**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held December 17, 2009

Commissioners Present:

James H. Cawley, Chairman

Tyrone J. Christy, Vice Chairman

Kim Pizzingrilli

Wayne E. Gardner

Robert F. Powelson

Petition of PPL Electric Utilities Corporation

for Approval of its Energy Efficiency and Docket No. M-2009-2093216

Conservation Plan; Petition for Reconsideration

of the Office of Small Business Advocate

**OPINION AND ORDER**

**BY THE COMMISSION:**

# I. Introduction

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration of the Office of Small Business Advocate (the OSBA or Petitioner) of the Commission’s Opinion and Order of October 26, 2009, (the *October 26, 2009 Order*) which conditionally approved the Energy Efficiency and Conservation Plan (EE&C Plan, or Plan), filed by PPL Electric Utilities Corporation (PPL) on July 1, 2009.

**II. Background and Procedural History**

Governor Edward G. Rendell signed Act 129 of 2008 (Act or Act 129) into law on October 15, 2008. The Act took effect thirty days thereafter on November 14, 2008. Among other things, the Act amended the Public Utility Code (Code), 66 Pa. C.S. §§ 101 *et seq*., to require the Commission to develop and adopt an Energy Efficiency and Conservation (EE&C) Program by January 15, 2009.

By Opinion and Order entered January 16, 2009 at Docket No. M-2008-2069887 (*Implementation Order*), the Commission (1) established the standards that EE&C Plans must meet, and (2) provided guidance on the procedures to be followed for submittal, review and approval of all aspects of EDC plans.

PPL filed its EE&C Plan on July 1, 2009. Numerous parties intervened prior to or at the prehearing conference, including the OSBA. The Plan was referred to Administrative Law Judge (ALJ) Susan D. Colwell, and on September 14, 2009, ALJ Colwell certified the record to the Commission for consideration and disposition.

On October 15, 2009, the Commission adopted, with modifications, PPL’s EE&C Plan.[[1]](#footnote-1)

On November 10, 2009, the OSBA filed a Petition for Reconsideration (Petition) of the Commission’s Opinion and Order of October 26, 2009.

On November 20, 2009, PPL filed an Answer to the Petition.

# III. Discussion

The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 *et al.*, 56 Pa. P.U.C. 553, 559, (1982). Under the standards set forth in *Duick*, a Petition for Reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations that appear to have been overlooked or not addressed by the Commission. *Duick* at 559. It has also been held that, because a grant of relief on such petitions may result in the disturbance of final orders, it should be granted judiciously and only under appropriate circumstances. *West Penn Power v. Pennsylvania Public Utility Commission*, 659 A.2d 1055 (Pa. Cmwlth. 1995), *petition for allowance of appeal denied*, No. 576 W.D., Allocatur Docket (April 9, 1996); *City of Pittsburgh v. PennDOT*, 490 Pa. 264, 416 A.2d 461 (1980).

We note that any issue, which we do not specifically address herein, has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); also *see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In its Petition, the OSBA requests that the Commission: (1) direct PPL to recognize Street Lighting customers served under Tariff Schedules SA, SM(R), SHS, SE, TS(R), and SI-1R, as a separate class or classes for purpose of cost-recovery; (2) amend Ordering Paragraph No. 15 to make clear that the conservation surcharge for small commercial and industrial (C&I) customers is to be a separate line item on the bills of those customers; and, (3) direct PPL to file a red-lined version of its revised EE&C Plan. Petition at 3, ¶ 13.

In its Answer, PPL states that, with respect to the issue raised by the OSBA concerning Street Lighting customers, that no party, including the OSBA, requested that PPL establish a separate customer class for Street Lighting customers in this proceeding and that it is improper for the Commission to reconsider an issue never raised, below. Further, PPL states that the OSBA’s attempt to boot-strap from the decision in the PECO Act 129 case[[2]](#footnote-2) to this proceeding is irrelevant given fundamental differences between the PPL and PECO EE&C Plans. PPL asserts that the OSBA request is inconsistent with Commission-approved cost recovery mechanisms. Answer at 3-6, ¶ 16.

Addressing the issue raised by the OSBA concerning the conservation surcharge for small C&I customers as a separate line item on the bills of those customers, PPL states that its Act 129 Compliance rider will be reflected as a separate line item on the bills of both large and small C&I customers, so PPL does not object to the proposed modification of Ordering Paragraph No. 15 of the *October 26, 2009 Order*. Answer at 6, ¶ 17.

Responding to the issue raised by the OSBA concerning filing a red-lined version of its revised EE&C Plan, PPL states that it was already PPL’s intention to serve the Commission and the Parties to this proceeding with both a “clean” and red-lined version of PPL’s revised EE&C Plan, so PPL does not object to the OSBA request. Answer at 6, ¶ 18.

**IV. Disposition**

We shall deny reconsideration with respect to the OSBA’s request that we direct PPL to recognize Street Lighting customers served under Tariff Schedules SA, SM(R), SHS, SE, TS(R), and SI-1R, as a separate class or classes for purpose of cost-recovery. In applying the *Duick* standard, we find that with regard to the Street Lighting issue, the OSBA has not met that standard in this case.

The assignment of costs for EE&C Plan measures that target street and area lighting were not raised or addressed in the *October 26, 2009 Order* for the simple reason that no such specific programs were offered by PPL. In contrast, the issue of a separate class for Street Lighting was addressed by the Commission in the PECO Order due to the simple fact that PECO proposed EE&C measures that targeted those customers. Thus, we do not believe that the allocation of lighting costs is an issue ripe for determination in the present matter. Furthermore, the OSBA has failed to cite any case to support its position that we can look to evidence and facts presented in another case to decide a different case where such evidence and facts were not presented. Such a result would allow a party to, in essence, present new evidence after the record was closed without giving the other parties an opportunity to challenge and respond. This would clearly violate the due process rights of those other Parties. We are not willing to set such a precedent, and we suspect that the OSBA would not want its due process rights compromised in such a manner.

Further, our *October 26, 2009 Order* specifically rejected the OSBA’s broad argument that 66 Pa. C.S. § 2806.1(a)(11) requires the creation of a separate rate class for Government/Non-Profit entities. In that Order, the Commission stated:

A more reasonable interpretation of Section 2806.1(a)(10)[sic][[3]](#footnote-3) under these circumstances is that the costs of measures benefitting governments, school districts, institutions of higher education and non-profit entities must be assigned in a reasonable manner to the rate class(es) in which those customers are embedded.

October 26, 2009 Order at 64.

This statutory requirement may be accomplished in myriad ways. Act 129 establishes certain requirements that must be met by electric distribution companies (EDCs), but gives the EDCs discretion (subject to Commission review) over the method by which the EDC will comply with those requirements. In reviewing the revised Plans, we will determine whether PPL’s cost recovery mechanism complies with the requirements of 66 Pa. C.S. § 2806.1(a)(11). As such, this aspect of the OSBA’s Petition is denied as premature.

With respect to the request of the OSBA to amend Ordering Paragraph No. 15 of the *October 26, 2009 Order* to make clear that the conservation surcharge for small C&I customers is to be a separate line item on the bills of those customers, we question whether this issue is raised in strict accord with the *Duick* standard. Nonetheless, as this request is not opposed by PPL, we will consider the request as within our authority to grant or deny under Section 703(g) of the Code, 66 Pa. C.S. § 703(g), relative to rescission and amendment of orders. We will grant the request. Ordering Paragraph No. 15 will, therefore, be amended to read:

15. That, consistent with 66 Pa. C.S. § 2802(17), our regulations at 52 Pa. Code § 54.4(3) and 52 Pa. Code § 56.15 and the Commission-approved approach regarding Section 1307(e) cost recovery mechanisms, PPL Electric Utilities Corporation’s Efficiency and Conservation program costs shall be included in the distribution rate on residential customers’ bills, rather than as a separate line item, but that PPL Electric Utilities Corporation’s Efficiency and Conservation program costs shall be set forth as a separate line item for both small and large C&I customers.

With respect to the issue raised by the OSBA concerning PPL filing a red-lined version of its revised EE&C Plan, we agree with the OSBA that the issue of requiring a red-lined version of the revised EE&C Plan is relevant to the filing schedule in this proceeding, though we question whether this issue is raised in strict accord with the *Duick* standard. This request is, however, moot as PPL has already agreed to provide a red-lined version of its revised EE&C Plan.

# V. Conclusion

For the reasons set forth above, we will deny the Petition for Reconsideration of the Office of Small Business Advocate but accept the request for modification of Ordering Paragraph No. 15 of the October 26, 2009 Opinion and Order at this docket, consistent with this Opinion and Order; **THEREFORE;**

**IT IS ORDERED:**

1. That the Petition for Reconsideration of the Office of Small Business Advocate of the Opinion and Order of October 26, 2009, which conditionally approved the Energy Efficiency and Conservation Plan of PPL Electric Utilities Corporation is denied, consistent with this Opinion and Order.

2. That Ordering Paragraph No. 15 of the Opinion and Order of October 26, 2009, is amended consistent with this Opinion and Order.

3. That a copy of this Opinion and Order be served on the Parties to this proceeding.



**BY THE COMMISSION,**

James J. McNulty

Secretary

(SEAL)

ORDER ADOPTED: December 17, 2009

ORDER ENTERED:  **December 28, 2009**

1. *Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093216 (Order entered October 26, 2009). [↑](#footnote-ref-1)
2. *Petition of PECO Energy Company for Approval of its Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program*, Docket No. M-2009-2093215 (Order entered October 28, 2009) (the PECO Order). [↑](#footnote-ref-2)
3. A typographical error was made in the *October 26, 2009 Order*. The correct site is Section 2806.1(a)(11). [↑](#footnote-ref-3)