McNees
Wallace & Nurick LLC

100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Shelby A. Linton-Keddie
Direct Dial: 717.237.5459
Direct Fax: 717.260.1763
skeddie@mwn.com

December 3, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

RE: Petition of PPL Electric Utilities Corporation for Approval of Changes to its Act 129 Energy Efficiency and Conservation Plan; Docket No. M-2009-2093216

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Reply Brief of the PP&L Industrial Customer Alliance ("PPLICA") in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and Reply Brief, and kindly return them to our messenger for our filing purposes.

Very truly yours,

McNEES WALLACE & NURICK LLC

By
Shelby A. Linton-Keddie

Counsel to the PP&L Industrial Customer Alliance

SLK/km

c: Administrative Law Judge Dennis J. Buckley (via E-mail and Hand Delivery)
Administrative Law Judge Elizabeth Barnes (via E-mail and Hand Delivery)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST-CLASS MAIL

Andrew S. Tubbs, Esq.
Post & Schell, P.C.
17 N. Second St., 17th Floor
Harrisburg, PA 17101
atubbs@postschell.com

David B. MacGregor, Esq.
Post & Schell, P.C.
Four Penn Center
1600 John F. Kennedy Blvd.
Philadelphia, PA 19103-2808
dmacgregor@postschell.com

Paul E. Russell, Esq.
Associate General Counsel
PPL Electric Utilities, Inc.
Two North Ninth Street
Allentown, PA 18108-1179
perussell@pplweb.com

James A. Mullins, Esq.
Tanya J. McCloskey, Esq.
Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923
jmullins@paoca.org
tmccloskey@paoca.org

Allison Kaster, Esq.
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105
akaster@state.pa.us

Sharon Webb, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
swebb@state.pa.us

Kurt E. Klapkowski, Esq.
Commonwealth of Pennsylvania
Department of Environmental Protection
RCSOB, 9th Floor
400 Market Street
Harrisburg, PA 17101-2301
kklapkowsk@state.pa.us

Harry S. Geller, Esq.
Julie George, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
hgellerpulp@palegalaid.net
jgeorgepulp@palegalaid.net

Christopher A. Lewis, Esq.
Christopher R. Sharp, Esq.
Blank Rome, LLP
One Logan Square
Philadelphia, PA 19103
lewis@blankrome.com
sharp@blankrome.com

Shelby A. Linton-Keddie
Counsel to PP&L Industrial Customer Alliance

Dated this 3rd day of December, 2010,
at Harrisburg, Pennsylvania.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation	:	
For Approval of Changes to its Act 129 Energy	:	Docket No. M-2009-2093216
Efficiency and Conservation Plan	:	

REPLY BRIEF OF THE PP&L INDUSTRIAL CUSTOMER ALLIANCE

Pamela C. Polacek (I.D. No. 78276)
Shelby A. Linton-Keddie (I.D. No. 206425)
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300

Counsel to PP&L Industrial Customer Alliance

Dated: December 3, 2010

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I. INTRODUCTION

On September 15, 2010, purportedly in accord with the Pennsylvania Public Utility Commission's ("PUC" or "Commission") annual reporting requirements articulated in the June 24, 2010, and September 1, 2010 Secretarial Letters as well as the Commission's October 26, 2009, Order at Docket No. M-2009-2093216, PPL Electric Utilities Corporation ("PPL" or "Company") submitted a Petition for Approval of Changes to its Act 129 Energy Efficiency & Conservation Plan ("EE&C Plan" or "Plan"). Despite making over 20 modifications to the EE&C Plan, the Company's September 15, 2010, Petition only included the two proposed modifications which PPL believes require prior Commission approval.

On November 30, 2010, the PP&L Industrial Customer Alliance ("PPLICA") filed a Main Brief ("M.B.") on behalf of its Large Commercial and Industrial ("C&I") members, addressing PPL's inappropriate unilateral modifications to its EE&C Plan outside of Commission review and approval, with specific emphasis on PPL's updated assumptions regarding the Time of Use ("TOU") Program and the corresponding 50 MW increase to the Load Curtailment Program at an additional cost of $3 million. On the same date, PPLICA received Main Briefs from PPL, Constellation NewEnergy, Inc. ("Constellation") and the Commonwealth of Pennsylvania, Department of Environmental Protection ("DEP"). Pursuant to the expedited procedural schedule established for this proceeding, PPLICA files this Reply Brief in response to arguments raised in the Main Brief of PPL.[1]

II. SUMMARY OF REPLY ARGUMENT

First, both the October 26, 2009 Order approving PPL's EE&C Plan and Act 129 itself limit the ability of an Electric Distribution Company ("EDC") to modify a EE&C Plan. Upon

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[1] As indicated above, PPLICA's Reply Brief will not respond to every argument contained in all of the parties' Main Briefs, but only those issues necessitating an additional response.

noting that the "General Assembly authorized the Commission, not the EDC, to make decisions in regard to modifying an approved Act 129 Plan," the PUC summarized its duties under Act 129 to include directing an EDC to modify its EE&C Plan after the Commission (not an EDC) determines that an energy efficiency or conservation measure will not achieve its reductions in consumption in a cost-effective manner. *See* October 26 Order at 93; 66 Pa. C.S. § 2806.1(b)(2). Further, the Commission noted, upon receiving the PUC's directive to modify its EE&C Plan, the EDC is required to submit a revised plan "describing the actions to be taken to offer substitute measures in the plan to achieve the required reductions in consumption." October 26 Order at 93; 66 Pa. C.S. § 2806.1(b)(3). Here, the Company admits that the modifications to the Load Curtailment Program were made outside of Commission review and approval to address anticipated shortfalls in other EE&C Programs, such as the residential TOU Program. As articulated by the Commission, this is precisely the type of EE&C Plan modification that the General Assembly intended to be submitted for Commission approval prior to implementation.

Second, the Commission should reject the Company's strained attempt to argue that because the substantial modifications made to the Load Curtailment Program can purportedly be achieved within the original estimated budget for this Program, the resulting peak load reduction increase can be characterized as an "overachievement." As explained herein, increasing a program's peak load reduction target by 50% at a cost of $3 million in an attempt to make up for other EE&C Program shortfalls is precisely the type of modification that the General Assembly intended to be submitted for Commission approval prior to implementation. The substantial changes to the Load Curtailment Program made by the Company will hardly result in an "overachievement," as the Company claims.

Third, in the June 24 and September 1, 2010 Secretarial Letters issued since the approval of PPL's EE&C Plan, the Commission has clearly articulated the process by which EDCs must submit modifications to EE&C Plans during the Annual Review process. Specifically, the Commission's June 24, 2010, and September 1, 2010, Secretarial Letters directed that EE&C Plan modifications be submitted in conjunction with an EDC's Annual Report and included in a complete copy of the revised plan. PPL ignored these directives when submitting only a fraction of the modifications it made to the EE&C Plan as part of its September 15, 2010, Petition. PPL's disregard for Commission's directives should not be awarded. Accordingly, the Company's request that any relief in this proceeding be applied prospectively should be rejected.

Finally, because the Company has not yet established through analysis that its current underperformance assumptions for the TOU Program are reasonable or that expanding the Load Curtailment Program is cost-effective, the Company should not be allowed to make any modifications to the Load Curtailment Program at this time.

III. ARGUMENT

A. The Company's Position Regarding the Implementation of Changes to the EE&C Plan is Too Narrow, Inconsistent with Act 129 and the Commission's Directives, and Deprives Ratepayers and the Commission of Their Proper Roles in Implementation of the $246 Million Ratepayer Funded EE&C Plan.

Consistent with PPLICA's Main Brief and previously filed Comments in this proceeding, PPL has too narrowly interpreted the October 26, 2009, Order as well as the PUC's June 24 and September 1 Secretarial Letters regarding what EE&C Plan modifications require Commission review and approval as part of the Annual Review Process. Despite its position that the only modifications to an EE&C Plan that require Commission approval are those that (1) shift program funds within a customer class; (2) shift program funds between customer classes; or (3) terminate a program (*see* PPL M.B. at 5), PPL has unilaterally modified its Load Curtailment

Program by shortening the program's duration and by substantially increasing the peak load reduction target at a cost of $3 million to Large C&I customers. Purportedly, this decision was made after PPL's review of bids from Curtailment Service Providers ("CSPs") and to address substantial anticipated peak load reduction shortfalls in other EE&C programs, namely the residential Time of Use ("TOU") Program. *See* PPL M.B. at 25-29.

While the Company has repeatedly claimed that its modifications to the Load Curtailment Program do not change any cost incurred by the Large C&I rate class because the $3 million dollar cost of adding 50 MW to the Load Curtailment Program still comes within the originally estimated budget for this program (*see e.g.*, PPL M.B.at 29-30), PPL's conclusion is incorrect. The record evidence in this proceeding clearly shows that if not for these modifications to the Load Curtailment Program, the Large C&I class would receive a refund through reconciliation of $3 million instead of being forced to incur an additional $3 million as proposed by the Company. Tr. at 61. This is because the Load Curtailment Program, if implemented as approved by the Commission, would be achieved at a cost of approximately $11.5 million, $3 million below the anticipated $14.5 million for this program as modified. Tr. at 55. However, based on no formal analysis by PPL to substantiate the TOU Program's updated assumptions (Tr. at 47-48) and no adequate investigation of other alternatives to achieve the same amount of peak load reduction, PPL unilaterally modified its EE&C Plan without Commission review or approval. *See* PPLICA M.B. pp. 14-15). The result of this modification will increase actual EE&C costs for Large C&I customers by $3 million while decreasing actual costs for Residential customers, because the TOU Program, under current estimates by the Company, is expected to incur costs below the original budget. Tr. at 45-46. Not only do these actions shift costs within and between customer classes, but these actions have also undeniably modified the EE&C Plan and the projected savings it will achieve. *See* PPLICA M.B. pp. 11-14. Modifications to EE&C plans are prohibited absent Commission approval, per the plain language of the October 26 Order, which states that the Commission, not an EDC, is to make decisions in regard to modifying an approved Act 129 Plan. *See* October 26 Order at 92.

The plain language of October 26, 2009, Order does not support PPL's narrow interpretation of what EE&C Plan modifications need to be submitted for Commission review and approval. First, PPL's position that the directives included in the June 24 and September 1 Secretarial Letters for the Annual Review process should be disregarded as generic (*see* PPL M.B. at 9) is directly countered by the plain language of the October 26 Order, which indicates that for the Annual Review process, the Commission will provide "Secretarial letter[s] identifying issues that the Commission would like to see addressed as well [as] data the Commission needs to perform its review." October 26 Order at 75. Secretarial Letters are the Commission's designated vehicle to amplify the Commission's prior determinations in the EE&C Plan Orders regarding the Annual Review process and how EDCs should request to make modifications to the approved plans. As such, the Secretarial Letters and the directives contained therein should be given the same effect as the original orders.

Further, and as unambiguously stated in the June 24 and September 1 Secretarial letters, the expectation of the PUC was that "any proposed EE&C plan revisions" were to be filed in a complete copy of a revised plan along with an Executive Summary or other section that "(a) briefly describes each proposed change, (b) states where each proposal can be found in the revised plan, and (c) indicates whether (and if so, how) each proposed change affects any other part(s) of the plan." June 24, 2010, Secretarial Letter at 1; September 1, 2010, Secretarial Letter at 1. Importantly, there was no stated limitation that the Commission only required submitted modifications that do not (1) shift costs between classes; (2) shift costs among classes or (3) terminate programs. PPL ignored these clear directives when picking and choosing what to submit to the Commission as part of its September 15, 2010, Petition.

Second, while the October 26 Order states that EDCs are prohibited from "shift[ing] program funds within a customer class, or between customer classes without prior Commission approval," the Commission did not state that these are the only modifications that need to be reviewed by the PUC. *See* October 26 Order at 92; *see also* DEP M.B. at 5. Conversely, the PUC specifically contemplated that other modifications would be submitted and reviewed by the Commission and other parties when stating:

> [I]f the EDC believes that it is necessary to modify its Act 129 Plan, the EDC may file a petition requesting that the Commission rescind and amend its prior Order approving the plan.
>
> The EDC's petition should explain the specific reasons supporting its requested modifications to its approved plan, i.e., the shifting of funds between programs or customers classes, the discontinuation of a program, etc.... The petition shall be served on all Parties participating in the EDC's Act 129 Plan proceeding. If the EDC believes that the need for modification of the plan is immediate, the EDC can request expedited consideration of its petition. However, procedures for rescission and amendment of Commission orders must be followed to amend that Order and to assure due process to all affected parties.

October 26 Order at 93. As indicated above, to modify an EE&C Plan, an EDC should include that information in a Petition requesting that the Commission amend the prior EE&C Order. This procedure is consistent with the PUC's direction in the September 1, 2010, Secretarial Letter that "an EDC may propose a plan change in conjunction with its annual report" and that EDCs proposing plan changes must do so using "standard procedures for rescission and amendment of Commission orders." September 1, 2010 Secretarial Letter at 1. Moreover, by the inclusion of "etc." when listing the types of modifications to be submitted as part of a Petition, there is specifically no limitation provided by the Commission in the October 26 Order on the types of modifications that must be submitted for Commission review. Had the Commission only wanted to review modifications that shift funds between programs or customer classes or discontinue a program as PPL contends, it could have plainly said so. In the absence of this limitation, it is more accurate and reasonable to assume that, consistent with the PUC's direction in its June 24 and September 1 Secretarial Letters, EDCs seeking to make any plan modifications were to submit those changes to the Commission as part of the Annual Review Process. This is consistent with the October 26 Order, in which the PUC specifically declared that "the General Assembly authorized the Commission, not the EDC, to make decisions in regard to modifying an approved Act 129 Plan." October 26 Order at 92. Further explaining this statutory obligation, the Commission stated:

> Section 2806.1(b)(2) expressly states that the "Commission shall direct" an EDC to modify or terminate any part of its approved plan if, after an adequate period for implementation, "the Commission determines that an energy efficiency or conservation measure will not achieve the required reductions in consumption in a cost-effective manner." 66 Pa. C.S. § 2806(b)(2). Section 2806.1(b)(3) sets forth the action an EDC is required to take in response to a Commission direction to modify or terminate part of the approved plan. Specifically, the EDC is required to submit a revised plan describing the actions to be taken, to offer substitute measures, or to increase the availability of existing measures in the plan to achieve the reductions in consumption. 66 Pa. C.S. § 2806.1(b)(3).

October 26 Order at 92-93. Accordingly, PPL's position that it only had to submit certain modifications for Commission review and approval should be rejected. At minimum, PPL's attempt to unilaterally modify the Load Curtailment Program in response to perceived underperformance of the TOU and other EE&C Plan programs should be rejected as statutorily prohibited. As unambiguously stated in Act 129, the Commission must direct an EDC to modify or terminate a program only after the Commission (not the EDC) makes a determination of a program's underperformance. *See* 66 Pa. C.S. § 2806.1(b)(2). According to the plain language of Act 129, it is after this directive by the Commission that an EDC is required to submit a revised plan describing what actions it would like to take, one of which includes increasing the availability of existing measures as PPL has attempted to do here. *See* 66 Pa. C.S. § 2806.1(b)(3). As a result, PPL's collective interpretation of the Commission's October 26 Order and Act 129 itself should be disregarded as incorrect.

Throughout its M.B., the Company relies on a single line of the October 26 Order to purport that the Commission rejected the idea of micro-managing modifications to PPL's EE&C Plan when it stated "...PPL is the Party that bears the risk of penalties in the event of non-compliance with the mandates of Act 129. We will not micro-manage the Company's compliance efforts." *See, e.g.,* PPL M.B. at 3 (citing October 26 Order at 88). Accordingly, the Company asserts, requiring PPL to submit all of its EE&C Plan modifications for Commission review and approval "runs contradictory to the Commission's determination that it will not micro-manage the Company's Act 129 compliance efforts." PPL M.B. at 6. Further, PPL continues,

> The changes proposed by PPL Electric do not affect the overall EE&C program in any way. Moreover, these changes do not shift any costs within a customer class or among customer classes and do not involve the termination of a program. Despite this fact, PPLICA has engaged in substantial discovery and cross-examination and presumably briefing on the Load Control Program, relating to when the program will begin, the timing of the proposed load reductions, details as to the bidding process and bid evaluation, effects on individual Large C&I customers, changes to the benefit/cost ratio, detailed contract review, etc. This is precisely the kind of micro-management of EE&C Plans that the Commission has clearly rejected and demonstrates in concrete terms why PPLICA's position should be rejected.

PPL M.B. at 6-7. The assertions regarding the Commission's view of "micro-managing" are taken out of context and PPL's complaints about PPLICA's position in this proceeding are unfounded.

When taken out of context, it appears as though the Commission in its October 26 Order made a blanket assertion that because EDCs may be assessed a penalty, the PUC would take a laissez-faire stance on program implementation issues. However, upon review of the pertinent part of the October 26 Order, this is clearly not the case. Specifically, when discussing ongoing stakeholder meetings, the Commission states:

> We are mindful, however, that PPL is the Party that bears the risk of penalties in the event of non-compliance with the mandates of Act 129. <u>We will not micro-manage the Company's compliance efforts. The Company shall therefore be responsible for determining the topics to be covered in stakeholder meetings and all other aspects of the on-going stakeholder process.</u>

October 26 Order at 88 (emphasis added). As indicated above, while the PUC stated that it would not "micro-manage the Company's compliance efforts," it was discussing how PPL would conduct its ongoing stakeholder process; not how PPL would modify its Plan. Accepting the Company's rationale that PPL should be able to unilaterally modify its Plan at will without Commission review or approval because the PUC stated in one sentence of a 120 page order that it would not "micro-manage" compliance efforts is contradictory to the Commission's clear statement on Page 92 that "the General Assembly authorized the Commission, not the EDC, to make decisions in regard to modifying an approved Act 129 Plan." October 26 Order at 92. There has been no indication by the Commission, either in its October 26 Order or its June 24 and September 1, 2010, Secretarial letters, that the PUC intended at any time to allow an EDC to unilaterally modify its EE&C Plan absent Commission review and approval during the Annual Review process. As a result, PPL's position should be rejected.

Moreover, stating that "the changes proposed by PPL Electric do not affect the overall EE&C program in any way" (PPL M.B. at 6) runs counter to PPL witness Peter Cleff's testimony submitted in this proceeding. Specifically, when asked to summarize the changes that were "submitted as part of the PY1 Annual Report submission," Mr. Cleff responded as follows:

> The implementation changes fall into five broad categories. The first category includes the fine-tuning to program rebate levels, energy efficiency measure descriptions, and eligibility requirements. The second category includes measures added to the Efficient Equipment Program. The third category includes measures deleted from the Efficient Equipment Program. The fourth category includes measures moved from the Efficient Equipment Program to the Custom Program. The fifth category includes changes to program schedule milestones or changes to projected peak load reduction for the load curtailment measure.

PPL St. No. 5 at 16. Clearly, all of these changes modify the overall EE&C program in some way.[2] As a result, they should have been submitted in a Petition along with a complete copy of the revised plan, in accordance with the PUC's October 26 Order and June 24 and September 1, 2010 Secretarial Letters.

Further, when criticizing PPLICA's actions in this proceeding, the Company's argument ignores the clear right of PPLICA and other interested parties, as part of the Annual Review process, to review and object to proposed EE&C Plan revisions. As stated in the June 24, 2010, Secretarial Letter:

> Any interested party can make a recommendation for plan improvements or object to proposed EE&C plan revisions within 30 days of the filing of the annual reports and proposed EE&C plan revision filings. Interested parties will have 20 days to file replies to any recommendations for plan improvements or objections to plan revisions, after which the Commission will determine whether to rule on the recommended changes or refer the matter to an ALJ for hearings and a recommended decision.

June 24, 2010 Secretarial Letter at 2. Throughout this proceeding, PPLICA has conformed with and followed the stated process for Annual Review of EE&C Plans and Plan revisions. PPLICA takes offense to the implication that exercising its due process rights in this proceeding when a

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[2] Further, PPLICA's M.B. at pages 9-10 and 14 summarizes these modifications' impacts on the costs and savings of the Load Curtailment Program and the overall EE&C Plan.

modification by the Company, if allowed, will increase Large C&I customers' costs by $3 million is characterized by the Company as "micro-managing" its EE&C Plan.

As explained above, part of PPL's rationale for wanting the ability to freely modify its EE&C Plan is because the Company faces a mere possibility of paying a one-time penalty ranging between $1-$20 million if it does not achieve the required reductions within the statutory time-frame. Notably, however, it must be remembered that prior to PPL incurring any penalty (if at all), PPL's ratepayers are being forced to pay $246 million dollars for this EE&C Plan. As explained in PPLICA's M.B., the potential effect of PPL's unilateral action to modify the Load Curtailment Program, if allowed, will have real consequences for Large C&I ratepayers. *See* PPLICA M.B., n. 12.[3] The Company does not dispute that the cost for the increased 50 MW is $3 million that would not be needed if the total peak load reduction for the Load Curtailment Program remains at 100 MW. *See* PPL St. No. 5 at 30; *see also* Tr. at 49, 55. Although participation in the Load Curtailment Program may be voluntary (*see* PPL M.B. at 28), paying the EE&C Surcharge is not. As a result, before approving this modification, the Commission must ensure that both the modification and resulting rate impact are just and reasonable. *See* 66 Pa. C.S. § 1301.

PPL, in its M.B., argues that the Commission's prior determination in the October 26 EE&C Order as to what modifications require Commission approval is binding here. *See* PPL M.B. at 13. PPLICA agrees. As explained above and in PPLICA's M.B., the Commission's October 26 Order as well as the June 24 and September 1 Secretarial letters did not limit Commission review simply to modifications that shift program funds within a customer class, or

[3] While the Company contends that the amount of an extra $3 million for Large C&I customers averages $2,500 per customer, footnote 12 in PPLICA's Main Brief states that the average actual impact to large C&I customers is as follows: The average customer on Rate Schedule LP-5 will pay an extra $17,361.78 over the 41 months of the plan ($0.058 x 7,301 kW x 41 months), while the average customer on Rate Schedule LP-6 will pay an extra $37,367.89 over the 41 months of the plan ($0.058 x 15,714 kW x 41 months). The customer with the largest PLC on Rate Schedule LP-5 will pay an extra $186,527.94 ($0.058 x 78,439 kW x 41 months).

between customer classes. *See generally* PPLICA M.B. Instead, the Commission stated that "if an EDC believes it is necessary to modify its Act 129 Plan, the EDC may file a petition requesting the Commission to rescind and amend its prior Order approving the plan." October 26 Order at 93. There was no limitation placed on the types of modifications that must be included in the Petition. In this instance, it is undisputed that PPL only included two modifications to its EE&C Plan in its September 15 Petition, while it unilaterally made 20+ other modifications absent Commission review and approval.

As indicated in PPLICA's M.B., to accept the Company's argument that only certain revisions need to be submitted for Commission review while other modifications can be made unilaterally would lead to the absurd result that the Commission, even if modifying PPL's revised Plan as requested in its September 15, 2010, Petition, would have a stale EE&C Plan on file while the Company actually operates from a different, more complete version of its EE&C Plan. *See* PPLICA M.B. at 19. This is not what was intended when the Commission articulated its expectation to receive a complete revised plan from EDCs that seek to propose a change. *See* September 1, 2010, Secretarial Letter. Accordingly, PPLICA renews its recommendation that the Commission require the Company to submit a complete copy of its revised EE&C Plan as part of this proceeding.

In addition to modifying the Load Curtailment Program in a way that significantly alters this program's design and impermissibly increases costs to Large C&I customers by $3 million outside of Commission review and approval (which is statutorily prohibited), PPL seeks to do so based on TOU Program assumptions that have not been substantiated or adequately analyzed. Tr. at 47. Further, PPL has conceded that it has not conducted formal analysis regarding the attainment of a 50 MW peak load reduction from other alternatives. *Id.* Because Act 129 provides that the Commission first must determine that a measure included in the Plan will not achieve required reductions in consumption in a cost-effective manner before requiring an EDC to submit a revised plan describing actions to be taken to offer substitute measures or to increase the availability of existing measures (*see* 66 Pa. C.S. § 2806.1(b)(2)-(3)), the Commission should reject PPL's plan to unilaterally increase the peak load reduction target for the Load Curtailment Program by 50 MW as statutorily prohibited and premature. Clearly, if the statute requires PUC certification that a measure will underperform prior to expanding other measures in the portfolio to meet the overall targets, then the EDC cannot unilaterally make this change on its own. In the alternative, PPL's shareholders should be made to pay the difference for this unauthorized, unreviewed unilateral change.

B. The Purported "Overachievement" by the Load Curtailment Program as Unilaterally Modified by PPL is Fundamentally Different From the Examples Cited by the Company.

In its M.B., the Company attempts to justify its unilateral decision to increase the peak load reduction target for the Load Curtailment Program on the basis that "'overachieving" projected savings (compared to the approved EE&C Plan) within budget is common in other programs and does not trigger any requirement for Commission approval." PPL M.B. at 27 (citing PPL Reply Comments at 9). PPL then continues:

> For example, PPL Electric may achieve greater savings than expected for heat pumps due to a different mix of sizes and efficiencies installed by customers than the assumptions in the EE&C Plan, or because program costs per heat pump are lower than expected and PPL Electric can provide rebates for more heat pumps than originally expected. Similarly, PPL Electric may achieve greater savings than expected in its CFL Program if customers buy higher wattage CFLs than assumed in the EE&C Plan, of if the program costs per CFL are lower than expected (more CFLs can be discounted). Therefore, if PPL can achieve greater savings (peak load reductions) in the Load Curtailment Program than assumed in the EE&C Plan, within budget, such excess savings should not require Commission approval.

PPL M.B. at 27-28. PPL's argument that its modifications can be characterized as "overachievement" should be rejected. Increasing the peak load reduction target in the manner PPL has done here is not simply an "overachievement" in the Load Curtailment Program as the Company suggests. Instead, and as the record evidence shows, PPL purposefully made substantial modifications to the program design of the Load Curtailment Program after receipt of bids from CSPs to address its updated assumptions about projected shortfalls in other EE&C plan programs.[4] *See* PPL M.B. pp. 25-29.

The modifications to this program can be summarized as follows:

- The Company made a specific request to a "short list" of CSPs willing to provide 100 MW what the price would be to increase to 150 MW (*See* Tr. at 56); and
- The increased peak load reduction target for the Load Curtailment Program not only increases its peak load reduction target by 50% and the cost for this program by $3 million, but also results in having the Load Curtailment Program account for approximately 50% of the EE&C Plan's <u>total</u> peak load reduction of 297 MW (assuming that, at some point, the peak load reduction target for the TOU Program is decreased). *See* Exhibit PDC-2 at 2.

In addition to increasing the anticipated peak load reduction target and cost for the Load Curtailment Program, the result of these modifications, if allowed, not only increases the savings achieved from actual participants, but also the number of participants as well.

As articulated in PPL's current EE&C Plan, the Load Curtailment Program already anticipates the need to sign up more than 100 MW in order to achieve the desired peak load

[4] This intent is clearly illustrated in PPL's M.B. on Page 30 when the Company explicitly states "if the Company does not increase projected peak load reductions form the Load Curtailment Program, it will not likely meet its peak load compliance target." PPL M.B. at 30. As explained earlier in this brief, however, while an EDC must file a revised plan with suggestions of how to address anticipated program shortfalls, the Commission, not the EDC, makes decisions regarding modifications to approved Act 129 Plans.

reduction target. *See* Exhibit PDC-2 at 166, n.65. Specifically, in response to the "analytical and logistical challenges of predicting the 100 hours of highest peak load each summer," the Company's EE&C Plan states that it will "obtain more than double the target amount of firm interruptible load for 50 hours to provide a reasonable cushion that the target is achieved." Exhibit PDC-2 at 168. Should the Company exceed the Load Curtailment Program's peak load reduction target through this "cushion," it would be equivalent to the "overachievement" cited by PPL. PPL M.B. pp. 27-28. Conversely, increasing the Load Curtailment Program's peak load reduction target by 50 MW from 100 MW to 150 MW in the manner carried out here is a clear EE&C Plan modification that required prior Commission approval, not an "overachievement" as the Company contends.

C. The Relief in This Proceeding Should Not Be Prospective.

In an attempt to allow its statutorily prohibited EDC modifications to be incorporated into the EE&C Plan, the Company argues in its M.B. that "to the extent that the Commission were to...determine that prior approval is required for other changes [than those submitted as part of PPL's September 15, 2010, Petition], such requirement should only be implemented prospectively." PPL M.B. at 23. This request for prospective treatment must be rejected. As explained throughout both PPLICA's Main and Reply Briefs, the October 26 Order, as well as the June 24 and September 1, 2010 Secretarial Letters were clear and unambiguous in directing what information regarding EE&C Plan changes must be submitted as part of the Annual Review. As explained more fully in PPLICA's Main Brief, there was a clear expectation from the Commission that any EE&C Plan revisions to date would be submitted in conjunction with the EDC's Annual Report and should be included in a complete copy of the revised plan. *See* June 24, 2010 Secretarial Letter pp. 1, 2; September 1, 2010 Secretarial Letter at 1. In addition, the revised plan was to include "an Executive Summary or other section that (a) describes each proposed change; (b) states where each proposal can be found in the revised plan, and (c) indicates whether (and if so, how) each proposed change affects any other part(s) of the plan." September 1, 2010 Secretarial Letter at 1. PPL clearly violated these directives when submitting only those modifications which, in the Company's opinion, need Commission review and approval. To allow the Company to unilaterally modify its EE&C Plan as suggested by PPL would create bad precedent, violate the PUC's October 26 Order that specifically prohibits an EDC from unilaterally modifying its Commission-approved EE&C Plan and harm ratepayers. At minimum, PPL's substantial modifications to the Load Curtailment Program should be rejected outright as premature and statutorily prohibited absent prior Commission approval.

D. PPL Has Not Established That Its Current Time of Use Program Underperformance Assumptions are Reasonable or That Expanding the Load Curtailment Program is Cost-Effective and Reasonable.

The Company does not dispute that the reason it seeks to modify and expand the Load Curtailment Program is based, in large measure, on its updated assumptions for the TOU Program. *See e.g.* PPL M.B. pp. 25-29. As indicated in PPLICA's Main Brief, PPL witness Peter Cleff explained in testimony that:

> Peak load reduction shortfalls are expected in other programs. For example, the Time of Use Program ("TOU Program") was expected to produce 61 MW of peak load reduction (from 150,000 participants); however, it will likely achieve no more than 10 MW, leaving a shortage of 51 MW. The TOU Program is open only to customers who take default electric supply from PPL Electric (*i.e.*, customers who do not shop for their generation supply). The number of shopping customers will be much higher than expected and customers will likely save more by shopping than via TOU. The Company's original estimate of 150,000 participants in the TOU program turned out to be unrealistic, and the current projection is less than 25,000 participants. In fact, as of October 31, 2010, there are only 443 participants in the Company's TOU Program that was launched in June 2010.
>
> In addition, the peak load reductions from energy efficiency measures (such as appliances, lighting, HVAC equipment, etc.) in other programs are lower than expected and are relatively uncertain because of changes in

> the TRM [Technical Reference Manual] that tend to decrease savings and peak load reductions (compared to the TRM that was in effect when the Company's EE&C Plan was approved). Also, it is uncertain whether net-to-gross adjustments will apply, further reducing energy and peak load savings. Therefore, to make up for these expected shortfalls, PPL Electric must increase peak load reductions from other programs in order to meet its peak load compliance target by September 2012. The Load Control Program was identified as an appropriate measure because we were able to obtain the original forecast peak reduction for this program at substantially less than the projected cost. We have determined that we can obtain 50 MW of additional peak load reductions with no increase in the amount of dollars originally budgeted for this measure.

PPLICA M.B. pp. 10-11. While the Company, in its M.B., continues to assert that "it would cost significantly more than $3 million to achieve the additional 50 MW of peak load reductions form other demand response measures," (PPL M.B. at 30), PPLICA's M.B. highlighted the problems with the Company's analysis. Specifically, PPLICA explained:

> First, despite the fact that Mr. Cleff includes statements regarding the TOU program like "the number of shopping customers will be much higher than expected" and that "the current projection is less than 25,000 participants," during the evidentiary hearing, Mr. Cleff was unable to articulate the amount of shopping that was expected and conceded that the Company has not conducted any type of analysis to confirm that its revised expectations for the TOU program are realistic. Second, despite the Company's clear expectation that the TOU Program will significantly underperform, the Company has admittedly not proposed any changes to modify the EE&C Plan to reflect its revised assumptions.
>
> Third, when making the decision to increase the Load Curtailment Program, PPL failed to adequately examine other options. As determined during the evidentiary hearings, the Company projected since approximately last April that its TOU Program would not meet expectations. In addition, since at least April, 2010, PPL contemplated increasing the peak load reduction target for the Load Curtailment Program. However, upon coming to this conclusion, other than seeking informal pricing requests "sometime during the last three to six months" for the direct load control program regarding an extra 50 MW of peak load reduction, the Company made pricing comparisons to other programs (i.e., CFL and Efficient Equipment) for additional peak load reductions only within the last month. Additionally, the Company did not conduct any formal analysis to determine whether it would be cost-effective to achieve a total 50 MW reduction from a combination of programs (i.e., Direct Load Control, CFL and/or Efficient Equipment).

PPLICA M.B. pp. 13-14 (internal citations omitted). The Company did not counter any of these arguments through the information contained in its M.B. Act 129 clearly states that after receiving a Commission directive that part of an EE&C Plan should be modified because the PUC (not the EDC) determines that a measure will not achieve the required reductions, an EDC must submit a revised plan describing actions to be taken to offer substitute measures or to increase the availability or existing measures in the plan to achieve the required reductions. *See* 66 Pa. C.S. §2806.1 (b)(2)-(3).

Because the Company has admittedly not conducted any analysis to determine whether its updated assumptions about the TOU Program's performance are correct and the Company has not sufficiently investigated other alternatives in addition to increasing and expanding the Load Curtailment Program, prior to allowing this modification, the Commission should require PPL to conduct a formal analysis to accurately update its TOU assumptions and determine whether the projected shortfall can be achieved in a more cost-effective manner that spreads peak load reductions among multiple EE&C programs and customer classes, rather than relying on only one program and one class. *See* PPLICA M.B. at 15.

IV. CONCLUSION

WHEREFORE, the PP&L Industrial Customer Alliance respectfully requests that the Pennsylvania Public Utility Commission reject PPL Electric Utilities Corporation's proposal to increase the peak load reduction target for the Load Curtailment Program by 50 MW at a cost of $3 million, require PPL to submit a complete copy of its revised EE&C Plan and take any other action as deemed necessary and appropriate.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By ______________________

Pamela C. Polacek (I.D. No. 78276)
Shelby A. Linton-Keddie (I.D. No. 206425)
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300

Counsel to PP&L Industrial Customer Alliance

Dated: December 3, 2010