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February 7, 2013

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

VIA ELECTRONIC FILING

RE: Petition of PPL Electric Utilities Corporation for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan; Docket No. M-2012-2334388

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Reply Brief of the PP&L Industrial Customer Alliance ("PPLICA") in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served with a copy of this document.

Sincerely,

McNEES WALLACE & NURICK LLC

By 
Adeolu A. Bakare

Counsel to the PP&L Industrial Customer Alliance

c: Administrative Law Judge Dennis J. Buckley (via First Class Mail and E-Mail)
Certificate of Service

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CERTIFICATE OF SERVICE

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

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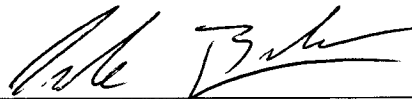
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Adeolu A. Bakare

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Dated this 7th day of February, 2013, at Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PPL ELECTRIC UTILITIES :
CORPORATION FOR APPROVAL OF ITS : DOCKET NO. M-2012-2334388
ACT 129 PHASE II ENERGY EFFICIENCY :
AND CONSERVATION PLAN :**

**REPLY BRIEF OF THE
PP&L INDUSTRIAL CUSTOMER ALLIANCE**

Air Products and Chemicals, Inc.
Armstrong World Industries, Inc.
General Dynamics-OTS Scranton
Hercules Cement Company

SAPA Extrusions, Inc.
The Hershey Company
TIMET North America
Wegmans Food Markets, Inc.

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Dated: February 7, 2013

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I. INTRODUCTION

A. Procedural History

On October 15, 2008, Governor Rendell signed into law House Bill 2200, or Act 129 of 2008 ("Act 129" or "Act"). Among other effects, Act 129 expanded the Pennsylvania Public Utility Commission's ("PUC" or "Commission") oversight responsibilities and set forth new requirements for electric distribution companies ("EDCs")¹ with respect to energy conservation, default service procurements, and the expansion of alternative energy sources.

Specifically, with regard to energy efficiency and conservation ("EE&C"), Act 129 required EDCs to adopt a plan, approved by the Commission, to reduce electric consumption by at least 1% by May 1, 2011, and by at least 3% by May 31, 2013, adjusted for weather and extraordinary loads. 66 Pa. C.S. § 2806.1(c). In addition, by May 31, 2013, peak demand was to be reduced by a minimum of 4.5% of the EDC's annual system peak in the 100 hours of highest demand measured against the EDC's peak demand during the period of June 1, 2007, through May 31, 2008. See id. § 2806.1(d). By November 30, 2013, the Commission is required to evaluate the cost-effectiveness of the aforementioned EE&C programs. See id. § 2806.1(c)(3). If the benefits of the programs exceeded the costs, then the Commission would impose additional reductions on the eligible EDCs. See id.

Consistent with the Act's requirements, all Pennsylvania EDCs, including PPL Electric Utilities Corporation ("PPL" or "Company"), filed with the Commission proposed EE&C plans ("Phase I EE&C Plans"). PPL's Phase I EE&C Plan was adopted on October 26, 2009, with

¹ As articulated in the Act, only EDCs with at least 100,000 customers are required to submit energy efficiency and conservation programs. See 66 Pa. C.S. § 2806.1, et seq.

modifications and further revisions occurring in subsequent Orders.² PPL's Phase I EE&C Plan remains in effect through May 31, 2013.

On August 2, 2012, the Commission issued an Implementation Order establishing the procedural and substantive requirements for Phase II of all EDCs' EE&C programs. Energy Efficiency and Conservation Program; Docket Nos. M-2012-2289411, et al., Order (Aug. 2, 2012) (hereinafter, "Implementation Order"). Importantly, the Commission held that energy efficiency programs should be continued during Phase II based on the Statewide Evaluator's ("SWE") Market Potential Study, which indicated that energy efficiency programs were cost-effective for consumers during Phase I. Implementation Order, p. 12. Mandatory demand reduction programs, however, were not to be included in Phase II Plans, because the cost-effectiveness of Phase I demand reduction programs could not be evaluated before Phase II implementation. Implementation Order, p. 40. In addition, the Commission stressed the importance of developing balanced Phase II EE&C Plans (i.e., plans that do not disproportionately impact specific customer classes). Implementation Order, p. 87. Finally, the Commission outlined the following procedural process in its Implementation Order:

The Commission will publish a notice of each proposed plan in the *Pennsylvania Bulletin* within 20 days of its filing. In addition, the Commission will post each proposed plan on its website. An answer along with comments and recommendations are to be filed within 20 days of the publication of the notice in the *Pennsylvania Bulletin*. Each plan will be referred to an Administrative Law Judge (ALJ), who will establish a discovery schedule and hold a public input hearing(s) in the EDC's service territory upon request

² See, e.g., Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan; Docket No. M-2009-2093216, Opinion and Order (Oct. 26, 2009); Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan; Docket No. M-2009-2093216, Opinion and Order (Feb. 17, 2010); Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan; Docket No. M-2009-2093216, Opinion and Order (Jan. 28, 2011); Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan; Docket No. M-2009-2093216, Opinion and Order (May 6, 2011); Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan; Docket No. M-2009-2093216, Opinion and Order (May 25, 2012).

of any party, as well as an evidentiary hearing(s) on issues related to the EE&C plan. Such hearings are to be completed on or before the 65th day after a plan is filed, after which, the parties will have 10 days to file briefs. The EDC will then have 10 days to submit a revised plan or reply comments or both. The ALJ will then certify the record to the Commission.

Id. at 62.

On November 15, 2012, PPL filed with the PUC a Petition for Approval of the Company's Act 129 Phase II Energy Efficiency and Conservation Plan ("Phase II EE&C Plan"). Petition of PPL Electric Utilities Corporation for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan; Docket No. M-2012-2334388 (hereinafter, "Petition"). On December 6, 2012, the PP&L Industrial Customer Alliance ("PPLICA") filed a Petition to Intervene in this proceeding.³ A Prehearing Conference was held on December 10, 2012, before Administrative Law Judge ("ALJ") Dennis J. Buckley. At the Prehearing Conference, ALJ Buckley adopted a procedural schedule for testimony, evidentiary hearings, and briefing.

PPLICA received the Company's Direct Testimony on December 4, 2012. Pursuant to the Implementation Order, on December 21, 2012, PPLICA filed Comments addressing various concerns with PPL's proposed Phase II EE&C Plan.⁴ Specifically, PPLICA: (1) requested that PPL's proposed class budget allocations for Phase II approximate class revenue levels; (2) recommended that PPL's Phase II program portfolio incorporate all relevant findings from the Commission's pending evaluation of PPL's Phase I EE&C Plan; and (3) further recommended that PPL minimize non-incentive costs in order to maximize direct customer benefits.

³ PPLICA's compilation is listed on the cover page of this Main Brief.

⁴ At the December 10, 2012, prehearing conference, ALJ Buckley ruled that Comments filed with the Commission would not be admitted on the record. Therefore, in addition to filing Comments, PPLICA developed a record through PPL's Phase II Plan, testimony filed by other parties, and cross-examination on the issues addressed in this Main Brief.

On December 28, 2012, PPLICA received Direct Testimony from the following parties: the Office of Consumer Advocate ("OCA"); the Coalition for Affordable Utility Services & Energy Efficiency in PA ("CAUSE-PA"); the UGI Distribution Companies ("UGI"); the Commission on Economic Opportunity ("CEO"); and the Sustainable Energy Fund ("SEF"). On January 11, 2013, PPLICA received Rebuttal Testimony from the Company.

An evidentiary hearing was held in this proceeding on January 16, 2013, for the purposes of presenting testimony and performing cross-examination. During this hearing, PPLICA entered one Cross-Examination Exhibit into the record, and the parties confirmed the process for submitting Briefs.

On January 28, 2013, PPLICA filed a Main Brief. PPLICA also received Main Briefs filed by PPL, OCA, CAUSE-PA, CEO, SEF, UGI, and Comverge, Inc. ("Comverge"). In response to arguments set forth by PPL and OCA, PPLICA hereby submits this Reply Brief.

B. Summary of Argument

PPLICA is an ad hoc group of energy-intensive customers receiving electric service from PPL primarily under Rate Schedules LP-4 and LP-5.⁵ PPLICA members consume substantial amounts of electricity in their manufacturing and operational processes, and these electric costs are a significant element of their respective costs of operation. Any modification to PPL's electric rates, including any changes to EE&C charges recovered through PPL's Act 129 Compliance Rider ("ACR"), can impact PPLICA members' costs of operations. For these reasons, PPLICA was an active participant in PPL's Phase I EE&C proceeding, and PPLICA has taken an active role in PPL's Phase II EE&C proceeding.

⁵ Some PPLICA members also have accounts on Rate Schedule GS-3.

As an active participant in PPL's Phase II EE&C proceeding, PPLICA filed a Main Brief addressing concerns with several of the Company's proposals. Now, PPLICA submits the following limited response to procedural concerns raised by PPL and an additional Large Commercial and Industrial ("C&I") program proposed by OCA.

First, the Commission should disregard any attempt to erode the rights of parties to thoroughly investigate, contest, or oppose PPL's Phase II EE&C Plan. PPL filed a Main Brief alleging that PPLICA raised arguments for the first time in its Main Brief and further suggesting that raising new arguments in a main or initial brief constitutes a violation of the Commission's procedural rules and regulations. See PPL Main Brief, p. 56. As an initial matter, the contention that PPLICA raised issues for the first time in its Main Brief is incorrect. Further, the Commission's Rules of Practice and Procedure do not prohibit parties from raising issues for the first time in a main or initial brief. Therefore, the Commission must reject PPL's attempt to undermine the procedural rights available to active parties.

Second, the OCA requests that the Commission order PPL to implement an additional industrial program targeting data centers. As PPL's Custom Incentive Plan allows large industrial entities to recover incentive rebates for all manner of energy efficiency programs, the Company has already developed a program encompassing energy efficiency measures for data centers. Additionally, PPL's proposed cost allocation represents a fair balance of EE&C expenses across customer classes. Accordingly, while the Commission is fully justified in rejecting OCA's proposal, if the Commission or PPL agrees that data centers should be further targeted, any ensuing modifications to PPL's Large C&I program portfolio must be structured within PPL's originally proposed budget for the Large C&I class.

II. ARGUMENT

A. **The Commission Should Reject PPL's Attempt to Inhibit the Procedural Rights Granted to Active Parties**

PPL's Main Brief includes highly prejudicial language infringing upon the procedural rights available to parties under the Commission's Rules of Administrative Practice and Procedure. In its Main Brief, PPL appropriately reserves its right to object to issues raised by PPLICA for the first time in brief. Although PPL rightly preserves its ability to respond to any issues raised for the first time in brief, the issue is essentially moot as the primary issues presented in PPLICA's Main Brief were initially raised at earlier points in this proceeding. However, to the extent that arguments raised in PPLICA's Main Brief are deemed to be raised for the first time, PPLICA submits that such issues were raised in full compliance with the Commission's Rules of Administrative Practice and Procedure.

The arguments raised in PPLICA's Main Brief were previously identified or documented on the record. PPLICA's Main Brief addressed the allocation of PPL's Phase II EE&C costs between customer classes, the proportion of PPL's Phase II EE&C incentive and non-incentive costs, and the necessity for a smooth transition between the Phase I and Phase II EE&C programs. See generally PPLICA M.B. The issues regarding cost allocation and rebate levels were initially raised in PPLICA's Prehearing Conference Memorandum, which stated that:

PPLICA is particularly concerned about the relative increase in total portfolio spending allocated to large commercial and industrial ("C&I") customers, compared with the proportional class allocations for PPL's Phase I EE&C Plan. PPLICA also seeks to evaluate the reasonableness of decreases to maximum rebates under several Phase II EE&C program measures available to large C&I customers. PPLICA anticipates pursuing these issues during this proceeding and reserves the right to raise further issues and to respond to all matters raised by other parties.

PPLICA Prehearing Conference Memorandum, p. 2. As a point of clarification, incentive costs are generally synonymous with "rebates" for purposes of PPL's EE&C programs. See id.; see also Tr. at 63. Additionally, PPLICA propounded discovery requesting detailed information regarding the Phase I and Phase II EE&C program acquisition costs for all customer classes and further introduced PPL's responses on the record. See PPLICA Cross-Examination Ex. No. 1. At the January 16, 2013, Evidentiary Hearing, PPLICA conducted cross-examination of PPL Witness Pete Cleff on both cost allocation and incentive/non-incentive costs. Tr. at 57-65. Finally, while not introduced as part of the evidentiary record in this proceeding, PPLICA provided a comprehensive summary of the issues raised in this proceeding through Comments filed with the Commission and publicly available to PPL and any other interested party.

Of the all the issues set forth in PPLICA's Main Brief, only the cursory recommendation that PPL provide adequate customer notice of the available Phase II programs was initially raised therein.⁶ Therefore, the contention that PPLICA raised arguments for the first time in its Main Brief is largely moot. To the extent that the Commission elects to address PPL's claims, PPLICA further submits that the Commission's Rules of Administrative Practice and Procedure fully authorize the presentation of new arguments in a Main or Initial Brief, subject to the evidentiary restrictions therein.

PPL's Main Brief attempts to unreasonably restrict the rights of active parties by suggesting that expert witness testimony is the only acceptable method for raising issues in Commission proceedings. As stated above, PPL's Main Brief reserved the Company's right to respond to issues raised for the first time on brief. However, the Company further cited to a

⁶ While initially raised in the PPLICA Main Brief, PPLICA's request that PPL provide adequate customer notification references record evidence of PPLICA's obligation to provide a "smooth and quick transition from Phase I to Phase II." PPLICA M.B., p. 18.

1982 Commission Order for the proposition that "it is highly inappropriate for a party to raise new issues for the first time in its brief." See Pa. P.U.C. v. Philadelphia Electric Co., 56 Pa. PUC 191, 236 (1982) [hereinafter "Philadelphia Electric"]. A review of the referenced case shows that the Commission's Order in Philadelphia Electric drew no conclusions regarding the appropriateness or inappropriateness of raising issues for the first time in a brief. Id. The Commission stated only that an ALJ correctly rejected a proposal from the Consumers Education and Protective Association ("CEPA") because it "was first brought up in CEPA's brief and, accordingly, there is no evidence to support it." Id. [Emphasis added]. It is unreasonable for PPL to suggest that the practice of raising an issue for the first time in Main or Initial Brief is categorically inappropriate where cited authority clearly conditions the appropriateness of an argument upon the underlying evidentiary support. See PPL M. B., p. 56; but cf. Philadelphia Electric, 56 Pa. PUC 236.

Consistent with Philadelphia Electric and the Commission's Rules of Administrative Practice and Procedure, PPLICA supported the arguments in its Main Brief with record evidence and therefore appropriately and timely presented such arguments, regardless of whether the issues were raised for the first time in brief. As discussed above, the Commission's Order in Philadelphia Electric clarified that arguments submitted in brief are appropriately denied when not supported by record evidence. See Philadelphia Electric, 56 Pa. PUC 236. The Commission's Rules of Administrative Practice and Procedure further state that a brief filed with the Commission must contain a "reference to the pages of the record or exhibits where the evidence relied upon by the filing party appears." 52 Pa. Code § 5.501(a)(2). Accordingly, issues argued in a Main or Initial brief are properly raised when the brief references record evidence and does not rely on extra-record evidence. See Petition of PECO Energy Company for

Approval of Its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of Its Compact Fluorescent Lamp Program, 2009 WL 3637663 (Pa. P.U.C. Oct. 28, 2009). As PPLICA's Main Brief included extensive citations to facts, data, and quotes from PPL's filing, testimony submitted by various parties, the hearing transcript, and PPLICA's own cross-examination exhibit, the arguments therein are properly before the presiding ALJ and the Commission. See generally PPLICA M.B.

As a party to this proceeding, PPLICA possesses full authority to not only to present expert witness testimony if desired, but also to propound discovery, conduct cross-examination and brief both legal and technical issues subject to the Commission's Rules of Evidence. PPL's attempt to erode PPLICA's procedural rights by further limiting the arguments properly raised in a main or initial brief must be denied as contrary to the Commission's Rules of Administrative Practice and Procedure and injurious to the due process rights of active parties in Commission proceedings.

B. OCA's Proposal to Add a Large C&I Program Targeting Data Centers Must Not Result in an Increase to PPL's Initially Proposed Program Budget for the Phase II EE&C Plan.

If PPL or the Commission agrees that PPL's Phase II EE&C portfolio should be modified to accommodate a program targeting Large C&I data centers, PPLICA requests that the Commission require PPL to implement the additional program within the initially proposed Phase II budget. OCA proposed that PPL adopt an additional Large C&I program targeting consumption reductions from data centers. OCA M.B., p. 18. In reviewing OCA's proposal, the Commission should recognize that PPL's current Large C&I Custom Incentive program provides the necessary framework for a data center to participate in PPL's Phase II EE&C Plan and consider PPL's assertion that additionally targeting data centers may increase administrative

costs. PPL M.B., pp. 37-38. Further, as outlined in PPLICA's Main Brief, PPL's proposed budgets for the Residential, Small C&I and Large C&I customer classes reasonably achieve parity with customer class revenues and approximate the projected acquisition costs adopted by the Commission's Implementation Order. PPLICA M.B., pp. 9, 11. Considering the resources available to data centers through PPL's existing programs, the potential for increased administrative costs, and the reasonableness of PPL's initially proposed program budgets, the Commission should deny OCA's proposal or, alternatively, order PPL to accommodate the additional program only to extent possible without further increasing the initial Large C&I Phase II EE&C budget allocation.

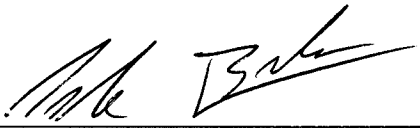
III. CONCLUSION

WHEREFORE, the PP&L Industrial Customer Alliance respectfully requests that the Pennsylvania Public Utility Commission:

- (1) Disregard PPL's assertion that parties are prohibited from raising arguments for the first time in a Main or Initial Brief;
- (2) Deny OCA's request that PPL add an additional Large C&I program targeting data centers or, alternatively, order PPL to accommodate the additional program only to the extent possible without further increasing the Phase II EE&C budget allocation to the Large C&I class; and
- (3) Provide any other relief deemed necessary and reasonable.

Respectfully submitted,

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