17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
717-731-1970 Main
717-731-1985 Main Fax
www.postschell.com

Andrew S. Tubbs

atubbs@postschell.com
717-612-6057 Direct
717-731-1985 Direct Fax
File #: 140069

July 9, 2012

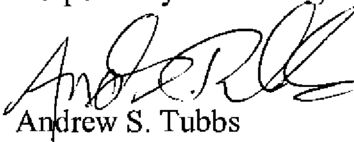
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Energy Efficiency and Conservation Program
Docket Nos. M-2012-2289411 & M-2008-2069887

Dear Secretary Chiavetta:

Enclosed are the Reply Comments of PPL Electric Utilities Corporation for the above-referenced proceeding.

Respectfully Submitted,



Andrew S. Tubbs

AST/jl
Enclosures
cc: Megan Good (*via E-mail*)
Kriss E. Brown (*via E-mail*)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Energy Efficiency and Conservation Program	:	**Docket Nos.**	**M-2012-2289411**
	:		**M-2008-2069887**

REPLY COMMENTS OF
PPL ELECTRIC UTILITIES CORPORATION

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

PPL Electric Utilities Corporation ("PPL Electric" or the "Company"), by and through its attorneys, in accordance with the Pennsylvania Public Utility Commission's ("Commission") May 11, 2012 Tentative Implementation Order,[1] hereby submits these Reply Comments in response to the comments filed by various parties on or about June 25, 2012, and to address discussions held subsequent to the filing of the Company's initial comments at these dockets, relative to the proposed 2013 update of the Commission's Technical Reference Manual ("TRM").

As discussed in detail below, PPL Electric continues to generally support the Commission's proposals for implementing the second phase ("Phase Two") of the Energy Efficiency and Conservation ("EE&C") Program. Therefore, the Company's Reply Comments request that certain proposals raised by other parties to modify the Tentative Implementation Order be rejected. PPL Electric also proposes particular refinements and requests clarification regarding a select number of proposals in the Tentative Implementation Order. Further, the

[1] *Energy Efficiency and Conservation Program*, Tentative Implementation Order at Docket Nos. M-2012-2289411 and M-2008-2069887 (Order Entered May 11, 2012) (*Tentative Implementation Order*).

Company's Reply Comments will address the significant ramifications of the proposed changes to the 2013 TRM and its direct impact on PPL Electric and perhaps others to meet the proposed consumption reduction requirements in the Tentative Implementation Order.

Subsequent to the release of the Tentative Implementation Order and the Commission's statewide evaluator's ("SWE") Market Potential Study, and after the due date for the filing of initial comments in this proceeding, the Commission convened the TRM technical working group ("TWG") to discuss potential modifications to the 2013 TRM. During the course of the TRM technical working group meeting on June 27, 2012, the SWE outlined proposed modifications to the 2013 TRM that, with one minor exception, will significantly reduce savings for efficiency measures that are likely to be a significant portion of PPL Electric's Phase Two EE&C Program. In reviewing the impact of these potential savings reductions on the Company's ability to meet Phase Two targets, PPL Electric has determined that the reductions will likely reduce the total savings of PPL Electric's Phase Two EE&C Plan by approximately 15% to 30%. This would translate to a corresponding increase in program acquisition[2] costs to meet the proposed targets. However, despite the significant reduction in savings, PPL Electric's cost cap for Phase Two will remain at the level set as set forth in Act 129 for Phase One. The Commission's Tentative Implementation Order reinforced this cap by assuming this maximum funding when it proposed each electric distribution company's ("EDC") Phase Two compliance target. Furthermore, as recognized by the Commission, experience and logic dictate that as EDCs progress forward, the targets become incrementally more difficult to achieve as the "low hanging fruit" has been harvested. Therefore, based on the proposed changes to the 2013 TRM,

[2] Program acquisition costs are calculated by dividing the total EDC EE&C Plan program funds by annualized savings.

the acquisition costs set forth in the Commission's Tentative Implementation Order are now insufficient to achieve the proposed consumption reduction target.

If the Commission adopts the 2013 TRM as proposed by the SWE, the Commission must reevaluate and lower the proposed Phase Two compliance targets for PPL Electric. Indeed, if the 2013 TRM modifications are adopted, there will be no factual basis for the proposed consumption reduction targets determined in the Market Potential Study and contained in the Tentative Implementation Order because those targets were based primarily on the 2012 TRM. However, the recently announced proposed modifications to the 2013 TRM would reduce savings by up to 30%, and it therefore is axiomatic that the previously proposed consumption reduction targets are not supported by the Market Potential Study and must be revised downward to reflect the proposed changes to the 2013 TRM.

PPL Electric specifically requests that the Commission lower the Company's Phase Two consumption reduction compliance target to 1.6% due to the proposed modifications to 2013 TRM that were not released until June 27, 2012. As noted above and discussed in detail below, if the Commission adopts the 2013 TRM, the Commission compliance targets for Phase Two need to be recalculated.

If the compliance target is not lowered to 1.6% to reflect the proposed changes to the 2013 TRM, PPL Electric may still be able to achieve a reduction of 2.1%, but PPL Electric's Phase Two EE&C Plan would have to emphasize low cost measures that may not have deep persistent savings and would have to emphasize the customer sectors with the lowest program acquisition costs, such as residential and large commercial and industrial ("C&I"). These changes may not be what customers want and would jeopardize PPL Electric's likelihood of achieving its target. They would also result in a suboptimal distribution of programs and funding

which may not be acceptable to many stakeholders. However, these approaches would have to be reflected in the EE&C Plan for PPL Electric to have any chance to achieve the compliance target, given the reduced savings proposed for the 2013 TRM and the available funding.

Finally, as discussed in more detail below, PPL Electric also requests that after the 2013 TRM is finalized, that the Commission limit changes to the TRM for the duration of Phase Two to the addition of new measures and that all existing savings and estimates for each measure included therein be frozen until subsequent phases.

In support thereof, PPL Electric states as follows:

I. BACKGROUND

In the Tentative Implementation Order, the Commission issued, for public comment, its proposals for implementing Phase Two of the EE&C Program. The Commission requested that interested parties file written comments on the Tentative Implementation Order by June 25, 2012. By Secretarial Letter dated June 29, 2012, the Commission extended the due date for the filing of Reply Comments with respect to the Tentative Implementation Order until July 9, 2012. On June 25, 2012, the American Council for an Energy-Efficient Economy ("ACEEE"), the Pennsylvania Weatherization Providers Task Force, EMC Development Company, Inc. ("EMC"), the National Housing Trust and the Pennsylvania Housing Financing Agency ("NHT/PHFA"), National Energy Solutions ("NES"), Tri-State Light & Energy, SEDA-Council of Governments ("SEDA-COG"), the City of Philadelphia, KVAR Energy Savings, Inc. ("KVAR"), the Honorable Camille "Bud" George ("Representative George"), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), the Pennsylvania Chapter of the Sierra Club ("Sierra Club"), Clean Air Council ("CAC"), PennEnvironment, Physicians for Social Responsibility, Philadelphia Chapter, and the Natural

Resources Defense Council (collectively, "the Citizen Groups"), Community Legal Services ("CLS"), UGI Distribution Companies ("UGI Distribution"), Opower, Inc. ("Opower"), the Office of Consumer Advocate ("OCA"), Northeast Energy Efficiency Partnerships ("NEEP"), the Regional Housing Legal Services ("RHLS"), Citizens Power, Inc. ("Citizens Power"), The Reinvestment Fund ("TRF"), Ecova, Inc. ("Ecova"), the Joint DR Commenters,[3] the Industrial Customer Groups,[4] Duquesne Light Company ("Duquesne Light"), the Energy Association of Pennsylvania ("EAP"), EnerNOC, KEEA, the Sustainable Energy Fund of Central Eastern Pennsylvania ("SEF"), PennFuture, the FirstEnergy Companies (Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company), PECO Energy Company ("PECO"), a group of low-income organizations ("Coalition of Low Income Groups"), PPL Electric and various trade unions ("Trade Unions") filed initial comments on the Commission's proposed Tentative Implementation Order. As noted above, the Company continues to generally support the Commission's proposals for implementing Phase Two. However, PPL Electric opposes a number of the positions set forth in the initial comments filed with the Commission. In addition to the modifications requested by PPL Electric in its initial comments related to the proposed Phase Two consumption reduction targets, and as noted above, PPL Electric requests that the Commission lower the Company's Phase Two compliance target to 1.6% due the proposed modifications to 2013 TRM.

---

[3] The Joint DR Commenters include AK Steel, Citizens For Pennsylvania's Future ("PennFuture"), Clean Air Council, Comverge, Inc., Conservation Voters of PA, EnerNOC, Inc. ("EnerNOC"), Environmental Defense Fund, Group Against Smog and Pollution ("GASP"), Johnson Controls, Inc., and EnergyConnect, Keystone Energy Efficiency Alliance ("KEEA") Natural Resources Defense Council ("NRDC"), PennEnvironment, the Sierra Club; Viridity Energy, Inc.; Wal-Mart Stores East, LP and Sam's East, Inc.; Association for Demand Response and Smart Grid; and Philadelphia Physicians for Social Responsibility.

[4] The Industrial Consumers Group includes the Industrial Energy Consumers of Pennsylvania ("IECPA"), Duquesne Industrial Intervenors, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors.

PPL Electric will not respond to each issue raised in the initial comments, but will focus on those issues of the utmost importance to the Company. In support thereof, PPL Electric states as follows:

II. <u>REPLY OF PPL ELECTRIC</u>

A. THE COMMISSION SHOULD LOWER THE REDUCTION TARGET APPLICABLE TO PPL ELECTRIC

The Commission proposes to adopt a three-year consumption reduction requirement for Phase Two as contained in the SWE's market potential report and reproduced in Table 1 of the Tentative Implementation Order. *See* Tentative Implementation Order at 10. The proposed consumption reduction targets are based on the 2009/2010 energy forecasts. Tentative Implementation Order at 12. These consumption reduction requirements vary by EDC based on the specific mix of program potential, acquisition costs and available funding.

These consumption reduction targets were based on savings from the 2012 TRM and now, as discussed below, the SWE is proposing to revise the savings downward in the 2013 TRM. For the reasons explained below, the Commission must either use the 2012 TRM for the entire Phase Two period or revise the consumption targets based on the 2013 TRM.

1. The initial comments filed in response to the Tentative Implementation Order

In its initial comments, PPL Electric did not oppose the Commission's decision to set individual EDC consumption reduction targets that are based upon each EDC's annual spending ceiling which limits the program spending to 2% of 2006 annual revenue. PPL Electric at 8. However, PPL Electric stated concern that the Company's 2.1% Phase Two compliance target proposed by the Commission will be challenging to achieve given external and variable factors

including:[5] (1) the impact of potential downward adjustments to savings in future versions of the TRM (2013 – 2015); (2) the Commission's proposed requirement that EDCs re-bid all Phase One Conservation Service Provider ("CSP") contracts; (3) the changes set forth in the Energy Independence and Security Act of 2007 ("EISA") which reduce savings available from efficient lighting by 25% to 40%; (4) the continued slow economic recovery and inflationary erosion of the purchasing power available within the 2% funding cap; and (5) the lengthy process associated with obtaining Commission approval of modifications to EE&C Plans. PPL Electric at 8-9.

Despite these concerns, PPL Electric indicated in its initial comments that the 2.1% Phase Two compliance target proposed for the Company could reasonably be achieved, if the Commission addressed the items identified above in its final Phase Two Implementation Order. Other parties also noted the aggressive nature of the consumption reduction targets proposed by the Commission. *See* FirstEnergy Companies at 8; EAP at 4; and PECO at 9-10. However, some parties commented that the energy reduction targets proposed in the Commission's Tentative Order for PPL Electric and other EDCs were too low. The parties asserted that the Market Potential Study was based on incorrect assumptions, and that in particular the estimated program acquisition cost included in the study was too high. *See, e.g.*, NEEP at 1; SEF at 5; ACEEE at 4. Some of these parties also challenged the three-year cumulative EDC Phase Two consumption reduction targets and requested that the Commission approve annual compliance targets for the EDCs instead of a single three-year cumulative target. *See e.g.*, Trade Unions at 1; NEEP at 3; ACEEE at 2; KEEA at 5; OPower at 5; and Coalition for Low Income Groups at 1. PPL Electric disagrees with these comments and to the contrary has determined its proposed

[5] PPL Electric notes that regardless of the consumption reduction target set by the Commission in this proceeding, the Company requests that these concerns be addressed by the Commission in its Final Implementation Order.

consumption reduction target is too high. As detailed below, the logic for higher targets is not supported by facts. PPL Electric has aggressively pursued and expects to achieve the Phase One targets in large part by harvesting the low hanging fruit and by doing so, removes those from consideration in Phase Two. Importantly, while lighting comprises approximately 70% of the total savings in PPL Electric's Phase One EE&C Plan, the changes in federal standards for lighting (EISA) have reduced lighting savings by approximately 40%, starting in 2012 and expanding in the 2013 – 2016 time frame. For the reasons set forth below, PPL Electric requests that the Commission lower the Company's Phase Two EE&C Plan target to 1.6% (615,804 MWh/yr).

Concurrent with the release of the Tentative Implementation Order, the Commission released the SWE's Market Potential Study. The Market Potential Study estimated various categories of market potential:

- Technical Potential - the savings possible by installing efficient equipment in all available technically feasible applications, regardless of cost-effectiveness, available program funding, available time, or market barriers.
- Economic Potential - a subset of Technical Potential that includes only those efficient measures that pass the TRC cost-effectiveness screening.
- Achievable Potential - a subset of Economic Potential that accounts for market barriers such as customer preferences, availability of product, customer's willingness to install efficient measures, *etc.*
- Program Potential - a subset of Achievable Potential that accounts for program funding limitations and duration, *i.e.*, there is not enough program funding or time to realize the achievable potential. Program Potential is the primary "constraint" and is the basis for the Phase Two Act 129 energy reduction compliance targets. Thus, even if the economic potential and the achievable potential were underestimated in the Market Potential Study that would not necessarily impact the program potential. Program Potential is primarily controlled by the available Act 129 funding, *i.e.*, "program acquisition cost".[6]

[6] Program acquisition cost is the EDC's total Act 129 funding divided by the annualized savings compliance target (MWh/yr).

PPL Electric notes that any Market Potential Study must address many uncertainties and assumptions. On balance, and especially given timing and funding constraints, PPL Electric believes the Market Potential Study, which relies primarily on the 2012 TRM currently in effect, reasonably estimates technical potential, economic potential,[7] and achievable potential. However, as the Company noted in its initial comments, PPL Electric's consumption reduction compliance target, which is based on the program potential and program acquisition costs estimated by the SWE in the Market Potential Study, is very challenging to achieve based on several factors. Specifically, PPL Electric indicated that its acceptance of the proposed 2.1% consumption reduction target was contingent upon the following: (1) that EDCs be permitted to carry over excess savings from Phase One to meet Phase Two requirements; (2) that 2013 – 2016 TRM changes do not reduce EDC's Phase Two savings relative to the 2012 TRM which is the basis for EDC's Phase Two EE&C Plans; (3) that EDCs be permitted to maintain Phase One CSP contracts for CSPs that are performing well and if the scope of work has not changed; (4) that EDCs are not required or expected to expend Phase Two budget toward achievement of Phase Three plan development and implementation; and (5) that if the Commission sets a Phase Two low-income savings compliance target, EDCs be permitted to include low-income participation in general residential programs as well as other parameters related to a low-income compliance target. PPL Electric at 13-14. Each of these factors, if not implemented as requested, will directly increase PPL Electric's program acquisition cost and limit PPL Electric's possible savings since the maximum allowable funding has been assumed in the program acquisition cost.

[7] PPL Electric believes that proposed changes to the 2013 TRM that reduce the savings (benefits) of many measures may cause some of those measures to no longer pass the TRC, thereby reducing economic potential.

2. The June 27th release of proposed changes to the 2013 TRM

Just days after PPL Electric filed its comments on the Commission's Tentative Implementation Order, the SWE issued a list of proposed changes to the 2013 TRM.[8] Although the proposed changes are not final and will be vetted through the Commission's 2013 TRM Tentative Order, the proposed changes identified by the Commission staff and the SWE, if approved, would significantly impair the Company's ability to achieve its Phase Two consumption reduction target.[9] PPL Electric has not commented on the technical merits of the proposed changes in this current proceeding, *i.e.*, whether or not they are more accurate estimates of savings in Pennsylvania. However, PPL Electric is concerned with the process used to identify these changes, the timing of these proposed changes, and most importantly the impact of these proposed changes on PPL Electric's ability to meet its Phase Two compliance requirements within the Act 129 2% revenue cap.

The Commission uses the TWG to collaboratively identify and review proposed changes to the TRM. Although the TWG meets often throughout the year, none of the recently proposed changes to the 2013 TRM were quantified or discussed prior to June 27, 2012. Therefore, these proposed changes were released after the SWE had completed the Market Potential Study and after the Phase Two proposed energy reduction targets were proposed by the Commission. The release of potential significant changes to the 2013 TRM after the release of the Market Potential Study and after proposing EDC specific Phase Two compliance targets is clearly inappropriate. The SWE's Market Potential Study and the Commission's proposed Phase Two consumption reduction targets should have been based upon the 2013 TRM. The 2012 TRM is the primary

---

[8] SWE letters to the Technical Working Group ("TWG") in preparation for the June 27, 2012 TWG Meeting: 2013 TRM Update, list of C&I measures; 2013 TRM Update- Residential HVAC, Water Heating, New Construction, Energy Star Lighting, Appliance Recycling, and Energy Star Appliances; 2013 TRM Update- CFL Hours of Use.

[9] PPL Electric notes that the TWG is scheduled to commence on July 24, 2012. Although the agenda has not yet been released for this meeting, the proposed modifications to the 2013 TRM are likely to be discussed.

basis of savings estimates in the Market Potential Study (which was used to set the EDC's Phase Two targets) and will be the basis of savings estimates in the EDCs' Phase Two EE&C Programs.[10] Therefore, the use of the 2013 TRM and subsequent TRMs to verify an EDC's compliance for Phase Two is without any factual basis.[11] Indeed, the process used by the SWE and the Commission will result in EDC Phase Two targets that are based upon potential savings calculations that could be discounted as early as the release of the 2013 TRM. The appropriate process and proper sequence should be as follows:

(1) Establish rules (TRM) that define how to estimate the savings for each efficiency measure;

(2) Use those rules (savings per measure) as a major input to the Market Potential Study to estimate total savings potential; and

(3) Use the results of the Market Potential Study to set compliance targets and funding levels.

However, in the current situation, step 1 was completed after step 3. On its face, this process, if followed, is counterintuitive. If significant changes to the 2013 TRM (and all TRM versions for Phase Two) were expected, these changes should have been identified and approved prior to the SWE initiating the Market Potential Study.

---

[10] The 2013 TRM will not be issued by the Commission before EDCs have completed or nearly completed their Phase Two EE&C Plans (November 13, 2013). Therefore, PPL Electric will use the 2012 TRM as the basis for its savings estimates in its Phase Two EE&C Plan.

[11] The "Commission's power to act by way of order requires findings of fact, based on the evidence, necessary to support the order." *Butler Township Water Co. v. Pennsylvania Public Utility Company*, 473 A.2d 219, 222 (Pa. Cmwlth. 1984) (quotation omitted). In order to satisfy the substantial evidence test, fact finding must be based exclusively on the evidence admitted to the record in the proceeding. *Kyu Son Yi v. State Board of Veterinary Medicine*, 960 A.2d 864, 870-871 (Pa. Cmwlth. 2008) (holding that extra-record evidence cannot sustain an adjudication). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm'n*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008). Substantial evidence must be "more than a scintilla and must do more than create a suspicion of the existence of the fact to be established." *Kyu Son Yi*, 960 A.2d at 874 (citation omitted).

This is particularly important because the proposed changes for the 2013 TRM are extensive and, if approved, will comprise a significant portion of the savings in PPL Electric's Phase Two EE&C Plan. All of the changes except for one (dehumidifiers) reduce the savings for the measures and will increase the program acquisition cost.[12] The significance of the proposed changes to the 2013 TRM is exacerbated by the approximately 40% reduction in lighting savings for EISA that were included in the 2012 TRM. Based upon PPL Electric's review of the Market Potential Study, almost all of the proposed reductions to the 2013 TRM were not included in the Market Potential Study assumptions for savings or program acquisition cost and therefore not properly factored into the Commission's proposed Phase Two consumption reduction targets.[13] Examples of the proposed reductions include:

- CFLs - reduced hours of use ("HOU") will reduce savings by approximately 7% for CFL measures compared to Phase One (2012 TRM)
- Residential HVAC - reduced HOU will reduce savings by approximately 33% for all residential HVAC measures (central air conditioning, heat pumps, *etc.*) compared to Phase One (2012 TRM)
- Appliance Recycling - reduce savings by approximately 4% - 20% compared to Phase One (2012 TRM), depending on the type of appliance and whether it is replaced
- C&I lighting - reduced HOU will reduce savings by 15% - 20% for all C&I lighting measures compared to Phase One (2012 TRM)

[12] The program cost for a measure (such as the incentive paid by the EDC) will not change but the savings will be lower. Therefore, the program acquisition cost (program funds divided by savings) will increase.

[13] PPL Electric further notes that the reduction in savings for these measures reduces the benefits of these measures. Therefore, some of these measures may no longer pass the TRC test as assumed in the Market Potential Study, thereby reducing economic potential and achievable potential.

- C&I HVAC - reduced HOU will reduce savings by 25% - 35% for all C&I HVAC measures (central air conditioning, chillers, heat pumps, *etc.*) compared to Phase One (2012 TRM)

These measures are a very significant portion of PPL Electric's Phase One EE&C Plan (comprising more than 70% of the total savings) and will very likely be a significant portion of its Phase Two EE&C Plan since these are the most common measures that are preferred by customers and comprise a very significant portion (more than 70%) of the market potential for PPL Electric. Although PPL Electric has not yet developed its mix of measures and programs for Phase Two, the changes proposed for the 2013 TRM, in aggregate, will likely reduce PPL Electric's total EE&C Plan savings by 15% to 30% and will increase PPL Electric's program acquisition cost by 15% to 30%. The Market Potential Study assumed an approximately 40% reduction in lighting savings (compared to Phase One EE&C Plans) due to EISA. As with Phase One, a significant portion of PPL Electric's total savings is expected to come from lighting measures. In fact, the Market Potential Study concludes that there are 432,447 MWh/yr of achievable lighting potential for PPL Electric which is 50% of PPL Electric's energy total reduction compliance target for Phase Two.

PPL Electric's Phase One program acquisition cost (for energy efficiency measures only; excluding demand response) is expected to be approximately $0.18/kWh.[14] It is reasonable to assume that program costs for lighting (primarily incentives and program management/delivery) will be approximately the same in Phase Two as Phase One. Therefore, since lighting is approximately 70% of the total portfolio savings and savings for lighting measures will decrease approximately 40% compared to Phase One (2012 TRM), total EE&C portfolio savings will

[14] EE&C Plan, May 2012, Table 5a, $223,435,000 divided by 1,275,766 MWh/yr.

decrease approximately 28% (0.7 * 0.4) and program acquisition costs will increase 33% (from $0.18/kWh to $0.24/kWh) due solely to the effects of EISA in Phase Two.[15] The Market Potential Study includes a 25% increase in program acquisition costs, presumably to address the reduced savings due to EISA, although it does not specifically state that reason. The Tentative Implementation Order proposes $0.22/kWh for PPL Electric's program acquisition cost which is reasonable to address EISA. However, it does not account for the proposed reduction to savings for the 2013 TRM, does not account for potential changes to the 2014 or 2015 TRMs, does not account for inflation, and does not account for the fact that there will be less "low hanging fruit" available in Phase Two which are usually less costly to implement.

As noted above, several parties commented that the proposed program acquisition cost is already too high, and higher than industry standards. In addition, they erroneously conclude the proposed energy reduction compliance target is already too low for the EDCs including PPL Electric. It is not realistic to directly compare program acquisition costs (and savings targets) across different states for the reasons summarized below. It is more appropriate to judge the reasonableness of savings targets and program acquisition costs by examining Pennsylvania-specific conditions that impact savings and program acquisition costs, and to compare Phase Two with Phase One. As noted below, data from other states is not indicative of the energy efficiency market in Pennsylvania:

- Historical savings (before 2012) are not indicative of future savings, especially because of the 40% reduction in savings (and increase in program acquisition costs) from EISA which began in 2012.

[15] PPL Electric's total funding in the current Plan excluding demand response is $223.4 million and the associated level of energy savings are 1,275,766 MWh/yr. A decrease in savings at the portfolio level by 28% with no change in available funding results in an acquisition cost of $0.24/KWh.

- Pennsylvania has low-income and government/educational/nonprofit sector[16] set-aside targets. Program acquisition costs for these sectors, especially low-income, are more costly than other sectors and the overall average for the entire EE&C Plan. Other states may not have comparable set-aside targets.
- All states do not use the same method to estimate savings for individual measures and, therefore, the savings for a particular measure may differ across states.
- Consumer preferences, pricing, economic conditions, length of time that programs have run, *etc.* vary across states.
- The regulatory framework (penalties, incentives, voluntary programs, mandatory programs, *etc.*) varies.
- The mix of measures or emphasis on customer sectors varies. Some states have programs that emphasize residential more heavily and that sector typically has the lowest program acquisition cost.

For Phase One, PPL Electric's expected program acquisition cost ($0.18/kWh for energy efficiency programs only) was determined to be reasonable by stakeholders and the Commission. The Commission proposed a $0.22/kWh acquisition cost (and established a savings target on this basis) for PPL Electric's Phase Two EE&C Plan to recognize, presumably, the reduced savings impact of EISA as described above and the associated increase in the program acquisition cost. If the proposed changes to the 2013 TRM summarized above are implemented, PPL Electric requests the Commission to reduce PPL Electric's Phase Two energy reduction target by 25%, from 2.1% (821,072 MWh/yr) to 1.6% (615,804 MWh/yr) to properly reflect the reduced savings potential (2013 TRM changes) and the associated increase in program acquisition costs.

[16] This sector is defined in Act 129 as federal, state and local governments, including municipalities, school districts, institutions of higher education and nonprofit entities. *See* 66 Pa. C.S. § 2806.1(b)(1)(i)(B).

3. PPL Electric's Phase Two consumption reduction target should be lowered to 1.6%.

PPL Electric specifically requests that the Commission lower the Company's Phase Two consumption reduction compliance target to 1.6% (615,804 MWh/yr) due to the proposed modifications to 2013 TRM that were not released until June 27, 2012. If the Commission adopts the 2013 TRM, the compliance targets for Phase Two need to be recalculated accordingly as the impact of the 2013 TRM changes are not reflected in the results of the Market Potential Study or the compliance targets (and funding constraints) included in the Tentative Implementation Order. Reducing the target (increasing the program acquisition cost) is consistent with the Commission's approach to adjusting the savings targets and the program acquisition cost to reflect the impact of EISA. If the proposed 2013 TRM changes were included in the Market Potential Study, it is logical to conclude that the targets would have been lower and the program acquisition cost would have been higher, consistent with the impacts of EISA's lower savings.

If the Commission maintains the previously proposed consumption reduction target of 2.1%, the Commission would approve an improperly set target and would constrain PPL Electric's Phase Two EE&C Plan to:

- Emphasizing low cost measures that may not have deep persistent savings;
- Emphasizing the customer sectors with the lowest program acquisition costs, such as residential and large C&I.

These impacts may not be what customers want, which would jeopardize PPL Electric's likelihood of achieving its compliance target, and will result in a suboptimal distribution of programs and funding as viewed by many stakeholders. However, these would have to be

included in the EE&C Plan for PPL Electric to achieve the compliance target, with the reduced savings proposed for the 2013 TRM, within the available funding.

B. A THREE-YEAR TERM FOR PHASE TWO IS APPROPRIATE

The Commission has proposed to implement a three-year term for Phase Two of the Act 129 EE&C Program that would operate from June 1, 2013 through May 31, 2016. Tentative Implementation Order at 10. In addition, the Commission has proposed to set the Phase Two consumption reduction targets based on the full 2% of 2006 annual revenue being spent for the EE&C Programs. Tentative Implementation Order at 14. Therefore, as discussed above, PPL Electric requests that the Commission reduce the Company's Phase Two consumption reduction target to 1.6%. In addition, PPL Electric maintains its request that the Commission address the items identified in the Company's initial Comment. *See* PPL Electric at 13-14. A major consideration identified by the Commission in proposing a three-year term for the Phase Two EE&C Program was "the contingency of dealing with a potential peak demand reduction target that will need to be accomplished by May 31, 2017." *Id.* In addition to PPL Electric, other commenters offered their support or non-opposition to the Commission's proposal. *See e.g.,* PPL Electric at 5-7; Industrial Customer Groups at 4-5; PECO at 4; ACEE at 2; and KEEA at 2. However, other parties continue to support a four-year EE&C Program noting that the longer duration would provide the time necessary for consumers and EDCs to respond to the evolving energy efficiency market place, allow for a demand response program to be included in Phase Two, and provide EDCs time to respond to changes in Federal regulations and standards and seek to modify their EE&C plans accordingly. OCA at 5-6; and SEDA-COG at 5.

PPL Electric continues to support a three-year term for Phase Two for all the reasons set forth in the Company's April 17th comments and its initial comments. However, in reply to the comments in favor of a four-year EE&C Program, PPL Electric notes that a three-year EE&C

Program will enable the Commission to: (1) remove uncertainty associated with continuously evolving energy efficiency technology; (2) coordinate changes to the TRM with EDC EE&C Plans; and (3) recognize the potential for dramatically fluctuating energy prices and the associated impact on EDC EE&C Plans.

First, a three-year EE&C Program properly aligns EDC's Phase Two compliance targets with the Commission's commitment to determine savings accurately. In the Tentative Implementation Order, the Commission proposed to adopt EDC-specific three-year energy consumption reductions for Phase Two. Tentative Implementation Order at 12. PPL Electric supports the Commission's proposal to set a cumulative, rather than an annual, Phase Two compliance targets for each EDC.[17] Aligning EDC Phase Two compliance targets with the duration of a three-year Phase Two EE&C Program properly recognizes the evolving energy efficiency market place and will enable the Commission, EDCs and other stakeholders to better respond to market changes. Indeed, ENERGY STAR® ratings for energy efficient consumer products relied upon by customers when choosing efficient equipment are changing. In addition to the original ENERGY STAR® rating, ENERGY STAR® has added a new rating category that identifies the "most efficient" products that qualify for an ENERGY STAR® rating. This change by ENERGY STAR® demonstrates that technology and the associated energy savings are rapidly changing. The adoption of a three-year Phase Two EE&C Program is best suited for the continuously evolving energy efficiency technology.

Second, as addressed in PPL Electric's initial comments, although the Company appreciates the Commission's commitment to determine savings as accurately as possible, this commitment must be balanced and take into consideration the impact modifications to the TRM

[17] The Commission rejected the requests by Penn Future and OPower to impose annual or interm targets by proposing to adopt a three-year consumption reduction requirement for Phase Two in the Tentative Implementation Order. Tentative Implementation Order at 12.

have on the EE&C Plan costs, EE&C Plan savings assumptions and EDC compliance with the Commission-set Phase Two consumption reduction targets. PPL Electric at 26. Requiring EDCs to apply TRM modifications to their Phase Two EE&C Plans would alter the basis by which the EDCs designed and the Commission approved the EE&C Plans. Therefore, PPL Electric has strongly encouraged the Commission to minimize changes to the TRM and to follow the process outlined in the Company's initial comments when updating the TRM. PPL Electric at 27. The cornerstone of the process requested by PPL Electric is that the effective date of updates to baseline and other changes to existing TRM measures coincide with the start of the next phase of the EE&C Program. A three-year Phase Two EE&C Program will enable the Commission to implement updated baseline and other changes to the TRM every three years, while not hindering an EDC's ability to meet its Phase Two consumption reduction target and subjecting the EDC to a significant civil penalty under Act 129.

Third, a three-year EE&C Program recognizes the potential for dramatically fluctuating energy prices and the associated impact on EDC EE&C Plans. Energy prices have fluctuated dramatically in the last four years in a way that was not anticipated in planning for the Phase One EE&C Programs. Recognizing that prices may continue to change, a three-year plan would provide more opportunity to provide optimal programs to meet customer's needs. Declining energy prices can financially benefit customers, but such declining prices may also make it more difficult for customers to justify investments in energy efficiency measures. This will result in higher EDC acquisition costs per kWh saved, such as increased incentives. This kind of price elasticity relative to installation of energy efficiency measures supports the approval of a three-year EE&C Plan. In addition, a three-year Phase Two EE&C Plan would create a sense of urgency, due to its compressed term, and encourage customers to "act now" rather than delay

participation in an EE&C Program, thereby providing better opportunity to engage customers and achieve targets.

For these reasons and those set forth in PPL Electric's April 17th and initial comments, the Commission should implement a three-year term for Phase Two EDC EE&C Programs.

C. THE COMPANY SUPPORTS ALLOWING EDCS TO ACCRUE SAVINGS DURING PHASE ONE AND THE ABILITY OF EDCS TO USE THOSE SAVINGS TOWARDS ANY PHASE TWO TARGETS

Certain commenters seek to have the Commission limit the ability of EDCs to bank savings from Phase One. *See* KEEA at 7. PPL Electric agrees with the Commission's proposal to allow an EDC to accrue savings, within the 2% revenue cap, beyond its 3% target during Phase One and to use those savings towards any Phase Two consumption reduction targets. Tentative Implementation Order at 29. Furthermore, PPL Electric agrees with the Commission that programs should continue, as applicable, during the transition from Phase One to Phase Two. For example, the Commission stated that it:

> does not want a scenario to occur in which an EDC's specific program "goes dark" during Phase I, possibly creating confusion to its customers, retailers, and contractors. The Commission believes this could be harmful to both those parties and the market as a whole. Therefore, the Commission proposes to allow the EDCs to accrue savings beyond their three percent (3%) target during Phase I and to use those savings towards any Phase II consumption reduction targets.

Tentative Implementation Order at 29. PPL Electric concurs with the above quoted determination by the Commission. In addition, PPL Electric agrees with the Commission's determination that:

> a smooth transition to Phase II is important to minimize transition costs from Phase I to Phase II and to limit ratepayer frustration and uncertainty in the EE&C programs.

As discussed further in Section II.F below, PPL Electric believes that a smooth transition is critical to the success of Phase Two, which is why it requested that the Commission revise its proposal and grant EDCs discretion to use existing CSPs for Phase Two, and not require a rebidding of all of the CSP contacts. PPL Electric at 33-36.

Although it is clear that the Commission intends to allow accrued savings beyond the 3% target during Phase One to be used for Phase Two, PPL Electric requests confirmation that EDCs will not need to reduce their Phase Two budgets in the event that Phase One savings are used for Phase Two. Furthermore, the Company requests that the Commission confirm that if an EDC exceeds the savings in its Phase One EE&C Plan, within the cost cap, the excess is not considered an "EE&C Plan Change" that must be approved by the Commission.

In its initial comments, PPL Electric requested that the Commission confirm that EDCs are permitted to apply Phase One over-compliance savings to Phase Two at the customer sector level, including the low-income and government/educational/nonprofit carve-outs. *See* PPL Electric at 21. PPL Electric reiterates this request. Specifically, the Company requests that the Commission confirm that if PPL Electric exceeds its Phase One government/educational/nonprofit sector target, said excess can be applied to the Phase Two government/educational/nonprofit sector target.

In addition, PPL Electric also requested in its initial comments, that the Commission allow EDCs the option to start incurring Phase Two costs in Phase One so that programs/measures can continue seamlessly from Phase One to Phase Two. *See* PPL Electric at 22. PPL Electric reiterates this request. Specifically, the Company seeks approval to start spending Phase Two funds before the Commission approves the Phase Two EE&C Plan, in order to prevent programs or sectors from going dark for an extended period. For example, if funds for

large C&I programs for Phase One are fully committed by May 2012 and an EDC cannot use Phase Two funds, programs for that sector will go dark for a year. To mitigate the impact, of going dark, an EDC should be permitted to start incurring Phase Two costs (such as incentives and other program implementation costs) in Phase One to ensure a smooth transition from Phase One to Phase Two. Moreover, these expenditures and savings should be accounted for in Phase Two even though the customer's project occurred during Phase One.

D. PHASE ONE SHOULD NOT BE EXTENDED BY THREE MONTHS

In its Tentative Implementation Order, the Commission proposes a specific timeline for implementing Phase Two of the Act 129 EE&C Program. Tentative Implementation Order at 33. Specifically, the Commission set June 1, 2013 as the date that the Phase Two EE&C Programs begin. The OCA requests that the Commission extend the EDCs' Phase One EE&C Programs by three months to allow for the EDCs and stakeholders to develop, review and present recommendations in preparing the Phase Two EE&C Programs. OCA at 3. Further, the OCA states that a three month extension of the Phase One EE&C Programs would allow for the Commission and the parties to review the results and evaluation of the Phase One demand response programs. For the reasons set forth below, PPL Electric requests that the OCA's recommendation be rejected.

As discussed in Section II.B., above, PPL Electric supports the Commission's proposal to implement three-year Phase Two EE&C Programs. By implementing three-year Phase Two EE&C programs, the Commission, the SWE, EDCs and all interested stakeholders will have the ability to closely review the SWE's evaluation of the Phase One demand response programs and to determine: (1) whether further demand response programs are appropriate; (2) whether the top 100 hours is the optimal methodology or if there is a more appropriate and cost-effective peak demand reduction model; and (3) to set new peak demand reduction targets, if necessary. As

addressed in PPL Electric's comments in this proceeding, there is no need for the Commission to require demand response programs in the EDCs' Phase Two EE&C Programs. Furthermore, Act 129 clearly provides that the length of the Phase One EE&C Programs correspond with the consumption and peak demand reduction targets that end on May 31, 2013. 66 Pa. C.S. § 2806.1 (c) and (d).

PPL Electric shares the OCA's support for an active stakeholder process. However, there is no need to delay implementing Phase Two to achieve this goal. Indeed, PPL Electric has already held two Phase Two EE&C Plan stakeholder meetings (a low-income and a general stakeholder meeting) where the Company discussed and sought input for programs to be included in its Phase Two EE&C Plan. In addition, the Company is meeting with individual stakeholders groups to solicit input for enhancements to existing programs/measures as well as for new programs/measures to incorporate into the Phase Two EE&C Plan.[18] The three month delay requested by the OCA is not necessary and will only serve to stall the momentum already generated by the EDCs and stakeholders. Moreover, PPL Electric has requested that the Commission permit EDCs to start incurring Phase Two costs (such as incentives and other program implement costs) in Phase One so that programs/measures can continue seamlessly from Phase One to Phase Two without "going dark."[19]

For these reasons, PPL Electric requests that the Commission reject the OCA's request to delay the implantation of Phase Two.

---

[18] The Company met with low-income stakeholders on February 9, 2012 and has a follow-up meeting scheduled with this group on July 11, 2012. A general stakeholder meeting was held on June 5, 2012, and another general stakeholder meeting will take place on August 8, 2012. In addition, as requested by stakeholders, PPL Electric is meeting with individual groups and is receiving comments relative to the Company's Phase Two EE&C Plan via a dedicated e-mail account (act129phasetwo@pplweb.com).

[19] However, should the Commission determine to extend Phase One as recommended by the OCA, then the Company proposes that all costs incurred during the extension must be accounted for as "Phase Two" since PPL Electric likely will not have enough Phase One funding to accommodate three extra months of Phase One programs.

E. PEAK DEMAND REDUCTIONS SHOULD NOT BE PART OF PHASE TWO

In the Tentative Implementation Order, the Commission explained that it does not have the information required to determine the cost effectiveness of the demand response programs and proposed to await the SWE's demand response study before proposing any possible demand response reduction program design for Act 129. Tentative Implementation Order at 15-16. PPL Electric and other commenters agree with the Commission that there should be no demand reduction compliance targets for Phase Two. PPL Electric at 15; FirstEnergy Companies at 8; Duquesne Light at 5; and Industrial Customers Group at 3. However, a number of commenters support the inclusion of demand response targets in the Phase Two EE&C Plans. *See, e.g.,* OCA at 9; EnerNOC at 5-7; Joint DR Commenters at 8-14; Sierra Club at 9; PennFuture at 9; City of Philadelphia at 1; Representative George at 1; Trade Unions at 1; and Coalition for Low Income Groups at 1.

As noted above in Section II.B., PPL Electric supports the Commission's proposal to implement a three-year Phase Two EE&C Program. One of the reasons in favor of a three-year EE&C Program is to allow the Commission to complete the Act 129 required evaluation of the EDC's Phase One demand response programs to determine whether the benefits of the Phase One demand response programs exceed their costs. 66 Pa. C.S. §2806.1(d)(2). In addition, Section 2806.1(d)(2) provides that, should the Commission determine to set additional incremental requirements for peak demand reductions, the required reductions are to be accomplished no later than May 31, 2017. 66 Pa. C.S. § 2806.1(d)(2). Therefore, if the Commission determines that an additional peak demand reduction compliance target is appropriate, the EDC's must implement demand response programs and achieve the peak demand reductions between June 1, 2016 through September 30, 2016 since that is the last

summer before the May 31, 2017 compliance date.[20] If Phase Two is a three-year cycle that ends May 31, 2016, there will be a clear delineation between Phase Two (a three-year Plan, presumably with no peak load reduction target) and Phase Three.

Moreover, the SWE will not likely report the results of its evaluation of the Phase One demand response programs until April 2013[21] which is not in time for the scheduled filing of the EDCs' Phase Two EE&C Programs on November 1, 2012. Therefore, should the Commission determine in April 2013 that further demand response targets are warranted, the demand response compliance targets and the EDC demand response programs to achieve these targets should be considered and implemented in the Phase Three EE&C Programs.

The Commission should also consider demand reductions in light of the both the Retail Markets Investigation and the PJM Interconnection, LLC ("PJM") market. PPL Electric contemplates a future where energy suppliers provide not only capacity and energy, but also bundle demand reductions as part of their portfolio, especially for large customers. In fact, a market already exists for such within PJM and requiring EDCs to provide demand response can be viewed as interfering with that market.

For these reasons, PPL Electric continues to support the Commission's decision not to include demand response in the Phase Two EE&C Programs.

F. EDCS SHOULD NOT BE REQUIRED TO RE-BID EXISTING CSP CONTACTS

In the Tentative Implementation Order, the Commission proposes to require EDCs to competitively bid all CSP contracts for Phase Two programs, regardless of whether the EDCs

[20] Presumably, peak load reduction targets will continue to apply only for the summer period.

[21] On the July 5, 2012 TWG conference call the EDCs were informed that the SWE is scheduled to issue the final demand response report in April 2013. The SWE is scheduled to issue an interim demand response report in November 2012 that presents secondary research on demand response cost-effectiveness testing, demand response program design, assessment of the top 100 hours, and a proposed a high-level demand response program design and cost-effectiveness model for future Act 129 programs.

have an existing contract with a CSP to provide services associated with existing programs and measures that will continue into Phase Two. Tentative Implementation Order at 52-53. In addition to PPL Electric, several commenters filed comments opposing the Commission's proposal to require EDCs to re-bid all CSP contracts for Phase Two. PPL Electric at 33-36; OCA at 20-21; Ecova at 2-3; FirstEnergy Companies at 18-19; PECO at 18-19; EAP at 19-20; and Duquesne Light at 11-12. After reviewing all the comments filed in response to the Commission's Tentative Implementation Order, PPL Electric did not identify any comments in support of the Commission's proposal.

As noted in the Company's previous comments at these dockets, it is vital that the transition from Phase One EE&C Programs to Phase Two be seamless. PPL Electric at 22-23, and 25; PPL Electric April 17th Comments at 19 – 21. Therefore, PPL Electric requested that the Commission permit EDCs the option to continue their currently approved contracts with CSPs in Phase Two. In support of this request, PPL Electric noted that: (1) the existing EDC/CSP contracts were competitively bid and reviewed by the Commission; (2) the start-up costs for the existing EDC/CSP contracts were amortized during Phase One and if EDCs are required to re-bid these contracts, start-up costs would be incurred for a second time for existing programs and/or measures; (3) the EDCs and CSPs have established relationships, systems, processes and controls during the Phase One EE&C Programs and it would be costly and time consuming for EDCs to replicate these with new CSPs; (4) the replacement of CSPs for existing Phase One programs/measures that will remain a part of Phase Two would be costly and impractical; and (5) the new Phase Two CSP contracts would have to be in place prior to the start of the Phase Two EE&C Programs to ensure a quick, smooth and seamless transition, however, the tight timeframe between the submittal of EDCs' Phase Two EE&C Programs on November 1, 2012,

Commission approval by February 28, 2012, and the launch of Phase Two programs in June 2013, is insufficient to obtain all new CSPs and develop new systems and processes.

As noted above, many commenters stated their opposition to requiring EDCs to competitively bid all CSP contracts for Phase Two programs, regardless of whether the EDCs have an existing contract with a CSP associated with existing measures that will continue into Phase Two. Indeed, in its comments the OCA states that:

> Requiring a disruption of these networks without a showing that there is a performance issue might not be cost-effective. The OCA submits that EDCs are working closely with the CSPs and know the market. EDCs are in the best position to determine if a rebid of a CSP contract is necessary or appropriate for a program that will continue into Phase II.

OCA at 20-21.

Again, it is imperative for the success of the Phase Two EE&C Programs that the transition from Phase One to Phase Two be seamless. Providing EDCs with the discretion to maintain performing CSPs for those programs that will remain in the Phase Two EE&C Plans will make the transition smoother and faster. This is particularly true for implementing a three-year Phase Two EE&C Program. For any new programs/measures, PPL Electric will follow its current Commission-approved RFP process to the extent it determines that is necessary to re-bid for an existing CSP function.

In addition, PPL Electric notes that CSPs provide a wide array of support services to EDCs. For instance, CSPs provide computer systems to measure and track savings and to issue rebates. These services are critical to the success of the EDC EE&C Plans. If EDCs are required to replace these CSPs, it will result in potentially serious disruptions in service and result in unnecessary spending that could be channeled to energy saving customer applications.

For the reasons set forth above, PPL Electric requests that the Commission permit EDCs the discretion to use existing CSPs for the Phase Two EE&C Programs. However, as set forth in the Company's initial comments, to the extent that the Commission wants the opportunity to review an EDC's decision to maintain an existing CSP for its Phase Two EE&C Program, PPL Electric offers the following alternative. Specifically, PPL Electric proposes that the Commission allow EDCs, on a case-by-case basis, to retain existing CSPs that are performing well in the EDC's Phase One EE&C Plan. For example, an EDC could document that: (1) the CSP had achieved or exceeded the goals or services stated in the Phase One contract; and/or (2) that the CSP performed the services at or under the contract budget and subsequent amendments. Further, the EDC, would submit any revisions to the previously approved CSP contract to the Commission for review and approval. Where existing CSPs are performing well, this option would permit the EDCs to avoid any unnecessary delay and start-up costs associated with rebidding CSP contracts and implementing new CSPs.

G. THE COMMISSION SHOULD MAINTAIN THE EXISTING LOW-INCOME CARVE-OUT AS PROVIDED FOR IN ACT 129

The Commission, in the Tentative Implementation Order proposes that each EDC's Phase Two EE&C Plan obtain a minimum of 4.5% of the consumption reduction requirements from the low-income sector. Tentative Implementation Order at 23. Several commenters support the Commission's proposed low-income carve out. *See, e.g.*, OCA at 15-17 and CAUSE-PA 5-6. As fully explained in its initial comments, PPL Electric recommends that the Commission maintain the existing low-income carve-out and that it continue to be based, for Act 129 compliance purposes, upon a proportion of measures available. Moreover, it is important to note that EDCs already provide significant low income programs separate from Act 129 and in concert with the Act, and this multifaceted approach is effective.

As PPL Electric, stated in its initial comments, if the Commission decides to implement its proposal for the Phase Two EE&C Programs, PPL Electric would support the Commission's proposal for a low-income savings carve-out of 4.5% of an EDC's required total savings compliance target within the following parameters:

- Low-income participation in non low-income programs qualifies in meeting this carve-out, as noted in the Tentative Implementation Order.
- EDCs are not required to income-qualify participants in non low-income programs. EDCs can determine low-income participation in non low-income programs through customer self-reporting (such as check boxes on the rebate application), surveys, secondary research (such as census data), or other methods that are defined in the EDC's Evaluation Plan and approved by the SWE.
- Low-income households at or below 250% of the Federal Poverty Income Guidelines qualify toward this low-income carve-out, as proposed in the Tentative Implementation Order.
- EDCs are not required to offer higher rebates for low-income participants in non low-income programs than is offered for non low-income participants.

PPL Electric at 20-21.

H. EDCS SHOULD NOT BE REQUIRED TO PARTNER WITH ANY SPECIFIC ENTITY REGARDING POTENTIAL MULTIFAMILY HOUSING MEASURES

In response to prior comments requesting that EE&C Programs include measures targeting multifamily housing, in the Tentative Implementation Order the Commission proposes that multifamily housing be given special emphasis and consideration within the government/educational/nonprofit sector. Tentative Implementation Order at 20-22. In addition, the Commission encouraged EDCs to recognize the available potential for energy savings present in multifamily housing and develop strategies and programs to sufficiently address this opportunity within their Phase Two EE&C plans.[22] *Id.* In preparing its Phase Two EE&C

[22] As requested by the Company in its initial comments, PPL Electric requests that the Commission clarify that the inclusion of measures targeting multifamily housing are to be applicable for low-income customers only. PPL Electric at 17.

Program, PPL Electric will investigate the potential for programs/measures to targeting low-income master metered multifamily housing.

In its comments, PHFA requests that the Commission require EDCs to coordinate with PHFA in administering program for multifamily affordable housing. NHT/PHFA at 4-5. PPL Electric welcomes the opportunity to voluntarily coordinate with interested stakeholders that have input. However, PPL Electric does support EDCs being required to coordinate with a specific named stakeholder or CSP.[23] If PPL Electric determines to include measures for low-income multifamily housing, it will work to have the most effective and beneficial program possible. If the Company offers a multifamily program, PPL Electric may need to contract with a CSP to manage this program. In that case, consistent with Act 129, PPL Electric would competitively bid to identify potential CSPs for this new program(s). *See* 66 Pa. C.S. §§ 2806.1(a)(10), 2806.2(a). Therefore, any agency or organization at that time would have the opportunity to bid on that work.

In the Tentative Implementation Order, the Commission proposed that multifamily housing be given "special emphasis and consideration." Tentative Implementation Order at 21. In addition, the Commission stated its belief that multifamily housing could assist EDCs in attaining the government/educational/nonprofit carve-out. *Id.* PPL Electric requests that the Commission clarify that if multifamily master metered housing measures are for the low income sector, that these measures can be included as parts of any low income carve-out requirement. Alternatively, if the multifamily housing measures are to be within the government/educational/nonprofit sector, the Commission should clarify whether some or all of

[23] PPL Electric believes that an entity such as PHFA meets the definition of a CSP and, therefore, would have to be competitively bid.

the measures could be considered as part of the low-income carve-out or if the measures are to only be considered as part of the government/educational/nonprofit sector carve-out.

I. THE ACT 129 PENALTIES ARE NOT APPLICABLE TO CUSTOMER SECTOR CARVE-OUTS

In the Tentative Implementation Order, the Commission proposed specific consumption targets and peak demand reduction requirements for the government/educational/nonprofit sector and the low-income sector. *See* Tentative Implementation Order at 18-20, 23-26. However, the Commission explained that the carve-outs for these sectors would not be subject to the penalties prescribed under 66 Pa.C.S. § 2806.1(f), which subjects EDCs to penalties for failing to achieve the reductions in consumption required under subsections 66 Pa.C.S. § 2806.1(c) or (d). *See* 66 Pa. C.S. § 2806.1(f)(2). The Commission stated that while the carve-out for the government/educational/nonprofit sector is a portion of the consumption reduction requirements under 66 Pa. C.S. § 2806.1(c) and (d), the carve-out is specifically prescribed under subsection (b), 66 Pa. C.S. § 2806.1(b)(1)(i)(B), which is separate and apart from subsections (c) and (d), 66 Pa. C.S. § 2806.1(c) and (d). The Commission applied the same analysis to its proposed carve-out for the low-income sector (albeit Act 129 does not contain the specific carve-out for the low-income sector that the Commission proposed in the Tentative Implementation Order).

Several commenters in this proceeding have asserted that the carve-outs proposed by the Commission, if required in Phase Two, should be subject to the Act 129 penalties. *See* KEEA at 9; Sierra Club at 9; SEDA-COG at 7-8. These commenters argue that since the carve-outs are a subset of the over all reductions targets, the carve-outs should be subject to the penalty provisions of Act 129.

The Commission should reject the assertion that the penalty provisions of Act 129 are applicable to the carve-outs for the government/educational/nonprofit sector or the low-income

sector. The penalty provisions of Act 129 are very specific. First, Act 129 contains a $100,000 per day penalty for the failure to submit a plan (or for the failure to submit a revised plan). 66 Pa. C.S. § 2806.1(f)(1). Second, Act 129 contains penalties applicable to an EDC that "fails to achieve the reductions in consumption required under subsections (c) or (d)." 66 Pa. C.S. § 2806.1(f)(2). Specifically, Act 129 provides that an EDC will be subject to a "civil penalty not less than $1,000,000 and not to exceed $20,000,000 for failure to achieve the required reductions in consumption under subsection (c) or (d)." 66 Pa. C.S. § 2806.1(f)(2)(ii).

Significantly, the 10% carve-out for the government/educational/nonprofit sector is contained in subsection "(b) Duties of Electric Distribution Companies" of Act 129, not in subsections (c) or (d). *See* 66 Pa. C.S. § 2806.1(b)(1)(i)(B). Furthermore, the provision requiring the Act 129 plans to include specific energy efficiency measure for the low-income sector, proportionate to those households' share of the total energy usage in the service territory is also contained in subsection (b).[24] Therefore, the plain text of Act 129 states that the penalty provisions under the Act only apply to the required reductions in consumption under subsections (c) or (d) of Act 129. The penalty provisions of Act 129 exclude an EDC's requirements under subsection (b), such as the carve-outs for the government/educational/nonprofit sector or the low-income sector from the penalties. Consequently, the penalty provisions in 66 Pa. C.S. § 2806.1(f) do not apply to the proposed carve-outs. For the Commission to impose the Act 129 penalties on the carve-outs in subsection (b) would violate the clear text of the statute.[25]

---

[24] *See* 66 Pa. C.S. § 2806.1(b)(1)(i)(G). As discussed in PPL Electric's initial comments (at 19), the Company recommends that the low-income carve-out not be modified for the Phase Two EE&C Programs and that the Commission continues to follow the standard established in Act 129. However, to the extent that the Commission does revise the low-income carve-out, such a requirement would be proscribed under subsection (b) of Act 129.

[25] *See Western Pennsylvania Water Co. v. Pa. P.U.C.*, 471 Pa. 347, 370 A.2d 337 (1977) (administrative agencies are creatures of the legislature and have only those powers which have been conferred by statute); *Pennsylvania Nat'l Guard v. Workmen's Compensation Appeal Board, 63 Pa. Cmwlth.*, 437 A.2d 494 (1981), *rev'd on other grounds*, 510 Pa. 348, 508 A.2d 292 (1986) (an administrative agency may exercise only those powers which the legislature has conferred by clear and unmistakable language).

Furthermore, the contention that because the carve-outs are a subset of the overall reduction targets and, therefore, the Act 129 penalty provision applies is without merit. Subsection (b) of Act 129, "Duties of Electric Distribution Companies," contains a list of requirements applicable to each EDC's EE&C Plan. *See* 66 Pa. C.S. § 2806.1(b)(1)(i)(B). This section of Act 129 is essentially a check list for EDCs to follow when formulating their plans as well as a set of minimum requirements for the Commission to look to when evaluating a proposed EE&C Plan. Subsection (b) of Act 129, does not contain the statutorily mandated reductions in consumption and demand to be achieved by specific dates. Such mandates are in subsections (c) or (d) of Act 129. The legislature was specific in the Act 129 penalty provisions that such sanctions are only to apply to the mandated target in subsections (c) and (d). If the legislature had wanted to penalize EDCs for not meeting the plan requirements contained in subsection (b) it would have stated so in the text of Act 129.

Furthermore, certain commenters also request that the Commission implement penalties for interim or annual targets. Citizen Groups at 10. As stated above, PPL Electric opposes the implementation of interim or annual targets, and the Company also opposes any potential penalties associated with interim and annual targets. Penalties for any interim or annual target are inappropriate because an EDC could miss a target in year one of Phase Two and be required to pay a penalty. In year two, the EDC could exceed its target, with a total amount of savings that both made up for the year one deficit and met or exceeded the targets year two. Then in year three the EDC could meet its target. In this scenario, the EDC would end up having to pay a penalty for year one even though it exceeded the target in year two and satisfied the final overall target for the phase. Such a result is inappropriate and would penalize an EDC even though it met its Act 129 targets.

J. ON-BILL FINANCING SHOULD NOT BE REQUIRED

In the Tentative Implementation Order, the Commission concluded that it did not have enough information to prescribe the implementation of on-bill financing of EE&C measures in Phase Two and recommended that a working group be convened to explore on-bill financing. Tentative Implementation Order at 22. In its comments filed on June 25, 2012, PPL Electric agreed with the Commission's determination for the reasons expressed in PPL Electric's comments filed on April 17th in these docket. Many of the commenters also supported the Commission's conclusion not to prescribe on-bill financing in Phase Two. *See, e.g.*, FirstEnergy Companies at 13; Duquesne Light at 7; PECO at 14. Other commenters support on-bill financing in some form. *See, e.g.*, the Coalition for Low Income Groups at 1; NHT/PHFA at 7. While PPL Electric does not believe that on-bill financing is practical or appropriate for the reasons stated previously in these docket, it looks forward to discussing these and other related issues in any working group that is convened.

PPL Electric believes that financing should be provided by companies that have financing as their core business and which are versed in consumer financing and lending laws and regulations. Companies and institutions that presently offer financing have the infrastructure and expertise to provide these services to customers, and are better able to assess customer credit and manage these risks. PPL Electric does not believe it is appropriate for EDCs to "compete" with these entities. Furthermore, it is not appropriate to use ratepayer funds to cover the cost of on-bill financing or for an EDC to take on credit risk when a traditional lending institution would not offer financing. In addition, EDC on-bill financing would require EDCs to incur additional costs to implement and manage on-bill financing, especially given the complex credit, accounting, and regulatory (utility and financial) issues involved. Even if a non-utility entity provides the financing to a customer, it is not appropriate for PPL Electric to be the "billing

agent" by including the loan payment on the customer's electric bill because that subjects the EDC to some credit risk in the event that the customer does not fully pay the bill or is no longer a PPL Electric customer.

Further, EDCs' EE&C Programs were designed to achieve participation levels (and reduction targets) by minimizing both cost and complexity for customers. However, requiring EDC on-bill financing would increase both the cost and the complexity of EDC EE&C Programs. EDC on-bill financing would alter the existing structure by requiring EDCs to become lenders and to undertake all the responsibilities and risks associated with this new role. Moreover, under some default scenarios, PPL Electric's customers could be required to bear the costs and risks associated with EDC on-bill financing.

A potential problem with on-bill financing programs is that such programs are designed as a tariff, that is, the program "attaches to the meter" and does not "move" if the original participant in the program moves. Finally, EDC provided on-bill financing may lead to customer confusion as to the impact on the customer's electric service if there is a default on an EDC provided financing instrument. For example, customers may have the perception that non-payment of the on-bill loan would result in a termination of service.

It has also been suggested that EDCs serve solely as the collection channel for customer repayment of energy efficiency loans made through a third party whose core competency is consumer loans. In this model the EDCs do not bear the financing risk, but do bear the burden of administration, distribution of funds, and there is the perception that the EDC is the collection agency. In addition, while financing is important in some energy efficiency projects, PPL Electric would incur costs for any mode of on-bill financing without an incremental energy savings.

For the reasons noted above, and previously stated in these docket, the Commission should not implement on-bill financing in Phase Two. Moreover, in the event that the Commission believes that such programs are appropriate for future EE&C Phases, EDCs should not be required to include on-bill financing in their EE&C Plans, as these programs should be voluntary. PPL Electric anticipates discussing these and other issues in the proposed working group.

K. EDCS SHOULD NOT BE REQUIRED TO BID EFFICIENCY SAVINGS INTO PJM

Through its Tentative Implementation Order, the Commission attempted to clarify its position relative to the bidding of qualifying energy efficiency resources into the PJM capacity market auctions. Specifically, the Commission proposed that EDCs should, when prudent and to the extent that the EDC has the appropriate rights, bid qualifying energy efficiency resources into the PJM capacity market auctions. *Id.* In addition, the Commission proposed that any revenue received by EDCs that bid energy efficiency resources into the PJM capacity market should be allocated to the customer class that provided the savings. Tentative Implementation Order at 65.

In its initial comments, PPL Electric requested clarification that the Commission was not requiring EDCs to bid into the PJM capacity. PPL Electric at 40. If the Commission intended to require EDCs to participate in the PJM capacity market, the Company stated that, due to the level of complexity associated with bidding into the PJM capacity market auctions, the costs of undertaking such bids and the potential risks for failing deliver, PPL Electric did not support EDCs being required to bid energy efficiency resources into the PJM capacity auctions. PPL Electric at 41. A number of other parties either opposed permitting EDCs to bid energy efficiency resources into the PJM capacity market or requested that EDCs not be required to do so. *See e.g.*, Duquesne Light at 12; and EMC at 1. Citizen Power indicated its support for the

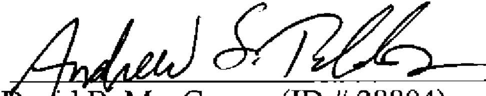
Commission's proposal that energy efficiency resources be bid into the PJM capacity markets when prudent. Citizen Power at 1-2. Further, Citizen Power asked that the Commission convene a working group to investigate the mechanism to maximize the amount of EE&C Program resources eligible to participate in the PJM capacity market. *Id.* at 2. KEEA advocated that EDCs bid energy efficiency resources into the PJM capacity markets and that the revenues not be returned to ratepayers, but instead that the funds be reallocated to EDC energy efficiency programs. KEEA at 6-7. In addition, the FirstEnergy Companies asked that the Commission provide guidelines or parameters for when EDC's bid into the PJM capacity market. FirstEnergy Companies at 20-21.

PPL Electric maintains its position that EDCs should not be required to bid energy efficiency resources into the PJM capacity market for the following reasons: (1) the PJM capacity market is a three-year forward market and by the time the Commission approves the EDCs' Phase Two EE&C Plans, the applicable PJM forward capacity market will be June 1, 2016 through May 31, 2017 which is outside of the Phase Two period; (2) the benefits of bidding the resources into the PJM capacity market do not justify incurring the costs associated with assessing whether such bids are "prudent" and to manage the process of making such bids; and (3) the bids that clear the PJM market are a firm obligation with penalties for failure to deliver and may subject the EDC to penalties assessed by PJM due to an EDC for failure to deliver. In addition, for the reasons set forth above, PPL Electric does not see the need to convene a working group on this issue.

III. CONCLUSION

For the reasons set forth above, PPL Electric Utilities Corporation respectfully requests that the Commission take these Reply Comments into consideration in preparing its Final Implementation Order.

Respectfully submitted,



David B. MacGregor (ID # 28804)
Post & Schell, P.C.
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2808
Phone: 215-587-1197
Fax: 215-320-4879
E-mail: dmacgregor@postschell.com

Andrew S. Tubbs (ID #80310)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-612-6057
Fax: 717-731-1985
E-mail: atubbs@postschell.com

Paul E. Russell (ID #21643)
Associate General Counsel
PPL Services Corporation
Office of General Counsel
Two North Ninth Street
Allentown, PA 18106
Phone: 610-774-4254
Fax: 610-774-6726
E-mail: perussell@pplweb.com

Matthew J. Agen
Post & Schell, P.C.
607 14th St. N.W.
Washington, DC 20005-2006
Phone: 202-661-6952
Fax: 202-661-6953
E-mail: matthewagen@postschell.com

Of Counsel:

Post & Schell, P.C.

Date: July 9, 2012

Attorneys for PPL Electric Utilities Corporation