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September 30, 2014

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
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400 North Street, 2nd Floor North
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**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:

Enclosed please find the Response Brief of PPL Electric Utilities Corporation in the above-referenced proceedings. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Christopher T. Wright

CTW/skr
Enclosure

cc: Honorable Susan D. Colwell
Certificate of Service

CERTIFICATE OF SERVICE
Docket Nos. C-2013-2398440 & C-2013-2398442

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

**RESPONSE BRIEF OF
PPL ELECTRIC UTILITIES CORPORATION**

**To Administrative Law Judge
Susan D. Colwell**

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I. INTRODUCTION

This proceeding was initiated on December 27, 2013, when PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) was served with two Complaints filed by PP&L Industrial Customer Alliance (“PPLICA”), challenging PPL Electric’s Tariff Supplement Nos. 139 and 140. Supplement No. 139 and 140 updated PPL Electric’s Act 129 Energy Efficiency and Conservation Plan (“EE&C Plan”) cost recovery mechanism, the Act 129 Compliance Rider (“ACR”). Specifically, Supplement No. 139 updated the ACR for PPL Electric’s Phase I EE&C Plan (“ACR-1”), which was a four-year program ending May 31, 2013, and Supplement No. 140 updated the ACR for PPL Electric’s Phase II EE&C Plan (“ACR-2”), which is a three-year program ending May 31, 2016. The purpose of Supplement Nos. 139 and 140 is to ensure that the actual costs incurred for the Phase I and Phase II EE&C Plan government/education/non-profit (“GNI”) measures are properly financed by the same customer class that actually received the direct energy and conservation benefits of those Phase I and Phase II EE&C program measures.

In its Complaints, PPLICA alleges that the rates and costs set forth in Supplement Nos. 139 and 140 are not just, reasonable, and prudent. PPLICA, therefore, requests that the Honorable Administrative Law Judge Susan D. Colwell (“ALJ”) recommend that the Pennsylvania Public Utility Commission (“Commission”) suspend Supplement Nos. 139 and 140 and enjoin the Company from collecting revenues through Supplement Nos. 139 and 140.

On September 9, 2014, in accordance with the litigation schedule set forth in ALJ’s August 13, 2014 Scheduling Order, PPLICA submitted its Main Brief (“PPLICA MB”) in support of its position that Supplement Nos. 139 and 140 are not just, reasonable, and prudent. In its Main Brief, PPLICA raises a total of eight different issues to be decided in this proceeding.

However, the sole issue to be decided in this case is whether PPL Electric's Tariff Supplement Nos. 139 and 140 are just, reasonable, and prudent.

Pursuant to Sections 5.501 and 5.502 of the Commission's regulations, 52 Pa. Code §§ 5.501 and 5.502, and the ALJ's August 13, 2014 Briefing Order, PPL Electric herein submits this Response Brief. As explained below, the record in this case clearly demonstrates that PPLICA does not dispute the actual costs or the allocation of the costs set forth in Supplement Nos. 139 and 140. Further, PPLICA's issues and arguments are largely a product of PPLICA's misunderstanding of the Commission-approved levelized rate and reconciliation processes for the ACR. As explained below, PPLICA's theory of why Supplement Nos. 139 and 140 are not just, reasonable, and prudent directly violates the levelized rate and reconciliation mechanisms approved by the Commission.

For the reasons explained below, PPLICA has failed to meet its burden to demonstrate that Supplement Nos. 139 and 140 are not just, reasonable, or prudent. Accordingly, the ALJ and the Commission should deny the Complaints filed by PPLICA.

II. STATEMENT OF THE CASE

On October 22, 2013, PPL Electric filed Supplement No. 139 to Tariff – Electric Pa. P.U.C. No. 201, which modified the Company's ACR-1, with an issuance date of October 22, 2013, and an effective date of November 1, 2013. Also on October 22, 2013, PPL Electric filed Supplement No. 140 to Tariff – Electric Pa. P.U.C. No. 201, which modified the Company's ACR-2, with an issuance date of October 22, 2013, and an effective date of November 1, 2013. By Secretarial Letters dated October 31, 2013, the Commission permitted Supplement Nos. 139 and 140 to become effective on November 1, 2013. *See* Secretarial Letter dated October 31, 2013, at Docket No. M-2013-2389549; Secretarial Letter dated October 31, 2013, at Docket No. M-2013-2389551.

On December 27, 2013, the Commission served PPL Electric with the two above-captioned Complaints filed by PPLICA. *See* PPLICA Complaint, Docket No. C-2013-2398442 (“PPLICA 139 Complaint”); PPLICA Complaint, Docket No. C-2013-2398440 (“PPLICA 140 Complaint”). Therein, PPLICA alleged that Supplement Nos. 139 and 140 violate Sections 1301, 1307, and 2806.1(k) of the Public Utility Code, 66 Pa.C.S. §§ 1301, 1307, and 2806.1(k). (*See* PPLICA 139 Complaint, ¶¶ 16-17, 19; PPLICA 140 Complaint, ¶ 14) Specifically, PPLICA alleged that Supplement Nos. 139 and 140 are not just, reasonable, and prudent because they were implemented through a tariff filing and because, according to PPLICA, PPL Electric recovered budgeted EE&C program costs from customers but declined to monitor actual per-class program costs for the GNI customer sector. (*See* PPLICA 139 Complaint, ¶¶ 16-17, 19; PPLICA 140 Complaint, ¶¶ 13-14) In its request for relief, PPLICA requested that the Commission suspend Supplement Nos. 139 and 140, enjoin the Company from collecting revenues through Supplement Nos. 139 and 140, and open an investigation on the rates set forth in Supplement Nos. 139 and 140. (*See* PPLICA 139 Complaint, ¶ 22; PPLICA 140 Complaint, ¶ 21) On January 16, 2014, PPL Electric filed answers to the PPLICA Complaints, denying that PPLICA is entitled to the relief requested.

A Prehearing Conference Order was issued on March 11, 2014, scheduling a prehearing conference on March 26, 2014. On March 21, 2014, the Office of Small Business Advocate (“OSBA”) and the Office of Consumer Advocate (“OCA”) separately filed Notices of Intervention and Public Statements.

PPL Electric, PPLICA, OCA, and OSBA submitted prehearing memoranda on March 21, 2014, pursuant to the Prehearing Conference Order. The Prehearing Conference was held on March 26, 2014, before ALJ Colwell. The ALJ issued the Second Prehearing Order on March

26, 2014, which established the litigation schedule, modified discovery rules, and consolidated the proceedings docketed at C-2013-2398440 and C-2013-2398442.

Throughout the evidentiary stage of the proceeding, the parties engaged in discovery. Pursuant to the litigation schedule established in the Second Prehearing Order, PPLICA served the following direct testimony on May 23, 2014: PPLICA Statement No. 1, the written direct testimony of Jeffrey Pollock; and PPLICA Statement No. 2, the written direct testimony of Michael K. Messer. On June 13, 2014, PPL Electric served the following direct testimony: PPL Electric Statement No. 1, the written direct testimony of Peter D. Cleff; and PPL Electric Statement No. 2, the written direct testimony of Bethany L. Johnson. On July 1, 2014, PPLICA served the written rebuttal testimony of Jeffrey Pollock, PPLICA Statement No. 3. On July 15, 2014, PPL Electric served the written surrebuttal testimony of Peter D. Cleff, PPL Electric Statement No. 3. No other parties submitted testimony in this proceeding.

A hearing was held before the ALJ on August 12, 2014. At the hearing, PPL Electric and PPLICA moved their respective testimony and exhibits into the record, and the parties' witnesses were cross-examined. In addition, at the hearing the ALJ heard oral argument on the issue of which party bears the burden of proof. Following argument, the ALJ ruled on the record that PPLICA, as the complainant challenging Supplement Nos. 139 and 140, bears the burden of proof. (Tr. 14)

On August 13, 2014, the ALJ issued the Briefing Order, which established the briefing schedule. Pursuant to the Briefing Order, PPLICA filed its Main Brief on September 9, 2014. PPL Electric herein submits its Response Brief. For the reasons explained below, PPLICA has failed to meet its burden to demonstrate that Supplement Nos. 139 and 140 are not just,

reasonable, or prudent. Accordingly, the ALJ and the Commission should deny the Complaints filed by PPLICA.

III. QUESTIONS PRESENTED

1. Whether PPLICA has failed to meet its burden to demonstrate that Supplement Nos. 139 and 140 are not just, reasonable, and prudent.

Suggested answer: *in the affirmative.*

2. Whether PPLICA’s argument violates the levelized rate, annual reconciliation, and final reconciliation mechanisms approved by the Commission.

Suggested answer: *in the affirmative.*

3. Whether Supplement Nos. 139 and 140 are major changes to the EE&C programs.

Suggested answer: *in the negative.*

IV. LEGAL STANDARDS

A. BURDEN OF PROOF

Under Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), “the proponent of a rule or order has the burden of proof,” except as “provided in section 315.” Section 315(a) provides that “in any proceedings upon complaint involving any *proposed* increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.” 66 Pa.C.S. § 315(a) (emphasis added). Therefore, the key to determining which party bears the burden of proof is whether the rate is proposed or existing.

The Commonwealth Court of Pennsylvania has explained this burden as follows:

[W]here a customer is heard to complain concerning a *proposed* change in rate, the *burden of proof is upon the public utility* to show the proposed rate is just and reasonable; where the complaint involves an *existing* rate, however, the *burden falls upon the customer* to prove that the charge is no longer reasonable.

Cup v. Pa. PUC, 556 A.2d 470, 472 (Pa. Cmwlth. 1989) (emphasis added); *see also Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067, 1070 (Pa. Cmwlth. 1981) (“Where the complaint involves an *existing* rate, however, the burden then falls upon the customer to prove that the charge is no longer reasonable.”) (emphasis in original).

It is well established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. *MacDonald v. Pa. R.R. Co.*, 348 Pa. 558, 36 A.2d 492 (1944). Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain its burden of proof. *See Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order Entered Oct. 9, 1980); *see also Dist. of Columbia’s Appeal*, 343 Pa. 65, 21 A.2d 883 (1941); *Application of Pennsylvania-American Water Company for Approval of the Right To Offer, Render, Furnish or Supply Water Service to the Public in Additional Portions Of Mahoning Township, Lawrence*

County, Pennsylvania, Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Opinion and Order entered Oct. 29, 2008).¹

In this proceeding, PPLICA challenges whether Supplement Nos. 139 and 140 violate Sections 1301, 1307, and 2806.1(k) of the Public Utility Code, 66 Pa.C.S. §§ 1301, 1307, and 2806.1(k). Supplement No. 139 and 140 updated PPL Electric's existing ACR-1 and ACR-2, respectively. The purpose of Supplement Nos. 139 and 140 is to ensure that the actual costs incurred for the Phase I and Phase II EE&C program measures are properly financed by the same customer class that actually received the direct energy and conservation benefits of those Phase I and Phase II EE&C program measures. (PPL Electric Statement No. 2, pp. 11-12, 14)

Supplement Nos. 139 and 140 were filed with the Commission on October 22, 2013. Following a review and audit by the Commission's Bureau of Audits, Supplement Nos. 139 and 140 were permitted to become effective on November 1, 2013. PPLICA failed to file its Complaints before Supplement Nos. 139 and 140 became effective. Instead, PPLICA waited until December 23, 2013, to file its Complaints, nearly two months after Supplement Nos. 139 and 140 went into effect. Very simply, Supplement Nos. 139 and 140 became effective on November 1, 2013, thereby making them existing rates when PPLICA filed its Complaints on December 23, 2013.

¹ In addition, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Grp. v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). 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 n.9 (Pa. Cmwlth. 2008) (citation omitted). Although 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 v. State Bd. of Veterinary Med.*, 960 A.2d 864, 874 (Pa. Cmwlth. 2008) (citation omitted), the "presence of conflicting evidence in the record does not mean that substantial evidence is lacking." *Allied Mech. and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

PPLICA fails to articulate how rates that are currently being charged to customers can be considered “proposed” rates as opposed to “existing” rates.² Rather, PPLICA argues that PPL Electric bears the burden of proof because Supplement Nos. 139 and 140 are not “Commission-made rates.” (PPLICA MB, pp. 10-13) The basis of PPLICA’s claim is that the Section 1307 review and audit performed by the Commission before Supplement Nos. 139 and 140 became effective did not, according to PPLICA, evaluate whether the rates were just and reasonable and, therefore, Supplement Nos. 139 and 140 are not Commission-made rates. (PPLICA MB, pp. 10-13) PPLICA’s reliance on the Commission-made rates doctrine is misplaced.³

The Commission-made rates doctrine is not applicable to Supplement Nos. 139 and 140. Supplement Nos. 139 and 140 updated the ACR (PPL Electric Statement No. 2, pp. 11-12, 14), which is reconcilable automatic adjustment clause under Section 1307 of the Public Utility Code. 66 Pa.C.S. § 2806.1(k)(1). It is well-established that the Commission-made rates doctrine is not applicable to 1307 automatic adjustment clauses. *Pa. PUC v. National Fuel Gas Distribution Corporation*, Docket No. R-00922499, 1993 Pa. PUC LEXIS 95 at *41-42 (Order Entered July 30, 1993); *Investigation of Gas Cost Rate No. 5*, Docket Nos. M-78050055, *et al.*, 1984 Pa. PUC LEXIS 59 (Order Entered Mar. 16, 1984). However, the fact that 1307 automatic adjustment

² The issue of whether PPLICA bears the burden of proof has already been decided in this proceeding. Here, the ALJ found at the hearing that PPLICA bears the burden of proof. (Tr. 14) Now that the proceeding is in the briefing stage, the ALJ’s determination on burden of proof should stand. To do otherwise could grossly prejudice PPL Electric.

³ The characteristics of Commission-made rates are that they are implemented after an exhaustive evidentiary presentation of the company’s expenses and their reasonableness, the fair value of the utility’s property used and useful in the public service, and the return on that value. *Equitable Gas Co. v. Pa. PUC*, 526 A.2d 823, 830 (Pa. Cmwlth. 1986). The Commission-made rate doctrine provides, among other things, that rates and tariff provisions, once fixed by final Commission order, may not be changed retroactively. *Cheltenham & Abington Sewage Co. v. Pa. PUC*, 344 Pa. 366, 25 A.2d 334, 338 (1942). The Commission-made rate doctrine is intended to protect utilities from claims for refunds for rates previously adjudged just and reasonable and to protect ratepayers from claims that the rates received were too low.

clauses are not Commission-approved rates does not shift the burden of proof regarding an *existing 1307 rate*.

For example, in *Lloyd v. PPL Electric Utilities Corp.*, Docket Nos. C-2011-2245906, M-2011-2243137, 2012 Pa. PUC LEXIS 531 (Recommended Decision entered Mar. 2, 2012) the ALJ in *this case* recently rejected a similar attempt to shift the burden in a complaint challenging an existing 1307 rate mechanism from the complainant to the utility. In that proceeding, OSBA filed a Formal Complaint challenging a quarterly Section 1307(e) reconciliation filing made by PPL Electric for its Generation Service Charge (“GSC”). The OSBA argued that PPL Electric bore the burden of proof because, according to the OSBA, the GSC was a proposed rate. The ALJ rejected the OSBA’s argument, holding that:

The rate under consideration here is one which was implemented following Commission approval of the mechanism to determine it. The math itself used to produce the rate had not been finished because the information necessary to formulate the rate under the mechanism is not available at the time of the approval of the mechanism. Under OSBA’s analysis, no rate would be anything but “proposed” until it is charged. This is not consistent with the ratemaking process, which approves formulas, as there are variables involved. OSBA’s analysis would make the utility responsible for establishing the reasonableness of a formula even after Commission approval.

This is an established rate, and OSBA has the burden of proving that it is unreasonable.

Id. at *31. The Commission agreed and adopted the Recommended Decision’s allocation of the burden of proof to the complainant. *See Lloyd v. PPL Electric Utilities Corp.*, Docket Nos. M-2011-2243137, C-2011-2245906, 2012 Pa. PUC LEXIS 1138 (Order Entered July 19, 2012).

As explained below in Section VI.A, the Commission approved the levelized rate and annual reconciliation cost recovery mechanisms provided in ACR-1 and ACR-2. *See Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan,*

Docket No. M-2009-2093216 (Order Entered Oct. 26, 2009) (“*Phase I EE&C Order*”); *Petition of PPL Electric Utilities Corporation for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan*, Docket No. M-2012-2334388 (Order Entered Mar. 14, 2013) (“*Phase II EE&C Order*”). Thus, the Commission has previously determined and found these cost recovery mechanism to be just and reasonable.

Importantly, Supplement Nos. 139 and 140 did not change or modify in any way the levelized rate or the reconciliation mechanisms previously approved by the Commission. Rather, Supplement Nos. 139 and 140 merely update the math necessary to determine the costs and the allocation of the costs to be recovered through these previously approved ACR-1 and ACR-2 cost recovery mechanisms. (PPL Electric Statement No. 2, pp. 11-12, 14) Accordingly, Supplement Nos. 139 and 140 did not seek approval of a new rate mechanism but, rather, sought a mathematical check and audit on the total amounts to be recovered through the *existing* rate mechanism, consistent with the requirements of Section 1307. *See Lloyd*, 2012 Pa. PUC LEXIS at *31.

Here, the Commission’s initial mathematical review and audit of Supplement Nos. 139 and 140 were sufficient to determine whether the rates were just and reasonable. After determining that Supplement Nos. 139 and 140 would recover the actual costs of PPL Electric’s Phase I and Phase II EE&C Plans from the correct customer classes, the Commission’s Bureau of Audits permitted them to go into effect. Consequently, the mathematical review was sufficient to determine whether the rates were just and reasonable. Thus, PPLICA bears the burden of proving that Supplement Nos. 139 and 140 are no longer just and reasonable.

Since PPLICA is complaining of existing rates, it carries a very heavy burden to prove that Supplement Nos. 139 and 140 are unjust and unreasonable. It is well-established that a

“complainant seeking to evade the effect of an existing tariff provision . . . carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable.” *Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996) (citing *Zucker v. Pa. PUC*, 401 A.2d 1377 (Pa. Cmwlth. 1979); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981)). Thus, as the complainant in this Complaint proceeding contesting existing rates, PPLICCA bears a heavy burden to prove that Supplement Nos. 139 and 140 are unjust and unreasonable, which must be satisfied by a preponderance of the evidence.

B. APPLICABLE LEGAL STANDARDS

Act 129 of 2008 (“Act 129”), P.L. 1592, 66 Pa.C.S. §§ 2806.1 and 2806.2, became effective on November 14, 2008. Act 129 directed, among other things, that each electric distribution company (“EDC”) with at least 100,000 customers implement a plan to reduce energy demand and consumption within its service territory. Relevant here, Act 129 requires each EDC’s EE&C plan to achieve “[a] minimum of 10% of the required reductions in consumption . . . from units of Federal, State and local government, including municipalities, school districts, institutions of higher education and nonprofit entities.” 66 Pa.C.S. § 2806.1(b)(1)(i)(B).

The total costs of any EE&C plan cannot exceed two percent of the EDC’s total annual revenues. 66 Pa.C.S. § 2806.1(g). However, Act 129 mandates that an EDC “shall recover on a full and current basis from customers, through a reconcilable adjustment clause under section 1307, all reasonable and prudent costs incurred in the provision or management of a plan.” 66 Pa.C.S. § 2806.1(k)(1). Further, Act 129 requires that the cost recovery mechanism must “ensure that measures approved are *financed by the same customer class that will receive the direct energy and conservation benefits.*” 66 Pa.C.S. § 2806.1(a)(11) (emphasis added). In sum,

a public utility must utilize a reconcilable automatic adjustment clause, pursuant to 66 Pa.C.S. § 1307, to recover the EE&C Plan costs and must recover those costs from the customer class that incurred them.

In addition, pursuant to Section 1301 of the Pennsylvania Public Utility Code, “[e]very rate made, demanded, or received by any public utility . . . shall be just and reasonable, and in conformity with regulations or orders of the commission.” 66 Pa.C.S. § 1301. Rates charged by public utilities also shall not “make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage.” 66 Pa.C.S. § 1304. Therefore, a public utility’s rates must be just and reasonable and not unduly discriminatory.

V. SUMMARY OF ARGUMENT

In its Complaints and Main Brief, PPLICA asserts that PPL Electric’s initial estimate of GNI costs incurred for Large C&I Customer Class turned out to be too low resulting in an undercollection. PPLICA asserts that PPL Electric had an obligation to monitor actual and projected GNI costs throughout the Company’s EE&C Plan and to make midcourse adjustments to the allocation factor if the actual costs differed from the projected costs on a customer class level. PPLICA contends that PPL Electric’s failure to do so should result in disallowance of costs. PPLICA’s Complaints and arguments in its Main Brief are fundamentally flawed, both legally and factually, and must be rejected.

A public utility is entitled to a fair opportunity to recover all reasonable and prudent operating expenses. More specifically, Act 129 provides that an EDC is entitled to recover, on a full and current basis from customers, all reasonable and prudent costs incurred in the provision or management of an EE&C plan through a Section 1307 automatic adjustment clause. Supplement Nos. 139 and 140 updated the costs and the allocation of the costs to be recovered

through the ACR-1 and ACR-2 cost recovery mechanisms. Importantly, PPLICA does not dispute that the Large C&I customer class incurred the costs to be recovered by Supplement Nos. 139 and 140. Further, PPLICA does not dispute the amounts or allocations set forth in Supplement Nos. 139 and 140. For these reasons alone, PPLICA's Complaints should be denied.

PPLICA's contention that PPL Electric is only entitled to recovery of the costs initially assigned to each customer class is completely inconsistent with Section 1307 which expressly permits recovery of over and undercollections caused by differences in actual and estimated costs. PPLICA's argument essentially reads the reconciliation provisions out of Section 1307. PPLICA cites no cases, and there are none, where a utility was denied recovery of a reasonable operating expense because that cost was underestimated in a Section 1307 reconcilable rate mechanism. PPLICA's unprecedented arguments should be summarily rejected.

PPLICA also criticizes PPL Electric for use of "projected allocations" in the final reconciliation of the Phase I EE&C Plan set forth in Supplement No. 134. The record demonstrates that PPL Electric performed its final reconciliation of actual costs and actual revenues based upon the information that it had at the time of the final Phase I reconciliation. PPL Electric filed Supplement No. 139 to update the actual costs and to ensure that the actual costs for the GNI program measures were properly financed by the same customer class that actually received the direct energy and conservation benefits of those GNI program measures. PPLICA's argument ignores that Supplement No. 134 has been replaced by Supplement 139 and, moreover, that PPLICA does not dispute the amount or allocation of costs set forth in Supplement No. 139.

PPLICA's argument -- that PPL Electric had an obligation to monitor actual and projected GNI costs throughout the Company's EE&C Plan and to make midcourse adjustments

to the allocation factor if the actual costs differed from the projected costs on a customer class level -- is plainly at odds with the levelized rate, the annual reconciliation, and the final reconciliation processes approved by the Commission and set forth in its tariff. PPLICA's argument is based on its incorrect belief that the Company was obligated to continually compare the actual costs to estimated costs on customer class basis throughout the duration of the Plan. Although PPL Electric monitored actual costs for each of the five customer sectors and three customer classes, it is not required and indeed is not permitted under its tariff to reconcile those actual costs with the revenues collected from each of the three customer classes until the conclusion of an EE&C Phase in the final reconciliation.

Further, under the Commission-approved EE&C Plans, PPL Electric is only required to make "mid-course" adjustments to the ACR to reflect "major changes" to any of its EE&C programs. Supplement Nos. 139 and 140 make no changes, major or minor, to any EE&C program, nor do Supplement Nos. 139 and 140 shift any program funds. Supplement Nos. 139 and 140 merely ensure that the actual costs for EE&C measures are financed by the same customer class that received the direct energy and conservation benefits as required by Section 2806.1(a)(11) of Act 129.

PPLICA's argument that Supplement Nos. 139 and 140 are major plan modifications that should have been approved through the Commission's petition process ignores the record evidence. The record evidence in this case clearly demonstrates that a difference between the actual costs and the estimated costs is not, and was not intended to be, a "major change." Further, Supplement Nos. 139 and 140 do not make any changes or modifications to the EE&C Plan and, therefore, PPL Electric was not required to submit a petition. Accordingly, the

Company properly filed for an interim rate change consistent with its tariff provisions, which allow for 10 days' notice before the rate is effective.

Finally, PPLICA's members have not suffered harm and indeed have benefitted from PPL Electric's approach. Under PPL Electric's approach, PPLICA's members paid the same total amount later rather than sooner. Thus, PPLICA's members incurred no harm on a nominal basis and a clear benefit on a present time value of money basis because PPL Electric does not collect or pay interest on under- or over-collections of Act 129 costs. At most, PPLICA argues that Supplement Nos. 139 and 140 impacted the budgeting of one of its customers. Even if this were true, this clearly is not sufficient reason to disallow recovery of millions of dollars of otherwise prudently incurred costs.

For these reasons and those discussed in more detail below, PPLICA has failed to meet its heavy burden to prove that the rates in Supplement Nos. 139 and 140 are unjust and unreasonable. Therefore, PPLICA's Complaints should be denied.

VI. ARGUMENT

A. OVERVIEW OF THE ACR-1 AND ACR-2

This case was initiated by two Complaints filed by PPLICA, challenging PPL Electric's Supplement Nos. 139 and 140. Supplement Nos. 139 and 140 update the costs and allocation of costs recovered through PPL Electric's ACR-1 and ACR-2. PPLICA's issues and arguments in this proceeding demonstrate that PPLICA either misunderstands or overlooks the Commission-approved levelized rate and reconciliation processes for the ACR. Thus, as a preliminary matter it is important to explain the ACR methodology approved by the Commission.

On July 1, 2009, PPL Electric filed its Phase I EE&C Plan pursuant to Act 129 and the Commission's Phase I Implementation Order. *Energy Efficiency and Conservation Program*, Docket No. M-2008-2069887 (Order Entered Jan. 16, 2009) ("*Phase I Implementation Order*").

The Commission approved PPL Electric's Phase I EE&C Plan, with modifications, on October 26, 2009. *See Phase I EE&C Order*, p. 111.

PPL Electric's Commission-approved Phase I EE&C Plan was a four-year program ending May 31, 2013, that included a broad portfolio of energy efficiency and peak load reduction programs and measures. Specifically, the portfolio consisted of 14 programs that were available to the following five customer sectors: Residential, Small Commercial & Industrial ("Small C&I"), Large Commercial & Industrial ("Large C&I"), Low-Income, and GNI. These programs were the key components of a comprehensive electric energy efficiency initiative designed to achieve the 1,146,000 MWh/yr of reduced energy consumption and 297 MW of peak demand reductions required by Act 129. All of the programs were voluntary for customers and, subject to the budget limitations for each program, a customer could elect to participate in any program for which the customer was eligible. (PPL Electric Statement No. 1, pp. 6-7)

On November 15, 2012, PPL Electric filed its Phase II EE&C Plan with the Commission requesting approval of its Phase II EE&C Plan pursuant to Act 129 and various related Commission orders. The Commission approved PPL Electric's Phase II EE&C Plan, with modifications, on March 14, 2013. *See Phase II EE&C Order*, p. 89.

PPL Electric's Phase II EE&C Plan is a three-year program (June 1, 2013 – May 31, 2016) that included a broad portfolio of energy efficiency programs and measures. The portfolio for the Phase II EE&C Plan consists of thirteen programs that are available to the following five customer sectors: Residential, Low-Income, Small C&I, Large C&I, and GNI. These programs were the key components of a comprehensive electric energy efficiency initiative designed to achieve energy consumption reduction target of 821,072 MWh/yr for PPL Electric, which was based on a 2.1% reduction in the Company's expected load as forecasted by the Commission for

the period of June 1, 2009 through May 1, 2010. All of the programs are voluntary for customers and, subject to the budget limitations for each program, a customer may elect to participate in any program for which the customer is eligible. (PPL Electric Statement No. 1, p. 8)

Under the Commission-approved Phase I and Phase II EE&C Plans, the Company incurs the costs of the EE&C program measures on behalf of its “customer classes” receiving the EE&C program benefits. (PPL Electric Statement No. 2, pp. 3-4) The term “customer classes” means the Residential Customer Class, Small C&I Customer Class, and Large C&I Customer Class, each of which is comprised of various rate schedules. These three “customer classes” are different than the five “customer sectors” designated in PPL Electric’s EE&C Plans: (i) Residential, (ii) Low-Income, (iii) Small C&I, (iv) Large C&I, and (v) GNI. (PPL Electric Statement No. 1, p. 3)

Section 2806.1(a)(11) of Act 129, 66 Pa.C.S. § 2806.1(a)(11), requires that EE&C measures must be paid for by the same customer class that receives the energy and conservation benefits of those measures. Consistent with Act 129 and PPL Electric’s Commission-approved EE&C Plans, PPL Electric, wherever possible, directly assigns actual costs relating to each EE&C measure to those customer classes (Residential Customer Class, Small C&I Customer Class, and Large C&I Customer Class) that will receive the benefits of energy savings and/or peak load reductions. (PPL Electric Statement No. 2, pp. 7-8) For the GNI program, which is available to all customer classes, PPL Electric initially allocates the program budget costs to each customer class using an allocation factor based on the number of participants expected from each class, and then the actual costs incurred for each customer class are directly assigned or trued-up

to those customer classes through the reconciliation process described below. (PPL Electric Statement No. 2, pp. 5-6, 8)

Pursuant to Section 2806.1(k)(1) of Act 129, 66 Pa.C.S. § 2806.1(k)(1), PPL Electric recovers the costs of its EE&C Plans through a reconcilable automatic adjustment clause under Section 1307 of the Public Utility Code, termed the ACR. Importantly, and unlike other Section 1307 automatic adjustment clauses utilized by the Company, PPL Electric recovers its estimated EE&C Plan costs through the Commission-approved ACR on a levelized basis over the life of the EE&C Plan. *See Phase I EE&C Order*, pp. 56-57. Thus, as approved by the Commission, annual budget amounts for each customer class are developed on a levelized basis over each year of the EE&C Plan. (PPL Electric Statement No. 2, p. 3)

The actual costs of the EE&C Plan, however, are not incurred on a levelized basis. Indeed, based on program availability and customer participation (which is voluntary), the actual EE&C costs incurred will vary in each program year for each customer sector and, therefore, each customer class. However, the Commission-approved ACR tariff requires that these costs be recovered through a levelized rate for each customer class. As a result, the ACR is relatively constant throughout the entire EE&C Phase, *even if* the actual EE&C costs incurred vary throughout the EE&C Plan period. (PPL Electric Statement No. 2, pp. 4-5)

In addition to approving PPL Electric's levelized cost recovery plan, the Commission also approved an annual reconciliation process and a final end of Plan reconciliation process. *Phase I EE&C Order*, pp. 56-57. Under the annual reconciliation process approved by the Commission, PPL Electric separately reconciles the actual revenues collected from each customer class under the cost recovery mechanism with the budget revenues for that year (actual annual revenues v. annual budget revenues). The annual budget amount is the revenue that PPL

Electric expected to collect from each customer class via the levelized ACR rate in the tariff during that program year. This reconciliation, which is performed on an annual basis, reflects variations in revenue due to actual sales compared to forecasted sales. (PPL Electric Statement No. 2, p. 5)

Under the annual reconciliation process approved by the Commission, the Company does *not* reconcile the revenues collected under the cost recovery mechanism to its actual spending levels (actual costs) in each year.⁴ *Phase I EE&C Order*, p. 56. The Commission explained that:

As for the reconciliation process, we find the Company's proposal to annually reconcile actual revenues collected to budgeted revenues to be the most logical approach, given the levelized recovery process. We agree with PPL that adopting a plan that would reconcile revenues collected with actual program expenditures for each year as proposed by the OSBA, SEF, and Mr. Epstein would defeat the purpose of the levelized recovery process since the rate changes resulting from such a reconciliation plan would introduce the kind of volatility the levelized recovery process is meant to prevent. Therefore, we will reject the positions of the OSBA, SEF, and Mr. Epstein with regard to this issue.

Id., p. 56.

In addition to the annual reconciliation, PPL Electric is required to make "mid-course" corrections in the cost recovery mechanism to reflect "major changes" to any of its EE&C programs. (PPL Electric Statement No. 2, p. 6) As explained below in Section VI.D, the trigger for the mid-course corrections is a "program change." (PPL Electric Statement No. 1, pp. 11-12)

Finally, at the end of the EE&C Plan, the Company reconciles total revenue collected to its total actual costs for the entire EE&C Plan period (total revenue v. total costs) for each

⁴ A fundamental confusion that pervades PPLICA's Main Brief is its interchangeable use of the words "costs" and "revenues." (*See, e.g.*, PPLICA MB, pp. 13-14) It is important to recognize the distinction between "costs" and "revenues." "Revenues" means the revenues collected from each of the three customer classes through the levelized ACR rate. (*See* PPL Electric Statement No. 1, pp. 9-10). "Costs," on the other hand, refers to the EE&C costs, or spending levels, incurred on behalf of customers to provide the EE&C programs. (*See* PPL Electric Statement No. 1, p. 4)

customer class. Total actual revenue collections under the ACR for each customer class are reconciled to the total actual costs incurred for that customer class. Over collections or under collections are reflected in the E factor and are refunded or recovered through the ACR calculated for the next compliance year of the EE&C Plan. PPL Electric does not collect or pay interest on under- or over-collections of Act 129 costs. (PPL Electric Statement No. 2, p. 6)

PPL Electric's Commission-approved levelized ACR rate and reconciliation process are explained and set forth in PPL Electric's tariff. (See PPL Electric Exhibit No. BLJ-1, Phase 1 ACR-1; PPL Electric Exhibit No. BLJ-2, Phase II ACR-2) It is well-established that a utility's Commission-approved tariff has the full force of law and is binding on the utility and its customers. *Pa. Elec. Co. v. Pa. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Stiteler v. Bell Tele. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977). In the absence of an exception by the Commission, a public utility may not charge any rate other than that lawfully tarified. *Pa. Elec. Co. v. Pa. PUC*, 663 A.2d 281, 284 (Pa. Cmwlth. 1995) (quotation omitted). Therefore, PPL Electric is only permitted to apply the levelized rate and reconciliation processes set forth in its tariff.

In this case, PPLICA does not dispute the levelized ACR rate or the annual and final reconciliation processes approved by the Commission. PPLICA largely ignores these fundamental requirements of the EE&C Plans. Instead, it asserts that PPL Electric had a duty to monitor actual costs and projected costs throughout the Company's EE&C Plan and to make "mid-course" adjustments to the allocation factor if the actual costs differed from the projected costs on a customer class level. PPLICA seeks to impute obligations on PPL Electric that were not included in the Commission-approved EE&C Plans and, moreover, are entirely inconsistent with the levelized ACR rate and reconciliation processes actually approved by the Commission

and set forth in PPL Electric's tariff. For the reasons that follow, PPLICA has failed to meet its heavy burden of proof that the rates set forth in Supplement Nos. 139 and 140 are unjust and unreasonable and, therefore, PPLICA's Complaints should be denied.

B. PPLICA HAS FAILED TO MEET ITS BURDEN OF PROOF

1. PPLICA Does Not Dispute the Costs and Allocations in Supplement Nos. 139 and 140

PPLICA alleges that the rates and costs set forth in Supplement Nos. 139 and 140 are not just, reasonable, and prudent. As explained above, Supplement Nos. 139 and 140 are existing rates and, therefore, PPLICA bears the burden of proof.

As a general matter, a utility is entitled to a fair opportunity to recover all reasonable and prudent operating expenses. *Western Pennsylvania Water Co. v. Pa. PUC*, 422 A.2d 906, 908 (Pa. Cmwlth. 1980); *Butler Township Water Co. v. Pa. PUC*, 473 A.2d 219, 221 (Pa. Cmwlth. 1984). Further, Act 129 permits an EDC to recover, on a full and current basis from customers, all reasonable and prudent costs incurred in the provision or management of an EE&C plan through a Section 1307 automatic adjustment clause. 66 Pa.C.S. § 2806.1(k)(1).

Further, Supplement Nos. 139 and 140 merely updated the costs and the allocation of the costs to be recovered through the previously approved ACR-1 and ACR-2 cost recovery mechanisms. (PPL Electric Statement No. 2, pp. 11-12, 14) PPLICA does not dispute the amounts or allocations set forth in Supplement Nos. 139 and 140. (Tr. 21-22, 33) PPLICA also does not dispute that the Large C&I customer class incurred the costs to be recovered by Supplement Nos. 139 and 140. (Tr. 19-22) Simply stated, PPLICA does not dispute that the rates set forth in Supplement Nos. 139 and 140 are correct.

The essence of PPLICA's complaint is that PPL Electric should be denied recovery because it failed to accurately forecast/estimate certain EE&C costs. This is completely

inconsistent with Section 1307 which expressly permits recovery of over- and under-collections caused by differences in actual and estimated costs. PPLICA's arguments essentially read the reconciliation provisions out of Section 1307. PPLICA cites no cases where a utility was denied recovery of prudently incurred costs because actual costs exceeded estimated costs. There are no such cases. PPLICA's unprecedented arguments should be summarily rejected.

For these reasons alone, PPLICA has failed to meet its burden to demonstrate that Supplement Nos. 139 and 140 are not just, reasonable, and prudent. Accordingly, PPLICA's Complaints must be denied.

2. Act 129 Mandates that Costs Are Recovered from the Customer Class that Incurred Them

Despite conceding that the amounts and allocation in Supplement Nos. 139 and 140 are correct, PPLICA continues to argue that Supplements Nos. 139 and 140 are not just, reasonable, and prudent. In support, PPLICA argues that PPL Electric is only entitled to recovery of the costs initially assigned to each customer class. According to PPLICA, under Act 129 PPL Electric was only permitted to recover the GNI costs it had allocated to each customer class at the beginning of the Phase I EE&C Plan. (PPLICA MB, pp. 27-28) PPLICA's argument is erroneous for several reasons.

Nothing in Act 129 limits recovery of costs to those initially allocated to each customer class at the beginning of the EE&C Plan. To the contrary, Act 129 mandates the recovery of EE&C Plan costs from the customer class that incurred them. Specifically, Section 2806.1(a)(11) provides that cost recovery under an EE&C Plan must "ensure that measures approved are financed by the same customer class that will receive the direct energy and conservation benefits." 66 Pa.C.S. § 2806.1(a)(11). No exception to this statutory mandate exists.

PPLICA appears to confuse the three customer classes and the five EE&C Plan customer sectors. The EE&C Plan budget was established across the five customer sectors, not the three customer classes. (PPL Electric Statement No. 1, p. 10) The GNI EE&C Plan measures are available to the Residential Customer Class, Small C&I Customer Class, and Large C&I Customer Class. (PPL Electric Statement No. 1, p. 3) That is, participants in the GNI measures may include all customers from each of the three customer classes. Consequently, the GNI sector budget was set in the aggregate for the three customer classes. (PPL Electric Statement No. 1, p. 10) The GNI sector budget was not broken down by customer class. (PPL Electric Statement No. 1, p. 10) In other words, there was no Large C&I GNI budget in PPL Electric's approved EE&C Plan, as suggested by PPLICA.

For purposes of collecting levelized ACR revenue for GNI programs, the GNI program budget costs were allocated to the customer classes in which those GNI customers are embedded (Residential, Small C&I, and Large C&I). This allocation was based upon a ratio of the actual number of institutional customers in each of the three customer classes to the total number of institutional customers on its system. (PPL Electric Statement No. 2, p. 8)

Phase I was the first EE&C Plan filed by PPL Electric under Act 129. Full implementation of Act 129 clearly would take some time. At the time it filed its Phase I EE&C Plan, PPL Electric did not have any information on the total number of federal, state and local governments, institutions of higher education, and nonprofit entities from each customer class that would participate in the Phase I EE&C programs. As such, PPL Electric used estimates and the tools at hand to estimate the number of GNI program participants in each customer class. (PPL Electric Statement No. 2, pp. 9-10)

As a means to estimate the GNI costs for each customer class in its Phase I ACR, PPL Electric used the ratio of the estimated number of GNI customer accounts that existed for each customer class to the total estimated number of GNI customer accounts on its system at the time it filed its Phase I EE&C Plan. This resulted in an estimated GNI cost allocation of approximately 14% to the Residential Customer Class, 85% to the Small C&I Customer Class, and 1% to the Large C&I Customer Class. PPL Electric's methodology and estimated allocation were approved by the Commission. (PPL Electric Statement No. 2, pp. 8-9) PPLICA never objected to this allocation process during the Phase I EE&C Plan and ACR tariff public comment periods. (PPL Electric Statement No. 1, p. 10)

The 1% allocation factor was used by PPL Electric *only to estimate* the portion of total estimated GNI costs (all customer classes) that is collected through the ACR from the Large C&I Customer Class on a levelized basis. (PPL Electric Statement No. 2, p. 9) Consistent with the requirements of Section 2806.1(a)(11) and the final reconciliation process approved by the Commission, the total GNI revenue collected from each customer class is to be reconciled with the total actual GNI costs incurred for each customer class at the end of the Plan.

Although the estimated 1% allocation factor did not accurately predict the proportion of actual GNI costs incurred for Large C&I customers (PPLICA Exhibit JP-1), Section 2806.1(a)(11) of Act 129 mandates that the EE&C Plan measures be financed by the same customer class that received the benefits. 66 Pa.C.S. § 2806.1(a)(11). PPL Electric filed Supplement Nos. 139 and 140 to recover the GNI costs from the customer class that actually incurred them.

Finally, if PPL Electric is only entitled to recovery of the costs initially assigned to each customer class, as suggested by PPLICA, this would render the annual reconciliation and the

final reconciliation under PPL Electric's Commission-approved EE&C Plans completely meaningless. Indeed, there would be no need for either the annual reconciliation or the final reconciliation because, under PPLICA's proposal, PPL Electric would merely recover the costs that were initially assigned to the customer classes, no more and no less. Clearly, the fact that the Commission adopted both an annual reconciliation process (actual annual revenues v. annual budget) and a final reconciliation process (total revenue collected v. total actual costs) demonstrates that recovery of EE&C costs is not limited only to the total costs initially allocated to each customer class.

Based on the foregoing, there is nothing in Act 129 or PPL Electric's Commission-approved EE&C Plans that provide that the initial allocation of the estimated costs is a cap on the total costs that may be recovered for EE&C costs actually incurred for a customer class. Therefore, PPLICA has failed to meet its burden of proof.

3. Supplement No. 139 Updated the Final Phase I Reconciliation

Despite conceding that the amounts and allocation in Supplement Nos. 139 and 140 are correct, PPLICA continues to argue that Supplements Nos. 139 and 140 are not just, reasonable, and prudent. In support, PPLICA argues that PPL Electric did not properly perform the final reconciliation at the end of the Phase I EE&C Plan. Specifically, PPLICA contends that PPL Electric's final Phase I reconciliation, Supplement No. 134, failed to reconcile actual costs and actual revenues. (PPLICA MB, pp. 22-23) PPLICA's argument is without merit.

As explained above, under the final reconciliation process approved by the Commission, the total GNI revenue collected from each customer class is to be reconciled with the total actual GNI costs incurred for each customer class. PPLICA goes to great lengths to criticize PPL Electric for use of "projected allocations" in the final reconciliation of the Phase I EE&C Plan set

forth in Supplement No. 134. (PPLICA MB, pp. 22-23) PPLICA's concerns regarding the final reconciliation are flawed for several reasons.

First, PPLICA's argument pertains to Supplement No. 134, the final Phase I reconciliation. Supplement 134 is *not* the subject of either of PPLICA's Complaints. The issue to be decided is whether Supplement Nos. 139 and 140 are just, reasonable, and prudent. Further, PPLICA's argument ignores that Supplement No. 134 has been replaced by Supplement 139 and, therefore, is no longer effective.

Second, while the final reconciliation for Phase I of PPL Electric's EE&C Plan turned out to be incorrect, PPL Electric explained that there were several actual costs that were not available at the time the Company filed its Phase I June 17 reconciliation report, including "the subsections of the GNI costs" and "additional costs that came in after April 30th of 2013." (Tr. 129)

Third, PPLICA disregards the unexpected surge in rebates *after* the final Phase I reconciliation was performed. PPL Electric explained that throughout Phase I, actual GNI sector costs were below the estimated GNI sector costs. In fact, actual total GNI sector costs were approximately \$5.3 million *under budget* in January 2013 and \$1.6 million *under budget* on May 31, 2013 – the end of Phase I. (PPL Electric Statement No. 1, p. 14) Therefore, PPL Electric allowed customers to submit rebate applications until August 31, 2013, so long as their measures were installed by May 31, 2013. (PPL Electric Statement No. 1, p. 14; PPL Electric Statement No. 2, p. 13) However, an unexpected surge in rebate applications occurred after May 31, 2013. As a result, total actual GNI sector costs unexpectedly increased over \$8 million after May 2013. Due to this unexpected surge in rebate applications, actual GNI sector costs exceeded the estimated GNI sector costs. (PPL Electric Statement No. 1, p. 14) When PPL Electric needed to

close its books for August in September, the Company analyzed the results and recognized the need to make a correction to Supplement No. 134. (PPL Electric Statement No. 2, p. 13)

Finally, PPLICA ignores that Supplement No. 139 replaced Supplement No. 134 to ensure recovery of the proper amounts of GNI costs from the proper customer classes. (PPL Electric Statement No. 2, p. 13; Tr. 146-47) As explained above, PPLICA does not dispute that the Large C&I Customer Class incurred the costs to be recovered by Supplement No. 139, nor does PPLICA dispute the amounts or allocations set forth in Supplement No. 139. (Tr. 19-22, 33) Notably, if PPL Electric did not file Supplement No. 139 to correct the cost recovery rates set forth in Supplement No. 134, PPL Electric would have been in violation of Section 2806.1(a)(11) because it would have been recovering EE&C costs from customers that did not receive the benefits.

Based on the foregoing, PPL Electric performed its final reconciliation of actual costs and actual revenues based upon the information that it had at the time of the final Phase I reconciliation. PPL Electric filed Supplement No. 139 to update the actual costs and to ensure that the actual costs for the GNI program measures were properly financed by the same customer class that actually received the direct energy and conservation benefits of those GNI program measures. For these reasons, PPLICA has failed to meet its burden of proof.

4. Even if PPL Electric Had the Burden to Prove that Supplement Nos. 139 and 140 Are Just and Reasonable, It Met that Burden

As explained above, PPLICA has the burden to prove that Supplement Nos. 139 and 140 are not just and reasonable. However, even assuming, *arguendo*, that PPL Electric had the burden of proof in this proceeding, which it denies for the reasons explained above, the tariff filings and the record in this case clearly demonstrate that the amounts and allocation in Supplement Nos. 139 and 140 are correct.

The actual final cost data for Phase I revealed that GNI costs were undercollected from the Residential customer class by \$2,137,070, overcollected from the Small C&I customer class by \$14,878,125, and undercollected from the Large C&I customer class by \$12,741,055. *See PPL Electric Utilities Corp. – Act 129 Compliance Rider Supplement No. 139 to Tariff Electric – Pa. P.U.C. No. 201*, Docket No. M-2009-2093216 (Oct. 22, 2013). The three customer classes actually incurred the costs outlined in Supplement No. 139 for Phase I of PPL Electric’s EE&C Plan. (PPL Electric Statement No. 2, pp. 11-12) Pursuant to Section 1307, the Commission’s Bureau of Audits reviewed the data in support of Supplement No. 139 and permitted the rates to become effective on November 1, 2013. *See* Secretarial Letter dated October 31, 2013, at Docket No. M-2013-2389549.

For Phase II, based upon the actual cost data from Phase I, Supplement No. 140 would reallocate the GNI costs to the customer classes by reducing the Residential customer class’s GNI costs by \$3,051,010, reducing the Small C&I class’s GNI costs by \$9,458,129, and increasing the Large C&I customer class’s GNI costs by \$12,509,140. *See PPL Electric Utilities Corp. – Act 129 Compliance Rider Supplement No. 140 to Tariff Electric – Pa. P.U.C. No. 201*, Docket No. M-2012-2334388 (Oct. 22, 2013). Supplement No. 140 more accurately recovers the EE&C costs being incurred by the three customer classes for Phase II of PPL Electric’s EE&C Plan. (PPL Electric Statement No. 2, p. 14) Pursuant to Section 1307, the Commission’s Bureau of Audits reviewed the data in support of Supplement No. 140 and permitted the rates to become effective on November 1, 2013. *See* Secretarial Letter dated October 31, 2013, at Docket No. M-2013-2389551.

Based on the foregoing, even if PPL Electric had the burden of proof, the Company did in fact establish a *prima facie* case that Supplement Nos. 139 and 140 are just, reasonable, and

prudent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain its burden of proof. (See Section IV.A, *supra*)

Importantly, PPLICA has conceded that it is not contesting whether Supplement Nos. 139 and 140 contain the correct amounts and allocation or that the Large C&I customers actually incurred those costs. (Tr. 19-22, 33) Thus, PPLICA has, by its own admission, failed to produce evidence to refute PPL Electric's *prima facie* case that Supplement Nos. 139 and 140 are just, reasonable, and prudent.

Based on the foregoing, even if PPL Electric had the burden to prove that Supplement Nos. 139 and 140 are just, reasonable, and prudent, the Company has met its burden.

C. PPLICA'S THEORY VIOLATES THE LEVELIZED RATE AND RECONCILIATION PROCESSES APPROVED BY THE COMMISSION

PPLICA argues that the Commission should reject Supplements No. 139 and 140 because, according to PPLICA, PPL Electric failed to comply with its duties to monitor actual costs and projected costs throughout the Company's EE&C Plan and to make midcourse adjustments to the allocation factor if the actual costs differed from the projected costs on a customer class level. However, as explained below, PPLICA's arguments contradict the levelized rate, the annual reconciliation, and the final reconciliation processes approved by the Commission and set forth in its tariff. Moreover, PPL Electric complied with all of its duties to monitor, track, and reconcile EE&C Plan costs.

1. PPL Electric Properly Monitored the Actual Costs and Revenues for Each Customer Class

PPLICA argues that PPL Electric failed to properly monitor and compare actual costs and projected costs on a customer class level during the course of the EE&C Plans. (PPLICA MB, pp. 13-20, 23-24) As explained below, PPLICA seeks to impute obligations on PPL Electric that

were not included in the Commission-approved EE&C Plans and, moreover, are entirely inconsistent with the levelized ACR rate and reconciliation processes actually approved by the Commission. Therefore, PPLICA's argument is without merit and should be rejected.

PPLICA concedes that the Commission did *not* require PPL Electric to annually reconcile the revenues collected under the cost recovery mechanism with the actual costs incurred each year for each customer class. (PPLICA MB, p. 14) PPLICA also concedes that the ACR approved by the Commission is to be a levelized rate throughout the EE&C Plan period and that total revenue collected is reconciled with the total actual costs only at the end of the EE&C Plan. (PPLICA MB, p. 16) However, PPLICA immediately disregards these facts and asserts that PPL Electric was obligated to “continually compar[e] actual costs to projected costs on customer class basis throughout the duration of the Plan, particularly for a situation where GNI program costs are recovered from all customer classes.” (PPLICA MB, pp. 13-14)

PPLICA appears to be confusing “monitoring” costs with “reconciling” costs. Monitoring simply means that that the Company is collecting the data and assigning it to the proper program by rate class. (Tr. 112) Reconciling, on the other hand, means comparing the applicable data and, if necessary, adjusting the rate going forward for over collections or under collections. (*See generally* PPL Electric Statement No. 2, pp. 5-6) PPLICA's issue is not that PPL Electric failed to monitor the EE&C Plan costs; rather, PPLICA's real issue is that PPL Electric did not make ongoing adjustments to the ACR for differences between actual and projected costs on a customer class basis.⁵

PPL Electric explained that it did in fact monitor the actual costs incurred for each customer class, the actual ACR revenues collected from each customer class, and the budgeted

⁵ As explained next in Section VI.C.2, *infra*, PPLICA's argument regarding ongoing adjustments is without merit.

revenues for each customer class. (PPL Electric Statement No. 1, p. 9) PPL Electric also monitored each customer sector's actual costs to make sure that actual costs for each of the five customer sectors did not exceed its estimated costs. (PPL Electric Statement No. 1, p. 14) Although PPL Electric monitored actual costs for each of the five customer sectors and three customer classes, it is not required and indeed is not permitted by its tariff to reconcile those actual costs with the revenues collected from each of the three customer classes until the conclusion of an EE&C Phase in the final reconciliation. (PPL Electric Statement No. 1, p. 10; PPL Electric Statement No. 3, pp. 2-3) By design, the final reconciliation is the first and only time that the Company evaluates the actual costs on a customer class level for rate purposes. (PPL Electric Statement No. 3, p. 5)

Further, PPLICA overlooks that nothing in the EE&C Plan provides separate budgets for the three customer classes participating in GNI programs. (PPL Electric Statement No. 3, p. 3) The GNI sector budget in the EE&C Plan was not broken down by customer class. (PPL Electric Statement No. 1, p. 10) In other words, there was no Large C&I GNI budget. PPLICA fails to recognize that PPL Electric was required to compare actual GNI costs and projected GNI costs in the aggregate, meaning it would not have compared the Large C&I Customer Class's actual GNI costs and projected GNI costs during the course of Phase I. (PPL Electric Statement No. 1, pp. 10, 14)

PPL Electric prudently incurred these costs on behalf of Large C&I customers by providing GNI programs to Large C&I customers. Moreover, PPL Electric prudently managed the EE&C programs at issue. PPL Electric committed to charging actual costs to the customer class that achieved the benefits (savings), tracking the actual costs to the EE&C Plan estimated costs for the five customer sectors, tracking actual revenues compared to budgeted revenues for

the three customer classes, and reconciling actual costs to actual revenues for the three customer classes at the conclusion of Phase I. That is precisely what PPL Electric did. Therefore, PPL Electric is entitled to full recovery of the GNI costs from Large C&I customers. To do otherwise would penalize PPL Electric for doing exactly what the Commission required and would be contrary to the cost-causation principles outlined in Section 2806.1(a)(11) of Act 129, 66 Pa.C.S. § 2806.1(a)(11).

Based on the foregoing, PPLICA has failed to meet its burden to prove that the rates in Supplement Nos. 139 and 140 are unjust and unreasonable. Therefore, PPLICA's Complaints should be denied.

2. PPL Electric Is only Required to Make “Mid-Course” Adjustments to the ACR to Reflect “Major Changes” to its EE&C Programs

PPLICA argues that PPL Electric was obligated to make “mid-course” adjustments to PPL Electric's cost allocations and cost recovery mechanism to reflect actual costs and projected costs on a customer class level during the course of the EE&C Plans. (PPLICA MB, pp. 16-18. 20-22) PPLICA contends that Supplement No. 139 results in unjust and unreasonable rates because, among other things, PPL Electric incurred the expenses on behalf of Large C&I customers “while taking no steps to address the divergence between projected customer class costs and actual customer class costs.” (PPLICA MB, p. 18) PPLICA's contention that PPL Electric had an obligation to adjust the allocation factor in the ACR during the course of the EE&C Plan is without merit and should be rejected for several reasons.

As a preliminary matter, the issue of whether PPL Electric was required to make “mid-course” adjustments to the ACR, as suggested by PPLICA, has no bearing on whether the costs and allocation of costs set forth in Supplement Nos. 139 and 140 are correct. As explained above, PPLICA does not dispute that the costs and rates set forth in Supplement Nos. 139 and

140 are correct. Further, PPLICA's argument is based on its incorrect belief that the Company was obligated to "continually compar[e] actual costs to projected costs on customer class basis throughout the duration of the Plan." (PPLICA MB, pp. 13-14) As explained above, although PPL Electric monitored actual costs for each of the five customer sectors and three customer classes, it is not required and indeed is not permitted under its tariff to reconcile those actual costs with the revenues collected from each of the three customer classes until the conclusion of an EE&C Phase in the final reconciliation. (PPL Electric Statement No. 1, p. 10) For these reasons alone, PPLICA's adjustment argument should be rejected.

Further, despite PPLICA's assertion to the contrary, nothing in the Commission's orders mentions periodically reviewing and adjusting the allocation and recovery of *actual costs* by customer class. (PPL Electric Statement No. 3, p. 5) Rather, PPL Electric is only required to make "mid-course" adjustments to the ACR to reflect "major changes" to any of its EE&C programs.

In Phase I, PPL Electric proposed "to make 'mid-course' corrections in the cost recovery mechanism to reflect *major changes* to any of its *EE&C programs*." *Phase I EE&C Order*, p. 53 (emphasis added); (PPL Electric Statement No. 1, p. 11) Likewise, for Phase II PPL Electric committed 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*." *Phase II EE&C Order*, p. 75 (quoting PPL R.B. at 45-46) (emphasis added). Thus, under the Commission-approved Phase I and Phase II EE&C Plans, PPL Electric is required to make "mid-course" adjustments to the ACR only if it is making "major changes" to any of its Phase II "EE&C programs."

PPLICA argues that a difference between actual and projected costs on a customer class level is a major change and, therefore, PPL Electric was obligated to make a “mid-course” adjustment. (PPLICA MB, p. 30) However, a difference between actual and projected costs on a customer class level is not a change to an EE&C program because “[t]he EE&C Plan contains no cost estimates, no savings estimates, and no information whatsoever about specific customer classes that participate in GNI programs.” (PPL Electric Statement No. 1, p. 13)

Further, if PPLICA’s theory were correct, every single difference between the actual costs and the actual revenues would constitute a “major change.” Since the actual costs and actual revenues change every month while the programs are open, PPL Electric would be required to request a “major change” every month. (PPL Electric Statement No. 3, p. 8) Further, if every difference between the estimated cost (in the approved EE&C Plan) and the actual costs of a measure, a program, or a customer sector constitutes a “major change,” that would also require the filing of countless petitions throughout the EE&C Plan period. (PPL Electric Statement No. 3, p. 8) Clearly, the Commission did not intend such an absurd and unworkable result.

Admittedly, the initial 1% estimated allocation factor for Large C&I customers’ GNI costs turned out to be incorrect.⁶ (PPL Electric Statement No. 2, p. 9) Moreover, making such an adjustment to the allocation factor would conflict with the Commission-approved levelized rate and the annual and final reconciliation processes. (PPL Electric Statement No. 2, p. 10)

The Commission approved the levelized rate to protect against rate volatility, but the position advanced by PPLICA would dismantle any such protection. The Commission stated the following in its *Phase I EE&C Order*:

⁶ As explained above, this initial estimate was based on the best information available at the time PPL Electric filed the Phase I EE&C Plan. (*See* Section VI.B.2, *supra*)

As for the reconciliation process, we find the Company's proposal to annually reconcile actual revenues collected to budgeted revenues to be the most logical approach, given the levelized recovery process. *We agree with PPL that adopting a plan that would reconcile revenues collected with actual program expenditures for each year as proposed by the OSBA, SEF, and Mr. Epstein would defeat the purpose of the levelized recovery process since the rate changes resulting from such a reconciliation plan would introduce the kind of volatility the levelized recovery process is meant to prevent.* Therefore, we will reject the positions of the OSBA, SEF, and Mr. Epstein with regard to this issue.

Phase I EE&C Order, p. 56 (emphasis added). In fact, PPLICA was a proponent of the levelized recovery and reconciliation process. (PPL Electric Statement No. 2, p. 7 (quoting PPLICA August 7, 2009 Comments, Docket No. M-2009-2093216, pp. 36-37))

Adjusting the cost allocations and cost recovery mechanism to reflect actual costs and projected costs on a customer class level during the course of the EE&C Plans, as argued by PPLICA, would subject PPL Electric's customers to the rate volatility that the levelized rate was meant to prevent. PPL Electric explained that "[i]t was not PPL Electric's intent to modify the allocation during the Program period" because "[s]uch an approach would have been inconsistent with the levelized rate methodology supported by the Parties and approved by the Commission." (PPL Electric Statement No. 2, p. 10) Indeed, PPLICA's own witness admitted that the percentage of GNI costs incurred by a particular customer class and the level of participation can fluctuate from month to month. (Tr. 24-25) As a result, if PPL Electric were to adjust the allocations and cost recovery mechanism every time there was a difference in the actual costs and projected costs, as suggested by PPLICA, the ACR would become extremely volatile. Clearly, PPLICA's argument is contrary to the levelized ACR rate approved by the Commission.

In addition, PPLICA's argument is contrary to the ACR reconciliation processes actually approved by the Commission. As explained above, the annual reconciliation approved by the Commission required PPL Electric to reconcile *actual revenues collected* with the *budgeted*

revenues every year, not actual costs and projected costs on a customer class level. (PPL Electric Statement No. 2, p. 5) Despite PPLICA's assertion to the contrary, nothing in the Commission's orders or PPL Electric's tariff mentions periodically reviewing the allocation and recovery of *actual costs* by customer class. (PPL Electric Statement No. 3, p. 5.) It is not until the final reconciliation at the end of EE&C Plan that the Company reconciles actual costs and actual revenues. (PPL Electric Statement No. 2, p. 6)

If PPL Electric were to adjust the allocations and cost recovery mechanism every time there was a difference in the actual costs and projected costs, as suggested by PPLICA, there would be no need for the annual or final reconciliation processes approved by the Commission. The fact that the Commission approved these reconciliation processes is, in and of itself, an indication that the Commission did not intend that PPL Electric should be making adjustments to the allocations and cost recovery mechanism every time there was a difference in the actual costs and projected costs, as suggested by PPLICA. Clearly, PPLICA's argument is contrary to the annual reconciliation and the final reconciliation processes approved by the Commission.

Finally, even if PPL Electric had made mid-course corrections for differences between the actual and projected costs on a customer class level, as suggested by PPLICA, the impact to the Large C&I customer class would have been that they paid the same amount sooner, over the remaining course of the Phase I program, rather than at the end during the final reconciliation of the Phase I program. (PPL Electric Statement No. 2, p. 11)

Based on the foregoing, PPLICA's argument conflicts with the Commission-approved levelized rate and the annual and final reconciliation processes. Under the Commission-approved EE&C Plans, PPL Electric is only required to make "mid-course" adjustments to the ACR to reflect "major changes" to any of its EE&C programs. The record evidence in this case

clearly demonstrates that a difference between the actual costs and the projected costs is not, and was not intended to be, a “major change.” Accordingly, PPLICA has failed to meet its burden to prove that Supplement Nos. 139 and 140 are unjust and unreasonable and, therefore, PPLICA’s Complaints should be denied.

D. SUPPLEMENT NOS. 139 AND 140 ARE NOT MAJOR EE&C PROGRAM CHANGES

PPLICA argues that Supplement Nos. 139 and 140 are “major changes” to PPL Electric’s EE&C Plans and, therefore, could only be implemented through a petition proposing a Plan Change. (PPLICA MB, pp. 24-31) PPLICA’s arguments are without merit and should be rejected.

In support of its assertion that Supplement Nos. 139 and 140 are “major changes,” PPLICA relies on the Commission’s order in *Energy Efficiency and Conservation Program*, Docket No. M-2008-2069887 (Order Entered June 10, 2011) (“*Minor EE&C Plan Change Order*”). (PPLICA MB, pp. 29-30) In that order, the Commission delegated authority to staff to review “minor EE&C Plan changes,” which it stated were:

- Elimination of a measure that is underperforming or has exhausted its budgeted amount.
- The transfer of funds from one measure to another measure within the same customer class.
- A change in the conditions of a measure, such as the addition of new qualifying equipment or a change in the rebate amount that does not increase the overall costs to that customer class.

Minor EE&C Plan Change Order at p. 14. The Commission then explained that “[a]ll proposed changes that do not fit within these three categories will be handled through the previous approval process established in the *Implementation Order*,” whereby “an EDC must file a petition requesting that the Commission rescind and amend its prior order approving the plan.”

Id. (emphasis added). According to PPLICA, the *Minor EE&C Plan Change Order* stands for the proposition that “*any* change to a Commission approved EE&C Plan other than the three categories of changes specifically identified in the Order is a major change necessitating a Petition to the Commission.” (PPLICA MB, p. 30)

PPL Electric agrees that a “major change” to an EE&C program requires a petition to the Commission for approval. However, PPLICA overlooks a fundamental issue - - Supplement Nos. 139 and 140 make no changes, major or minor, to any EE&C program. Rather, Supplement Nos. 139 and 140 ensure that the actual costs for EE&C measures are financed by the same customer class that received the direct energy and conservation benefits as required by Section 2806.1(a)(11) of Act 129. (PPL Electric Statement No. 1, p. 18; PPL Electric Statement No. 2, pp. 11-12, 14; PPL Electric Statement No. 3, p. 10) Indeed, Supplement Nos. 139 and 140 merely updated the data used to set the levelized rate in the previously approved ACR-1 and ACR-2 cost recovery mechanisms. (PPL Electric Statement No. 2, pp. 11-12, 14)

PPLICA argues that Supplement Nos. 139 and 140 are major changes because, according to PPLICA, they shift costs between customer classes. In support, PPLICA quotes the *Phase I EE&C Order*, wherein the Commission stated that “an EDC cannot shift program funds within a customer class, or between customer classes without prior Commission approval.” *See Phase I EE&C Order*, p. 92. The purpose of this limitation is to ensure that an EDC does not implement changes to its EE&C Plan that shifts estimated program costs from one customer class to another customer class without prior Commission approval, *i.e.*, a “major change” to the EE&C Plan. This also ensures that the actual costs incurred by a customer class are allocated to the same customer class that received the EE&C benefits. (PPL Electric Statement No. 1, p. 19)

Admittedly, shifting program funds between customer classes constitutes a “major change.” However, Supplement Nos. 139 and 140 do not shift any program funds. In fact, the budgeted GNI program funds were not changed by Supplement Nos. 139 and 140. (PPL Electric Statement No. 1, p. 19)

Further, the GNI programs are available to all three customer classes and, under Section 2806.1(a)(11) of Act 129, each customer class is responsible for the GNI program costs incurred by customers in their respective class. Thus, the costs are not “shifted” between the customer classes because the customer classes *already* share these costs in accordance with their respective class participation in the program. (PPL Electric Statement No. 1, pp. 19-20) If anything, Supplement Nos. 139 and 140 *prevent* cost shifting by properly allocating the actual costs to the customer class that received the benefits. (PPL Electric Statement No. 1, p. 20)

In an effort to demonstrate that Supplements No. 139 and 140 are “major changes,” PPLICA cites to prior Petitions filed by PPL Electric to modify its EE&C Plans.⁷ (PPLICA MB, p. 21) PPLICA’s argument is flawed for several reasons. First, PPL Electric is required to petition for approval of a major change to its EE&C Plan. In both petitions cited by PPLICA, PPL Electric in fact proposed to make changes to the costs of its EE&C programs, specifically the Efficient Equipment Program and the Direct Load Control Program. *See Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093216, p. 7 (Feb. 28, 2011) (“*PPL Electric 2011 Petition*”); *Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093216, p. 37 (Feb. 2, 2012) (“*PPL Electric 2012 Petition*”). The specific

⁷ PPLICA also has attached a summary of PPL Electric’s previous petitions to modify its EE&C Plans to its Main Brief. (See PPLICA MB, Appx. A) However, PPLICA’s summary was not admitted to the record and contains numerous errors. (Tr. 103-06) Therefore, PPLICA’s summary attached to its Main Brief should be wholly disregarded.

budget for each of these programs was established by customer sector and explicitly spelled out in the Company's Phase I EE&C Plan. In contrast, no EE&C programs are changed by Supplement Nos. 139 and 140. PPL Electric's EE&C Plans do not detail the allocation of GNI costs to the three customer classes that participate in and share in the costs of GNI programs. Therefore, Supplement Nos. 139 and 140 make no changes to the Company's EE&C Plans, let alone major changes.

Second, PPLICA mischaracterizes the petitions and again demonstrates its confusion of the three customer classes and the five customer sectors. PPLICA states that "PPL filed a 2011 Petition proposing to eliminate the allocation of CFL costs to Small C&I customers and allocate such costs exclusively to Residential customers." (PPLICA MB, p. 21) Further, PPLICA alleges that in 2012, the Company filed a petition to "shift Direct Load Control Program costs from the Small C&I class to the Residential class." (PPLICA MB, p. 21) However, both of PPL Electric's petitions reallocated costs between customer *sectors*, not customer classes as alleged by PPLICA.

PPL Electric's petition in 2011 actually proposed "to allocate all CFL Program sales, savings, and costs to the residential customer *sector*, instead of allocating 5% to the Small C&I *sector* and 17% to the low-income residential customer *sector*." *PPL Electric 2011 Petition*, Docket No. M-2009-2093216, p. 7 (emphasis added). Likewise, in the PPL Electric's 2012 petition, the Company changed "the projected participation levels between *sectors*, including no allocation to the Low-income *sector* . . . , a reduction to the Small C&I *sector*, and an increase to the Residential *sector*." *PPL Electric 2012 Petition*, Docket No. M-2009-2093216, p. 37 (emphasis added).

As discussed previously, the EE&C Plan budget is allocated across the five customer sectors, not the three customer classes. An alteration to the total EE&C Plan budget for a customer sector is a major change that requires the filing of a petition to receive Commission approval. (PPL Electric Statement No. 1, p. 20) No change to the total GNI sector budget, however, is made by Supplement Nos. 139 and 140. Supplement Nos. 139 and 140 merely ensure that the EE&C measures are financed by the same customer class that received the direct energy and conservation benefits as required by Section 2806.1(a)(11) of Act 129. Therefore, the petitions cited by PPLICA are irrelevant and inapplicable to Supplement Nos. 139 and 140.

In addition, to support its claim that PPL Electric failed to adjust the rebates under the GNI programs, PPLICA cites PPL Electric's previous adjustments to its Efficient Equipment Program for program measures that became oversubscribed. (PPLICA MB, p. 21) PPLICA fails to recognize that prior to May 31, 2013, the GNI programs remained under budget.⁸ PPL Electric had no reason to expect the surge of rebates after May 31, 2013, which is why the Company extended the deadline for filing rebate applications until August 31, 2013. (PPL Electric Statement No. 1, p. 14; PPL Electric Statement No. 2, p. 13) Stated simply, PPL Electric did not adjust the rebates, the projected savings, or the projected costs because the GNI programs were under budget throughout Phase I and the Company did not expect the surge of rebate applications at the end of the Phase I EE&C Plan period. Thus, PPL Electric's previous adjustments to its Efficient Equipment Program bear no consequence on Supplement Nos. 139 and 140.

Based on the foregoing, Supplement Nos. 139 and 140 are not "major changes" to PPL Electric's EE&C Plans. Accordingly, PPLICA has failed to meet its heavy burden of proof that

⁸ See Section VI.B.3, *supra*.

the rates in Supplement Nos. 139 and 140 are unjust and unreasonable and, therefore, PPLICA's Complaints should be denied.

E. SUPPLEMENT NOS. 139 AND 140 ARE PROPER TARIFF SUPPLEMENTS

PPLICA contends that by not implementing Supplement Nos. 139 and 140 through the Commission's Petition process, customers were denied meaningful review of Supplement Nos. 139 and 140. In support, PPLICA submits that Supplement Nos. 139 and 140 will have a significant impact on the business and operating budgets of Large C&I customers. (PPLICA MB, pp. 31-36) PPLICA's arguments are without merit.

As explained above, Supplement Nos. 139 and 140 did not constitute "major changes" to any EE&C program. Supplement Nos. 139 and 140 merely reconcile, based on actual experience, the already approved funding or budget levels to ensure that the EE&C measures are financed by the same customer class that receives the direct energy and conservation benefits as required by Section 2806.1(a)(11) of Act 129. By filing Supplements No. 139 and No. 140, PPL Electric is actually continuing to be in compliance with the EE&C Plan and the Company's tariff provisions. Because these are not major plan modifications, or any modification to the EE&C Plan, PPL Electric is not required to submit a petition. Accordingly, the Company filed for an interim rate change consistent with its tariff provisions, which allow for 10 days' notice before the rate is effective. (PPL Electric Statement No. 2, p. 19)

Moreover, as explained above, PPLICA does not dispute that the amounts or allocations set forth in Supplement Nos. 139 and 140 are correct. (Tr. 21-22, 33) Consequently, any review allegedly denied to PPLICA would, arguably, only result in the determination that the three customer classes actually incurred or will incur the costs outlined in Supplement Nos. 139 and 140.

In addition, PPLICA had the opportunity to oppose various aspects of PPL Electric's EE&C Plans and cost-recovery mechanisms of which PPLICA now complains, but failed to do so. Further, PPLICA could have filed a complaint at any time, which is precisely what it has done here. PPLICA engaged in discovery, submitted testimony and exhibits, and cross-examined witnesses. Clearly, PPLICA has not been denied a meaningful review of the costs and allocations set forth in Supplement Nos. 139 and 140.

In further support of its argument that Large C&I customers have been denied meaningful review of Supplement Nos. 139 and 140, PPLICA submits that Supplement Nos. 139 and 140 will have a significant impact on the business and operating budgets of Large C&I customers. (PPLICA MB, pp. 31-36) However, as explained above, PPLICA and its members have, in fact, had more than a meaningful review of Supplement Nos. 139 and 140.

Further, the impact on Large C&I customers cited by PPLICA is grossly overstated. PPL Electric explained that the example provided by PPLICA to show the impacts that Supplement Nos. 139 and 140 will have on Large C&I customers is an extreme hypothetical example that would only apply to the largest of PPL Electric's customers.⁹ (PPL Electric Statement No. 2, p. 16) In addition, PPLICA refused to provide discovery to PPL Electric's counsel regarding the alleged impacts, and PPLICA's witness failed to answer questions on cross-examination about the alleged impact of Supplement Nos. 139 and 140 on his organization.¹⁰ (*See, e.g.*, Tr. 65-66)

⁹ PPLICA contends that "Supplement Nos. 139 and 140 would increase annual EE&C rates by \$250,000 for a single LP-5 customer with a PLC of 25,000 kW." (PPLICA MB, p. 35). In actuality, an average Rate Schedule LP-5 customer is defined as having a peak load contribution ("PLC") of approximately 6,000 kW (i.e., 19,000 kW less than PPLICA's example). (PPL Electric Statement No. 2, p. 16) For the average LP-5 customer, Supplement Nos. 139 and 140 would increase Act 129 annual expenses by approximately \$60,000 (i.e., \$190,000 less than PPLICA's example). (PPL Electric Statement No. 2, p. 16) For the average Large C&I customer, the impact of these supplements is much lower. Supplement Nos. 139 and 140 would increase the average Large C&I customer's Act 129 annual expenses by approximately \$14,000. (PPL Electric Statement No. 2, p. 17)

¹⁰ Not only did PPLICA's witness refuse to provide discovery to PPL Electric's counsel and answer questions on cross-examination, even subject to an appropriate protective order, PPLICA's witness also provided responses to

PPLICA could have easily, and credibly, testified about the alleged impacts that Supplement Nos. 139 and 140 will have on the business and operating budgets of Large C&I customers. However, PPLICA declined to do so.

PPLICA has suffered no harm and indeed has benefitted from PPL Electric's approach. Basically, PPLICA says the Company should have reconciled sooner. However, even if PPL Electric had made mid-course corrections or reconciliations for differences between the actual and projected costs on a customer class level, as suggested by PPLICA, the impact to the Large C&I customer class would have been that they paid the same amount sooner, over the remaining course of the Phase I program, rather than at the end during the final reconciliation of the Phase I program. (PPL Electric Statement No. 2, p. 11) This is particularly relevant because there is no interest on over and undercollections in the ACR. (PPL Electric Statement No. 2, p. 6) Under PPL Electric's approach, PPLICA's members paid the same total amount later rather than sooner. Thus, PPLICA's members incurred no harm on a nominal basis and a clear benefit on a present time value of money basis because PPL Electric does not collect or pay interest on under- or over-collections of Act 129 costs. At most, PPLICA argues, without sufficient credible evidentiary support, that it impacted the budgeting of one of its customers. Even if this were true, this clearly is not sufficient reason to disallow recovery of millions of dollars of otherwise prudently incurred costs.

Based on the foregoing, PPLICA failed to demonstrate that Supplement Nos. 139 and 140 were required to be implemented through the Commission's Petition process, or that

certain discovery questions in a misleading and un-forthright manner. Specifically, PPLICA's witness stated in a discovery response that he did not contact any other Large C&I customers regarding Supplements No. 139 and 140; however, on the stand he stated that he did have discussions with other Large C&I customers. (Tr. 69-73) Hiding behind a "game" of semantics, the witness opined "contact" and discussions were not the same. (Tr. 72-73) The credibility of PPLICA's witness in this proceeding is questionable at best.

customers were denied meaningful review of Supplement Nos. 139 and 140. Accordingly, PPLICA has failed to meet its burden to prove that Supplement Nos. 139 and 140 are unjust and unreasonable. Therefore, PPLICA's Complaints should be denied.

VII. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Honorable Administrative Law Judge Susan D. Colwell recommend and that the Pennsylvania Public Utility Commission deny the Complaints filed by the PP&L Industrial Customer Alliance.

Respectfully submitted,

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Date: September 30, 2014

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Appendix A

APPENDIX A
Proposed Findings of Fact

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) proposes the following findings of fact.

1. On October 22, 2013, PPL Electric filed Supplement Nos. 139 and 140 to Tariff – Electric Pa. P.U.C. No. 201.
2. By Secretarial Letters dated October 31, 2013, the Commission permitted Supplement Nos. 139 and 140 to become effective on November 1, 2013.
3. Supplement No. 139 and 140 updated PPL Electric’s Act 129 Energy Efficiency and Conservation Plan (“EE&C Plan”) cost recovery mechanism, the Act 129 Compliance Rider (“ACR”). (PPL Electric Statement No. 2, pp. 11-12, 13-14)
4. Supplement No. 139 updated the ACR for PPL Electric’s Phase I EE&C Plan (“ACR-1”), which was a four-year program ending May 31, 2013, and Supplement No. 140 updated the ACR for PPL Electric’s Phase II EE&C Plan (“ACR-2”), which is a three-year program ending May 31, 2016. (PPL Electric Statement No. 1, pp. 6-7, 8; PPL Electric Statement No. 2, pp. 11-12, 13-14)
5. Supplement Nos. 139 and 140 update the math necessary to determine the costs and the allocation of the costs to be recovered through these previously approved ACR-1 and ACR-2 cost recovery mechanisms. (PPL Electric Statement No. 2, pp. 11-12, 14)
6. Supplement Nos. 139 and 140 ensure that the actual costs incurred for the Phase I and Phase II EE&C Plan government/education/non-profit (“GNI”) measures are properly financed by the same customer class that actually received the direct energy and conservation benefits of those Phase I and Phase II EE&C program measures. (PPL Electric Statement No. 2, pp. 8, 11-12, 14)

7. Supplement Nos. 139 and 140 became effective on November 1, 2013, thereby making them existing rates when PPLICA filed its Complaints on December 23, 2013.

8. The Company incurs the costs of the EE&C program measures on behalf of its “customer classes” receiving the EE&C program benefits. (PPL Electric Statement No. 2, pp. 3-4)

9. The term “customer classes” means the Residential Customer Class, Small Commercial and Industrial (“Small C&I”) Customer Class, and Large Commercial and Industrial (“Large C&I”) Customer Class, each of which is comprised of various rate schedules. (PPL Electric Statement No. 1, p. 3)

10. The “customer classes” are different than the five program “customer sectors” designated in PPL Electric’s EE&C Plans: (i) Residential, (ii) Low-Income, (iii) Small C&I, (iv) Large C&I, and (v) GNI. (PPL Electric Statement No. 1, p. 3)

11. For EE&C programs that are applicable to more than one customer class, such as the GNI program, PPL Electric initially allocates the program budget costs to each customer class using an allocation factor based on the number of participants expected from each class, and then the actual costs incurred for each customer class are directly assigned or trued-up to those customer classes through the reconciliation process. (PPL Electric Statement No. 2, pp. 5-6, 8)

12. As approved by the Commission, annual budget amounts for each customer class are developed on a levelized basis over each year of the EE&C Plan. (PPL Electric Statement No. 2, p. 3)

13. The actual costs of the EE&C Plan are not incurred on a levelized basis. The actual EE&C costs incurred will vary in each program year for each customer sector and, therefore, each customer class. (PPL Electric Statement No. 2, p. 4)

14. The Commission-approved ACR tariff requires that these costs be recovered through a levelized rate for each customer class. (PPL Electric Statement No. 2, pp. 4-5)

15. The GNI EE&C Plan measures are available to the Residential Customer Class, Small C&I Customer Class, and Large C&I Customer Class. (PPL Electric Statement No. 1, p. 3)

16. The GNI sector budget was set in the aggregate for the three customer classes. (PPL Electric Statement No. 1, p. 10)

17. The GNI sector budget was not broken down by customer class. (PPL Electric Statement No. 1, p. 10)

18. As a means to estimate the GNI budget costs for each customer class in its Phase I ACR, PPL Electric used the ratio of the estimated number of GNI customer accounts that existed for each customer class to the total estimated number of GNI customer accounts on its system at the time it filed its Phase I EE&C Plan. This resulted in an estimated GNI cost allocation of 1% to the Large C&I Customer Class. (PPL Electric Statement No. 2, pp. 8-9)

19. PPL Electric separately reconciles the actual revenues collected from each customer class under the cost recovery mechanism with the budget revenues for that year (actual annual revenues v. annual budget revenues). This reconciliation, which is performed on an annual basis, reflects variations in revenue due to actual sales compared to forecasted sales. (PPL Electric Statement No. 2, p. 5)

20. PPL Electric is required to make “mid-course” corrections in the cost recovery mechanism only to reflect “major changes” to any of its EE&C programs. (PPL Electric Statement No. 2, p. 6)

21. At the end of the EE&C Plan, the Company reconciles total revenue collected to its total actual costs for the entire EE&C Plan period (total revenue v. total costs) for each customer class. Total actual collections under the ACR for each customer class are reconciled to the total actual costs incurred for that customer class. (PPL Electric Statement No. 2, p. 6)

22. Over collections or under collections are reflected in the E factor and are refunded or recovered through the ACR calculated for the next compliance year of the EE&C Plan. PPL Electric does not collect or pay interest on under- or over-collections of Act 129 costs. (PPL Electric Statement No. 2, p. 6)

23. The final reconciliation is the first and only time that the Company reconciles the actual costs on a customer class level. (PPL Electric Statement No. 3, p. 5)

24. Several actual costs were not available at the time the Company filed its Phase I June 17 reconciliation report, including “the subsections of the GNI costs” and “additional costs that came in after April 30th of 2013.” (Tr. 129)

25. PPL Electric’s Commission-approved levelized ACR rate and reconciliation process are explained and set forth in PPL Electric’s tariff. (See PPL Electric Exhibit No. BLJ-1, Phase I ACR-1; PPL Electric Exhibit No. BLJ-2, Phase II ACR-2)

26. PPLICA does not dispute the levelized ACR rate or the annual and final reconciliation processes approved by the Commission.

27. Throughout Phase I, actual GNI sector costs were below the estimated GNI sector costs. (PPL Electric Statement No. 1, p. 14)

28. An unexpected surge in rebate applications occurred after May 31, 2013. As a result, total actual GNI sector costs unexpectedly increased over \$8 million after May 2013. (PPL Electric Statement No. 1, p. 14)

29. When PPL Electric needed to close its books for August in September, the Company analyzed the results and recognized the need to make a correction to Supplement No. 134. (PPL Electric Statement No. 2, p. 13)

30. The three customer classes actually incurred the costs outlined in Supplement No. 139 for Phase I of PPL Electric's EE&C Plan. (PPL Electric Statement No. 2, pp. 11-12)

31. Supplement No. 140 more accurately recovers the EE&C costs being incurred by the three customer classes for Phase II of PPL Electric's EE&C Plan. (PPL Electric Statement No. 2, p. 14)

32. PPLICA does not dispute the amounts or allocations set forth in Supplement Nos. 139 and 140. (Tr. 21-22, 33)

33. PPLICA does not dispute that the Large C&I customer class incurred the costs to be recovered by Supplement Nos. 139 and 140. (Tr. 19-22)

34. Supplement Nos. 139 and 140 make no changes, major or minor, to any EE&C program. Supplement Nos. 139 and 140 ensure that the actual costs for EE&C measures are financed by the same customer class that received the direct energy and conservation benefits as required by Section 2806.1(a)(11) of Act 129. (PPL Electric Statement No. 1, p. 18; PPL Electric Statement No. 2, pp. 11-12, 14; PPL Electric Statement No. 3, p. 10)

35. PPL Electric's EE&C Plan contains no cost estimates, no savings estimates, and no information whatsoever about specific customer classes that participate in GNI programs. (PPL Electric Statement No. 1, p. 13)

36. If PPL Electric had made mid-course corrections for differences between the actual and projected costs on a customer class level, the impact to the Large C&I customer class would have been that they paid the same amount sooner, over the remaining course of the Phase I program, rather than at the end during the final reconciliation of the Phase I program. (PPL Electric Statement No. 2, p. 11)

37. The budgeted GNI program funds were not changed by Supplement Nos. 139 and 140. (PPL Electric Statement No. 1, p. 19)

38. The GNI program costs are not “shifted” between the customer classes because the customer classes *already* share these costs in accordance with their respective class participation in the program. (PPL Electric Statement No. 1, pp. 19-20)

39. PPLICA and its members have not been denied a meaningful review of the costs and allocations set forth in Supplement Nos. 139 and 140.

40. The impact on Large C&I customers cited by PPLICA is grossly overstated. (PPL Electric Statement No. 2, pp. 16-17)

41. PPLICA’s members incurred no harm on a nominal basis and a clear benefit on a present time value of money basis under PPL Electric’s approach because PPL Electric does not collect or pay interest on under- or over-collections of Act 129 costs. (PPL Electric Statement No. 2, p. 6).

Appendix B

APPENDIX B
Proposed Conclusions of Law

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) proposes the following conclusions of law:

1. Under Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), “the proponent of a rule or order has the burden of proof,” except as “provided in section 315.”

2. Section 315(a) of the Public Utility Code, 66 Pa.C.S. § 315(a), provides that “in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.”

3. “[W]here a customer is heard to complain concerning a *proposed* change in rate, the *burden of proof is upon the public utility* to show the proposed rate is just and reasonable; where the complaint involves an *existing* rate, however, the *burden falls upon the customer* to prove that the charge is no longer reasonable.” *Cup v. Pa. PUC*, 556 A.2d 470, 472 (Pa. Cmwlth. 1989) (emphasis added).

4. The Commission-made rates doctrine is not applicable to 1307 automatic adjustment clauses. *Pa. PUC v. National Fuel Gas Distribution Corporation*, Docket No. R-00922499, 1993 Pa. PUC LEXIS 95 at *41-42 (Order Entered July 30, 1993); *Investigation of Gas Cost Rate No. 5*, Docket Nos. M-78050055, *et al.*, 1984 Pa. PUC LEXIS 59 (Order Entered Mar. 16, 1984).

5. The fact that 1307 automatic adjustment clauses are not Commission-approved rates does not shift the burden of proof regarding an existing 1307 rate. *See Lloyd v. PPL Electric Utilities Corp.*, Docket Nos. C-2011-2245906, M-2011-2243137, 2012 Pa. PUC LEXIS

531 (Recommended Decision entered Mar. 2, 2012); *Lloyd v. PPL Electric Utilities Corp.*, Docket Nos. M-2011-2243137, C-2011-2245906, 2012 Pa. PUC LEXIS 1138 (July 19, 2012).

6. PPLICA is complaining of existing rates and, therefore, PPLICA bears the burden of proving that Supplement Nos. 139 and 140 are no longer just and reasonable.

7. It is well-established that a “complainant seeking to evade the effect of an existing tariff provision . . . carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable.” *Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996) (citing *Zucker v. Pa. PUC*, 401 A.2d 1377 (Pa. Cmwlth. 1979); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981)).

8. It is well-established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990); see *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999); *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

9. Act 129 of 2008 (“Act 129”), P.L. 1592, 66 Pa.C.S. §§ 2806.1 and 2806.2, directed, among other things, that each electric distribution company (“EDC”) with at least 100,000 customers implement a plan to reduce energy demand and consumption within its service territory.

10. Pursuant to Section 1301 of the Pennsylvania Public Utility Code, “[e]very rate made, demanded, or received by any public utility . . . shall be just and reasonable, and in conformity with regulations or orders of the commission.” 66 Pa.C.S. § 1301.

11. Rates charged by public utilities shall not “make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage.” 66 Pa.C.S. § 1304.

12. A utility is entitled to a fair opportunity to recover all reasonable and prudent operating expenses. *Western Pennsylvania Water Co. v. Pa. PUC*, 422 A.2d 906, 908 (Pa. Cmwlth. 1980); *Butler Township Water Co. v. Pa. PUC*, 473 A.2d 219, 221 (Pa. Cmwlth. 1984).

13. Act 129 permits an EDC to recover, on a full and current basis from customers, all reasonable and prudent costs incurred in the provision or management of an EE&C plan through a Section 1307 automatic adjustment clause. 66 Pa.C.S. § 2806.1(k)(1).

14. Act 129 requires that the cost recovery mechanism must “ensure that measures approved are financed by the same customer class that will receive the direct energy and conservation benefits.” 66 Pa.C.S. § 2806.1(a)(11). No exception to this statutory mandate exists.

15. It is well-established that a utility’s Commission-approved tariff has the full force of law and is binding on the utility and its customers. *Pa. Elec. Co. v. Pa. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Stiteler v. Bell Tele. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977).

16. In the absence of an exception by the Commission, a public utility may not charge any rate other than that lawfully tariffed. *Pa. Elec. Co. v. Pa. PUC*, 663 A.2d 281, 284 (Pa. Cmwlth. 1995) (quotation omitted).

17. PPL Electric is only permitted to apply the levelized rate and reconciliation processes set forth in its tariff.

18. Nothing in Act 129, PPL Electric's Commission-approved EE&C Plans, or PPL Electric's tariff provides that the initial allocation of the estimated costs is a cap on the total costs that may be recovered for EE&C costs actually incurred for a customer class.

19. PPL Electric prudently incurred the costs of government/education/non-profit ("GNI") measures in the Company's Phase I and Phase II EE&C Plans on behalf of Large Commercial and Industrial ("Large C&I") customers.

20. PPL Electric prudently managed the GNI programs.

21. PPL Electric is entitled to full recovery of the GNI costs from Large C&I customers. 66 Pa.C.S. § 2806.1(a)(11).

22. PPL Electric is neither required nor permitted under its tariff to reconcile actual costs for GNI programs with the revenues collected from each of the three customer classes until the conclusion of an EE&C Phase in the final reconciliation.

23. PPLICA's theory that PPL Electric should have periodically reviewed and adjusted the allocation and recovery of actual costs by customer class contravenes the levelized rate and reconciliation processes established by the Commission and set forth in PPL Electric's tariff.

24. PPL Electric is only required to make "mid-course" adjustments to the ACR to reflect "major changes" to any of its EE&C programs. *See Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093216, p. 53 (Order Entered Oct. 26, 2009); *Petition of PPL Electric Utilities Corporation for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan*, Docket No. M-2012-2334388, p. 75 (Order Entered Mar. 14, 2013).

25. Supplement Nos. 139 and 140 are not “major changes” to PPL Electric’s EE&C Plans.

26. Supplement Nos. 139 and 140 are consistent with PPL Electric’s tariff provisions, which allow for 10 days’ notice before the rate is effective.

27. Supplement Nos. 139 and 140 ensure that the EE&C measures are financed by the same customer class that receives the direct energy and conservation benefits as required by Section 2806.1(a)(11) of Act 129.

28. PPLICA has failed to meet its burden to prove that Supplement Nos. 139 and 140 are not just, reasonable, or prudent.