McNees
Wallace & Nurick LLC

100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Adeolu A. Bakare
Direct Dial: 717.237.5290
Direct Fax: 717.260.1744
abakare@mwn.com

October 14, 2014

VIA ELECTRONIC FILING

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

RE: PP&L Industrial Customer Alliance v. PPL Electric Utilities Corporation; Docket Nos. C-2013-2398440 and C-2013-2398442

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission is the Reply Brief of the PP&L Industrial Customer Alliance ("PPLICA") in the above-referenced proceedings.

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

Sincerely,

McNEES WALLACE & NURICK LLC

By
Adeolu A. Bakare

Counsel to the PP&L Industrial Customer Alliance

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

CERTIFICATE OF SERVICE

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

VIA E-MAIL AND FIRST-CLASS MAIL

David B. MacGregor, Esq.
Post & Schell, PC
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103
dmacgregor@postschell.com

Paul E. Russell, Esq.
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
perussell@pplweb.com

Devin T. Ryan, Esq.
Christopher T. Wright, Esq.
Post & Schell, PC
17 North 2nd Street, 12th Floor
Harrisburg, PA 17101-1601
dryan@postschell.com
cwright@postschell.com

Elizabeth Rose Triscari, Esq.
Pennsylvania Public Utility Commission
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101
etriscari@pa.gov

Amy E. Hirakis, Esq.
Aron J. Beatty, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place 5th Floor
Harrisburg, PA 17101 1921
abeatty@paoca.org
ahirakis@paoca.org

Adeolu A. Bakare

Dated this 14th day of October, 2014, in Harrisburg, Pennsylvania.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF THE PP&L INDUSTRIAL CUSTOMER ALLIANCE

Air Products and Chemicals, Inc.
Armstrong World Industries, Inc.
General Dynamics-OTS Scranton
Harristown Enterprises, Inc.
Hercules Cement Company
Linde LLC
SAPA Extrusions, Inc.
The Hershey Company
TIMET North America
Wegmans Food Markets, Inc.

Pamela C. Polacek (I.D. No. 78276)
Adeolu A. Bakare (I.D. No. 208541)
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300
ppolacek@mwn.com
abakare@mwn.com

Counsel to the PP&L Industrial Customer Alliance

Dated: October 14, 2014

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: Page

Statutes:

Other Authorities:

I. INTRODUCTION

A. Procedural History

On October 22, 2013, PPL Electric Utilities Corporation ("PPL" or "Company") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") Supplement No. 139 to PPL Tariff – Electric Pa. P.U.C. No. 201, proposing to update PPL's Phase I Act 129 Rider ("ACR-1"). *PPL Electric Utilities Corporation – Act 129 Compliance Rider Supplement No. 139 to Tariff Electric – Pa. P.U.C. No. 201*, Docket No. M-2009-2093216 (Oct. 22, 2013) (hereinafter, "Supplement No. 139").[1] Also on October 22, 2013, PPL filed Supplement No. 140 to PPL Tariff – Electric Pa. P.U.C. No. 201, proposing to update PPL's Phase II Act 129 Rider ("ACR-2"). *PPL Electric Utilities Corporation – Act 129 Compliance Rider Supplement No. 140 to Tariff Electric – Pa. P.U.C. No. 201*, Docket No. M-2012-2334388 (Oct. 22, 2013) (hereinafter, "Supplement No. 140").[2] Both Supplements contained a proposed effective date of November 1, 2013.

Supplement No. 139 proposed two changes to the ACR-1 on ten days' notice. First, Supplement No. 139 proposed to revise PPL's Phase I costs to reflect actual grants disctibuted by PPL to each customer class through the Company's Phase I Energy Efficiency and Conservation ("EE&C") Plan. This revision was caused by PPL's failure to accurately monitor its costs for each customer class, particularly the cost of its Government, Nonprofit, and Institutional ("GNI") programs, during Phase I and through its Phase I end-of-phase reconciliation. Additionally, Supplement No. 139 proposed to correct the billing demands for Large Commercial and Industrial ("C&I") customers, because PPL erroneously calculated the ACR-1 reconciliation

[1] The Commission's Secretary subsequently assigned Supplement No. 139 to Docket No. M-2013-2389549.
[2] The Commission's Secretary subsequently assigned Supplement No. 140 to Docket No. M-2013-2389551.

charges effective as of June 1, 2013, based on customers' monthly billing demand data instead of the appropriate PJM Peak Load Contribution ("PLC") data.

Supplement No. 140, also on ten days' notice, proposed to revise PPL's ACR to reflect a new allocation of the Company's Phase II EE&C Plan cost for GNI programs that was consistent with the actual disbursements that PPL made during the Company's Phase I EE&C Plan. Additionally, Supplement No. 140 proposed to correct the billing demands for Large C&I customers, because PPL erroneously calculated the ACR-2 effective as of June 1, 2013, based on customers' monthly billing demand data instead of the appropriate PLC data.

On December 23, 2013, PPLICA[3] filed individual Complaints to Supplement Nos. 139 and 140 requesting that, *inter alia*, the Commission suspend and investigate Supplement Nos. 139 and 140. PPL filed Answers to the Complaints on January 16, 2014. Following the pleadings, a Prehearing Conference was held on March 26, 2014, before Administrative Law Judge ("ALJ") Susan D. Colwell.

An evidentiary hearing was held in this proceeding on August 12, 2014, for the purposes of presenting testimony and performing cross-examination. During this hearing, the parties confirmed the process for submitting Briefs.

Pursuant to the procedural schedule, PPLICA filed a Main Brief on September 9, 2014. PPL filed a Response Brief on September 30, 2014. To address issues raised in PPL's Response Brief, PPLICA hereby files its Reply Brief.[4]

---

[3] PPLICA's members are listed on the cover page of this Reply Brief.

[4] The full procedural history and background set forth in PPLICA's Main Brief are hereby incorporated by reference. *See* PPLICA M.B., pp. 1-6.

II. SUMMARY OF ARGUMENT

This Reply Brief responds to several arguments set forth in PPL's Response Brief.[5] First, PPLICA addresses PPL's claim that the burden of proof shifts to PPLICA by distinguishing the caselaw relied upon by PPL from the facts of this proceeding. PPLICA next responds to PPL's recitation of the legal standards for cost recovery of Act 129 expenses, clarifying that the requirement that program measures benefitting a customer class must be financed by that customer class does not supplant all other provision of the Act, particularly the mandate that only prudently incurred expenses may be recovered from any customer class, and that PPL must adhere to its approved plan in disbursing grants.

PPLICA also counters PPL's assessment that the Company met the prudency requirement because total GNI customer sector costs remained under budget for most of the Phase I Plan and PPL allegedly monitored actual customer sector costs and budgeted customer sector costs. As originally detailed in PPLICA's Main Brief, PPLICA again clarifies that PPL recklessly and continuously authorized GNI disbursements far in excess of the Commission-approved allocation used to determine the customer class EE&C Plan budgets and then sought to correct the error by disregarding procedural requirements and filing tariff supplements instead of formally petitioning to modify its EE&C Plans. PPLICA further illustrated PPL's imprudent failure to monitor and compare actual and projected costs on a customer class basis, both throughout the Phase I Plan and the end-of-Phase reconciliation.

PPLICA also responds to PPL's surprising and entirely inappropriate claim that PPLICA members benefitted from Supplement Nos. 139 and 140. Both filings deprived PPLICA members of any opportunity to accurately monitor program costs and consequently subjected

[5] PPLICA's Reply Brief will not respond to every argument contained in PPL's Response Brief but only those issues necessitating additional response. PPLICA's decision not to respond to all arguments should not be construed as agreement with PPL with regard to any of the outstanding issues in this proceeding.

customers to a completely unexpected 162% increase to the combined ACR-1 and ACR-2 rates on 10 days' notice.

Large C&I customers should not bear the burden of PPL's failure to administer its EE&C Plans in accordance with Commission Orders. Therefore PPLICA requests that the Commission find that the rate increases for the Large C&I class made effective through Supplement Nos. 139 and 140 were not just and reasonable, would allow recovery for imprudently incurred expenses, and would violate Act 129, the PPL Phase I Order, the Minor Plan Change Order, and the PPL Phase II Order. Further, PPLICA requests that the Commission direct PPL to issue full refunds for all revenues collected from the Large C&I Class pursuant to Supplement Nos. 139 and 140, excepting only revenues associated with the billing demand errors, consistent with PPLICA's non-opposition of the Company's proposal to correct self-reported billing errors.[6]

III. ARGUMENT

A. PPL has not furnished persuasive evidence supporting its claim that the burden of proof lies with PPLICA; accordingly, PPL bears the burden of proof.

PPL curiously argues that PPLICA inappropriately relies on the Commission-made rate doctrine to show that Section 1307 rates are not "Commission-made" rates, but subsequently argues that the Commission-made rate doctrine is inapplicable to Section 1307 rates. This point amounts to a distinction without a difference. The caselaw cited by PPL restates the same point adduced in PPLICA's Main Brief, *i.e.,* that Section 1307 rates are not subject to Commission review before taking effect and therefore are not "Commission-made" rates. *See Gas Cost Rate No. 5*, 58 P.U.R.4th 369, 375 (1984) (revising rules for Section 1307(f) Gas Cost Rate ("GCR") riders and finding that "all fuel revenues and expenses, whether in the GCR or in base rates, are

[6] The Residential and Small C&I refunds for Supplement 139 should stand because the adjustment reflects those classes' actual costs and other customers should not be forced to carry the burden of PPL's imprudent monitoring of its ACR-1. *See* PPLICA Stmt. No. 1, p. 6.

subject to review within our GCR procedure and are not commission-made rates."). Both PPL's observation that the Commission-made rates doctrine is "inapplicable" and PPLICA's similar observation that Supplement Nos. 139 and 140 are not protected by the Commission-made rate doctrine ultimately reach the same end. *See* PPL Response Brief, p. 8; *see also* PPLICA M.B., p. 12.

PPL then proceeds under a different doctrine, arguing that PPLICA bears the burden of proof because it challenges an existing rate. To support this argument, PPL relies on *PPL Electric Utilities Corporation Proposed Generation Supply Charge-1 For the period June 1, 2011 Through August 31, 2011 William R. Lloyd, Jr. Office of Small Business Advocate v. PPL Electric Utilities Corporation*, 2012 WL 3042067 (Penn.P.U.C., 2012) (hereinafter "*PPL GSC-1*"), where the Commission held that the Complainant challenging a rate implemented by a quarterly adjustment to PPL's Generation Supply Cost-1 ("GSC-1") Rider bore the burden of proof. *See* PPL Response Brief, p. 9. This case in inapplicable to PPLICA's Complaints because the respective tariff provisions governing quarterly adjustments to the GSC and interim adjustments to the ACRs are materially different.

In *PPL GSC-1*, the presiding ALJ found that "the rate under consideration here [GSC-1 quarterly adjustment] is one which was implemented following Commission approval of the mechanism to determine it." *PPL GSC-1*, at 6. This finding reflects the fact that the GSC-1 establishes a clear formula for calculating the quarterly adjustments, which was approved by the Commission and set forth in the tariff as follows:

> Reconciliation of the GSC-1 for Fixed Price Option and the on/off-peak TOU Price Option will be conducted separately for each of the two Customer Classes. The reconciliation will include a calculation of the adjustment to the GSC-1, in cents per kWH, required to refund or recover previous application period over or under recoveries of the quarterly generation supply acquisition costs. The reconciliation will be the difference between actual generation supply acquisition

> costs and the projected generation supply acquisition costs estimated for the computation quarter. Any over/under collection will be reflected in the GSC-1 charges for the subsequent computation quarter.

See Supplement No. 133 to Tariff Electric-Pa. P.U.C. No. 201, Third Revised Page No. 19Z.5D.

To the contrary, the ACR tariffs contain no such formula for interim rate adjustments. *See* PPLICA Stmt. No. 1, Appendix C, pp. 46, 49. Both the ACR-1 and ACR-2 explicitly state that the charges may only be adjusted on June 1 of each year "unless revised on an interim basis *subject to the approval of the Commission.*" *See id.* (Emphasis added). As discussed in significant detail in PPLICA's Main Brief, Supplement Nos. 139 and 140 were subject to a staff review by the Commission's Bureau of Audits, but were not subject to review by the Commission. *See* PPLICA M.B., p. 12. Neither had the Commission delegated authority to the Bureau of Audits pursuant to Section 5.44 of its Regulations. *See id.* Therefore, although Supplement Nos. 139 and 140 were permitted to become effective, they remained subject to challenge as to whether the rates are just and reasonable. As such, the burden of proof properly rests with PPL.

Additionally, even if *arguendo*, PPLICA bore the burden of proof, PPLICA met its burdens of production and persuasion by showing that PPL failed to administer its ACR-1 and ACR-2 tariff in compliance with Act 129, the Phase I Implementation Order, and its ACR-1 and ACR-2 tariffs. *See PPL GCR-1*, at 4 (describing dual burdens of production and persuasion embedded within the burden of proof). This showing is sufficient to support the remedy that PPLICA seeks as set forth in Section IV, *infra.*

B. As a threshold matter, Supplement Nos. 139 and 140 were improperly filed and must be denied.

PPL claims that Supplement Nos. 139 and 140 were properly filed as interim rate adjustments on 10 days' notice. *See* PPL Response Brief, p. 42. This claim ignores the plain fact

that both Supplement Nos. 139 and 140 shifted revenue between customer classes. *See* PPLICA M.B., p. 6. As discussed in greater detail in Section III.D.3., *infra*, the Commission's Minor Plan Change Order and PPL's Phase I Order firmly establish that costs cannot be shifted between customer classes unless the EDC petitions the Commission for approval to modify its EE&C Plan. *See* Section III.D.3., *infra*; *see also* PPLICA M.B., pp. 28-29.

The provision in PPL's ACR-1 and ACR-2 tariff allowing for interim rate adjustments does not modify the proscription against shifting costs between customer classes. For example, the ACR-1 tariff states that:

> Upon determination that ***a customer class's*** ACR-1, if left unchanged, would result in a material over or undercollection of Phase 2 Act 129 Compliance costs incurred or expected to be incurred during the current 12-month period ending May 31, the Company may file with the Commission for an interim revision of the ACR-1 to become effective ten (10) days from the date of filing, unless otherwise ordered by the Commission.

See PPLICA Stmt. No. 1, Appendix C, p. 46. (Emphasis added). Nothing in this provision gives any indication that costs can be shifted between customer classes through an interim rate adjustment. Rather, the reference to adjusting the rate of a single customer class indicates that the interim rate adjustment is only available to account for material over or undercollections resulting from unexpected changes in sales volumes, similar to the annual reconciliation procedure applicable to the ACRs. For changes shifting costs between customer classes, such as the $25 million collections shifted from Residential and Small C&I customers to Large C&I customers by Supplement Nos. 139 and 140, PPL must proceed under the procedures set forth in the Minor Plan Change Order and file a petition with the Commission. *See* PPLICA M.B., pp. 28-29. Supplement Nos. 139 and 140 are procedurally deficient and should be denied on such grounds alone.

C. In focusing solely on the Act 129 requirement that EE&C Plan measures be financed by the same customer class receiving the benefits, PPL ignores numerous additional obligations.

PPL correctly identifies the cost recovery standards applicable to this proceeding, but fails to apply the relevant factors to the record facts. Despite acknowledging that Act 129 authorizes recovery of all reasonable and "prudent" costs, PPL overemphasizes the General Assembly's determination that Act 129 programs must be "financed by the same customer class that will receive the direct energy and conservation benefits." 66 Pa. C.S. § 2806.1(a)(11). According to PPL, this is the sole relevant inquiry to assess whether costs are properly recoverable. In truth, this standard exists in tandem with the prudency standard, meaning that only costs that were "prudently incurred" are to be financed by the customer class set to benefit from the applicable program measures. *See* PPLICA M.B., p. 17.

PPL's belief that it is entitled to recover any EE&C costs, upon a showing that the costs were applied to programs benefitting a particular customer class, reflects the Company's incomplete application of Act 129's directives. As stated in PPL's Response Brief "Section 2806(a)(11) of Act 129, 66 Pa. C.S. § 2806(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." PPL Response Brief, p. 17. This provision is found in the Section of Act 129 establishing the Commission's requirements for developing an Act 129 program. However, the section detailing the EDC's duties offers the additional detail set forth in PPLICA's Main Brief, specifying that:

> (H) The plan shall include a proposed cost-recovery tariff mechanism in accordance with section 1307 (relating to sliding scale of rates; adjustments), to fund the energy efficiency and conservation measures ***and to ensure full and current recovery of the prudent and reasonable costs of the plan***, including administrative costs, ***as approved by the commission***.

PPLICA M.B., p. 17 *citing* 66 Pa. C.S. § 2806.1(b)(1)(i)(H). (Emphasis added). By way of further clarification, the Commission again addressed the applicable standard in its Phase I Implementation Order, stating that:

> We will require each subject EDC to develop a reconcilable adjustment clause tariff mechanism in accordance with 66 Pa. C.S. § 1307 and include this mechanism in its EE&C Plan. Such a mechanism shall be designed to recover, on a full and current basis from each customer class, **all prudent and reasonable EE&C costs that have been assigned to each class** as directed above.

Phase I Implementation Order, p. 38. (Emphasis added). Both the additional clarifications in the statute and the Commission's Implementation Order show that PPL's reliance on Section 2806(a)(11) of Act 129 is misplaced. Section 2806(a)(11) establishes that costs can only be recovered from the customer class benefitting from the underlying program. However, such costs must first be shown to be prudently incurred and in accordance with what the Commission has approved.

Therefore, PPLICA's position is entirely consistent with Section 2806(a)(11). The record shows that the ACR charges proposed through Supplement 139 would recover EE&C costs disbursed primarily on behalf of Large C&I customers eligible for GNI programs. *See* Tr. 19-22. For this reason, as stated in PPL's Response Brief, "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 these costs." *See* PPL Response Brief, p. 29. Accordingly, consistent with Section 2806(a)(11), such costs cannot be recovered from Residential or Small C&I customers.

Contrary to PPL's claims, PPLICA's acknowledgement of the mathematical correctness of Supplement Nos. 139 and 140 does not mean that "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." *See* PPL Response Brief, p. 29. The prudency standard requires more than mathematical correctness. To meet the prudency standard, PPL must show that the costs to be recovered through Supplement No. 139 were incurred consistent with the requirements of Act 129 and the Commission's Implementation Order. In other words, the costs must be consistent with the plan that the Commission approved. Only then can PPL recover such costs from Large C&I customers consistent with Section 2806(a)(11).

D. As set forth in PPLICA's Main Brief, PPL fails to show that the costs proposed for recovery through Supplement No. 139 were prudently incurred and consistent with the approved plan.

PPL's Response Brief argues that PPL acted prudently because it had no duty to monitor or compare actual costs to projected costs on a customer class basis until the reconciliation phase of its Phase I Plan. However, because GNI sector costs are applicable to all customer classes, PPL was required to compare actual cost to projected costs in order to ensure that actual costs did not exceed the Commission-approved allocations. Moreover, even assuming that PPL was not bound by capped allocations, nothing in Act 129 excuses an EDC from exercising a degree of prudence commensurate with generally accepted ratemaking principles. To the contrary, multiple provisions of Act 129 and the Commission's Implementation Order directly require or encourage such prudence. Finally, the Commission directly ordered PPL to reconcile projected costs to actual costs at the conclusion of the Phase I Plan, which PPL failed to do with respect to GNI costs. Accordingly, PPL violated the prudency standard in at least three respects, by exceeding its Commission-approved GNI allocation without authority, by failing to monitor and compare actual and projected costs on a customer class basis, and by failing to reconcile actual end-of-Phase GNI sector costs to the projected GNI sector costs on a customer class basis.

1. PPL's Act 129 Plan included Commission-approved allocations that limited the maximum cost recovery from each customer class.

PPL's claim that its Commission-approved allocation of GNI sector costs does not constitute a customer class budget must be rejected because the end result would create an absurd ratemaking construct where customers have no expectation of their costs exposure until the end of each EE&C Plan. PPL concedes that the initial per-customer class allocation of GNI sector costs for the Phase I Plan was approved by the Commission. *See* PPL Response Brief, p. 24. However, PPL claims that the only budgets applicable to the Phase I Plan are the total budgets for the five customer sectors, *i.e.,* the Residential, Low-Income, Small C&I, Large C&I and GNI sectors. *See id.* at 23. On a customer class level, PPL argues that the allocation did not limit the Company's discretion to disburse GNI expenses to each customer class and that any such limitation would run contrary to the approved reconciliation process. *See id* at 31. If the Commission agrees with PPL, then all of the safeguards implemented to protect against unauthorized shifts of revenue between customer classes would be rendered moot as customers would always remain at risk of paying anywhere from 0-100% of the GNI sector costs, regardless of the initial cost allocation.

As explained in PPLICA's Main Brief, the Commission-approved allocations were also approved as customer class budgets. PPLICA's Main Brief explained that, despite PPL's division of program expenses across the five customer sectors, the Commission reviewed the total Phase I budget on a customer class basis when approving the Phase I EE&C Plan. *See* PPLICA M.B., p. 26 *citing* PPL Phase I Order, p. 17. The customer class budgets evaluated and approved by the Commission consisted of the total budgeted costs for the four class-specific customer sectors (Residential, Low-Income, Small C&I, and Large C&I) and, for the sole "multi-class" customer sector (GNI), the Commission-approved cost allocation that then became part of the budget for

each of the classes. *See id.* Similarly, the Phase I Implementation Order authorized PPL to recover only costs that have been "assigned" to a customer class. *See id.* at 27. As evidenced by the below excerpt from PPL's Phase I Plan, the Commission confirmed that the GNI allocation constitutes the "assignment" of GNI costs to each customer class:

> ... the cost of measures benefitting governments, school districts, institutions of higher education and non-profit entities ***must be assigned in a reasonable manner to the rate class(es)*** in which those customers are embedded. We find that ***the Company has done so by basing its allocation on a ratio of the actual number of Government/Non-Profit customers in each of its three customer classes*** to the total number Government/Non-Profit customers on its system, as set forth above.

PPL Phase I Order, p. 64. (Emphasis added). Finally, PPL's ACR Tariffs confirm that "collections under the ACR 1 for each customer class will be reconciled to the total cost of the EE&C Plan *allowed by the Commission* for that customer class." PPLICA Stmt. No.1, Appendix C, pp. 46, 49 (Emphasis added). The ACR-1 does not, as suggested by PPL, permit reconciliation of ACR collections to any costs incurred by for a customer class, but only authorizes reconciliation to the costs assigned or allocated to each class and approved by the Commission.

Importantly, PPLICA's assessment of the Commission-approved allocations is not founded on any misunderstanding of the distinction between the five customer sectors used to administer program expenses and three customer classes from which PPL collects revenues to fund the EE&C programs. *See* PPL Response Brief, p. 23. PPL views the customer sectors as completely divorced from the customer classes, meaning that PPL projects costs for the EE&C Plan, collects the projected costs from the three customer classes, and then incurs actual costs on behalf of the five customer sectors. *See* PPLICA M.B., p. 15. For the four class-specific program sectors, this process works seamlessly because the respective customer class budgets

and program sector budgets are synonymous. *See id.* For the GNI sector, the total sector budget is not attributable to any single customer class because all three customer classes are eligible for the GNI programs. *See id.* According to PPL, applicability of GNI programs to all customer classes simply means that "the GNI sector budget was not broken down by customer class." *See* PPL Response Brief, p. 23. However, as discussed above, the Commission-approved customer class budgets included the GNI sector allocations, thereby confirming each customer class' approved allocation of GNI sector costs as the respective customer class GNI budget. *See* PPLICA M.B., p. 26; *see also* Tr. 141-142.

2. PPL violated the prudency standard by incurring GNI costs in excess of budgeted costs for the Large C&I customers without filing a Petition to modify the Commission-approved allocation.

PPL submits that the Company was not obligated to petition for modification of the Commission-approved GNI allocations. PPL argues that Supplement Nos. 139 and 140 did not constitute major changes requiring submission of a petition for approval because neither filing modified an EE&C program. The record shows that PPL modified its Phase I Plan by incurring actual costs in excess of the Large C&I budget. As the GNI costs incurred on behalf of Large C&I customers in excess of 1% of total GNI costs were never approved by the Commission, recovery of such costs through Supplement No. 139 is improper. With regard to Supplement No. 140, PPL directly modified the Commission-approved allocation of GNI costs without submitting a petition to the Commission for approval of the major change. Therefore, both Supplement Nos. 139 and 140 were imprudently filed in violation of Commission procedures.

PPL agrees that implementation of a major change necessitates a petition to the Commission, but argues that Supplement Nos. 139 and 140 are not major changes because they do not modify the total costs budgeted for the GNI sector. *See* PPL Response Brief, pp. 38-39, 40. This argument is without merit. As discussed above, the Commission approved PPL's

allocation of GNI sector expenses to each customer class, meaning that the allocation is part of the approved EE&C Plan. *See* Section III.D.1., *supra*. Further, the Commission specifically approved customer class budgets including the allocated GNI sector expenses. *See* PPLICA M.B., p. 26. Therefore, when PPL approved GNI sector expenses for Large C&I customers in excess of the initial 1% allocation, PPL imprudently exceeded the Phase I budgeted GNI expenses for Large C&I customers without authority from the Commission. *See* PPLICA M.B., p. 32 As discussed more fully in Section III.D.3., *infra*, PPL continued to wildly exceed the 1% budget, spending no less than 36% of total GNI expense on Large C&I customers during any month between October 2010 and August 2013. *See id.* These excess costs constitute imprudent expenses that should not be permitted for recovery through Supplement No. 139. *See* PPLICA M.B., 30-31.

Additionally, PPL directly modified the Phase II allocation of GNI costs without filing a petition with the Commission. *See* PPLICA M.B., p. 27. While PPL may have had worthy intentions in seeking to modify its Phase II budget to reflect the actual experience from Phase I, this change shifted $12.5 million from Residential and Small C&I customers to Large C&I customers and therefore should have been submitted to the Commission for approval as a major plan change. *See* PPLICA M.B., p. 6.

PPL's claim that Supplement Nos. 139 and 140 did not shift costs between customer classes because all customers are eligible for GNI sector programs constitutes an illogical *non-sequitur* that must be rejected. PPL Response Brief, p. 39. PPL argues that a major change occurs when program costs are adjusted and claims that Supplement Nos. 139 and 140 are not major changes (or changes at all) because they did not modify the total GNI sector budget. *See* PPL Response Brief, pp. 38-39. However, the Commission did not allow PPL to administer

EE&C costs through customer sectors as a vehicle to evade the proscriptions against shifting costs between customer classes. To the contrary, the Commission clarified that:

> ***Because the EDCs' Act 129 Plan will be approved by Commission Order, procedures for rescission and amendment of Commission Orders must be followed to amend that Order and to assure due process for all affected Parties.***
>
> [cite omitted]. Accordingly, if the EDC believes that it is necessary to modify its Act 129 Plan, the EDC may file a petition requesting that the Commission rescind and amend its prior Order approving the plan.
>
> The EDC's petition should explain the specific reasons supporting its requested modifications to its approved plan, *i.e.* the shifting of funds ***between programs or customer classes***, the discontinuation of a program, *etc.* The petition should also contain a request to modify its cost recovery mechanism.

See PPLICA M.B., pp. 28-29 *citing* PPL Phase I Order, p. 93 (Emphasis added). The Commission clearly established that moving customer costs between either program measures or customer classes constitutes a major change. *See id.*

PPL cannot evade the Commission's prohibition on shifting costs between customer classes by creating a GNI sector and claiming that costs can now be shifted freely between customer classes as long as the total sector budget remains unchanged. The Commission approved PPL's request to create a GNI sector only to avoid forcing PPL to add a new GNI customer class to its existing tariff. *See* PPLICA M.B., p. 26. The creation of the GNI customer sector did not in any way absolve PPL of its responsibilities with respect to the three customer classes. *See id.* To the contrary, the Commission based its approval of the multi-class GNI sector on the fact that PPL has assigned, *i.e.,* budgeted, the GNI costs to each customer class. *See id.* PPL cannot claim that the Commission approved the allocation of GNI sector expenses and then somehow argue that the allocation is not part of the EE&C Plan. *See* PPL Response Brief, p. 24; *cf.* PPL Response Brief, p. 31.

Ironically, where PPL alleges that PPLICA confuses customer sectors and customer classes, PPLICA purposefully used the term "customer classes" to illustrate the absurdity of PPL's apparent position that it is required to petition for any reallocation of costs between customer sectors only. For every sector except GNI, any shift of program costs between sectors also shifts costs between customer classes because no other sectors apply to more than one customer class. *See* PPLICA M.B., pp. 15-16. PPL has not explained why the Commission would so stringently prohibit shifting costs between customer classes and then decide that $21 million of total budgeted GNI sector costs can be "assigned" to all customer classes without any specific customer-class based budgeting. *See* PPL Stmt. No. 1, Exhibit PDC-1 (showing total GNI sector budget). PPL's total GNI sector budget also included customer class budgets pursuant to the Commission-approved allocation.

3. Even assuming that PPL is correct that GNI sector costs are not strictly budgeted by customer class, PPL's failure to: (1) monitor and compare actual costs to projected costs during the Phase I Plan; and (2) reconcile to actual costs immediately after the Phase I Plan, still violated the prudency standard.

PPL goes through great lengths to marginalize PPLICA's claims in this proceeding, but fails to address the core matter of how the PUC can make a finding that PPL prudently incurred its Phase I GNI expenses when the utility unabashedly declined to compare actual costs to projected costs on a customer class basis throughout the Phase I period and even during the end-of-Phase reconciliation. Despite PPL's protestations to the contrary, Act 129 and the Commission's Implementation Order clearly anticipated that an EDC would remain cognizant of the relationship between the actual costs to be reconciled at plan end and the projected costs collected from customers through the ACR. Further, the Company's Commission-approved tariff explicitly stated that the projected costs must be reconciled to actual costs on a customer class basis at the end of Phase I. For GNI sector costs, PPL failed to meet these obligations, thereby

depriving customers of any meaningful opportunity to review or prepare for the effects of PPL's Phase I Plan.

Despite PPL's representations, the Company's decision to incur GNI expenses for approximately four years without monitoring or comparing actual costs to projected costs contrasts with generally accepted ratemaking principles, constitutes unacceptable public policy, and fails to comport with the prudency standard required for recovery of costs under Act 129. PPL argues that its management of EE&C expenses was prudent because the Company committed to "tracking the actual costs to the EE&C Plan estimated costs for the five customer sectors" and "tracking actual revenues compared to budgeted revenues for the three customer classes... ." *See* PPL Response Brief, pp. 31-32. Contrary to PPL's constructed bifurcation, four of the five customer sectors are assigned to a single customer class. For the GNI sector, the only customer sector applicable to multiple customer classes, the Commission explicitly rejected a challenge to create a separate GNI customer class because PPL assigned costs within that sector to each customer class. *See* PPLICA M.B., p. 26. Moreover, as explained at length in PPLICA's Main Brief, the prudency requirement enshrined in Act 129 incorporates generally accepted ratemaking principles that require a utility to remain constantly informed as to how revenues collected from a customer class are actually spent. *See* PPLICA M.B., pp. 17-18. PPL was therefore charged with a duty to ensure that the costs assigned to each customer class, including the GNI allocations, were not shifted between customer classes without entry of a Commission Order approving the change. *See id.* The only way to fulfill this duty is to track and compare actual costs to projected, *i.e.,* budgeted costs, on a customer class basis, which PPL failed to do.

By way of clarification, the obligation to track and compare actual costs to projected costs, on a customer class basis, in no way contradicts PPL's Commission-approved levelized

rate and end-of-Phase reconciliation process. PPL grossly oversimplifies its responsibilities by alleging that PPLICA confuses the term "monitoring" with "reconciling." *See* PPL Response Brief, p. 30. PPL defines "monitoring" as tracking actual program costs by rate class and further defines "reconciling" as "comparing the applicable data and, if necessary, adjusting the rate going forward for over collections or under collections." *See id.*; *see also* Tr. 112. These definitions miss the critical point that actual costs can and should be continuously compared to projected costs, even absent any obligation to annually reconcile such costs. PPLICA does not disagree with PPL's definition of "reconciling," but, as discussed below, the term is inapplicable to PPLICA's argument.

PPLICA does not dispute that PPL has no obligation to reconcile actual costs to projected costs on an annual basis. *See* PPLICA M.B., p. 14. PPLICA does dispute the Company's impression that approval of the levelized rate and end-of-Phase reconciliation constitutes a waiver of any responsibility to continuously monitor and compare actual costs to projected, *i.e.* budgeted, costs throughout the Plan. *See* PPL Response Brief, p. 31 (stating that "the final reconciliation is the first and only time that the Company evaluates the actual costs on a customer class level for rate purposes"); *see also* PPLICA M.B., pp. 15-16. Contrary to PPL's intimation, "compare" is not synonymous to "reconcile" in that comparing two costs does not include the corrective action inherent in a reconciliation. As emphasized in PPLICA's Main Brief, the Company cannot meet the Commission's expectation that interim rate adjustments will be considered when necessary if the Company does not at least compare actual costs to projected costs. *See* PPLICA M.B., pp. 16-18. This concern is particularly relevant to GNI sector expenses, where the total program costs do not correlate to a specific customer class.

Finally, PPL also failed to conduct its end-of-Phase reconciliation in the manner set forth in its Commission-approved tariff. As stated in PPLICA's Main Brief, PPL's ACR Tariffs require the Company to reconcile collections from each customer class to the Commission-approved EE&C Plan costs for each customer class. *See* PPLICA M.B., p. 22. PPL does not dispute that the end-of-Phase reconciliation included projected costs, but generally avers that several actual costs were not available. *See* PPL Response Brief, p. 26. PPL's claim that certain costs were unavailable fails to exonerate the reconciliation error because the Company failed to disclose that the reconciliation incorporated projected costs and instead represented that the end-of Phase reconciliation included actual costs through April 30, 2013. *See* PPLICA M.B., pp. 19, 23. Importantly, although PPL repeatedly asserts that actual costs were not available at the time of the end-of-Phase reconciliation, this claim is not supported by the record.[7] *See* PPL Response Brief, p. 26; *cf.* PPLICA M.B., pp. 19, 23.

PPL claims that two categories of costs were unavailable at the time the end-of-Phase reconciliation went into effect. The Company represents that both the actual per-customer class GNI costs and the additional costs coming in after April 30, 2013 were not available. *See* PPL Response Brief, p. 26. PPLICA understands that costs incurred after April 30, 2013, were not available, and further notes that the filed calculation of the end-of-Phase reconciliation clearly stated that all costs after April 30, 2013, were projections. *See* PPLICA M.B., p. 22. However, PPL's claim that the actual per-customer class GNI costs were not available is not supported by the record. At the evidentiary hearing, PPL Witness Peter D. Cleff confirmed that his

[7] PPL also suggests that the end-of-Phase reconciliation is irrelevant because Supplement No. 139 replaced the prior Tariff Supplement implementing the end-of-Phase reconciliation rates. *See* PPL Response Brief, p. 26. This argument lacks credibility because PPL cited the calculation errors from the end-of-Phase reconciliation (filed as Supplement No. 134) as the primary reason for filing Supplement No. 139. *See* Supplement No. 139, p. 2; *see also* PPLICA Stmt. No. 1, Appendix C.

department "was continually tracking GNI costs to a customer class level" during Phase I, meaning that when PPL incurs GNI expenses on behalf of a Large C&I customers, the costs are classified as both GNI costs and sub-classified as Large C&I GNI costs. *See id.* at 19. PPL Witness Bethany Johnson, in stark contrast to Mr. Cleff, claimed that actual per-customer class GNI costs were unavailable when calculating the Phase I reconciliation because "the company was not – was not comparing actual GNI costs by customer class to anything." *See id.* at 23.

The testimony of these witnesses shows that the actual per-customer class GNI costs were available as of April 30, 2013 and throughout the Phase I Plan, but simply not compared to to projected costs or incorporated into the final reconciliation. *See id.* at 19, 23. Although the initial error was likely unintended, PPL's efforts to continually represent that actual GNI cost data incurred as far back as January 2010, was unavailable as of April 30, 2013, are inexcusable. *See* PPLICA M.B., pp. 19, 23; *see also* PPL Response Brief, p. 26. Both the initial error and the subsequent lack of disclosure demonstrate further imprudence supporting PPLICA's request to deny recovery of the GNI costs reallocated to Large C&I customers through Supplement Nos. 139 and 140.[8]

E. PPL's suggestion that PPLICA members "benefitted" from Supplement Nos. 139 and 140 is further indicative of the Company's imprudent management of GNI expenses.

PPL also alleges that the unexpected reallocation of $25 million to Large C&I customers actually confers a benefit to PPLICA's members. Regardless of the outcome or the technical positions taken in this proceeding, this statement represents a disturbing lack of appreciation for the factual circumstances underlying the Complaints. Even assuming *arguendo* that PPL

[8] At the very least, the additional GNI sector costs proposed for recovery through Supplement Nos. 139 and 140 must be denied to the extent that PPL's incurrence of $28.8 million in total GNI expenses exceeded the total GNI sector budget of $21 million. *See* PPL Stmt. No. 1, Exhibit PDC-1 (showing that PPL exceeded the $21 million Commission-approved GNI sector budget by about $7.7 million).

managed its EE&C Plan precisely as intended by the Commission, and further assuming that the reallocation of $25 million to Large C&I customers (less than four months after the end-of-Phase reconciliation showed a refund for the class) is overlooked as an unintended consequence of the Commission-approved cost recovery terms, PPL's argument that these circumstances benefit Large C&I customers pays short shrift to the Commission's directive to involve stakeholders in the EE&C Plan process. This statement alone highlights the imprudent management of PPL's EE&C Plan and merits denying recovery of the GNI reallocations proposed through Supplement Nos. 139 and 140.

PPL claims that PPLICA members would have paid the same amounts sooner or later regardless of when the Company reconciled EE&C costs. *See* PPLICA Response Brief, p. 44. PPL argues that PPLICA's members benefitted from the "present time value of money" because PPL does not collect interest on ACR over and undercollections. *See id.* This statement is deficient both factually and as a matter of policy.

One of the principal harms outweighing PPL's purported benefits is the lack of due process afforded by PPL's management of GNI sector expenses. *See* PPLICA M.B., p. 33. The Commission's Implementation Order directed PPL to engage stakeholders throughout its administration of the EE&C Plan. *See id.* PPLICA welcomed this opportunity and participated in the Company's Phase I stakeholder meetings. Throughout the Phase I Plan, only PPL had access to the data showing that the actual per-customer class GNI costs were dramatically divergent from the Commission-approved allocations. Notwithstanding the legality of PPL's continuing to issue rebates to Large C&I customers after exceeding the budgeted allocation or failing to petition for approval of a revised allocation, the Company at the very least could have, and should have acted with enough prudence to disclose this information to customers and/or the

Commission. As stated in PPLICA's Main Brief, PPL distributed at least 36% of total monthly GNI costs to Large C&I accounts in every month of the Phase I Plan between October 2010 and August 2013. This information remained under lock and key until PPLICA began its investigation of Supplement Nos. 139 and 140.

Had PPL disclosed this data sooner, stakeholders could have suggested alternatives for improving PPL's marketing efforts to Small C&I customers (thus bringing the GNI allocation closer to that which the Commission approved) or discussed the possibility of staggering the impact by implementing a one-time interim adjustment for part of the undercollection and reconciling the remainder at the end of Phase I. At the very least, notice of the fact the actual GNI costs were far exceeding the ACR-1 collections would have allowed Large C&I customers to incorporate the monthly undercollections into their longer term budgeting instead of reacting to a significant and completely unexpected rate adjustments set forth in Supplement Nos. 139 and 140. However, PPL denied Large C&I customers of any opportunity to proactively address the unexpectedly high usage of GNI programs by qualifying Large C&I customers.[9] PPL's efforts to portray its lack of transparency as a purported benefit to Large C&I customers is highly inappropriate and should be considered by the Commission in addressing the Complaints.[10]

[9] None of PPLICA's members qualify for GNI program rebates.

[10] Additionally, PPL's lack of transparency regarding a substantive and fundamental ratemaking matter is particularly egregious when considered in light of the Company's attack on the credibility of PPLICA Witness Michael K. Messer. PPL questions Mr. Messer's credibility because the witness responded to discovery stating that he did not contact Large C&I customers, but later stated on the stand that he did have some discussions with Large C&I customers. *See* PPL Response Brief, p. 44. While PPL alleges that Mr. Messer engaged in a "game of semantics" a review of the transcript clearly shows that Mr. Messer attempted to distinguish between his "contacting" other Large C&I customers through affirmative means such as telephone calls and emails, versus chance "discussions" in the ordinary course of business with his business partners. *See id*; *cf.* Tr. 72-73.

IV. CONCLUSION

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

(1) Enter an Order confirming that PPL failed to conform to the Commission Order approving PPL's Phase I EE&C Plan, Act 129, and Sections 1301 and 1307 of the Public Utility Code by recovering budgeted GNI sector costs from customers, but declining to monitor actual per-customer class GNI sector costs;

(2) Enter an Order confirming that PPL failed to conform to the Commission Order approving PPL's Phase I EE&C Plan, the Commission Order approving PPL's Phase II EE&C Plan, Act 129, and the Minor Plan Change Order by modifying GNI rate allocations without filing a Petition with the Commission;

(3) Enter an Order partially denying Supplement No. 139 and enjoining PPL from collecting revenues from Large C&I customers attributable to any divergence from its original GNI customer class cost assignments for the Phase I Plan;

(4) Enter an Order partially denying Supplement No. 140 and enjoining PPL from collecting revenues from Large C&I customers attributable to any divergence from its original GNI customer class cost assignments for the Phase II Plan;

(5) Enter an Order directing PPL to implement refunds of all revenues collected from Large C&I customers pursuant to the shift of GNI sector revenue from Supplement Nos. 139 and 140, but excluding revenues associated with correcting the billing demand errors reported in Supplement Nos. 139 and 140;

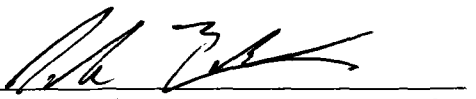
(6) Alternatively, enter an Order directing PPL to implement refunds of all revenues collected from Large C&I customers pursuant to the shift of GNI sector revenue from Supplement Nos. 139 and 140 and exceeding the original budget for total GNI expenses, but excluding revenues associated with correcting the billing demand errors reported in Supplement Nos. 139 and 140;

(7) Enter an Order directing PPL to submit a Compliance Filing proposing the methodology for issuing refunds and showing the calculation of refunds of all revenues collected from Large C&I customers pursuant to the shift of GNI sector revenue from Supplement Nos. 139 and 140, but excluding revenues associated with correcting the billing demand errors reported in Supplement Nos. 139 and 140; and

(8) Provide any other relief deemed necessary and reasonable.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

Pamela C. Polacek (Pa. I.D. No. 78276)
Adeolu A. Bakare (Pa. I.D. No. 208541)
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300
ppolacek@mwn.com
abakare@mwn.com

Counsel to the PP&L Industrial Customer Alliance

Dated: October 14, 2014