PPL or Company) petitioned the Pennsylvania Public Utility Commission (Commission) for approval of the Company's Phase II Energy Efficiency and Conservation Plan (Phase II Plan). The Phase II Plan is intended to reduce energy consumption in accordance with the requirements of Act 129 of 2008, 66 Pa.C.S. § 2806.1 (Act 129) and the *Energy Efficiency and Conservation Program*, Docket No. M-2012-2289411 (Order entered August 3, 2012) (*Implementation Order*).

 A Prehearing Conference was held in this case on December 10, 2012, at which time I articulated how I anticipated “comments” being treated in this case. N.T. 22-23. Given that one of the primary responsibilities of a Presiding Officer in these Act 129 Phase II cases is the certification of the record in conformity with the Commission’s directive, as opposed to issuing a decision, this is a critical issue. My decision was and remains that pre-filed comments from non-intervenors will not be included in the certified record, nor will “comments” offered by a party in lieu of testimony be accepted into the certified record. Affixing a verification onto “comments” – many of which are no more than argument – does not transform unsubstantiated and untested opinion into evidence.

 What constitutes, “the record?” Turning to *Black’s Law Dictionary*, “Record *Court proceedings*,” is defined as:

The official collection of all the trial proceedings, exhibits, orders and word-for-word testimony that took place during the trial. The ‘record’ includes pleadings, the process, the verdict, the judgment and such other matters as by some statutory or other recognized method have been made a part of it. *C.J. Tower & Sons of Buffalo, Inc. v. U.S. Cust Ct*., 347 F.Supp 1388, 1389

*Black’s Law Dictionary* 1145 (5th ed. 1979).

 In the *Implementation Order*, the Commission also makes it clear that the certified record is to be derived from the evidentiary proceeding:

If an EDC files a Petition by August 20, 2012, the matter will be assigned to the Office of Administrative Law Judge for *expedited hearings with certification of the record* to the Commission by no later than November 2, 2012. Petitions for intervention must be filed within 10 days of an EDC filing a request for a hearing.

At such hearings, the EDC *will have the opportunity to present evidence* and argument as to its reasonable consumption reduction target for Phase II. While the Commission will not entertain petitions from other parties, any other party *may intervene in the EDC-requested hearing and present evidence*. Given the narrow scope of the proceeding and time constraints, we believe it is appropriate to have *certification of the record rather than issuing a recommended decision*. As part of this process, the parties will have the opportunity to file main and reply briefs directly to the Commission rather than filing exceptions to a recommended decision.

*Implementation Order* at 31 (emphasis added).

 Of course, the Commission is not bound in its evidentiary determinations by the rulings of Presiding Officers and may take whatever notice it wishes of comments filed at this docket. However, for a Presiding Officer, the Pennsylvania Public Utility Code at 66 Pa. C.S.

§ 335(a) provides for the certification of “the entire record” to the Commission for decision in a proceeding.[[1]](#footnote-1) While Section 335(a) does not define what constitutes “the entire record,” the *Implementation Order* clearly contemplates that the record in this case is to be established in the context of an adversarial proceeding. Further, the Commission’s regulation at 52 Pa. Code Section 5.402(a) states: "A party shall move the admission of evidence *into the record* upon presentation of the *sponsoring witness*, and after *opportunity for other parties to examine the witness*." (Emphasis added). Evidence "of record," therefore, must be formally sponsored by a party and received into the record.[[2]](#footnote-2) This provision of the Commission's procedural rules and regulations is essential to the integrity of the record and to afford due process of law.

 In sum, and based on the foregoing, as Presiding Officer I will not accept “comments” into the record. By this stage in the proceeding, direct testimony was to have been filed with rebuttal testimony due by January 11, 2013.

Date: January 9, 2013 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Dennis J. Buckley

 Administrative Law Judge

**M-2012-2334388 – PETITION OF PPL ELECTRIC UTILITIES CORPORATION FOR APPROVAL OF ITS ACT 129 PHASE II ENERGY EFFICIENCY AND CONSERVATION PLAN.**

***REVISED 12/28/12***

PAUL E RUSSELL ESQUIRE

PPL SERVICES CORPORATION

TWO NORTH NINTH STREET GENTW3

ALLENTOWN PA 18106

**610-774-4254**

***eServe***

DAVID B MACGREGOR ESQUIRE

POST & SCHELL PC

FOUR PENN CENTER

1600 JFK BOULEVARD

PHILADELPHIA PA 19103-2808

**717-731-1970**

ANDREW S TUBBS ESQUIRE

POST & SCHELL PC

17 NORTH SECOND STREET

12TH FLOOR

HARRISBURG PA 17101-1601

**717-612-6057*eServe***

DIANNE E DUSMAN ESQUIREOFFICE OF CONSUMER ADVOCATE5TH FLOOR FORUM PLACE555 WALNUT STREETHARRISBURG PA 17101**717-783-5048*eServe***

ELIZABETH ROSE TRISCARI ESQUIRE

OFFICE OF SMALL BUSINESS ADVOCATESUITE 1102300 NORTH SECOND STREETHARRISBURG PA 17101**717-783-2525**JULIA A CONOVER ESQUIRE

HAWKE MCKEON & SNISCAK100 NORTH TENTH STREETHARRISBURG PA 17101**717-236-1300 EXT 223**

HEATHER M LANGELAND ESQUIREPENNFUTURE200 FIRST STREET SUITE 200PITTSBURGH PA 15222**412-258-6684*eServe***

PATRICK CICERO ESQUIREPA UTILITY LAW PROJECT118 LOCUST STREETHARRISBURG PA 17101**717-236-9486**

***eServe***

CRAIG R BURGRAFF ESQUIREHAWKE MCKEON & SNISCAK LLPO BOX 1778100 N TENTH STREETHARRISBURG PA 17105-1778**717.236.1300**JEFFERY J NORTON ESQUIREECKERT SEAMANS CHERIN & MELLOTT213 MARKET STREET 8TH FLOORHARRISBURG PA 17101**717-237-6000**JOSEPH L VULLO ESQUIRE1460 WYOMING AVENUEFORTY FORT PA 18704**570-288-6441*eServe***

BARRY A NAUM ESQUIRESPILMAN THOMAS & BATTLE PLLCSUITE 1011100 BENT CREEK BLVDMECHANICSBURG PA 17050**717-795-2742**

***eServe***

1. See also 52 Pa. Code § 5.531(a), *Certification of record without decision*. [↑](#footnote-ref-1)
2. I note that even “public documents,” including reports, decisions, opinions “or other document[s] on file with the Commission,” are to be offered into evidence. 52 Pa. Code § 5.406(a)(1). [↑](#footnote-ref-2)