**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

 Public Meeting held February 11, 2010

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 Docket No. M-2009-2093216

for Approval of its Energy Efficiency and

Conservation Plan

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**OPINION AND ORDER**

**BY THE COMMISSION:**

# I. Introduction

In *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) (*October 2009 Order*), the Pennsylvania Public Utility Commission (Commission) granted in part and denied in part, PPL Electric Utilities Corporation’s (PPL or Company) Energy Efficiency and Conservation Plan (EE&C Plan), thereby approving the Plan as modified consistent with that Opinion and Order, pursuant to Act 129 of 2008 (Act 129 or the Act). The Commission required PPL to submit a revised Plan within sixty days of the date of entry of the *October 2009 Order*. Now before the Commission for consideration and disposition is PPL’s revised Energy Efficiency and Conservation Plan (Revised Plan). For the reasons set forth herein, we will approve in part and reject in part the Revised Plan, and direct PPL to file a second Revised Plan within sixty days of the entry of this Opinion and Order.

# II. Procedural History

A detailed history of this proceeding, together with that of our various Act 129 proceedings, was set forth in the *October 2009 Order*. Consequently, this section summarizes the procedural history of this matter.

PPL filed its Plan on July 1, 2009. The Plan was referred to Administrative Law Judge (ALJ) Susan D. Colwell, who held a Public Input hearing at Bethlehem, Pennsylvania on July 29, 2009. ALJ Colwell also held evidentiary hearings on August 17, 2009, in Harrisburg, Pennsylvania.

The Parties to this proceeding are: the Office of Trial Staff (OTS); the Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA); the Commonwealth of Pennsylvania, Department of Environmental Protection (DEP); Pennsylvania Association of Community Organizations for Reform Now (ACORN); Citizens for Pennsylvania’s Future (PennFuture), UGI Utilities, Inc. – Gas Division, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc. (collectively UGI); Sustainable Energy Fund for Central Eastern PA (SEF); PP&L Industrial Customer Alliance (PPLICA); Field Diagnostics Services, Inc. (FDSI); Richards Energy Group, Inc. (Richards); EnerNOC, Inc. (EnerNOC); Comperio Energy LLC d/b/a ClearChoice Energy (ClearChoice); and Eric J. Epstein.[[1]](#footnote-1)

On September 14, 2009, ALJ Colwell certified the record to the Commission for consideration and disposition.

As stated previously, the PPL EE&C Plan was considered in our *October 2009 Order* and was approved as modified consistent with that Opinion and Order. The Commission directed PPL to file a Revised Plan within sixty days.

On November 10, 2009, the OSBA filed a Petition for Reconsideration of the *October 2009 Order*.

By Opinion and Order entered November 19, 2009, the Commission granted reconsideration pending review of, and consideration on, the merits. PPL filed an Answer to the Petition for Reconsideration on November 20, 2009.

On December 17, 2009, the Commission adopted an Opinion and Order, subsequently entered on December 28, 2009, which denied the OSBA’s Petition for Reconsideration.

On December 17, 2009, PPL filed a Revised Plan, red-lined to show all of the changes that the Company had made to the July 1, 2009 version of its Plan. Comments with respect to the Revised Plan were filed by the OSBA and the OCA on December 28, 2009. PPL filed Reply Comments on January 7, 2010.

# III. Description of the Revised Plan

 PPL’s original EE&C Plan was described in detail in the *October 2009 Order*, and so will not be described in detail, here.

 In its Revised Plan, PPL has offered a *Summary of Changes* made to its original EE&C Plan so as to comply with the Commission’s *October 2009 Order*. PPL has also identified corrections and clarifications made in the Revised Plan. The changes reflected in the Revised Plan are, primarily: corrections to the allocation of common costs to customer sectors; minor changes due to the correction of line loss factors; and some corrections to the Total Resource Cost (TRC) results for demand response programs to exclude customer benefits beyond Program Year 4. Upon review, we find that the correction of line loss factors and corrections to the TRC results for Demand Response Programs do not affect our determination with respect to the overall acceptability of PPL’s Revised Plan.

 We note that in many instances, PPL has re-asserted portions of its EE&C Plan already approved. PPL often uses the term, “reinforced,” in this context.

Specifically, in its *Summary of Changes*, PPL states that its Revised Plan has:

* Revised the method PPL will use to demonstrate it has met the low-income

requirement (percent of measures dedicated/available to low-income customers is at least equal to the low-income customers' proportion of total load).

* Corrected line loss factors.
* Stated that Stakeholder meetings are required no less than twice annually.
* Corrected the allocation of common costs to customer sectors.
* Reinforced the understanding that result of the Annual Review is a criterion for updating the Plan.
* Established that the cost recovery mechanism will be a separate line item on small and large Commercial and Industrial (C&I) customers’ bills instead of included in the distribution rate and that the $/kW charge for large C&I customers will be based on each customer’s PJM Interconnection, LLC (PJM) peak load contribution instead of billing demand.
* Reinforced the concept that mid-course corrections to the Plan will be reviewed with stakeholders and submitted to the Commission for approval.
* Acknowledged that the cost of the statewide evaluator is not included in the Act 129 cost cap.
* Declared that PPL will not collect or pay interest on under- or over-collections of Act 129 costs.
* Agreed that no Act 129 capital costs are included as part of the Act 129 cost recovery rider, nor will such costs be placed into rate base.
* Agreed that PPL Electric will not directly assign the cost of a program or specific measure to an individual large C&I customer.
* Clarified the reason why there is no expiration date for the cost recovery mechanism (i.e. because the mechanism will be needed to refund any over collection or to recover any under collection existing at the end of the four-year EE&C Plan).
* Reinforced that cost recovery will not exceed the mandated 2% cost cap.
* Clarified that PPL will amortize and recover the costs of the EE&C Plan over a 41 month period from January 1, 2010, through May 31, 2013, instead of a 42 month period starting in December 2009. This enables the Company to use the same effective dates for Act 129 tariff changes as many other tariff changes, thereby simplifying programming changes and minimizing customer confusion.
* Added Table 5a for clarity to consolidate common information that is spread over several other tables.
* Added the requirement that PPL will track and report if a customer switches to electric appliances from gas appliances or from gas appliances to electric appliances. This data will be included in the Annual Report. PPL will also report data on replacement appliances and systems.
* Reinforced that fuel switching is limited to Residential Thermal Storage (RTS) customers only.
* Added eligibility for customers with window air conditioners with respect to Energy Assessment & Weatherization Program.
* With respect to the Direct Load Control Program, reinforced the following:

PPL plans to hire one Conservation Service Provider (CSP) to deliver firm load reductions for the entire Direct Load Control Program.

A customer can participate in PJM’s demand response programs, PPL’s Act 129 demand response programs, or both.

A customer’s curtailment service provider for PJM’s demand response programs can be the same as, or different from, the customer’s demand response CSP for PPL’s Act 129 demand response programs.

PPL Electric expects its Act 129 demand response CSP to bid peak load reductions from the Direct Load Control program into PJM’s RPM auction (to the extent that those MWs were not previously committed from PJM’s demand response programs) and share benefits with its customers.

PPL’s Direct Load Control program must be coordinated with PJM’s demand response programs and will not require customers to leave PJM’s programs or their PJM curtailment service provider and use PPL Electric’s CSP.

Corrected the benefit-cost ratio to exclude customer benefits beyond Program Year 4.

Clarified that the Time of Use Rates Program is available only to customers taking default service from PPL on Time-of-Use rate schedules.

* With respect to the PPL Load Curtailment Program, reinforced the following:

PPL plans to solicit bids from multiple demand response CSPs to provide blocks of firm curtailable load. PPL plans to select the most cost-effective combination of these firm load reductions and could award the Load Curtailment Program to one or more CSPs.

A customer can participate in PJM’s demand response programs, PPL’s Act 129 demand response programs, or both.

A customer’s curtailment service provider for PJM’s demand response programs can be the same as, or different from, the customer’s demand response CSP for PPL’s Act 129 demand response programs.

PPL expects its Act 129 demand response CSP to bid peak load reductions from the Load Curtailment Program into PJM’s RPM auction (to the extent that those MWs were not previously committed from PJM’s demand response programs) and share benefits with its customers.

PPL’s Load Curtailment Program must be coordinated with PJM’s demand response programs and will not require customers to leave PJM’s programs or their PJM curtailment service provider and use PPL’s CSP exclusively.

* Distributed generation can be used, consistent with the Commission’s Order.
* Clarified that the Quality Assurance/Technical CSP role may be merged with the Evaluation, Monitoring and Verification CSP role.
* Clarified how PPL defines “administrative costs.”
* Clarified whether data includes or excludes participant costs.
* Corrected the TRC benefits for the Direct Load Control and Load Curtailment Programs to exclude benefits beyond Program Year 4.
* Made relatively minor changes to the “Summary of Projected Benefits, Costs, and Cost-Effectiveness” tables at the end of each program description in Section 3 to reflect corrected line loss factors.

*Summary of Changes to PPL Electric Utilities Corporation’s Act 129 Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093216, December 10, 2009.

 We also note that in its Revised Plan, PPL offers clarifications, additions or corrections to various Tables. Those clarifications, additions or corrections did not substantively affect the Plan, were not commented upon or objected to by the Parties, and are hereby accepted by the Commission.

# IV. Discussion

In Commission proceedings, the proponent of a rule or order bears the burden of proof. 66 Pa. C.S. § 332(a). To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

We note that any issue that 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 Corporation 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).

## A. Proper Allocation of EE&C Plan Costs

 **1. *October 2009 Order***

 In the *October 2009 Order*, we found that PPL’s EE&C Plan must be modified to reflect the Commission decision that EE&C Plan costs may not be assigned to individual customers. *October 2009 Order* at 47, Ordering Paragraph No. 13.

 **2. Positions of the Parties**

 PPL’s Revised Plan makes a number of changes to comply with this Commission directive. Specifically, under Section 1.7, *Summary Description of Cost Recovery Mechanism*, of the Revised Plan, PPL will not directly assign the cost of a program or of a specific measure to a Large C&I customer.

 No Parties commented with respect to this issue.

 **3. Disposition**

 We find that PPL’s allocation of EE&C Plan Costs is satisfactory and is in substantial compliance with the Act and our *October 2009 Order*.

## B. Separate Line Item Billing

 **1. *October 2009 Order***

 In the *October 2009 Order,* PPL proposed to implement a cost recovery mechanism in the form of an ACR to be included in its tariff. A *pro forma* version of this proposed tariff rider was set forth in the Company’s EE&C Plan. PPL Exh. 1 Amended, Appendix F; PPL Exh. JMK-1. While the Commission agreed with this proposal generally, the Commission made an exception for both the Large and Small C&I customer classes. The Commission was persuaded by the OSBA and the reasoning of PPLICA that because of the potentially sizeable increases associated with the ACR for these customer classes, a separate line delineation of these charges will provide transparency and clarity. The Commission rejected PPL’s proposal to apply its ACR to the distribution charges on Large and Small C&I customers’ bills, and PPL’s EE&C Plan must be modified accordingly. *October 2009 Order* at 48-52, Ordering Paragraph No. 15.

 **2. Positions of the Parties**

 PPL’s Revised Plan makes a number of changes to comply with this Commission directive. Specifically, under Section 1.7 and Section 7.4 of the Revised Plan, PPL states that the cost recovery mechanism will be a separate line item on Large and Small C&I customers’ bills instead of included in the distribution rate and that the $/kW charge for Large C&I customers will be based on each customer’s PJM peak load contribution instead of billing demand. Revised Plan at 28, 216 and 217.

 No Parties commented with respect to this issue.

 **3. Disposition**

 We find that PPL’s provisions for separate line item billing are satisfactory and are in substantial compliance with the Act and our *October 2009 Order*.

## C. Interest Charges

**1. *October 2009 Order***

In the *October 2009 Order,* we directed that the PPL EE&C Plan must be modified to reflect the Commission’s decision that interest charges on over and under collections are not allowed. *October 2009 Order* at 58-61, Ordering Paragraph No. 18.

 **2. Positions of the Parties**

 PPL’s Revised Plan contains a modification at Section 1.7 to the effect that PPL will not collect or pay interest on over or under collections. Revised Plan at 29, 217.

 No Parties commented with respect to this issue.

 **3. Disposition**

 We find that PPL’s provision that it will not collect or pay interest on over or under collections is satisfactory and is in substantial compliance with the Act and our *October 2009 Order*.

## D. Rate Design for Large C&I Customers

**1. *October 2009 Order***

In its original Plan, PPL proposed the recovery of Plan costs via the ACR from Large C&I customers on a demand charge basis. PPLICA, however, advocated the use of the PJM Peak Load Contribution (PLC) instead of PPL’s billing demand. This was accepted by the Commission, and in the *October 2009 Order* the Commission directed that PPL must modify its EE&C Plan accordingly. *October 2009 Order* at 65‑66, Ordering Paragraph No. 22.

 **2. Positions of the Parties**

 PPL’s Revised Plan makes a number of changes to comply with this Commission directive. Specifically, under Section 7.4 of the Revised Plan, the $/kW charge for Large C&I customers will be based on each customer’s PJM PLC contribution instead of billing demand. Revised Plan at 216, 217.

 No Parties commented with respect to this issue.

 **3. Disposition**

 We find that PPL’s provision that it will use PJM’s PLC instead of PPL’s billing demand is satisfactory and is in substantial compliance with the Act and our *October 2009 Order*.

## E. Time of Use (TOU) Program

**1. *October 2009 Order***

In the *October 2009 Order*, the Commission directed that PPL’s EE&C Plan must be modified to reflect that TOU costs are default service costs which should be allocated to Default Service customers pursuant to the Commission’s Default Service Policy Statement at 52 Pa. Code §§ 69.1801 *et seq. October 2009 Order* at 67, Ordering Paragraph No. 41.

 **2. Positions of the Parties**

 PPL’s Revised Plan states at section 3.2 that the TOU Rates Program is available only to customers taking default service from PPL on TOU rate schedules noting, however, that the Commission will issue a Final Order with respect to the TOU Program prior to January 31, 2010. Revised Plan at 90-91.

 No Parties commented with respect to this issue.

 **3. Disposition**

 We find that PPL’s provision that the TOU Rates Program is available only to customers taking default service from PPL on TOU rate schedules is satisfactory and is in substantial compliance with the Act and our *October 2009 Order*. We note, however, the action taken at our Public Meeting of January 28, 2010, at which we adopted an Opinion and Order in the case of *Re: PPL Electric Utilities Corporation Supplement No. 71 to Tariff Electric-Pa. P.U.C. No. 201 Regarding its Proposed Time-of-Use Rate Program*, Docket No. R-2009-2122718. In that Opinion and Order, PPL is directed to recover all costs specific to its TOU program through its default service tariffs and that PPL is not permitted to recover its TOU program costs through the Consumer Education Plan and EE&C Plan surcharges. Further, PPL was directed in that Opinion and Order to seek recovery of any additional TOU program costs by an appropriate filing with the Commission, with service on all Parties, containing the amount and description of TOU program costs and an update of TRC parameters to reflect any such increased costs or revised benefits. The Opinion and Order is consistent with our action in this proceeding, which should be read *in pari materia* with the Opinion and Order adopted January 28, 2010, at Docket No. R-2009-2122718.

## F. Demand Response Resources

**1. *October 2009 Order***

In the *October 2009 Order*, the Commission directed that PPL’s EE&C Plan must be modified to reflect that PPL is required to bid qualifying energy efficiency and demand response resources into the PJM Reliability Pricing Model auction process and credit customers for the value received in its cost recovery mechanism. *October 2009 Order* at 71-72.

 **2. Positions of the Parties**

 PPL’s Revised Plan states at Sections 3.2 and 3.4 that PPL expects its Act 129 CSP to bid peak load reductions from the Direct Load Control Program into PJM’s RPM auction (to the extent that those MWs were not previously committed from PJM’s Demand Response Programs) and to “share” benefits with its customers. Revised Plan at 85, 155.

 No Parties commented with respect to this issue.

 **3. Disposition**

 We find PPL’s use of “share” to be ambiguous, however we interpret it to mean that the Company intended to comply with the *October 2009 Order*.  The *October 2009 Order* adopted the OCA proposal on this issue.  The OCA proposal was that PPL “credit” customers through the cost recovery mechanism to offset the costs that customers must bear under Act 129.  *October 2009 Order* at 72, citing OCA MB at 21.  We hereby clarify that with respect to the benefits that accrue from bidding peak load reductions from the Direct Load Control Program into PJM’s RPM auction, PPL will “*credit* benefits to its customers.” PPL is directed to conform its tariff to the clarified language, so as to avoid ambiguity in the future.

## G. Other Issues

 We note that the *October 2009 Order* contains other suggestions from the Commission for consideration by PPL and assigns various issues to collaboratives or working groups. The foregoing issues discussed and disposed of in this Opinion and Order are the specific modifications required for the PPL EE&C Plan to comply with the *October 2009 Order*. However, we acknowledge the following clarifications or reiterations included by PPL in its Revised Plan:

* Added eligibility for customers with window air conditioners with respect to Energy Assessment & Weatherization Program as suggested by the *October 2009 Order*, Ordering Paragraph No. 21, at 114.
* Agreed that cost recovery will not exceed the mandated 2% cost cap as required by the *October 2009 Order*, Ordering Paragraph No. 25, at 114.
* Acknowledged that Stakeholder meetings are required no less than twice annually as stated in the *October 2009 Order*, Ordering Paragraph No. 30, at 115.
* Stated that PPL will track and report if a customer switches to electric appliances from gas appliances or from gas appliances to electric appliances. This data will be included in the Annual Report as required by the *October 2009 Order*, Ordering Paragraph No. 33, at 115.
* Acknowledged that fuel switching is limited to RTS customers only as set forth in the *October 2009 Order*, Ordering Paragraph No. 37, at 116.
* Acknowledged that PPL’s Direct Load Control program must be coordinated with PJM’s demand response programs and will not require customers to leave PJM’s programs or their PJM curtailment service provider and use PPL Electric’s CSP as required by the *October 2009 Order*, Ordering Paragraph No. 38, at 116.

## H. Comments to the Revised Plan

 As stated, above, comments with respect to the Revised Plan were filed by the OSBA and the OCA on December 28, 2009. PPL filed Reply Comments on January 7, 2010.

 **1. Comments of the OCA and PPL’s Reply Comments**

 The OCA made several comments with respect to the Revised Plan:

 The OCA requested that PPL include the phrase, “and the five year review,” after reference to the required annual review in PPL’s Revised Plan. OCA Comments at 1. PPL responded by stating that it considers the “five year review” as one of the annual reviews and so did not distinguish it. PPL Reply Comments at 1.

 The OCA requested that PPL clarify that it will not directly assign EE&C Plan costs to individual customers participating in Commission-approved EE&C Plan programs. OCA Comments at 2. PPL responded by confirming that it will not so assign costs and, in fact, deleted that provision in the Revised Plan. PPL Reply Comments at 2.

 The OCA asserted that PPL’s definition of “administrative costs” in the Revised Plan is overly broad and could result in non-EE&C Plan costs being recovered. The OCA asked that the definition be removed. OCA Comments at 2. PPL responded by saying that the OCA’s concern is unwarranted as PPL has properly defined “administrative costs,” in this proceeding and declines to remove the definition. PPL Reply Comments at 2.

 The OCA requested that PPL provide supporting work papers for its proposed residential ACR rates. OCA Comments at 2. PPL responded by including the requested work papers as attachments to its Reply Comments. PPL Reply Comments at 3: Attachments 1& 2.

 The OCA requested that PPL provide supporting workpapers for the revised allocations in Tables 3, 5, 7, 136 and 137 of the Revised Plan. OCA Comments at 3. PPL responded by re-directing the OCA to Section 1.7 of the Revised Plan, by providing examples, and by providing supporting data in a Table attached to its Reply Comments. PPL Reply Comments at 3; Attachment 3.

 Upon consideration of the Comments of the OCA and the Reply Comments of PPL, we find that PPL has provided satisfactory responses to the concerns of the OCA up to this point, and that the Revised Plan will be approved.

 **2. Comments of the OSBA and PPL’s Reply Comments**

 The OSBA stated in its Comments that it has been unable to confirm PPL’s calculations and the accuracy of Act 129 Cost Rates set forth in Appendix F of the Revised Plan. OSBA Comments at 3. PPL responded by referencing the work papers attached to its Reply Comments. PPL Reply Comments at 3: Attachments 1& 2.

 Upon consideration of the Comments of the OSBA and the Reply Comments of PPL, we find that PPL has provided satisfactory responses to the concerns of the OSBA up to this point, and that the Revised Plan will be approved.

# V. Conclusion

For the reasons set forth above, we approve the Revised Energy Efficiency and Conservation Plan submitted by PPL Electric Utilities Corporation consistent with this Opinion and Order. PPL is permitted to implement any portion of its Plan approved without modification by the Commission in the *October 2009 Order* or by this Opinion and Order; **THEREFORE;**

 **IT IS ORDERED:**

1. That PPL Electric Utilities Corporation’s Revised Energy Efficiency and Conservation Plan, as filed on December 17, 2009, is approved, consistent with this Opinion and Order.

2. That PPL Electric Utilities Corporation is permitted to implement its Revised Energy Efficiency and Conservation Plan, consistent with this Opinion and Order.

3. That any directive, requirement, disposition or the like contained in the body of this Opinion and Order that is not the subject of an individual Ordering Paragraph shall have the full force and effect as if fully contained in this part.

4. That a copy of this Opinion and Order be served on Steven Pincus, Assistant General Counsel for the PJM Interconnection, LLC.



 **BY THE COMMISSION,**

 James J. McNulty

 Secretary

(SEAL)

ORDER ADOPTED: February 11, 2010

ORDER ENTERED: **February 17, 2010**

1. Comments to the original PPL Plan of July 1, 2009, were filed by: the OCA; the OSBA; the OTS; EnerNOC; E-Cubed; Envinity, Inc.; Affordable Energy Now; SEF; PPLICA; Keystone Help; PA Home Energy; DEP; PennFuture; Keystone Energy Efficiency Alliance; and Eric Epstein. [↑](#footnote-ref-1)