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March 21, 2014

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

**VIA ELECTRONIC FILING**

**RE: PP&L Industrial Customer Alliance v. PPL Electric Utilities Corporation;  
Docket No. C-2013-2398440**

**PP&L Industrial Customer Alliance v. PPL Electric Utilities Corporation;  
Docket No. C-2013-2398442**

Dear Secretary Chiavetta:

Attached please find for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Prehearing Memorandum of the PP&L Industrial Customer Alliance ("PPLICA").

As shown on the attached Certificate of Service, all parties to this proceeding are being duly served. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 

Adeolu A. Bakare

Counsel to the PP&L Industrial Customer Alliance

Enclosures

c: Administrative Law Judge Susan D. Colwell (via E-mail and First Class Mail)  
Certificate of Service

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

### VIA E-MAIL AND FIRST-CLASS MAIL

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Adeolu A. Bakare

Dated this 21<sup>st</sup> day of March, 2014, in Harrisburg, Pennsylvania.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PP&L Industrial Customer Alliance	:	
	:	
v.	:	C-2013-2398440
PPL Electric Utilities Corporation	:	
PP&L Industrial Customer Alliance	:	
	:	
v.	:	C-2013-2398442
PPL Electric Utilities Corporation	:	

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**PREHEARING MEMORANDUM OF THE  
PP&L INDUSTRIAL CUSTOMER ALLIANCE**

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As requested by Administrative Law Judge ("ALJ") Susan D. Colwell in the March 11, 2014, Prehearing Conference Order, the PP&L Industrial Customer Alliance ("PPLICA") hereby submits this Prehearing Conference Memorandum in the above-captioned proceeding.

**I. HISTORY OF THE PROCEEDING**

On October 22, 2013, PPL Electric Utilities Corporation ("PPL" or "Company") filed Supplement No. 139 to PPL Tariff – Electric Pa. P.U.C.-201 ("Supplement No. 139") and Supplement No. 140 to PPL Tariff – Electric Pa. P.U.C.-201 ("Supplement No. 140") with Pennsylvania Public Utility Commission ("PUC" or "Commission") at Docket Nos. M-2009-2093216 and M-2012-2334388, respectively.<sup>1</sup> Supplement No. 139 proposed to update PPL's Phase I Act 129 Rider ("ACR-1") to reconcile budgeted costs to actual costs incurred for each customer class through the Company's Phase I Energy Efficiency and Conservation ("EE&C") Plan. Principally, this adjustment included a shift of Government, Nonprofit and Institutional ("GNI") program costs from Small Commercial & Industrial ("C&I") to Large C&I customers.

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<sup>1</sup> The Commission's Secretary subsequently assigned Supplement Nos. 139 and 140 to Docket Nos. M-2013-2399549 and M-2013-2389551, respectively.

Supplement No. 140 similarly modified the prospective Phase II budget allocation initially approved for the Company's Phase II Act 129 Rider ("ACR-2") to reflect the actual cost allocation observed through Phase I.<sup>2</sup>

Previously, on October 26, 2009, the Commission entered an Order at Docket No. M-2009-2093216 ("Phase I Order"), approving PPL's Phase I EE&C Plan and establishing, inter alia, cost recovery procedures encouraging PPL to monitor its actual program costs. The Commission did not require PPL to reconcile its projected rates to actual program expenditures on an annual basis, reasoning that deferring reconciliation of actual costs to the end of the plan would facilitate levelized rates throughout the Plan and decrease rate volatility.<sup>3</sup> However, the Commission also recognized the importance of correcting for major changes, declaring "[w]e support PPL's proposal to make mid-course corrections to its cost recovery mechanism, and we encourage the use of a stakeholder process to consider the need for such corrections as the OCA recommends."<sup>4</sup>

Consistent with its findings in PPL's Phase I EE&C Order, the Commission subsequently issued an Order on June 10, 2011, at Docket No. M-2008-2069887 ("Minor Plan Change Order") prescribing bifurcated procedures for implementing minor and major changes to EE&C Plans. The Order clarified that minor plan changes may be implemented through an expedited process, but specifically excluded changes shifting costs between customer classes from its definition of minor changes.<sup>5</sup> Pursuant to the Minor Plan Change Order, major changes, including any change

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<sup>2</sup> Additionally, both Supplement Nos. 139 and 140 proposed to correct the billing demands for Large C&I customers.

<sup>3</sup> Phase I Order, p. 56

<sup>4</sup> Id.

<sup>5</sup> Minor Plan Change Order, p. 14.

shifting program costs between customer classes, must be submitted for Commission approval in the form of a Petition requesting authority to modify an EDC's Act 129 EE&C Plan.<sup>6</sup>

Additionally, in its Order approving PPL's Phase II Plan, the Commission addressed a PPLICA request for increased Commission oversight of PPL's Phase II customer class allocations and actual costs by referencing the below excerpt from a PPL testimony statement:

As in Phase I, PPL Electric plans to closely monitor actual program costs and savings for each sector (and program) compared to the estimated values in the Phase II EE&C Plan. Similar to Phase I, if there are material changes between actual and estimated values, PPL Electric will propose changes to its EE&C Plan. Specifically, in addition to the annual reconciliation, PPL Electric proposes to make "mid-course" corrections in the cost recovery mechanism, subject to Commission review and approval, to reflect any major changes to any of its EE&C programs.<sup>7</sup>

As recognized in the testimony, PPL committed to monitor actual costs and propose modifications to its Phase I EE&C Plan if actual costs diverged materially from estimated costs. Citing its affirmative commitment to monitor actual costs, the Company claimed that PPLICA's request for additional Commission oversight of customer class allocations was unnecessary.<sup>8</sup> Upon review of PPL's position, the Commission found "no reason to establish any additional provisions for monitoring or revising PPL's class cost allocations."<sup>9</sup>

Although PPL previously indicated that actual costs would be monitored in order to make mid-course adjustments as necessary, Supplement No. 139 proposed to update PPL's Phase I customer class allocations to reflect substantial discrepancies between budgeted costs and actual costs. For both its Phase I and Phase II EE&C Plans, it appears that PPL originally allocated 89% of Government, Non-Profit, and Institutional ("GNI") program costs to Small C&I rate classes, with a 10% allocation to Residential customers and a nominal 1% allocation to Large

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<sup>6</sup> Id.

<sup>7</sup> Order entered March 14, 2012, at Docket No. M-2012-2334388, p. 75 ("Phase II Order") (Emphasis added).

<sup>8</sup> Id. at 76.

<sup>9</sup> Id.

C&I customers.<sup>10</sup> At some point after June 17, 2013, PPL determined that approximately 43.5% of actual Phase I GNI program costs were incurred on behalf of Large C&I customers, with the remaining 56.5% attributable to Small C&I participation.<sup>11</sup> To reflect the allocation of actual costs in the Phase I rates collected from customers, PPL proposed Supplement No. 139 to modify the reconciliation of the ACR-1 and shift approximately \$12.7 million to Large C&I rates. Similarly, PPL proposed Supplement No. 140 to modify the Commission-approved allocation of its ACR-2 and shift \$12.5 million to Large C&I rates.

Following submission of Supplement Nos. 139 and 140, PPLICA filed letters with the Commission on November 1, 2013, at Docket Nos. M-2013-2389549 and M-2013-2389551, stating its intention to file a Complaint with the Commission regarding Supplement Nos. 139 and 140.

On November 6, 2013, the Office of Small Business Advocate ("OSBA") filed Notices of Intervention at Docket Nos. M-2013-2389549 and M-2013-2389551.

On December 23, 2013, PPLICA filed Complaints at Docket Nos. M-2013-2389549 and M-2013-2389551, requesting that the Commission deny Supplement Nos. 139 and 140 retroactive to November 1, 2013, or suspend further collection by PPL and investigate both Supplements.

On January 16, 2014, PPL filed Answers requesting that the Commission deny PPLICA's Complaints.

As noted above, ALJ Susan D. Colwell issued a Prehearing Order on March 11, 2014, directing parties to file Prehearing Memorandums addressing issues to be raised in evidentiary

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<sup>10</sup> Phase I Order, p. 56.

<sup>11</sup> See Supplement No. 140. The actual cost percentages were not disclosed in Supplement Nos. 139 or 140. PPLICA has estimated the actual cost allocation percentages based on informal discussions with PPL and review of the Company's Phase II budget.

hearings on PPLICA's Complaints by March 21, 2014. Consistent with the Prehearing Order, PPLICA hereby submits this Prehearing Conference Memorandum in the above-captioned proceeding.

## **II. SERVICE LIST**

PPLICA is represented in this matter by Pamela C. Polacek and Adeolu A. Bakare. All correspondence, notices, documents, orders or other communications with respect to this proceeding should be addressed to Pamela C. Polacek at the following address:

Pamela C. Polacek  
McNees Wallace & Nurick LLC  
100 Pine Street  
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Harrisburg, PA 17108-1166  
Phone: (717) 232-8000  
Fax: (717) 237-5300  
[ppolacek@mwn.com](mailto:ppolacek@mwn.com)

In addition, PPLICA requests that all parties add Adeolu A. Bakare to any electronic mail service lists. The e-mail address for Mr. Bakare is [abakare@mwn.com](mailto:abakare@mwn.com).

## **III. ANTICIPATED ISSUES AND SUBISSUES**

Since the submission of PPL's original EE&C Plan, PPLICA has been concerned with whether the Company's EE&C Plans are in the public interest and consistent with Act 129, as well as all other applicable statutes, regulations and Commission orders. Particularly, PPLICA has expressed concerns regarding the unique impacts of PPL's EE&C Plans on PPLICA members, which are among the largest customers in PPL's service territory and significant contributors to PPL's Act 129 revenues. As indicated above and in PPLICA's Complaints submitted on December 23, 2013, PPLICA is concerned that the Company failed to appropriately monitor and/or communicate its actually incurred costs for each customer class or

follow the appropriate procedures to implement adjustments to its Phase I and Phase II cost allocations and rates.

Without accurate monitoring and communication of actual costs, PPL cannot satisfy its obligations to propose mid-course corrections when budgeted costs diverge significantly from actual costs. For Large C&I customers, these circumstances led to a volatile \$12.5 million increase to PPL's Phase I reconciliation charges through the ACR-1 and a parallel \$12.7 million increase to the Phase II rates through the ACR-2, both of which became effective on November 1, 2013. PPLICA is preparing discovery to determine when PPL became aware of the gap between budgeted per-class GNI costs and actual per-class GNI costs during the Phase I Plan, whether PPL could have provided advance notice to customers, and what modifications to PPL's monitoring and reporting procedures could provide more accurate disclosures to customers. PPLICA will also request discovery addressing what analysis the Company performed prior to determining that the ACR-2 should be adjusted to reflect actual costs from Phase I instead of tailored to reflect expected performance under Phase II or principles of gradualism in light of the parallel increases to Large C&I ACR-1 rates.

Additionally, PPLICA is concerned that the PPL improperly shifted Phase I and Phase II Plan costs between customer classes without following established Act 129 policies and procedures. The Commission requires Electric Distribution Companies ("EDCs") to file Formal Petitions requesting authority to modify an EE&C Plan prior to implementing any modification shifting costs between customer classes.<sup>12</sup> As discussed above, Supplement Nos. 139 and 140 shifted a total of total of approximately \$25 million from Residential and Small C&I customers to Large C&I customers. While PPL's tariff allows the Company to submit Tariff Supplements

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<sup>12</sup> Minor Plan Change Order, p. 14.

on 10 days' notice to correct for undercollections and overcollections, this provision is inapplicable to adjustment shifting costs between customer classes.

In addition to the above issues, PPLICA reserves the right to raise further issues and to respond to issues raised by other parties.

#### **IV. PROPOSED WITNESSES**

PPLICA will present the testimony of Mr. Jeffrey Pollock, J. Pollock Incorporated, 12647 Olive Boulevard, Suite 585, St. Louis, MO 63141. Mr. Pollock's testimony will address PPL's monitoring of costs recovered through the ACR-1 and ACR-2, the Company's allocation of GNI program costs, and other issues that may arise throughout the course of this proceeding. PPLICA reserves the right to modify or supplement this witness list during the course of the proceeding. In the event that PPLICA decides to modify or supplement its witness list, PPLICA will inform the parties and the ALJ, as soon as possible, of any additional intended witnesses.

#### **V. PROPOSED SCHEDULE AND DISCOVERY RULES**

PPLICA will adhere to the schedule contained in the ALJ's Prehearing Conference Order. PPLICA proposes that discovery be conducted according to the Commission's rules and regulations (52 Pa. Code § 5.321 et seq), subject to the following modifications:

a. Answers to written interrogatories will be served in-hand within fifteen (15) calendar days of service of the interrogatories except that service of interrogatories after Noon on a Friday shall be deemed service on the following business day;

b. Objections to interrogatories will be communicated orally within three (3) business days of service; unresolved objections shall be served to the ALJ in writing within five (5) business days of service of the interrogatories;

- c. Motions to dismiss objections and/or direct the answering of interrogatories will be filed within three (3) business days of service of written objections;
- d. Answers to motions to dismiss objections and/or direct the answering of interrogatories will be filed within three (3) business days of service of such motions;
- e. Responses to requests for document production, entry for inspection, or other purposes will be served in-hand within ten (10) calendar days;
- f. Requests for admission will be deemed admitted unless answered within ten (10) calendar days or objected to within five (5) business days of service;
- g. Answers to on-the-record data requests will be served in-hand within seven (7) calendar days of the request;
- h. Rulings over motions shall be issued, if possible, within seven (7) calendar days of the filing of the motion;
- i. Any discovery or discovery related pleadings such as objections, motions, answers to motions served on a Friday or on any business day preceding a state holiday shall be deemed to have been served on the following business day for purposes of tracking responsive due dates; and
- j. That due dates be “in-hand” and that electronic or fax service on the due date will satisfy the “in-hand” requirement, where such service is immediately followed by a hard copy sent by first-class mail.

**VI. POSSIBILITY OF SETTLEMENT**

PPLICA is willing to participate in discussions with the other parties to amicably resolve the issues in this proceeding.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By   
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Dated: March 21, 2014