



September 8, 2009

Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

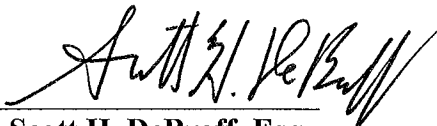
Dear Mr. McNulty:

Enclosed herewith please find an original copy of the “**Reply Brief on Behalf of EnerNOC, Inc.**” in the above captioned proceeding. The Reply Brief has been electronically filed through the PUC’s efilings system. A copy of the Brief will also be served to the parties on the service list.

Should you have any questions, please do not hesitate to contact me at (717) 233-5731.

Sincerely,

RHOADS & SINON LLP

By: 
Scott H. DeBroff, Esq.

Enclosures

cc: Service List for Docket M-2009-2093216

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PPL ELECTRIC UTILITIES
CORPORATION FOR APPROVAL OF ITS
ENERGY EFFICIENCY AND
CONSERVATION PLAN

DOCKET NO. M-2009-2093216

REPLY BRIEF ON BEHALF OF ENERNOC, INC.

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I. INTRODUCTION

EnerNOC, Inc. ("EnerNOC"), a leading demand response ("DR") and energy management services provider throughout the United States, appreciates the opportunity to offer comments on PPL Electric Utilities Corporation's ("PPL" or "Company") Energy Efficiency and Conservation Plan ("EE&C Plan"). As discussed in more detail herein, EnerNOC supports several aspects of PPL's EE&C Plan, specifically regarding its Load Curtailment Plan for Large Commercial and Industrial ("C&I") customers.

EnerNOC currently manages over 3,150 MW of demand response resource capability from over 2,400 customers across 5,450 sites nationwide. As an active demand response provider across three Independent System Operators ("ISOs") or Regional Transmission Organizations ("RTOs") (*i.e.*, New York Independent System Operator, Inc., ISO New England, Inc., and PJM) and numerous states with various statutory and regulatory regimes, EnerNOC has a broad base of experience on which to draw and, as a result, has a unique perspective to offer in this proceeding. EnerNOC also has signed contracts with a variety of utilities to provide demand response services, including Allegheny Power, Baltimore Gas and Electric, Delmarva Power and PEPCO, Southern California Edison, Pacific Gas & Electric, San Diego Gas & Electric, the Tennessee Valley Authority, Tampa Electric Company, Public Service Company of New Mexico, Xcel Energy (Colorado), Salt River Project, and Idaho Power.

EnerNOC's demand response activities are implemented via automated, aggregated, and intelligent management of end-user lighting, HVAC, distributed generation, and industrial process equipment. Every one of EnerNOC's thousands of sites is connected to its Network Operations Center (the "NOC" in EnerNOC) and communicates real-time load data over a secure Internet connection, allowing its operations staff to monitor and verify facility load reductions in

real time. This customer visibility allows EnerNOC to ensure that customers are delivering their contracted reductions and where they are not to take efforts to "coach" them, or to dispatch technicians to take corrective action. As a result, EnerNOC dispatched emergency demand response resources in its network over 100 times during 2008 and delivered performance that averaged over 100% during the year, based on nominated versus delivered capacity.

II. PROCEDURAL HISTORY

Governor Rendell signed into law House Bill 2200, or Act 129 of 2008 ("Act 129" or "Act"), on October 15, 2008. Consistent with the Act's requirements, on July 1, 2009, all Pennsylvania EDCs filed with the Commission proposed energy efficiency and conservation plans ("EE&C Plan") that seek to meet the Act's energy efficiency and conservation requirements.

By letter issued July 2, 2009, the PUC also approved EnerNOC's Application to Register as a Conservation Service Provider.¹ On July 27, 2009 the Prehearing Conference was held. On August 3, 2009, EnerNOC filed a Petition to Intervene in this proceeding. On August 7, 2009, EnerNOC filed its initial comments in this proceeding. On August 28, 2009, EnerNOC filed its Main Brief.

Consistent with the procedural schedule for this proceeding, EnerNOC is submitting this Reply Brief in order to address its positions and concerns regarding party positions taken in their Main Briefs.

¹ See generally Docket No. A-2009-2102368.

III. DESCRIPTION OF PPL'S PLAN

The Company's EE&C Plan proposes to fulfill the requirements of Act 129 through the implementation of 14 energy efficiency and demand reduction programs for Residential, Low-Income, Small Commercial and Industrial ("C&I"), Large C&I and Governmental/Institutional customers.² Of these, the Companies have multiple targets for many of its programs, with nine programs targeted to Residential customers; five programs targeted to low-income customers; six programs targeted to Small C&I customers; seven programs targeted to Government and non-profit customers; and three programs targeted to Large C&I customers.³

IV. SUMMARY OF ARGUMENT

As stated previously, EnerNOC supports several elements of the proposed PPL Load Curtailment Program and commends its focused and cost-effective nature. In its Reply Brief EnerNOC addresses its disagreements with several party recommendations. EnerNOC strongly oppose PPL's concession to ClearChoice Energy to establish a demand response program that requires the bidding of load blocks to multiple CSPs. EnerNOC also disagrees with ClearChoice's recommendation that there should be a cap on the amount of demand reduction that any one CSP could be awarded. In addition, EnerNOC disagrees with ClearChoice's recommendation to set aside 25% of the demand reduction for a disadvantaged business and to not require those businesses to put up capital to guarantee performance. Furthermore EnerNOC disagrees with PPLICA's argument that the programs should not be expanded beyond May 31,

² See EE&C Plan, p. 1

³ See *id.* at 28-32.

2013 and that multiple CSPs should be used for PPL's demand response program. Instead, EnerNOC would recommend that a competitive RFP be issued for one CSP to implement and run the entire demand response program. EnerNOC also disagrees with OSBA's recommendation that the Commission could make adjustments to the incentives offered to participants in the various programs on a going-forward basis.

V. ARGUMENT

A. PPL Electric Utilities Corporation

In PPL's Main Brief on pages 33-34, PPL states that it has responded to ClearChoice's request for multiple demand response CSPs in the Load Curtailment Program. PPL's witness Cleff stated that "PPL Electric will not limit this program to a single CSP." PPL Electric St. 1-R, p. 13. PPL further explains that it will solicit bids from demand response CSPs to provide blocks of firm curtailable load and/or direct load control between 5 MW and 25 MW in size. PPL has also stated that it plans to select the most cost-effective combination of these firm load reduction blocks." PPL further indicates that a "cap amount" for a single CSP provider is not necessary because the "granularity of the blocks" for CSPs to bid on "will allow for a robust bidding process from entities of all sizes and means."

EnerNOC strongly opposes PPL's concessions to ClearChoice in establishing a demand response program that requires the bidding of load blocks to multiple CSPs. Separating out participants into 25 MW blocks will make them too small to aggregate effectively⁴. It will be far

⁴ The essence of what CSPs do is aggregate customers to allow the over-performance of some to offset the under-performance of others. It is only in this way that CSPs can take upon themselves the performance risks that would otherwise be borne by the EDCs (customers, especially smaller ones, are generally unwilling to accept non-performance risks/penalties themselves and will simply not participate if required to do so.) It should be

less economic for a CSP to run a program if it is awarded a demand response block that only represents a portion of the Demand Response program.

PPL's "block" approach would be extremely challenging to operate and manage. If EnerNOC, for example, won a bilateral arrangement for some portion of the capacity in the program, with several other smaller CSPs participating and working to fulfill the rest of the capacity, EnerNOC would have a much different view regarding the amount of risk we would be willing to take on.

There are a number of market influences that will not be controllable and those could easily create confusion and program failure.

First, there would be no control over what revenue percentage split that the other CSPs would offer to their customers. Second, if one CSP had over-enrolled its program, that would, in turn, make it more difficult for other CSPs to realize their program commitments⁵. Third, multiple CSPs providing customers with different marketing campaigns and different messaging will make it confusing for customers. The important market details, including information on what it means to participate in a Demand Response Program, the hours that a customer is required to curtail usage, and other program details, communicated in different ways to customers will create substantial confusion in the market. Customers will have unrealistic

obvious that the larger the aggregation, the less likely it is that the performance of a few large resources will jeopardize the performance of the entire group. Thus, larger aggregations allow for achieving a given level of performance with less of a "cushion" and therefore lower costs that would otherwise be borne by the EDCs (customers, especially smaller ones, are generally unwilling to accept non-performance risks/penalties themselves and will simply not participate if required to do so.) It should be obvious that the larger the aggregation, the less likely it is that the performance of a few large resources will jeopardize the performance of the entire group. Thus, larger aggregations allow for achieving a given level of performance with less of a "cushion" and therefore lower costs.

⁵ It is difficult to overstate how much more difficult it is to enroll customers in a 50-hour per year program, than a less than 10-hour per year program such as the PJM Emergency program. EnerNOC is a party to several bilateral contracts with such terms and we can attest to the fact that customer recruitment is far more difficult than it first appears. It will be a significant challenge for any CSP to meet the aggressive goals envisioned by PPL. Oversubscription is a luxury that PPL and its customers cannot afford and even if they can, may simply not be possible.

expectations about the program, and there could be a rise in consumer complaints before the Commission, which could also slow down the implementation of the program.

In examining PPL's DR program concession, we see additional problems, i.e. if a fledgling CSP were to offer 95% of the revenue to all of the utility's customers. In this scenario, the other CSPs fail to fulfill their own offerings of 25 MW blocks because they cannot offer a reliable program while offering 95% of the revenue. The "discount" CSP then fails to actually deliver on its MW blocks because it is out of business by 2012 because at 95% the economics do not work for them either. Such a program, in our view, jeopardizes the DR goals of PPL as all of the CSPs then fail to achieve their targets. Reliable (but also more expensive) CSPs will be less willing to shoulder the performance risk under these conditions. They would, instead, drive larger and more responsible CSPs to find better opportunities in markets other than PPL.

A successful demand response program is achieved by utilizing an RFP process that ultimately chooses the most qualified CSP to implement the entire demand response program effectively and reliably. The RFP process will weed out CSPs who may be too inexperienced and unable to provide the necessary financial assurances in order to prove that they can adequately implement a program with PPL.

B. ClearChoice Energy

On page 10 of ClearChoice's Main Brief, they cite to 66 Pa.C.S. §2811(a), which holds that the Commission can take steps to prevent discriminatory conduct or unlawful exercise of market power. We strongly disagree with their representation that PPL's Demand Response program is somehow discriminatory in nature and needs correction. EnerNOC would contend

that PPL's program design is just the opposite. This argument is purely an attempt to position ClearChoice to be able to participate in a process that it may not be financially or practically able to handle at this time.

ClearChoice also goes on to indicate, in Footnote 23, on page 38, that in the PA PUC Implementation Order, subsidies or incentives not offered to competitive providers of service cannot be cost subsidized. EnerNOC contends that ClearChoice has taken the meaning of the footnote and what it refers to completely out of context. This footnote refers to a phrase in the Implementation Order that states that when EE&C plans are offered by EDCs, those programs will benefit customer choice and default customers equally. The footnote only tries to alert us to the fact that some customer programs may not be subsidized if they only impact certain classes of customers. ClearChoice's argument that it has some pre-established right to participate in every DR program, no matter what the requirements may be, has nothing to do with this section.

In ClearChoice's Main Brief, it explains that it wants PPL to take steps beyond awarding blocks of demand response to multiple providers to ensure that their program is "nondiscriminatory and competitively neutral." (at pg 11). Specifically, ClearChoice recommends that any marketing materials by PPL must not "prefer the use of one curtailment service provider over another, and all information provided to CSPs participating in the PPL program, also must be provided to non participating CSPs." (at pg 11).

EnerNOC disagrees with ClearChoice's marketing recommendation. It is imperative to present customers with easy to read and understandable marketing materials that will create less confusion to the customer. As stated above, EnerNOC believes that PPL should pursue a strategy that includes issuing a competitive RFP to select the most qualified demand response provider. As we have pointed out previously, seeking out multiple CSPs and requiring that multiple

marketing materials be made available to customers would only cause confusion in program marketing and implementation, particularly if the marketing materials promoted CSPs that were not selected as the most qualified demand response provider for the service area.

In its Main Brief, on page 11, ClearChoice further argues that the Commission should place a cap on the amount a CSP can be awarded so that no CSP can be awarded more than “50% of the demand reduction required by the plan.” ClearChoice seemingly makes this recommendation to ensure that multiple providers can participate in the Demand Response program.

EnerNOC strongly disagrees and opposes the concept of placing any “cap” on the amount of demand reduction that any one CSP can be awarded under PPL’s plan for the same reason it disagrees with having multiple CSPs responsible for specific MW blocks of the PPL demand response program. Both the block format and the “cap” on the amount of demand reduction awarded would create a situation in which multiple CSPs would be crowding the market and attempting to implement the same program. Having a number of CSPs attempting to market to the same customer group will drive the customer acquisition costs higher and make the resources obtained that much less reliable. Instead, EnerNOC recommends that PPL issue an RFP and then select the CSP that provides the most reliable, efficient, and economic services for the Load Curtailment Program.

Also in its Main Brief, on page 11, ClearChoice proclaims that PPL should make several allowances for “disadvantaged businesses” such as itself. ClearChoice claims that EDCs should not be allowed to ask CSPs to post collateral as a guarantee of performance of the demand side resources participating in the program. (pg 12). ClearChoice goes on to state that since it is a “disadvantaged business,” it lacks the capital to post collateral as a performance guarantee in the

EDC curtailment programs. ClearChoice then states that the “essence of what makes a disadvantaged business “disadvantaged” is the limited capital to fund its operations. This logic is clearly circular.

ClearChoice cites page 26 of the Commission’s Implementation Order, which states that part of the minimum criteria for reviewing and approving the CSP bidding process is that EDCs should “encourage efforts to acquire bids from ‘disadvantaged business’ (i.e., minority owned, women-owned, persons with disability-owned, small companies, companies located in Enterprise Zones, and similar entities- consistent with the Commission’s Policy Statements at 52 Pa. Code §§ 69.804, 69.807 and 69.808.” As a result of its circular argument, ClearChoice states that if PPL’s program includes posting collateral as a performance guarantee, then it must set aside 25 percent of its demand response program for disadvantaged businesses with the proviso that the disadvantaged business would not have to post collateral in the program. (pg 13).

EnerNOC strongly disagrees with ClearChoice’s recommendation and interpretation of the Implementation Order and the Pennsylvania Code. To begin with, the section of the Implementation Order and the provisions of the Code require that a “disadvantaged business” be given “an equal opportunity to compete.” Also a disadvantaged business is defined in the Order and the Code as “ minority/women/person with disabilities-owned.” Nowhere in the Code or the Order does it define “disadvantaged business” as one with “limited capital.”

EnerNOC believes that the rational behind the Commission’s citing to Policy Statements at 52 Pa. Code §§ 69.804, 69.807 and 69.808 on page 26 of its Implementation Order was to ensure that no inherent discrimination between two equally **qualified** businesses takes place. All RFPs given out for any EDC program should be awarded to the most qualified CSP that meets the requirements of the program. The PA Code and PA PUC Implementation Order simply align

with national policy concerns against discrimination. Utilities should not be forced to rely on unreliable DR providers when the program successes are so critical.

PPL has provided an “equal opportunity” for all CSPs to bid on its program. To begin with, in the formation of its EE&C plan, PPL has held widely published stakeholder meetings and welcomed input from all people in attendance. In addition, its plan promotes a “competitive RFP” that will be open to all CSPs.

EnerNOC fully supports an open and competitive RFP and welcomes the challenge of equally qualified opponents in the bidding process in order to be chosen as the most qualified and effective CSP and the one to work on implementing the demand response program for PPL. EnerNOC does not support set-asides for inexperienced, under-capitalized, or otherwise unqualified participants. To the extent those participants have valuable and reliable resources, they should offer those resources to the winning bidder. To the extent the price of that offer is commensurate with the quality of the resources, the winning bidder should be happy to work with them.

Finally, and most compelling, setting aside any percentage of a demand response program to a company that ultimately admits it will not be able to make payment on penalties for non-performance, would not be a “prudent or reasonable” business decision on the EDC’s part. Under Act 129, PPL has a duty to make “prudent and reasonable” decisions and to protect its ratepayers. (66 Pa. C.S. § 2806.1) It would **not** be prudent or reasonable for PPL, or any other PA utility, to award a program bid to a company who lacked experience and capital to back up its performance guarantee.

EnerNOC requests that the Commission require PPL to submit competitive RFPs and to choose one CSP that is the most qualified to implement and run its demand response program, needed for it to meet its requirements under Act 129.

C. PPL Industrial Customer Alliance

In its Main Brief, on page 5, the PPL Industrial Customer Alliance (“PPLICA”) argues that the Commission should require that PPL’s EE&C Plan and its cost recovery mechanism end as of May 31, 2013. (pg 5, 24-27). PPLICA cites to 66 Pa.C.S. § 2806.1(c)(3) and interprets Act 129 to only permit one result. That result is that the initial Plans terminate at the end of 42 months unless the PUC affirmatively determines that the actual benefits outweigh the actual costs and the PUC would establish new DR goals for the utility. In addition, PPLICA contends that the cost recovery mechanisms may extend beyond the initial term solely to reconcile any over recovery or under recovery of costs. Further, PPLICA claims that by extending the curtailment-related contracts may not be “cost justified as the projected increase to compensate the CSPs for the plan without the extension would increase by \$5 million while the increase with the extension would appear to be \$5-\$10 million per year.” (pg 26-27).

EnerNOC strongly disagrees with PPLICA’s recommendation and its interpretation of Act 129. In its Main Brief, EnerNOC explained why 66 Pa.C.S. § 2806.1(c)(3) supports the EDCs entering into long term contracts with a CSP and how it would ultimately be more “prudent and reasonable” for the EDCs to do so. PPLICA’s argument, theory at best, completely distorts the legislative intent of requiring utilities to achieve a peak load reduction requirement in

2012/2013. We disagree with the stance that the Legislature would have intended that PPL be forced into dropping a successful peak load reduction program just as it gets underway.

In reviewing, 66 Pa.C.S. § 2806.1(c)(3), our interpretation is that the intent of the Legislature was to have the EDCs maintain the status quo with the DR program, while the potential for further (not “existing”) reductions was being assessed by the Commission. Unlike energy efficiency investments, demand response programs will only work if the EDCs provide continuing support. It would be prudent and most beneficial to the ratepayers if the EDCs maintained the current demand response and peak load reductions during that time of the Commission review. If these programs are not maintained during that interim period, the EDCs will have to incur more costs to meet any new requirements beyond the 4.5% peak demand reduction goal for 2013.

Further, other components of the EE&C plan, such as deployment of smart metering, that will tie into the Load Control Program, will certainly continue to be in service and operational long after the May 31, 2013 deadline. Energy Efficiency Programs and Demand Response Programs work together in the same demand side management spectrum, and will need to be available to work in concert with Smart Metering, which contributes the platform for measurement, verification and evaluation of such programming. With this Commonwealth’s commitment to the deployment of advanced metering and the creation of a Smart Grid, there is every reason to infer that the Demand Response and Energy Efficiency programming once started were meant to endure as well.

PPLICA, on Page 11 of its Main Brief, supports using multiple CSPs, but since the RFPs will not be issued until September, the company does not know whether there will be a cap on

the load that any one CSP can win or when the number of CSPs for this program will be determined.

EnerNOC opposes this rationale just as it opposes the program participation as described by ClearChoice. As we have stated, DR program success for PPL, as with any utility, is based upon a clearly defined program that can be implemented with a reputable CSP partner who can successfully market that program to the utility's customers. By diluting the load and splitting up the program responsibilities, the utility creates more risk of program failure. As we stated earlier, we support a program design that will provide confidence to the utility as well as to the Commission and offers the best chance for success. We oppose PPLICA's argument and support the concept that other CSPs and customers could participate through the CSP that was selected in the RFP process.

On page 16 in PPLICA's Main Brief, they cite to PPL's Main Brief which indicates that the projected cost of its large C & I Curtailment Program could increase by \$30 million (to oversubscribe participants), \$14 million (to pay adequate incentive to curtail) and potentially even more. See EE&C Plan pp. 13-14.

EnerNOC, in reflecting on the design of the Curtailment Program, believes that oversubscription will not be necessary if RFP terms, security and penalties are appropriate.

On page 24 of PPLICA's Main Brief, they contend that PPL's EE&C plan should automatically terminate at the end of 42 months, by May 31, 2013, the end of the PPL EE&C program date.

EnerNOC opposes this view and supports PPL's plan design and testimony that supports it. PPL has argued that its current portfolio design contemplates that the Company will need to enter into contracts with CSPs that extend beyond the end of this EE&C plan (May 31, 2013),

although those payments are not included in the current portfolio and would likely be structured in the CSP contract to be contingent on the Commission's extension of peak load reduction targets and funding beyond the life of the current plan. (EE&C Plan, p. 13 [emphasis added].)

Further, the Company continues that if it were limited to contracts that expire on September 12, 2012, which is the compliance date for peak load reductions, PPL contends that these short-term contracts could be more costly – at approximately \$5 million beyond the current portfolio. Id. at 13-14. The Company is proposing, and EnerNOC supports its position, that it be allowed to enter into contracts with CSPs in many cases for five (5) to eight (8) years. See PPL Response to OTS 1-3(b).

As the Company continues, “assuming a contract is awarded in late 2009 and demand reduction programs (and associated incentive payments to participants and the CSP) will start gradually in mid-2010, a five (5) to eight (8)–year contract term would extend to 2015-2017.” Id.; see also Tr. at 166. Mr. Cleff, of the Company, confirmed that the total projected costs in each of the extra years will be approximately \$5 million - \$10 million per year. Tr. at 168.

PPLICA opposes the extension of the costs recovery mechanism beyond May 31, 2013, except for the limited purpose of addressing any over-collection or under-collection of plan costs. EnerNOC disagrees with PPLICA's perspective and contends that it makes absolutely no financial nor practical sense to end a DR program operating at a lower cost only to have to, in all likelihood, restart the same program at a significantly higher cost.

The testimony of the Company supports the continuation of the DR programming beyond the 2013 time frame, and EnerNOC contends that this is the best decision this Commission could make in order to generate a successful demand response opportunity for both ratepayers and the utilities.

Finally, PPLICA quotes 66 Pa C.S. §2806.1, just as EnerNOC quoted it in its Main Brief, in regard to the process to determine whether any plan should extend beyond the initial five-year plans. PPLICA interprets the statute to mean that Act 129 implies that the initial plans must terminate at the end of the 42 months unless the PUC affirmatively determines that the benefits outweigh the costs of the program.

EnerNOC disagrees with that interpretation of Act 129 and contends that its argument made on the differing DR program costs and the ability to conduct a more effective and cost-conscious DR program, as indicated in PPL's testimony, is the only interpretation that will provide both program benefits to ratepayers and accomplish the reduction goals of Act 129.

C. Office of Small Business Advocate

On page 11 of their Main Brief, the OSBA takes the position that PPL has not provided detailed justification for the magnitude of the incentives proposed. Their recommendation is that as part of an annual reconciliation filing, PPL should present a detailed justification for the magnitude of the incentives that it offers. They go on to recommend, based on that data, that the parties could propose and the Commission could consider, adjustments to the incentives offered to participants in the various programs on a going-forward basis.

EnerNOC opposes this "detailed justification" process and believes that it is unnecessary to the extent that it would disrupt long-term contracts managed through the RFP process.

VI. CONCLUSION

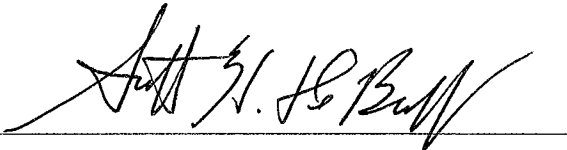
For all of the foregoing reasons as well as the reasons expressed in EnerNOC's earlier filings, EnerNOC respectfully requests that the Commission adopt its proposed recommendations to PPL's EE&C Plan.

VII. PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

1. That PPL's Load Curtailment Program be structured in a way in which it can continue on successfully after the statutory deadline of May 31, 2013.
2. That PPL issue a competitive RFP and select one CSP to implement and run its Load Curtailment Program.

Respectfully submitted,

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DATED: SEPTEMBER 8, 2009

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**COMMONWEALTH OF PENNSYLVANIA
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PETITION OF PPL ELECTRIC UTILITIES
CORPORATION FOR APPROVAL OF ITS
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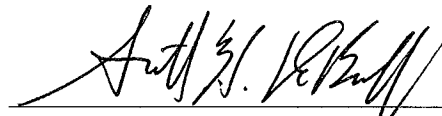
DOCKET NO.M-2009-2093216

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties, listed on the next page, in accordance with the requirements of §1.54 (relating to service by a party).

Dated: **September 8, 2009**

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