

**BEFORE THE  
Pennsylvania Public Utility Commission**

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Re: Petition of PPL Electric Utilities Corporation for  
Approval of Time of Use Supplement No. 1102 to  
Tariff Electric PA PUC, No 201,  
Docket No. R-2011-2264771

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**Main Brief  
Eric Joseph Epstein, *Pro se***

March 21, 2012

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
PO Box 3265  
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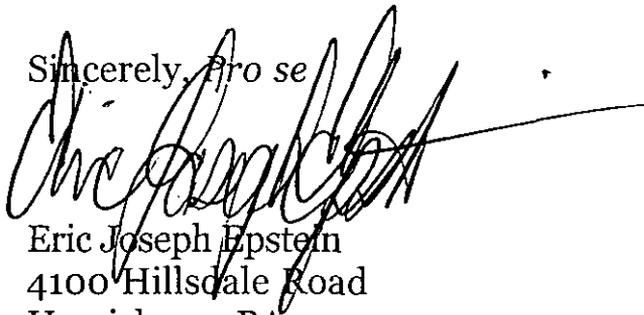
MAR 21 2012

PA PUBLIC UTILITY COMMISSION  
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Secretary Chiavetta:

Enclosed for filing with the Commission are an original, and nine (9) copies of Eric Joseph Epstein's Main Brief in the above-referenced proceeding.

Sincerely, *Pro se*



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**Main Brief of  
Eric Joseph Epstein, *Pro Se***

**I. Introduction**

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On October 15, 2008, Governor Edward Rendell signed HB 2200 into law as Act 129 of 2008 (“Act 129” or the “Act”), with an effective date of November 14, 2008. Act 129 expands the oversight responsibilities of the Pennsylvania Public Utility Commission (“Commission”) and imposes new requirements on Electric Distribution Companies (“EDCs”) in an effort to reduce energy consumption and demand, enhance the circumstances for the procurement of generation supply for default service, expand the installation of smart meter technology and expand the availability of alternative energy sources.

Act 129 is codified in the Pennsylvania Public Utility Code at Sections 2806.1 and 2806.2, 66 Pa. C.S. §§ 2806.1 and 2806.2. The Act requires an EDC with at least 100,000 customers to adopt a plan, approved by the Commission, to reduce electric consumption by at least one percent (1%) of its expected consumption for June 1, 2009 through May 31, 2010, adjusted for weather and extraordinary loads. The 1% reduction is to be accomplished by May 31, 2011. (66 Pa. C.S. § 2806.1 (c) (1))

Moreover, by May 31, 2013, the total annual weather-normalized consumption is to be reduced by a minimum of three percent (3%). (66 Pa. C.S. § 2806.1 (c) (2)) In addition, by May 31, 2013, peak demand is to be reduced by a minimum of four-and-a-half percent (4.5%) of the EDC's annual system peak demand during the period of June 1, 2007 through May 31, 2008. 66 Pa. C.S. § 2806.1 (d) (1). By November 30, 2013, the Commission is to assess the cost effectiveness of the program and set additional incremental reductions in electric consumption if the benefits of the program exceed its costs. (66 Pa. C.S. § 2806.1 (d) (2))

In an Act 129 Implementation Order entered January 16, 2009 at Docket No. M-2008-2069887 ("Implementation Order"), the Commission established that EDCs are required to demonstrate the cost effectiveness of their Energy Efficiency and Conservation Plans using the Total Resource Cost Test ("TRC Test"). (Implementation Order, pp. 14-15) Act 129 defines the TRC Test as "[a] standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures." (66 Pa. C.S. § 2806.1 (m))

PPL Electric discussed Time of Use ("TOU") rates at pp. 84-88 of its initial EE&C Plan. Despite acknowledging that the Company must make a separate filing for approval of TOU rates pursuant to a Commission-approved POLR settlement at Docket No. P-2008-2060309, PPL Electric outlined its TOU program in its EE&C proposal. The Company indicated that the program "will be similar in format to pilot TOU programs the Company has been conducting since 2002." (Id)

That discussion was at best premature, and possibly a violation of the settlement discussed previously. The repercussions of the Company's inability to craft a viable TOU program are still being felt.

PPL's current proposal is not dissimilar from the position the Company staked out in the original EE&C proceeding. PPL's witnesses continue to create a bureaucratic shell game; and as a result, PPL has continually underperformed in the execution of TOU programming:

TOU programs are not an active component of PPL Electric's Act 129 EE&C Plan. As such, the Company has not implemented its TOU programs within the structure of the EE&C Plan ...In its petition to modify to modify its 2010 EE&C Plan, PPL Electric indicated that it did not expect to achieve the project participation levels and peak load reductions related to the TOU program. (1)

In addition to the above discussion in the EE&C filing, Mr. Epstein's initial concerns with PPL Electric's TOU proposal have never been addressed.

- The EE&C Plan indicated that projected TOU costs are based largely upon information gathered through PPL Electric's ongoing TOU pilot programs. (EE&C Plan, p. 87)
- However, the TOU pilot programs had limited customer participation, will not conclude until 2010 and have not been fully evaluated. (PPL Electric St. 3, pp. 6-8)
- PPL Electric stated that it plans to spend \$4 million over 3.5 years on the TOU program, \$3.3 million of this amount will pay for marketing the program. EE&C Plan, p. 88 (Table 53).

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<sup>1</sup> PPL Response to Interrogatories of Epstein Set I, Witness, J.M. Kleha, Question 1-3, (a to h), (Epstein Exhibit 1).

Mr. Epstein questioned those proposed expenditures and lack of planning for the TOU pilot programs. Many of the same questions remain unanswered - and still remain unaddressed- such as:

- How many of these customers received a bill that was higher as a result of the program?
- What are the average and median demand savings per customer?

Mr. Epstein asked PPL, “How many of these customers received a bill that was higher as a result of the program?” (2)

PPL responded, “The Company has not compared the bills of customers participating in the program to bills they receive prior to their participation.” (3)

Mr. Epstein also asked, “What is the average demand savings per customer? What is the median demand savings per customer?”

PPL responded, “The Company has not compared the demands of customers participating in the program to demands they created prior the program.”

While the Proceeding has changed, the canned non-answers remain the same.

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2 Epstein Set I, Witness, J.M. Kleha, Question I-7, (b) (c) & (d), (Epstein Exhibit 1).

3 PPL Response to Interrogatories of Epstein Set I, Witness, J.M. Kleha, Question I-7, (b), (c) & (d), (Epstein Exhibit 1).

Mr. Epstein also asked PPL about its initial goal of enrolling 45,000 customers in TOU programming: "Will PPL meet its plan of obtaining participation by no less than 45,000 customers through 2013, with a total reduction of 32 MW? (EE&C Plan, p. 79)"

Mr. Kleha referred Mr. Epstein to his meandering response contained in to Question I-3, Epstein Cross examination, Exhibit 1.

PPL's initial plan to reach "no less that 43,000 customers" failed abysmally. At its peak rate of enrollment, there were 23,000 customers. however, do to PPL's inept rate design, that number has dwindled to 3,300 or 7.3 % of its PPL's initial enrollment goal in 2010. The Act requires an EDC with at least 100,000 customers to adopt a plan, approved by the Commission, to reduce electric consumption by at least one percent (1%) of its expected consumption for June 1, 2009 through May 31, 2010, adjusted for weather and extraordinary loads.

PPL has never made a serious commitment to design and implement a TOU program as evinced by their flawed EE&C plans, and poorly executed TOU Tariff #71 and TOU Tariff #94.

## **II. Procedural History**

This Proceeding involves PPL Electric Utilities Corporation's ("PPL" or "the Company") filing at the Public Utility Commission's ("Commission") for Approval of Time of Use Supplement No. 110 to Tariff Electric PA PUC, No 201, Docket No. R-2011-2264771.

On September 23, 2010, PPL Electric Utilities Corporation filed a Petition for Approval of Time of Use Supplement No. 94 to Tariff Electric PA PUC, No 201, Docket No. R-2010 with an issue date of September 23, 2010 and an effective date of January 1, 2011.

PPL filed Supplement No. 110 to its Tariff Electric-PA. PUC No. 201 on September 26, 2011 to implement a revised Time-of-Use program.

On November 28, 2011, Eric Joseph Epstein ("Epstein" or "Mr. Epstein") received a Prehearing Order from Administrative Law Judge Colwell scheduling an Initial Prehearing Conference for December 9, 2011 at 10:00 pm in Hearing Room 31, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA.

Mr. Epstein filed a Prehearing Memorandum on December 6, 2011

Mr. Epstein filed two sets of Interrogatories on PPL. Set I was filed on December 23, 2011. Set II was filed on December 29, 2011.

Mr. Epstein participated in the Evidentiary Hearing convened on February 22, 2012 at Commonwealth Keystone Building.

### **III. Background**

Mr. Epstein has been a residential customer of PPL for over 25 years, and has testified and intervened on issues relating to consumer education, universal service programming, rate structure, and reliability and service since 1985.

Mr. Epstein participated in PPL Electric Utilities Corporation's Request for Approval of a Competitive Bridge Plan.

Epstein intervened and was an Active Party in PPL's Request for Approval to Offer Customers a Voluntary Alternative Energy Program and to Bank Alternative Energy Credits.

Mr. Epstein also intervened and was an Active Party in PPL Electric Utilities Corporation's Request for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 through May 14, 2014.

Mr. Epstein intervened and was an Active Party in PPL Electric Utilities Corporation's Request for Approval of an Energy Efficiency and Conservation Plan.

Mr. Epstein intervened and was an Active Party in PPL's Request for Approval of Time of Use Supplement No. 71 Tariff Electric PA PUC. No 201 Issued on July 31, 2009, Effective for Service On and After January 1, 2010.

Mr. Epstein intervened in PPL's Petition for Approval of Time of Use Supplement No. 94 to Tariff Electric PA PUC, No 201, with an issue date of September 23, 2010 and an effective date of January 1, 2011.

Mr. Epstein is an active participant in PPL's Collaborative stake holder process, a proponent of TOU tariffs, and offered TOU programming suggestions during the TOU collaborative in 2007-2008 and in Direct Testimony submitted to the PUC on October 30, 2009.

#### **IV. Description of PPL's Plan**

According to PPL Witness, David R. Woodruff. "The objective of the TOU default service program is to comply with the commission approved settlement at Docket No. P-2008-2060309 and Act 129. A TOU default service program provides pricing that encourages customers to shift electricity usage from on-peak periods, when wholesale electricity demands and prices are generally higher, off-peak periods, when demands and process are generally lower. The shifting of use from on-peak to off-peak periods reduces peak demands on generation sources, contributes to reducing whole sale electric prices during the hours of highest demand, and provides customers with an opportunity to reduce their monthly electric bills." (4)

However, Mr. Woodruff said that, "The objective of any state program is to reduce usage during times of highest demand, but PPL has not conducted a detailed evaluation of plans in other states. PPL is not aware of any National TOU programs." (5)

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4 Before the PA PUC, Docket Nos. R-2011-2264771, C-2011-2267808 & C-2011-2268983, Direct Testimony of David R. Woodruff, PPL, Statement No. 2, Page. 4 Lines: 8-16.

5 PPL Response to Interrogatories of Epstein Set I, Witness, David R. Woodruff, Question II-3, (b) & (c), (Epstein, Exhibit 2).

## **V. Statement of Issues**

The Present filing is an attempt to remove barriers, increase participation and eliminate current shortcomings as a result of the Supplement No. 94 Tariff. This filing will require an evaluation of the following issues to avoid duplicating problems incurred the implementation of the Supplement No. 94 filing, included but not limited to:

- Customer Participation Levels.
- Implementation of Best Management Practices and Lessons Learned.
- Oversight and Implementation of the Program.
- Program Design and the Viability of the Proposed TOU program.

## **VI. Argument**

The issues raised by Mr. Epstein in his Petition to Intervene on October 17, 2011 have not been addressed, modified or designed to achieve greater participation in the PPL's, and echo issues Mr. Epstein raised in the EE&C filing.

PPL did not provide criteria or metrics for a successful TOU program. In addition, Company failed to identify the target enrollment numbers necessary to achieve a successful TOU program, and made no effort to review, compare contrast or examine TOU programming in Pennsylvania or throughout the PJM grid.

PPL's Time of Use Supplement No. 1102 proposal failed to close out the following issues and may likely duplicate problems incurred the implementation of the Supplement No. 94 filing, included but not limited to: customer participation levels; implementation of Best Management & Practices and Lessons Learned; oversight and implementation of existing programs; and, the viability of the proposed TOU program.

### **A) Customer Participation Level**

PPL' track record for enrolling customers in TOU programing is woeful. The Company continues to exert minimal effort to enroll and sustain customers. "PPL Electric has not estimated the number of customers who will enroll in the proposed TOU program." (6) In addition, David R. Woodruff stated, PPL Electric has not conducted any studies regarding customer participation in its TOU programs. (7)

During evidentiary hearings, Mr. Epstein provided PPL with the opportunity to revisit the customer participation issue.

**Epstein:** "PPL has not estimated the number of customers that will participate in the proposed TOU, is that correct?" (Transcript, Page 72)

**Woodruff:** "No, it has not."

**Epstein:** "Ok so there is no good number for participation?"

**Woodruff:** " No there is not."

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<sup>5</sup> PPL Response to Interrogatories of Epstein Set II, Witness, David R. Woodruff, Question II-3, (a), (Epstein Cross Examination, Exhibit 2).

<sup>6</sup> PPL Response to Interrogatories of Epstein Set II, Witness, David R. Woodruff, Question II-2, (e) & ( f), (Epstein Cross Examination, Exhibit 2).

**Epstein:** “Ok. How would you quantify, qualify if it’s a successful program?”

**Woodruff:** “ I believe if we could show that customers did shift usage from off-peak, on-peak, to off-peak periods That would be a success.”  
(Transcript, Page 72)

**Epstein:** "It wouldn't matter if it was 1, 10, 100,000, 10,000. In other words, we just went over this in the morning (Transcript, Page: 72, Lines 24- 25 ) with Mr. Kleha - where he had a number that peaked at (Transcript, Page: 73, Line 1) 23,00 and dipped all the way to 440.”

“That’s probably not what you’re looking to do this time.”

“I’m trying to estimate what your metrics for success would be. How many customers participate? Do you have any idea what that would be? “

**Woodruff:** “We have not estimated how many customers will participate.”

**Epstein:**” Okay. So the participation number does not matter to you? How many people participate flat out doesn't matter? “(Transcript, Page, 77, Lines 9- 11)

**Woodruff:** (No response). (Transcript, Page, 77, Line 12)

**Epstein**” That’s what I am getting at . It does not matter to PPL how many people participate in the program if those objectives are met.”

## **B) Implementation of Best Management & Practices and Lessons Learned**

Mr. Epstein explicitly asked Mr. Woodruff, “What changes have you made? What lessons learned have you adopted to make this a tariff that more customers would like to participate in?”

**Mr. Woodruff:** (“Pause) Well the change, the primary change made from this, in this filing compared to our prior existing TOU rate was that pricing was determined.” (Transcript, Page. 77, Lines: 24-25)

Neither Mr. Kleha or Mr. Woodruff made an attempt to review and examine data from previous PPL TOU programing. And neither witness made an attempt to review or examine data from statewide or national TOU programming.

Mr. Kleha’s responses to the following questions were consistently vacuous:

### **Epstein: Re: Customer enrollment.**

“Please provide all studies, formulas, polls, work papers, and related data PPL, and it’s contractors utilized to support conclusions and opinions contained in PPL’s Response to Interrogatory I-2 (a) (b) (c) (d) and (e). (December 27, 2011)

**Kleha:** “Not applicable.” (Response, January 13, 2012)

**Epstein:** “What additional information has PPL garnered since it submitted its previous plan to inform the Company’s present TOU offering?” (Interrogatory I-4 (c), (December 27, 2011)

**Kleha:** “ No additional information has been garnered.” (Response, January 13, 2012).

During evidentiary hearings, Mr. Epstein provided PPL with another opportunity to revisit the issues of Best Management & Practices and Lessons Learned.

**Epstein:** “And I guess what I’m trying to determine is, in fact, that you’re not aware, does that mean you didn’t investigate programs in the or outside of the state.”

**Kleha:** “I personally did not investigate any items in or out of state. Others in the company may have have done that.” (Page 31, Lines: 12-16)

**Epstein** asked, “...is there somebody in your company that’s not you that would be tracking trends where you can gain value from those trends and apply them to PPL”?

“Is there any formal process at PPL that does that? Or are you not aware of that?”

**Kleha:** “Certainly it doesn't belong in my shop. Mr. Woodruff whose coming up, may have more information about that.” (Page 33)

**Epstein:** “You have also responded that you are not aware of any other national TOU programs, and that you have not conducted any evaluation of plans in other states.”

“Did you look at any plans in this state or outside the state before you prepared the tariff?”

**Woodruff:** “Me personally, no.”

**Epstein:** Do you know if anybody at PPL did?”

**Woodruff:** “I can’t fairly say.”

**Epstein:** “So you’re not aware if anybody in the organization looked at other TOU tariffs in the state or outside of the state prior to preparing this tariff, correct? (Transcript, Page, 73).

Later in the cross examination **Mr. Woodruff** stated, “And that’s not to say that there may be other utilities in other states, but we didn’t look at other states.” (Transcript, Page 75, Line 1.)

**Epstein:** “But there could be a utility in another state that has a similar load situation but you didn’t look?”

**Woodruff:** “That’s Correct.

### **C) Oversight and Implementation of Program**

The “Whose on First? What’s on Second?” oversight and implementation of PPL’s TOU programing in evidence by the failures of Tariffs No. 71 and No. 94, and was in full view when Mr. Epstein queried PPL witnesses about oversight and implementation of exiting programs.

Mr. Woodruff sated, “A small number of employees, not more than a dozen, worked on the TOU programs contained in Supplement Nos. 71 and No. 94. The majority of these employees worked on both programs.” (7)

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<sup>7</sup> PPL Response to Interrogatories of Epstein Set I, Witness, David R. Woodruff, Question II-6,( a-d), (Epstein Cross Examination, Exhibit 2).

Mr. Kleha and Mr. Woodruff have acknowledged that PPL has not compared, contrasted or evaluated TOU programs in other states which may could inform the proposed tariff and improve upon PPL's dismal TOU track record' (8) Mr. Epstein asked Mr. Woodruff how many of his staff are involved with the tariff.

**Woodruff:** "It would vary from time to time, but there were...I could point to maybe a dozen people involved in this a tone time or another."  
(Page 79, Lines: 1-2)

**Woodruff:**" I am not aware if they asked any specific questions related to with the TOU tariff."

**Epstein:** "Okay. So these would be the people that I would have to direct a question to if whether or not they looked at other programs to derive lessons learned? Or can you say confidently that, really, with you and Mr. Kleha that would be it? You would give the directive to compare and contrast to other programs?"

**Woodruff:** "I can not say definitely that nobody else on, who worked on this looked at outside utilities or other states." (Page 79)

On the heels two poorly performing TOU programs, PPL made no effort to implement Lessons Learned, import a Best Practices Model, and refused to compare and contrast in-state and out-of-state state TOU programs. In fact the Company really doesn't even know what goes on in its TOU "shop".

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8 Please refer Woodruff Response to Epstein Interrogatories Set II-3 (d) (e) (f), Set II-8 (b) & (c) (f) and Set II-9 (a) (& (b), Cross examination, Exhibit 2.

## **D) Program Design and the Viability of the Proposed TOU Program**

PPL has not designed a new TOU tariff consistent with Act 129 or even a tariff designed to attract customers. There is no new design to increase and maintain customer participation. PPL refuses to implement Lessons Learned, import Best Management Practices and has no target for enrollment.

PPL's only plan is to do the bare minimum and recover costs. This program has little to do with the Act 129 statute, and everything to do with PPL going through the motions and padding their administrative costs.

Our intent is, 1, to comply with the requirements of Act 129 , provide a TOU rate for our customers; and 2, to make sure that any rate we have for TOU is, recovers all our cost to provide the energy for those customers. An to ultimately reduce potential demands in the future for our customers.” (Transcript, Page 75, Lines: 13-18)

For example, PPL Electric has requested recovery of all legal expenses, including billing attributable to Post & Schell without preparing a legal budget, executing an RFP or providing a fee scale for invoices. Mr. Kleha admitted PPL does not issues an RFP for legal counsel. “We hire the best counsel we can buy” (Laughter), (Transcript, Page 36).

**Epstein:** “What metrics do you have to determine that if you have no control over the budget?”

**Kleha:** “Well, I’ve been doing this for 35 years. I think I know the best counsel I can get.”

**Epstein:** “Not good enough.”

## VII. Conclusions

PPL Electric discussed Time of Use (“TOU”) rates at pp. 84-88 of the EE&C Plan and outlined its program. The Company indicated that the program “will be similar in format to pilot TOU programs the Company has been conducting since 2002.” (Id) PPL is stuck and neutral and continues to invest rate payer dollars on a stalled and chronically deficient program.

PPL’s program is based on a generalized belief.

**Epstein:** “Ok. How would you quantify, qualify if it’s a successful program?”

**Woodruff:** “ I believe if we could show that customers did shift usage from off-peak, on-peak, to off-peak periods That would be a success.” (Transcript, Page 72)

Mr. Woodruff was unambiguous when he stated, “PPL Electric has not estimated the number of customers who will enroll in the TOU program...PPL has not estimated the number of customers that who will be aware of the proposed TOU program...PPL electric had not conducted a detailed evaluation of plans in other states.” (9)

PPL’s bottom line was summed up by Mr. Woodruff:

“Our intent is, 1, to comply with the requirements of Act 129 , provide a TOU rate for our customers; and 2, to make sure that any rate we have for TOU is, recovers all our cost to provide the energy for those customers. An to ultimately reduce potential demands in the future for our customers.” (Transcript, Page 75, Lines: 13-18)

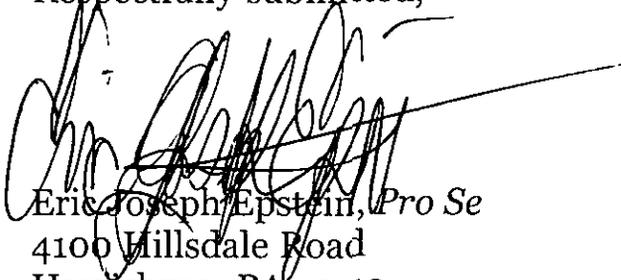
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PPL Response to Interrogatories of Epstein Set I, Witness, David R. Woodruff, Question II-3, (a) (c) (d) & (e), (Epstein Exhibit 2).

For the reasons stated above, Eric Joseph Epstein respectfully submits that the Commission should reject the proposed TOU filing and Order PPL to:

- 1) Review the TOU filings of other Pennsylvania EDCs and review FERC's 2012 Assessments of Demand Response and Advanced Metering;
- 2) Implement Lessons Learned and Best Management Practices after the reviews;
- 3) Issue an RFP and bid out TOU supply to a third party supplier ; and,
- 4) Supply a budget to the parties including all administrative expenditures associated with this Proceeding.

Respectfully submitted,



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Dated: March 21, 2012

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

## CERTIFICATION OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the active participants named below by US mail or hand delivery or electronic transmission in accordance with the requirements of Section 1.54.

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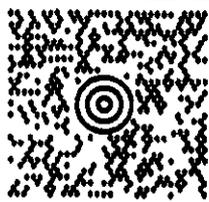
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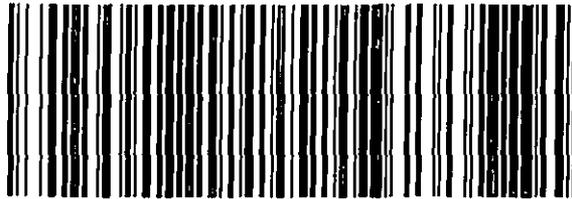
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