COMMONWEALTH OF PENNSYLVANIA

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August 28, 2009

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Petition of PPL Electric Utilities Corporation for Approval of an Energy Efficiency and Conservation Plan
Docket No. M-2009-2093216

Dear Secretary McNulty:

Enclosed for filing is the Main Brief of the Office of Consumer Advocate, in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

James A. Mullins
Assistant Consumer Advocate
PA Attorney I.D. # 77066

Enclosures
cc: Honorable Susan D. Colwell
Office of Special Assistants

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation for Approval of an Energy Efficiency and Conservation Plan	: : :	Docket No. M-2009-2093216

MAIN BRIEF
OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: August 28, 2009

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Administrative Decisions

Statutes

I. INTRODUCTION

Act 129 (Act) was signed into law by Governor Rendell on October 15, 2008 and became effective on November 14, 2008. The Act provides for Energy Efficiency and Conservation Programs; Amending the Duties of Electric Distribution Companies' (EDCs) Obligation to Serve; Providing for Smart Meter Technology and Time of Use Rates; Providing Additional Market Power Remediation for Market Misconduct; Providing Additional Alternative Energy Sources; and Providing a Carbon Dioxide Sequestration Network. The Act makes a number of significant amendments to the Pennsylvania Public Utility Code, many of which will have a direct impact on the rates and service of customers of Pennsylvania's EDCs.

Of particular relevance here, Act 129 establishes an obligation for each EDC with 100,000 or more customers to achieve specified reductions in energy usage and peak demand. By May 31, 2011, each EDC must reduce the energy usage of its customers by 1% and by May 31, 2013, each EDC must reduce the energy usage of its retail customers by 3%. These energy consumption reductions are based on the forecasted energy usage for the June 1, 2009 to May 31, 2010 base period. Also by May 31, 2013, an EDC must reduce the weather-normalized peak demand of its retail customers by a minimum of 4.5% in the 100 hours of highest demand. The Act also provides for specific fines for an EDC's failure to achieve the standards for reduction contained in the Act.

Act 129 states that the Commission's energy efficiency and conservation program must include the following: (1) procedures for the approval of plans submitted by EDCs pursuant to Act 129; (2) an evaluation process "to monitor and verify data collection, quality assurance and results" of each EDC EE&C plan; (3) a cost-benefit analysis of each EDC EE&C plan in accordance with a total resource cost test approved by the Commission; (4) analysis of how the

Commission's program and each EDC EE&C plan will achieve or exceed Act 129's consumption reduction requirements; (5) standards to ensure that each EDC EE&C plan includes a variety of EE&C measures that are provided equitably to all customer classes; (6) procedures to make recommendations as to additional measures that will enable EDCs to improve their EE&C plans and exceed the Act's required reductions in consumption; (7) procedures to require EDCs to competitively bid all contracts with conservation service providers (CSPs); (8) procedures to review, and modify if the Commission deems necessary, all proposed contracts with CSPs prior to execution; (9) procedures to ensure compliance with the Act's requirements for reduction in consumption; (10) a requirement for the participation of CSPs in the implementation of all or part of their respective EDCs' EE&C plans; and (11) cost recovery to ensure that the measures approved are financed by the same customer class that will receive the direct energy and conservation benefits. See 66 Pa.C.S. § 2806.1(a).

In the latter months of 2008, the Commission commenced a stakeholder process and invited written comments from the EDCs and other interested parties to develop the energy efficiency and conservation program required by Act 129. The OCA participated by submitting Comments to the Commission on November 3, 2008, and again on December 8, 2008. The OCA also participated in a stakeholder meeting. Pursuant to the requirements of Act 129, on January 16, 2009, the Commission entered its Implementation Order at Docket No. M-2008-2069887 See, Energy Efficiency and Conservation Program, Docket No. M-2008-2069887 (Order entered January 16, 2009)(Implementation Order). [1]

In the Implementation Order, the Commission called for the publication of the Plans in the *Pennsylvania Bulletin* and allowed for the filing of Comments on the Plan. The

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[1] The Implementation Order was adopted at the Public Meeting on January 15, 2009.

Commission also directed evidentiary and public input hearings on each EE&C plan so that recommendations for improving the plans could be submitted by the statutory advocates, other stakeholders, and the public. See Implementation Order at 8. Further, the Commission established specific litigation schedules to meet Act 129's requirement that it rule on each EDC's EE&C plan within 120 days of submission, and provisions were established for the re-submission of rejected EE&C plans.[2] Id. See also 66 Pa.C.S. § 2806.1(e)(2). In its Implementation Order, the Commission also encouraged each EDC to conduct a collaborative process during the development of its Plan to receive input from various stakeholders. As discussed more fully below, the OCA actively participated in the PPL stakeholder process. Also pursuant to the Order, each EDC was required to submit its consumption forecast with the Commission by February 9, 2009. The Commission approved the consumption forecasts and set the consumption savings and demand reduction requirements by Order entered March 30, 2009. See, Energy Consumption and Peak Demand Reduction Targets, Docket No. M-2008-2069887 (Order entered March 30, 2009).

Pursuant to the Implementation Order, on May 7, 2009, the Commission issued a Secretarial Letter, which provided EDCs with an EE&C plan template to be used by the EDCs in preparing and filing their EE&C plans with the Commission. Thereafter, on May 28, 2009, the Commission adopted Standards for the Participation of Demand Side Management Resources in an updated Technical Reference Manual (TRM) at Docket No. M-00051865 to be used as a guide by the EDCs in evaluating the savings impacts of aspects of their plans. See,

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2 Based on the established consideration period of 120 days, the schedule was broken down as follows: (1) each EE&C plan is assigned to an Administrative Law Judge (ALJ), who will establish discovery, public input hearing schedule and evidentiary hearing schedules, but all hearings must be completed by September 3, 2009; (2) all briefs are due by September 14, 2009; (3) each EDCs' reply brief and/or revised plan is due by September 24, 2009; and (4) the Commission will issue its decision regarding each EDC plan by October 29, 2009. See Implementation Order at 12. The Commission extended the opportunity to file reply briefs to all parties by Reconsideration Order entered June 2, 2009, at Docket Number M-2008-2069887.

Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources – Technical Reference Manual Update, Docket No. M-00051865 (Order entered June 1, 2009).

Act 129 requires each EDC to demonstrate, *inter alia*, that its EE&C plan is cost-effective using the Total Cost Resource (TRC) test[3] and that its plan provides a diverse cross section of alternatives for customers of all rate classes. See 66 Pa.C.S. § 2806.1(b)(1)(i)(I). After inviting and receiving comments from interested parties on the matter, including the OCA, the Commission adopted a TRC test at Docket No. M-2009-2108601 (TRC Test) on June 18, 2009. Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test, Docket No. M-2009-2108601 (Order entered June 23, 2009).

In compliance with the Implementation Order, on June 29, 2009, PPL Electric Utilities Corporation (PPL) filed its Petition seeking approval of an Energy Efficiency and Conservation Plan with the Pennsylvania Public Utility Commission (Commission) pursuant to Section 2806.1 of the Section 2806.1 of the Public Utility Code, 66 Pa.C.S. § 2806.1.

II. PROCEDURAL HISTORY

On June 29, 2009, PPL Electric Utilities Corporation filed its Petition seeking approval of an Energy Efficiency and Conservation Plan. On July 7, 2009 the Office of Consumer Advocate (OCA) filed its Notice of Intervention and Public Statement. On July 8, 2009, the Office of Trial Staff (OTS) filed a Notice of Appearance. On July 10, 2009, the Sustainable Energy Fund of Central Eastern Pennsylvania (SEF) and UGI Distribution Corporation (UGI) filed Petitions to Intervene. On July 15, 2009, Eric Epstein (Epstein) filed a Petition to Intervene, *pro se*. On July 27, 2009, the Office of Small Business Advocate filed a Notice of Intervention. On July 21, 2009, the

3 A TRC test is "a standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures." 66 Pa.C.S. § 2806.1(m).

Citizens for Pennsylvania's Future (PennFuture) filed a Petition to Intervene. On July 23, 2009, Richards Energy Group, Inc (Richards) filed a Petition to Intervene. On July 24, 2009, Pennsylvania Association of Community Organizations for Reform Now (ACORN), the Department of Environmental Protection (DEP), PP&L Industrial Customer Alliance (PPLICA) filed Petitions to Intervene. On July 27, 2009, ClearChoice Energy (ClearChoice), Direct Energy Business, Inc. (Direct Energy), and Field Diagnostic Services, Inc (FDSI) filed Petitions to Intervene.

The matter was assigned to the Office of Administrative Law Judge and was further assigned to Administrative Law Judge Susan D. Colwell. A prehearing conference was held on July 27, 2009, at which time a procedural schedule was established. A public input hearing was held in Bethlehem, Pennsylvania at 6:00 PM on July 30, 2009 at which time 11 customers testified. On August 7, 2009, the OCA filed its Comments to the proposed plan as well as the Direct Testimony of Richard Hahn of LaCapra Associates addressing the Company's EE&C Plan.[4]

III. DESCRIPTION OF PPL PLAN

As described in the testimony of PPL witness Peter Cleff, PPL conducted a stakeholder process to inform stakeholders of the Company's progress in developing the Plan and to solicit input from stakeholders on various Plan components. PPL St. 1 at 8-9. The Company held three large group meetings, focus group meetings and numerous one-on-one meetings and teleconferences. The OCA was able to attend the three large group meetings held by PPL and was able to participate in some smaller teleconferences on specific issues.

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4 Mr. Hahn, a senior executive in the energy industry with diverse experience in both regulated and unregulated companies, joined La Capra Associates in 2004. Mr. Hahn has a proven track record of managing integrated resource planning, analyzing energy, capacity, and ancillary services markets, valuation of energy assets, creating operational excellence, and developing start-ups. He has demonstrated expertise in electricity markets, utility planning and operations, sales and marketing, engineering, business development, and R&D. He has testified on numerous occasions before the Massachusetts Department of Telecommunications and Energy, before FERC, and before the Pennsylvania Public Utility Commission.

Following the initial start up of the stakeholder group, the OCA found the PPL stakeholder process to be well attended by a diverse group of stakeholders. As PPL witness Cleff notes in his testimony, representatives of many stakeholders, including consumer representatives, environmental advocates, chambers of commerce, state and local governments, economic development organizations, governmental organizations, trade allies, community based organizations, investor owned utilities, market partners and conservation service providers were in attendance and actively participated in the stakeholder process. In the OCA's view, the stakeholder process allowed for a better informed process—for both stakeholders and the company—and resulted in a Plan that was comprehensive and addressed many of the potential issues that can arise with such plans.

Following the conclusion of the stakeholder process, on July 1, 2009, PPL filed its EE&C Plan with the Commission. The proposed EE&C Plan consists of 14 voluntary programs for customers and describes an extensive portfolio of energy-efficiency, conservation, and peak load reduction measures, programs, and education. These 14 programs are designed to meet the goals established by Sections 2806.1 and 2806.2 of Act 129. See, PPL Exhibit No. 1 at 1.

The Plan also incorporates elements of PPL's coordination activities with Pennsylvania's other EDCs, including ideas, insights, and consistent program features, design elements, and implementation details. For residential customers, PPL proposes to offer the following programs: 1) Efficient Equipment Incentive Program, 2) Residential Energy Assessment & Weatherization, 3) Compact Fluorescent Lighting Campaign, 4) Appliance Recycling, 5) ENERGYSTAR New Homes, 6) Renewable Energy Program, 7) Direct Load Control, 8) Time of Use Rates, and 9) Energy Efficiency Behavior & Education. Additionally, for low-income customers, PPL will offer the Low-Income WRAP and E-Power Wise Program.

PPL requests that the Commission approve all of these programs together as an integrated portfolio designed to meet Act 129 energy-efficiency and conservation goals in the Company's service territory. In a nutshell, as set forth by PPL witness Peter Cleff:

> The plan provides an extensive portfolio of energy efficiency, conservation, and peak load reduction programs and customer education. These programs and customer education are designed as a portfolio of options which will offer all of PPL Electric's customers cost-effective, flexible, and wide-ranging choices and financial incentives to reduce their electricity consumption and peak load, which ultimately will help customers reduce their energy costs.

PPL St. No. 1 at 4.

Specifically, PPL's portfolio of programs is designed to provide customer benefits while also meeting the energy saving and peak load reduction goals set forth in the Act within the designated expenditure cap of two percent (2%) of 2006 annual revenues ($61.5 million) for each year of the four-year plan, which equates to a total of approximately $246 million for the entire Plan period. PPL's Plan includes measures and programs to achieve the Company's calculated electricity consumption and peak load reduction targets of: a) 1% energy savings by 2011, which is 382,000 MWh; b) 3% energy savings by 2013, which is 1,146,000 MWh; and c) peak load reduction of 4.5% by 2013, which is 297 MW. See, PPL St. No. 1 at 4 and PPL St. No. 2 at 5.

The Company also proposes to implement an Act 129 Compliance Rider (ACR) to be applied, on a non-bypassable basis, to charges for electricity supplied to customers who receive distribution service from the Company. See, PPL St. No. 4 at 3 and Proposed Act 129 Compliance Rider (Appended to PPL St. No. 4). As set forth by PPL witness Kleha:

> The Company proposes to calculate separately the applicable EE&C costs for each of the three major customer classes on its system, i.e., (1) residential, (2) small commercial and industrial ("Small C&I"), and (3) large commercial and industrial ("Large C&I").

PPL St. No. 4 at 7. Initially, the ACR rates for each class are projected to be:

Residential: $ 0.00219/kwh

Small C& I: $ 0.00299/kwh

Large C&I: $ 0.432/KW

See OCA St. No. 1 at 12; and PPL Exhibit JMK-1, Attachment 2. PPL witness Kleha testified:

> Act 129 authorizes EDCs to recover the costs of their EE&C Plans through a reconcilable adjustment clause under Section 1307 of the Public Utility Code. The Commission reiterated this requirement in its January 16, 2009 Implementation Order. In its EE&C Plan filing, PPL Electric has included pro forma tariff pages to implement such a cost recovery mechanism. Those tariff pages also are attached to my testimony as PPL Electric Exhibit JMK- J. The Implementation Order also directs that such cost recovery mechanisms must be non-bypassable, and that those mechanisms not affect the EDC's price-to-compare, if the EE&C Plan benefits both shopping and non-shopping customers. Because all of the programs included in PPL Electric's proposed EE&C Plan will benefit both shopping and non-shopping customers, the Company has designed its cost recovery mechanism to be non-bypassable. In this regard, PPL Electric proposes that the cost recovery echanism be applied to the distribution charges for each customer class rather than appear as a separate line item on customers' bills.

PPL St. No. 4 at 6-7. PPL witness Kleha continued:

> Although costs will vary year-to-year, PPL Electric proposes to recover those costs on a levelized basis. Annual budget amounts for each customer class will be developed on a levelized basis for the four years of the Company's proposed EE&C Plan.

Id. at 7.

Specific aspects of the Company's Plan and cost recovery mechanism will be addressed below.

IV. SUMMARY OF ARGUMENT

In general, the OCA supports the Company's proposed EE&C Plan. However, there are some areas of the Plan in need of modification. Specifically, the OCA proposes that PPL: (1) limit application of the fuel substitution component of the Efficiency Equipment Incentive Program to customers on rate RTS, (2) not charge interest on cost-recovery over- or under-collections, 3) include statewide evaluator costs within its $246 million spending cap, and 4) continue its EE&C stakeholder process, including at least quarterly meetings during the EE&C Plan period.

The following is a summary of the OCA's conclusions and recommendations as set forth in this Main Brief:

Overall Plan Assessment and Compliance with the Requirements of the Act:

- The EE&C Plan is reasonably designed to meet or exceed the requirements for energy efficiency and demand reduction set forth in Act 129 in the time period specified for compliance and within the budget limitations specified in the Act.
- The EE&C Plan is designed to meet or exceed the requirements in Section 2806.1(b)(1)(i)(B) for savings within the government/non-profit sector.
- The EE&C Plan is designed to meet the requirements in Section 2806.1(b)(1)(i)(G) for providing programs and savings for low income customers.
- The EE&C Plan is designed to provide a variety of programs to all customer classes and provides the measures equitably to all customer classes as specified in Section 2806.1(a)(1)(5).
- The EE&C Plan as a whole has a positive benefit/cost ratio of 2.48 based on the Total Resource Cost Test as set forth by the Commission making the Plan a cost-effective means of achieving the requirements of the Act.
- The EE&C Plan proposed by PPL should be generally approved as a sound starting point for meeting the requirements of Act 129, subject to certain modifications recommended in these comments

Program Design:

- The fuel substitution component of the Efficiency Equipment Incentive Program should be limited to customers on Rate RTS.

On-Going Stakeholder Process And Plan Adjustment Process:

- The Company's commitment for an on-going stakeholder process should include quarterly meetings and should be formalized as part of the Commission Order. Further, the Commission Order should provide for certain specific information to be provided to stakeholders through the process.

Cost Recovery

- The Company's proposal to recover the costs of the EE&C Plan on a levelized basis over 42 months should be approved. However, PPL should not collect or charge any interest.

- The overall program budget should reflect the fact that the statewide evaluator costs are included within the 2% cap on spending.

- PPL should plan to bid any qualifying energy efficiency and demand response measures into the PJM RPM auctions and credit customers with any benefits received through the cost recovery mechanism.

These issues will be discussed in this Brief.

V. ARGUMENT

A. Act 129 Conservation and Demand Reduction Requirements

1. Overall Conservation Requirements

Of particular relevance here, Act 129 establishes an obligation for each EDC with 100,000 or more customers to achieve specified reductions in energy usage and peak demand.

a. 2011 Requirements

By May 31, 2011, each EDC must reduce the energy usage of its customers by 1%. 66 Pa.C.S. § 2806.1(c)(1). For PPL Electric, this target represents 382,000 MWh of energy savings by May 31, 2011. This energy consumption reduction is based on the forecasted energy usage for the June 1, 2009 to May 31, 2010 base period. As set forth in PPL Exhibit 1, Table 4, the Company's proposed EE&C Plan is projected to exceed this target by reducing energy usage by 1.1% (419,907 MWh).

b. <u>2013 Requirements</u>

By May 31, 2013, each EDC must reduce the energy usage of its retail customers by 3%. 66 Pa.C.S. § 2806.1(c)(2). For PPL Electric, this target represents 1,146,000 MWh by May 31, 2013. This energy consumption reduction is based on the forecasted energy usage for the June 1, 2009 to May 31, 2010 base period. As set forth in PPL Exhibit 1, Table 4, the Company's proposed EE&C Plan is projected to exceed this target by reducing energy usage by 3.6% (1,361,979 MWh).

2. <u>Overall Demand Reduction Requirements.</u>

In accordance with Act 129 and the Commission's Implementation Order, PPL must also reduce--by the summer of 2012--its customers' peak demand by 4.5 percent, relative to the average top 100 hours of the utility's load during June, July, August, and September 2007. For PPL Electric, this target represents 297 MW. As set forth by PPL witness Haeri:

> Peak load reduction targets will be met through peak-coincident impacts of conservation programs and demand response programs. Implementation of programs in the Plan is expected to produce 322 MW of peak savings, exceeding the 297 MW target by 25 MW (8.4%).

PPL St. No. 2 at 8.

3. <u>Requirements for a Variety of Programs Equitably Distributed.</u>

The Act requires that the Plan include a variety of measures and that the measures be provided equitably to all customer classes. 66 Pa.C.S. § 2806.1(a)(5). The Company's Plan contains 14 different programs distributed across all of its customer classes. PPL Exhibit No. 1 at 1. PPL has provided at least one energy efficiency and one demand response program for each class in accordance with the Commission's Implementation Order, and in fact, offers multiple programs for each customer class. PPL Exhibit No. 1, Table 6.

While determining reasonableness or equity can be in the eye of the beholder, the OCA also reviewed the required Budget and Parity Analysis Summary found in Table 7 of PPL's EE&C Plan and the following information when evaluating whether the portfolio proposed by the Company achieved a reasonable and equitable balance in its portfolio. The OCA also conducted this review keeping in mind the specific requirements of the Act for low income customers, government/non-profit sector and the need for the Plan to be cost-effective under the Total Resource Cost Test.

Chart 1

Class	Current Revenues (2008)*	Percent of Current Revs.	Projected Spending (Over Total Plan)**	Spending Percent of the Total Budget
Residential	$1,476,444,164	45.4%	$104,573,538	43%
Small Commercial and Industrial	$1,027,237,882	31.6%	$85,751,508	35%
Large Commercial & Industrial-Primary Voltage and Higher	$743,252,314	22.8%	$30,303,594	12%

Source: OCA Cross-Examination Exhibit No. 2. Table 7 of PPL Exhibit No. 1

Chart 2

customer class	KWH sales	% of total
	(millions)	
Residential	14,412	38%
Small C&I	11,377	30%
Large C&I	12,049	32%
Other	23	0%
Total	37,862	100%

Source: OCA St. No. 1 at 13.

Chart 3

Class	Projected Rate ($/kWh)	Revenue Increase (Rate Inc. / Current Rev)
Residential	$0.00219/kWh	2.3%
Small Commercial and Industrial	$0.00299/kWh	3.3%
Large Commercial & Industrial-Primary Voltage and Higher	$0.432/kW	1.3%

Source: PPL Exhibit JMK-2.

When these charts are reviewed, keeping in mind the other requirements of the Act for particular customer segments, the budgetary constraints and the need for the Plan to pass the TRC, in the OCA's view, PPL has achieved a portfolio that is balanced and cost-effective.

4. <u>10% Government/Non-Profit Requirement</u>

Section 2806.1(b)(1)(i)(B) establishes a specific requirement for achieving reductions from the government/non-profit/school sector. The section provides:

> (B) A minimum of 10% of the required reductions in consumption under subsections (c) and (d) shall be obtained from units of Federal, State and local government, including municipalities, school districts, institutions of higher education and nonprofit entities.

66 Pa.C.S. § 2806.1(b)(1)(i)(B). PPL's expected compliance with this requirement is set forth in Table 4 of PPL Exhibit No. 1. The Act requires a minimum of 10% in energy reductions from federal, state, and local government entities as well as nonprofit agencies. As set forth by Mr. Hahn:

> Table 4 of the plan shows that the government/non-profit sector energy savings in PY 2012 is 134,554 MWH, or 9.9% of the Plan total energy savings of 1,361,979. However, as shown in Table 6 of the Plan, the net lifetime MWH savings for all the government/non-profit programs total 1,513,581, which is 10.7% to the total required savings for the plan of 14,149,089 MWH. I believe that compliance over the lifetime of the program measures

> is consistent with the Act's requirement, and that this requirement has been met.

OCA St. 1 at 7. Therefore, the OCA submits that the Company's Plan meets the specific requirements of Section 2806.1(b)(1)(i)(B).

5. Low Income Program Requirements

Section 2806.1(b)(1)(i)(G) establishes a requirement for specific energy efficiency measures for low income households. Section 2806.1(b)(1)(i)(G) reads in pertinent part:

> (G) The plan shall include specific energy efficiency measures for households at or below 150% of the Federal poverty income guidelines. The number of measures shall be proportionate to those households' share of the total energy usage in the service territory.

66 Pa.C.S. § 2806.1(b)(1)(i)(G). The OCA submits that the General Assembly sought to establish a set aside for low income customers through this language to ensure that low income customers received the benefits that energy efficiency can bring to a customer. This becomes even more pressing in light of the Commission's conclusion in its Implementation Order that all customers should be required to pay the costs associated with Act 129, including low income customers. Implementation Order at 37.

The language of the Act uses the terms "measures" within the section but also refers to "in proportion to usage." The OCA submits that the most effective way to implement this Section is to require each EDC to assure that a specific percentage of the overall savings to be achieved from the Plan are realized through programs and measures directed to the low income customer segment. This approach would parallel the set aside approach for the government/non-profit sector. See, Section 2806.1(b)(1)(i)(B). As set forth in OCA Cross-Examination Exhibit 1:

> According to 2000 census data, 16.5% of PPL Electric's residential customers are "low-income" as defined by Act 129. PPL Electric estimates that its average low-income customer has the same average energy consumption as its average residential customer. The load forecast approved by the PUC as the Act 129 "baseline" is 38,214,368 mWh/yr for all customer sectors and 14,560,303 mWh/year for the residential customer sector. Therefore, the low-income customer load is 0.165*14,560,303 =2,402,000 mWh/year which is approximately 6% of PPL Electric's total load.

<u>See</u>, OCA Cross-Examination Exhibit 1. As explained by Mr. Hahn:

> These programs must be in addition to and coordinated with existing low-income programs. As discussed in Mr. Haeri's testimony (p. 10), the total savings from low-income programs should be approximately 6% of the Plan's savings, which is equal to low income usage as a percentage of total usage in PPL's service territory...As discussed in the Plan, the Company will increase the funding of its existing low-income Winter Relief Assistance Program ("WRAP") by 60% in addition to having new programs targeted at low-income customers to address this issue.

OCA St. 1 at 7. Under the Plan, the Company will seek to achieve consumption reductions of 68,562 MWH by Program Year (PY) 2012 (which is 6% of the required reduction) from the low income sector and demand savings of 23,421 KW (7.9% of the required reduction). EE&C Plan, Section 1, Table 4. The OCA submits that the Company's methodology for determining the low income set aside requirement, and its Plan for meeting the requirement, is reasonable and in compliance with the Act. The OCA supports the Company's efforts in this regard.

6. <u>Issues Relating to Individual Conservation and Demand Reduction Programs.</u>

a. <u>Residential</u>

i. <u>Efficient Equipment Incentive program</u>

The OCA has identified concerns with one of the programs proposed by PPL-- the fuel switching component of the Efficient Equipment Incentive program. As Mr. Hahn explained:

> This program contains many typical measures. However, it also includes one form of fuel switching, which is typically not included in electric utility EE&C plans. The PPL plan provides cash incentives to convert electric space heating systems to gas furnaces. My understanding of the Company's proposal is that only residential customers currently on the RTS rate are eligible.

OCA St. No. 1 at 18. Mr. Hahn then explained his concern with this aspect of the program:

> Fuel switching is not a measure that contributes to the efficiency of the underlying electric equipment in the home. According to the Company's workpapers, these programs do not contribute significantly to peak reduction goals since they would displace most usage in the winter period rather than the summer. The measures are expected to contribute approximately 98,000 MWH of energy consumption reductions but those result from removing electric equipment from the home, not from improving the efficiency of the electric equipment or the ability to conserve usage from existing electric equipment.

Id.

Mr. Hahn also identified significant public policy issues that must be addressed when considering programs that utilize fuel switching. He testified:

> Incentivizing a customer of one utility to switch to a different fuel source supplied by another utility raises many policy issues and questions as to what is in the customer's best interest that may require further discussion...At any point in time, the answer as to which "fuel is more efficient" may change. Furthermore, cross subsidization issues are likely to emerge. All of PPL residential customers will pay for the fuel switching program, but only those who also purchase natural gas service can benefit. This creates inequities in the opportunity of each customer to fairly benefit from energy efficiency.

OCA St. 1 at 18-19. As set forth below, the OCA submits that the concerns outlined by Mr. Hahn necessitate a clarification of the Company's proposed plan that this fuel switching component be limited to Rate RTS customers at this time. As explained below, in its Rebuttal Testimony, the Company did make such a clarification which is satisfactory to the OCA.

b. Commercial

OCA witness Hahn did not raise any issues with respect to Commercial customer programs included in the Plan.

c. Industrial

OCA witness Hahn did not raise any issues with respect to Industrial customer programs included in the Plan.

7. Proposals for Improvement of EDC Plan

a. Residential

In general, the OCA supports the Company's EE&C Plan design and the included programs. However, as noted above, there is one clarification regarding the Company's Plan that the OCA recommends. Specifically, the fuel substitution component of the Efficiency Equipment Incentive Program should be limited to customers on rate RTS. As Mr. Hahn testified:

> Fuel switching is not a measure that contributes to the efficiency of the underlying electric equipment in the home. According to the Company's workpapers, these programs do not contribute significantly to peak reduction goals since they would displace most usage in the winter period rather than the summer. The measures are expected to contribute approximately 98,000 MWH of energy consumption reductions but those result from removing electric equipment from the home, not from improving the efficiency of the electric equipment or the ability to conserve usage from existing electric equipment.

OCA St. No. 1 at 18. Therefore, these types of programs raise numerous public policy concerns that require careful consideration. The OCA recommends that any spending on the fuel switching component of the Efficient Equipment Incentive Program should be initially limited. Funds should instead be initially directed to programs that maximize the annual energy consumption savings per dollar spent. The Company agrees with the OCA. As Mr. Cleff testified:

> PPL Electric agrees with Mr. Hahn's recommendation. Currently, the only fuel substitution measure included in PPL Electric's EE&C Plan is the Efficient Equipment Incentive Program and the only eligible participant is a Rate Schedule RTS customer. Rate Schedule RTS is a unique rate schedule with a long history, including major capital investment by customers and a legacy of very low rates. These customers are very large users of electricity, and some of these customers will see a large rate increase in 2010 (on both an absolute dollar and percentage basis) when compared to other residential customers. Because of their unique circumstances, PPL Electric believes that Rate Schedule RTS customers should be offered this narrowly tailored and limited fuel switching alternative.

PPL St. 1-R at 12. The OCA agrees that, with this clarification, the OCA's concern regarding the Residential Efficient Equipment Initiative Program is resolved.

b. <u>Commercial</u>

OCA witness Hahn did not raise any issues with respect to Commercial customer programs included in the Plan.

c. <u>Industrial</u>

OCA witness Hahn did not raise any issues with respect to Industrial customer programs included in the Plan.

B. <u>Cost Issues</u>

1. <u>Plan Cost Issues</u>

As discussed below, the OCA disagrees with the Company's position that the costs of the statewide evaluator should not be accounted for within the applicable 2% cap.

2. <u>Cost Effectiveness/Cost-Benefit Issues</u>

OCA witness Hahn did not identify any issues with respect to cost effectiveness/cost-benefit of the Company's proposed Plan.

3. Cost Allocation Issues

OCA witness Hahn did not identify any issues with respect to cost allocation issues of the Company's proposed Plan.

4. Cost Recovery Issues

a. Introduction

In general, the OCA supports the Company's proposed cost recovery mechanism. As explained below, however, the OCA does not support the Company's proposal to charge interest on over-collections and under-collections. Further, the Company's proposal to exclude the costs of the statewide evaluator from the applicable 2% spending cap should be rejected. Finally, qualifying energy efficiency and demand response resources can now bid into the PJM auctions as a capacity resource and, if cleared, receive capacity payments. Consequently, PPL should explore this option and considering bidding its qualifying resources into the auctions.

b. The OCA Supports The Levelized Cost Recovery Mechanism Proposed By PPL But There Should Be No Interest on Over or Undercollections.

The OCA anticipates that Plan expenditures will vary, perhaps significantly, on a year by year basis. To provide more stability for customer rates, the Company is proposing to recover the same levelized amount each year from customers. This will allow the Company the flexibility to spend each year based on program ramp up needs, program success and market conditions (within the total spending cap) to maximize Plan implementation without undue volatility in customer rates. OCA St. No. 1 at 15. The OCA supports this approach to cost recovery, particularly for residential customers, to avoid any undue volatility and confusion in rates. The reconcilable and non-bypassable recovery mechanism proposed by the Company will encompass annual reconciliations that reconcile collections to the levelized budget amounts for the year and a reconciliation near the end of the period to reconcile actual collections to actual expenditures.

The Company has proposed that interest be charged on any under or over-collection and on any start-up costs which were deferred. See proposed Act 129 Compliance Rider tariff page (appended to PPL St. No. 4). The OCA does not support adoption of this feature. As explained by Mr. Hahn:

> The spending constraint should not include any interest charges. In other words, PPL has an average annual amount of $61.5 million, not $61.5 million plus interest. Also, with levelization, the interest would likely balance out over time. PPL should not be allowed to collect or charge any interest from customers.

OCA St. No. 1 at 15. Therefore, the OCA submits that the Company should not collect or charge any interest, particularly if such interest would result in customers paying more than $246 million for the Plan.

c. Statewide Evaluator Costs

Section 2806.1 (G) states that:

> The total cost of any plan required under this Section shall not exceed 2% of the electric distribution company's total annual revenue as of December 31, 2006.

66 Pa.C.S. § 2806.1(G). The OCA submits that the costs of the statewide evaluator are part of the total cost of the Plan and must be accounted for within the applicable 2% cap. In its testimony, PPL asserts that the 2% cost cap only applies to its own costs for the EE&C Plan, *i.e.*, the cost of the component programs and their implementation. PPL St. No. 4 at 8. The OCA submits, however, that this is too narrow a reading of the protection of the 2% spending limit. The statewide evaluator costs are a necessary component of the measurement, evaluation and verification needed to ensure that the Plan complies with Act 129. Therefore, the EE&C Plan

budget must accommodate the inclusion of the costs of the statewide evaluator. As set forth by Mr. Hahn, inclusion of the statewide evaluator costs within the 2% spending limit will not impact PPL's ability to meet the required reduction targets since the forecasted energy savings exceed the requirements of Act 129. OCA St. No. 1 at 8. As a result, PPL must include these costs in the four-year overall spending level of $246 million.

d. The Company Should Be Required To Bid Qualifying Energy Efficiency and Demand Response Resources Into The PJM RPM Auction And Credit Customers For The Value Received In The Cost Recovery Mechanism.

As of May 2009, PJM has modified its Reliability Pricing Model (RPM) auction process to allow for the inclusion of energy efficiency and demand response resources. Qualifying energy efficiency and demand response resources can now bid into the PJM auctions as a capacity resource and, if cleared, receive capacity payments. Mr. Hahn recommended that:

> [t]he Company avail itself of participation in existing market mechanisms, such as PJM's Reliability Pricing Model ("RPM") auctions, and return any benefits from such mechanisms to customers as a credit.

OCA St. No. 1 at 16. The OCA submits that PPL should be directed to explore this option and to bid its qualifying resources into the RPM auctions. Capacity payments can provide a significant value that should then be credited to customers through the cost recovery mechanism to offset the costs that they must bear under the Act.

C. CSP Issues

OCA witness Hahn did not identify any issues with respect to CSPs.

D. Implementation and Evaluation Issues

1. Implementation Issues

OCA witness Hahn did not identify any issues with respect to implementations of the Company's proposed Plan.

2. QA Issues

OCA witness Hahn did not identify any issues with respect to QA.

3. Monitoring and Reporting Issues

OCA witness Hahn did not identify any issues with respect to monitoring and reporting.

4. Evaluation Issues

a. On-Going Stakeholder Process

In its filing, PPL did not fully commit to an ongoing stakeholder process. The OCA recommends that the Commission direct the Company to convene an ongoing stakeholder process during the implementation of its Plan. As Mr. Hahn testified, when he was at NSTAR and NSTAR began the development of its DSM programs in the mid-1980s, a similar process was used.

OCA St. No. 1 at 16. Mr. Hahn explained the value of such a process:

> The parties convene to exchange information and discuss matters in an informal setting outside of a formal adjudicatory proceeding. Efforts are made to identify areas of consensus or agreement, and resolve any differences. Any unresolved differences can then be presented to the Commission for resolution. The success of such stakeholder processes depends upon the willingness and ability of the Parties, including the Company, to remain open minded and receptive to change. If successfully implemented, there are several benefits. The informal nature of such processes is an efficient way to exchange information. Numerous issues can be addressed in advance of a formal filing, reducing the time required by the Commission to review the filings. The Commission can take

> comfort in the fact that parties have debated many issues and reached consensus on many of them. Collaborative stakeholder processes are somewhat similar to settlements. Each party may not get everything it wants, but overall the results represent an acceptable basis for moving forward quickly.

Id. In the instant proceeding, the OCA found the initial stakeholder process to be useful in developing a more fully informed Plan and in resolving the numerous issues presented by the requirements of the Act in a beneficial manner. The OCA submits that the Plan, its implementation and any necessary adjustments would benefit greatly from the continuation of this process. As Mr. Hahn stated:

> I believe that there is considerable merit in expanding the stakeholder process for PPL's EE&C Plan. The Company has filed a four-year plan. It is extremely unlikely that this plan will be implemented exactly as projected by the Company. Adjustments and changes are very likely to be required over time, as some programs will exceed their individual targets and others will lag behind. The stakeholder process represents a suitable forum for discussing, and reaching consensus on, these inevitable changes. I recommend that PPL's EE&C stakeholder process be continued with at least quarterly meetings during the Plan period.

OCA St. 1 at 17.

Additionally, the Company should provide the stakeholders with necessary information regarding Plan implementation, including reports on the progress of selecting Conservation Service Providers, the expected costs, the progress toward implementation, penetration rates and savings levels achieved to date, and cost recovery to date. The OCA would also expect that the Company will work with the stakeholder group to review implementation issues, program issues that arise, educational or promotional materials that are being developed so that the stakeholders can provide their input. Other information and exchanges would also be included within the process, such as information regarding American Recovery and Reinvestment Act funding or any new legislation that impacts the EE&C Plan. The OCA recommends that, as with the initial stakeholder process, the process should remain an open exchange of ideas and information.

The OCA commends PPL in its stakeholder efforts to date. Given the significance of the effort needed to implement the EE&C Plan in a cost-effective manner for all customers, the OCA urges that the commitment to the process be extended and formalized so that all stakeholders can count on continuing to make contributions to the EE&C Plans.

b. Mid-Course Corrections

PPL proposes to make "mid-course" corrections in the cost recovery mechanism to reflect major changes to any of its EE&C programs. PPL St. No. 4 at 9. The OCA agrees with PPL that mid-course corrections should be considered so that large changes in cost recovery or program participation are not required near the end of the process. The OCA recommends that the need for any mid-course corrections be considered through a stakeholder process as a first matter. This process should assist PPL in determining whether program changes are needed either within a class or between classes and can assist in determining whether any mismatch between spending and collection is becoming unduly large.

The Company also has proposed that once a mid-course correction is found to be needed, it will seek Commission approval of such a correction. PPL St. No. 1 at 11-12. The OCA does not object to such a process and submits that the annual review to be conducted by the Commission could provide an appropriate forum for such changes.

E. Other Issues

The OCA does not have other issues to address at this time.

VI. CONCLUSION

For the reasons set forth above, the OCA respectfully requests that the Commission approve PPL's EE&C Plan subject to the following recommendations: (1) that PPL limit application of the fuel substitution component of the Efficiency Equipment Incentive Program to customers on rate RTS, 2) that PPL not charge interest on cost-recovery over- or under-collections, 3) that PPL include statewide evaluator costs within its $246 million spending cap, and 4) that PPL continue its EE&C stakeholder process, including at least quarterly meetings during the EE&C Plan period.

VII. PROPOSED ORDERING PARAGRAPH

THEREFORE, IT IS ORDERED:

1. That PPL implement its EE&C Plan with the following modification:

    a. Limitation of the fuel substitution component of the Efficiency Equipment Incentive Program to customers on rate RTS.

2. That PPL include statewide evaluator costs within its $246 million spending cap.

3. That PPL continue its EE&C stakeholder process, including at least quarterly meetings during the EE&C Plan period.

4. That PPL not charge interest on cost-recovery over- or under-collections.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

Petition of PPL Electric Utilities Corporation for Approval of an Energy Efficiency and Conservation Plan	: : :	Docket No. M-2009-2093216

I hereby certify that I have this day served a true copy of the foregoing document, Main Brief of the Office of Consumer Advocate, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

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