**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PPL Electric Utilities Corporation :

Energy Efficiency and Conservation Plan : Docket No. M-2009-2093216

**ORDER**

Following the hearing of November 17, 2010, in the above-captioned matter, PPL Electric Utilities Corporation (PPL) answered data requests of PPL Industrial Customer Alliance (“PPLICA”) on November 19, 2010. These responses were later marked as PPLICA Cross Examination Exhibit No. 3, Response to PPLICA-II-1, PPLICA-II-2. PPLICA requested the exhibit be admitted into the record on November 30, 2010. PPL objects to the admission of the exhibit as it was untimely submitted.

At 10:00 a.m. on December 1, 2010, ALJ Dennis Buckley and I held a conference call with the interested parties. PPL objected to the admission of this exhibit on the grounds that PPLICA failed to move the exhibit into evidence before the close of the record on 11/22/10. Thus, in drafting its brief which was due also on November 30, 2010, PPL neither relied upon nor considered PPLICA’s Exhibit 3. Accordingly, PPL argued that it would be procedurally and substantively prejudiced by the admission of PPLICA’s Exhibit 3 into the record. PPL requests PPLICA’s main brief at page 12, footnote 12 be stricken.

PPLICA responded that although it admitted to being procedurally late with its request, there is no harm to PPL because the information contained in PPLICA Exhibit 3 was requested at the prehearing conference on September 22, 2010, and PPL’s substantive rights have not been adversely affected. The only reference PPLICA made in its brief to the exhibit is on page 12, footnote 12. Further, PPLICA argues PPL received PPLICA’s brief before submitting its own to the Commission and that PPL had 6 hours yesterday to revise its brief to address the reference to the exhibit.

On November 17, 2010, we held the record open beyond the date of the hearing in order for data requests to be answered and to allow time for the responses to be moved into the record if the parties desired that result. Although it was expected that the record would be closed on Monday, November 22, we will allow the admission of PPLICA Exhibit 3 into the record pursuant to 52 Pa. Code § 1.2(c) which provides that the presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect a substantive right of a party.”

Ideally, PPLICA would have moved its exhibit into the record on or before November 22, 2010. However, we are not persuaded that PPL is adversely affected by the exhibit being made part of the record, as the data responses come from PPL, and PPL was aware at the time of the prehearing conference that PPLICA wanted the record to be kept open so that it could introduce into evidence the data requests and responses thereto. Therefore, PPL had notice in advance of finalizing its brief, and additionally will have an opportunity to rebut PPLICA’s main brief when PPL prepares its reply brief due December 3, 2010.

**ORDER**

THEREFORE,

IT IS ORDERED:

1. That PPL Industrial Customer Alliance’s Cross Examination Exhibit No. 3 is hereby admitted into evidence in the case of *PPL Electric Utilities Corporation Energy Efficiency and Conservation Plan* at Docket No. M-2009-2093216.

2. PPL’s motion to strike is denied.

3. The record in this case is now closed.

4. Reply briefs are due December 3, 2010.

Date: December 1, 2010 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Elizabeth H. Barnes

Administrative Law Judge

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Dennis J. Buckley

Administrative Law Judge

**M-2009-2093216 - Petition of PPL Electric Utilities Corporation For Approval of An Energy Efficiency and Conservation Plan**

*revised 9/14/09*

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