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February 7, 2013

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor (filing room)  
PO Box 3265  
Harrisburg, PA 17105-3265

RE: Petition of PPL Electric Utilities Corporation for Approval of an Energy Efficiency and Conservation Plan; Docket No. M-2012-2334388; **REPLY BRIEF OF THE SUSTAINABLE ENERGY FUND**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is an original Reply Brief of the Sustainable Energy Fund of Central Eastern Pennsylvania. This filing has been served in accordance with the attached Certificate of Service.

If you have any questions concerning this filing, please do not hesitate to contact my office.

Very truly yours,

Craig R. Burgraff  
*Counsel for The Sustainable Energy Fund of  
Central Eastern Pennsylvania*

CRB/jld/152839.1

Enclosures

cc: Administrative Law Judge Dennis J. Buckley (via email and via first class mail)  
Per Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Dated: February 7, 2013

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation :  
for Approval of an Energy Efficiency and :  
Conservation Plan : Docket No.: M-2012-2334388

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**REPLY BRIEF  
OF THE SUSTAINABLE ENERGY FUND  
OF CENTRAL EASTERN PENNSYLVANIA**

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## I. INTRODUCTION AND SUMMARY OF REPLY ARGUMENT

In accordance with the briefing schedule established by Administrative Law Judge Dennis J. Buckley in this proceeding, the Sustainable Energy Fund of Central Eastern Pennsylvania (“SEF”) submits this Reply Brief in response to the Main Brief filed by PPL Electric Utilities Corporation (“PPL Electric”) in this proceeding. In addition, SEF incorporates herein its Main Brief in this case. SEF briefed the issues of concern to it in its Main Brief, and will not repeat those arguments here.<sup>1</sup>

The SEF in this proceeding recommended that the water heater measure of PPL Electric’s proposed Residential Retail program included in its Phase II EE&C Plan be expanded to include all of the alternative energy sources listed in Tier 1 of Act 213,<sup>2</sup> including solar thermal water heaters, as well as natural gas water heaters.<sup>3</sup> PPL Electric limits the measure to electric heat pump water heaters. The UGI Distribution Companies recommended that PPL Electric allow for the installation of natural gas water heaters in both the Residential Retail and Low-Income WRAP programs, as well as incentives for the installation of a natural gas furnace or boiler in the Residential Home Comfort and Prescriptive Equipment programs and for Combined Heat and Power (“CHP”) projects that are comparable to other measures eligible for the Custom Incentive program.<sup>4</sup>

PPL Electric raises several arguments against these recommendations, none of which have merit. First, these arguments effectively seek to transfer discretion over the components of the Phase II EE&C Plan from the Public Utility Commission (“Commission”) to PPL Electric since PPL Electric may face civil penalties and the Commission does not mandate that any

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<sup>1</sup> The SEF, in its Main Brief, took no position with respect to many of the issues enumerated in the OSA’s proposed brief outline. SEF’s Main Brief corresponded to Section B.7.a and b of that outline.

<sup>2</sup> 2009, Nov. 30, P.L. 1672, No. 213 (73 P.S. §§ 1648.1-1648.8)(“Act 213”).

<sup>3</sup> SEF Main Brief at 5-9.

<sup>4</sup> UGI Statement No. 1 at 4.

particular energy efficiency program or measure be implemented. This leads PPL Electric to argue that, absent a “fatal flaw” in the proposed Phase II EE&C Plan, the Plan should be approved. These reasons inappropriately constrict the Commission’s discretion. Act 129<sup>5</sup> makes it clear that, regardless of whether the Commission does not mandate any particular energy efficiency program or measure, it retains the ultimate authority under its discretion to determine the appropriate programs or measures that comprise the EE&C Plan. Act 129’s public policy findings declare the objective that it is in the public interest to expand the use of alternative energy. In addition, the Act 129 Fuel Switching Working Group Staff Report finds, as approved by the Commission, that fuel switching measures, including natural gas usage, should be available when considering the best measures of achieving energy efficiency goals.

Also, the potential for civil penalties does not automatically trump the interests of ratepayers and stakeholders to the extent that PPL Electric’s voluntary inclusion of measures ends the debate. The Commission should reject the diminution of its discretion.

PPL Electric also raises tangential arguments against the SEF’s recommendation, such as discrimination, fuel neutrality and the calculation of incentives that have no merit.

Finally, PPL Electric proposes a voluntary Phase II fuel switching pilot program that is insufficient since it excludes solar thermal water heaters, as well as other alternative energy sources, and offers a de minimus level of rebates, with no justification, for fossil fuel alternatives.

## **II. REPLY ARGUMENT**

### **A. The Commission should reject any transfer of its discretion to PPL Electric.**

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<sup>5</sup> 2008, Oct. 15, P.L. 192, No. 129 [Nov. 14, 2008]; 66 Pa.C.S. §2806.1 (“Act 129”).



PPL Electric argues that the Commission has determined that Electric Distribution Companies (“EDCs”) should not be mandated to include fuel switching programs in their Act 129 EE&C plans. PPL Electric notes that nothing in Act 129 or Commission implementing orders require EDCs to include “fuel switching” in their EE&C plans. It also notes that the Commission has recognized that EDCs should be given substantial discretion in designing their EE&C programs, particularly because it is the EDC which has the obligation to meet the requirements of Act 129 within a hard cost cap or face substantial potential civil penalties.<sup>6</sup>

PPL Electric places extensive reliance on the Commission’s fuel switching working group, citing the resulting Commission Staff Report wherein the Staff concluded that fuel switching measures should be available to EDCs and their stakeholders when considering the best measures of achieving energy efficiency goals, but that, just as no other particular energy efficiency program or measure has been mandated for implementation, fuel switching programs should not be mandated either.<sup>7</sup> The Commission, by Secretarial Letter, adopted the conclusion contained in the Staff Report in which it adopted the recommendations of the Staff Report.<sup>8</sup>

In essence, PPL Electric proposes a standard for Commission review of its Phase II EE&C Plan that effectively transfers Commission discretion to PPL Electric at the expense of Act 129 and its ratepayers. The Commission should reject this analysis.

**1. PPL Electric does not have complete proprietary control over its EE&C Plan simply because it may face penalties.**

PPL Electric implicitly assumes, in arguing against the efficacy of opening the heat pump water heater measure in the Residential Retail program to alternative energy sources and natural

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<sup>6</sup> PPL Electric Main Brief at 40-41.

<sup>7</sup> Id. at 42, citing The Act 129 Fuel Switching Working Group Staff Report, Docket No. M-00051865 (April 30, 2010) at 6.

<sup>8</sup> Id.

gas, that its discretion with regard to the Phase II EE&C Plan should receive substantial deference particularly because it is the EDC which has the obligation to meet the requirements of Act 129 within a hard cost cap or face substantial potential civil penalties.<sup>9</sup> This culture of proprietary control belies the purpose of Act 129 and ignores the goals of energy conservation for its ratepayers, and effectively argues for total voluntary control by PPL Electric.

As witness Costlow noted, PPL Electric and its parent PPL Corporation have business interests that compete with the ultimate interests of Act 129 and the proposed Phase II EE&C Plan. The heat pump water heater measure favors electricity over other energy sources leading to PPL Electric's benefit from the increases in distribution revenues as the result of increased consumption. PPL Corporation benefits from both the improved financial performance of PPL Electric and the increases in the sale of electrical energy.<sup>10</sup> However, Act 129 requires the adoption and implementation of cost-effective energy efficiency and conservation plan to reduce energy consumption for the benefit of PPL Electric's ratepayers. In addition, it is the ratepayers who provide the funding for the EE&C Plan. PPL Electric's estimated expenditures for its proposed Phase II EE&C Plan total \$184.5 million, which will be received from ratepayers.

SEF submits that in this circumstance, the potential for civil penalties to PPL Electric does not automatically trump the interests of ratepayers and stakeholders to the extent that PPL Electric's voluntary inclusion of measures ends the debate.

- 2. The fact that the Commission does not mandate that any particular energy efficiency program or measure be implemented, including fuel switching or alternative energy measures, in no way removes the Commission's discretion relative to EE&C Plan.**

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<sup>9</sup> Id. at 40-41.

<sup>10</sup> SEF Statement No. 1 at 2-3. PPL Electric has proposed incentives solely for heat pump water heaters that utilize electricity, and no incentive for other energy sources such as solar thermal energy and natural gas, which can also be used to heat water.

Act 129 clearly recognizes the Commission’s long-standing discretion to determine the efficacy of proposed EE&C Plans. Act 129 provides that the Commission will allow recommendations of the Office of Consumer Advocate, the Office of Small Business Advocate and other stakeholders on how the EDC could improve its plan or exceed the required reductions in consumption. The Commission may expressly approve or disapprove an EE&C Plan and, if it disapproves a plan, should describe in detail the reasons for its disapproval. Following the submittal of a revised plan, the Commission expressly retains its discretion to approve or disapprove that revised EE&C Plan.<sup>11</sup>

Thus, it is clear that, regardless of whether the Commission does not mandate any particular energy efficiency program or measure, it retains the ability to determine the appropriate programs or measures that ultimately comprise the EE&C Plan under the auspices of Act 129. To a large degree, PPL Electric attempts to transfer much, if not all, of the Commission’s discretion to the Company. It states that it is critical for PPL Electric to have substantial unfettered discretion with regard to its EE&C Plan since it faces the consequences if it does not comply. Thus, PPL Electric argues that, absent a “fatal flaw”, such as non-compliance with a direct Act 129 or Commission requirement, PPL Electric’s Phase II EE&C Plan should be approved.<sup>12</sup> This construct simply transfers the Commission’s discretion to PPL Electric, especially given that no energy conservation program or measure is required by the Commission.

However, as noted in the SEF’s Main Brief, Act 129’s public policy findings declares the objective that it is in the public interest to expand the use of alternative energy and to explore the feasibility of new sources of alternative energy to provide electric generation in this

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<sup>11</sup> 66 Pa.C.S. §2806.1(e).

<sup>12</sup> PPL Electric Main Brief at 11.

Commonwealth.<sup>13</sup> In addition, as noted, the Act 129 Fuel Switching Group Staff Report finds, as approved by the Commission, that fuel switching measures, including natural gas usage, should be available when considering the best measures of achieving energy efficiency goals.<sup>14</sup>

The Commission should ignore any transfer of its discretion to PPL Electric under any EDC substantial discretion argument or a strict “fatal flaw” standard.

The fact that PPL Electric voluntarily chooses to propose only that heat pump water heaters are eligible for incentives under the proposed Residential Retail program should not foreclose or limit the Commission’s discretion, especially where, as here, the employment of solar thermal and natural gas water heaters contributes significant electric and energy savings.

**B. PPL Electric’s arguments against expansion of the Residential Retail heat pump water heater program are meritless.**

SEF demonstrated in its Main Brief that the expansion of the heat pump water heater measure of the Residential Retail program on a fuel neutral basis to include the energy sources listed in Tier 1 of Act 213, including solar thermal water heaters, as well as natural gas meets the requirements of Act 129. In addition, the solar thermal water heater and the natural gas water heater both provide electricity and energy savings in comparison to the heat pump water heater. The solar thermal water heater provides greater consumption savings and is one of the most cost-effective renewable energy applications on the market today. A program that promotes natural gas water heaters under a full fuel cycle analysis still saves 14% more energy than PPL Electric’s proposed heat pump water heater program.<sup>15</sup>

In addition, SEF witness Costlow has recommended incentive levels for solar thermal water heaters, natural gas water heaters and other technologies established on an equivalent kWh

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<sup>13</sup> SEF Main Brief at 8; 66 Pa.C.S. §2806.1.

<sup>14</sup> The Act 129 Fuel Switching Working Group Staff Report, Docket No. M-00051865 (April 30, 2010) at 6.

<sup>15</sup> SEF Main Brief at 6-9.

or energy proportional basis. Since the proposed incentives are proportionally based on PPL Electric's existing proposal, the cost would remain constant regardless of technology and energy source and would not increase the incentive and, consequently the program costs.

Given this, PPL Electric's criticisms are reduced to meritless contentions tangential to the central issues. For example, PPL Electric argues that the SEF proposal (as well as the UGI Distribution Companies proposals) are not fuel neutral since the SEF recommendation "limits" the availability of rebates to include eleven Tier 1 alternative energy sources, including solar thermal water heaters, as well as natural gas water heaters while excluding other fuel sources such as oil, propane and wood.<sup>16</sup> This argument is specious. It is not only counter-intuitive, but also incomprehensible, to apply a double standard to the issue of fuel neutrality such that PPL Electric's water heater measure, which provides incentives only to electric heat pump water heaters, survives a fuel neutrality standard because a proposal that includes not only incentives for electric heat pump water heaters, but incentives to eleven other alternative energy sources, as well as natural gas water heaters, "fails" a fuel neutrality standard because it does not include oil, propane or wood.

Another example is PPL Electric's position that one cannot judge the reasonableness of SEF's position since incentives of various kinds may be available to install a solar hot water heater, which are not available to customers who install a high-efficiency electric water heater.<sup>17</sup> This is complete speculation on PPL Electric's part with absolutely no record support. PPL Electric had the opportunity to present this information, if it exists, and it did not. It cannot hide behind speculative, unknown incentives.

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<sup>16</sup> PPL Electric Main Brief at 46.

<sup>17</sup> PPL Electric Main Brief at 46.

Finally, PPL Electric argues that the SEF incentives proposal for water heaters are inappropriate and calculated incorrectly. First, PPL Electric posits that the proposal is discriminatory. This argument is meritless as discussed in SEF's Main Brief.<sup>18</sup> Second, the proposal makes no mention of other rebates for the installation of solar thermal water heaters. This argument is meritless as just discussed. Third, proposed rebates should not be based on expected savings. However, as also delineated in the SEF's Main Brief, SEF's recommended incentive levels are abundantly reasonable since several benefits are provided, namely (1) the programmatic costs are not changed in order to shift load to other energy sources; (2) the incentive does not provide economic advantage to any given technology or energy source, hence does not pick winners and losers; (3) the incentive is easy for the EDC to administer; and, (4) the program is easy for providers to understand and promote. This is demonstrably reasonable.

**C. PPL Electric's proposed Phase II fuel switching pilot program is insufficient.**

In his rebuttable testimony, PPL witness Cleff testified that PPL Electric is prepared to voluntarily modify its Phase II EE&C Plan to include rebates to its Residential Rebate and Prescriptive Rebate programs for efficient natural gas, oil and propane water heaters and efficient natural gas, oil and propane central heat that meet certain efficiency ratings. The pilot program is proposed to provide up to one hundred (100) rebates within the Home Comfort and Prescriptive Equipment Incentive programs on a first-come, first-served basis solely for fossil fuel central heating and water heating applications that meet listed criteria.<sup>19</sup> While the pilot program is stated as applying to fossil fuels, PPL Electric witness Cleff confusingly also states that Tier 1 measures, including solar thermal, can apply for customer incentives if they offset

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<sup>18</sup> SEF Main Brief at 8-9.

<sup>19</sup> PPL Electric Statement No. 4-R at 9-10.

existing electric use and meet program eligibility requirements.<sup>20</sup> However, PPL Electric in its Main Brief limits the pilot program to fossil fuel alternatives.<sup>21</sup> PPL Electric states that a pilot program is necessary in order for it to learn more about the potential for fuel switching in its service territory by evaluating market reaction.<sup>22</sup>

SEF submits that PPL Electric's proposed pilot program is insufficient. First, it is limited only to fossil fuels and excludes solar thermal water heaters, as well as other alternative energy sources enumerated in Act 213. Even for natural gas and other fossil fuels, the limitation of up to one hundred (100) rebates over the life of the Phase II EE&C Plan is de minimus, especially in light of the clear electric and energy savings attendant to solar thermal and natural gas water heaters.

Second, there is no need to limit the expansion of the water heating proposal in the Residential Retail program to acquire additional information. Regarding natural gas usage, the UGI Distribution Companies pointed out that the Commission has already determined that fuel switching is a viable, cost-effective EE&C measure, as evidenced by the work of the Fuel Switching Working Group and the inclusion of electric to natural gas switching measures in the Technical Reference Manual.<sup>23</sup> Thus, there is no need to test the efficacy of fuel switching through a pilot program.

The fossil fuel pilot program is a poor response to fuel neutrality and should not substitute for an effective expansion of Residential Retail heat pump water heater program.

### **III. CONCLUSION**

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<sup>20</sup> Id. at 13.

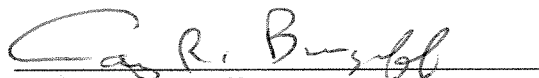
<sup>21</sup> PPL Electric Main Brief at 51-57.

<sup>22</sup> PPL Electric Statement No. 4-R at 9.

<sup>23</sup> UGI Distribution Companies' Main Brief at 25.

The Sustainable Energy Fund submits that the Public Utility Commission should modify PPL Electric's Phase II EE&C Plan consistent with the recommendations made in its Main Brief.

Respectfully submitted,



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