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January 13, 2015

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

VIA ELECTRONIC FILING

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

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission is the Exceptions 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)
Office of Special Assistants (via Email)
Certificate of Service

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CERTIFICATE OF SERVICE

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

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Dated this 13th day of January, 2015, 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	:	

**EXCEPTIONS OF THE
PP&L INDUSTRIAL CUSTOMER ALLIANCE**

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Dated: January 13, 2015

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I. INTRODUCTION

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 to become effective on ten days notice. First, Supplement No. 139 proposed to revise PPL's Phase I reconciliation costs to reflect actual costs incurred for each customer class during the Company's Phase I Energy Efficiency and Conservation ("EE&C") Plan. This revision was primarily 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. This caused PPL to incur costs that were inconsistent with its approved Phase I Plan. Additionally, Supplement No. 139 proposed to correct the billing demands for Large Commercial and Industrial ("C&I") customers, following PPL erroneously calculating the

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.

ACR-1 reconciliation 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 proposed to become effective on ten days notice, would 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 processed during the Company's Phase I EE&C Plan. Additionally, Supplement No. 140 proposed to correct the billing demands for Large C&I customers, following PPL erroneously calculating the ACR-2 effective as of June 1, 2013, based on customers' monthly billing demand data instead of the appropriate PLC data.

On November 1, 2013, PPLICA filed a letter with the Commission's Secretary reserving all rights to file a Complaint or take other action following further review of Supplement Nos. 139 and 140.³

On December 23, 2013, PPLICA⁴ 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 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

³ PPLICA initially filed letters to Docket Nos. M-2009-2093216 and M-2012-2334388, as reflected on Supplement Nos. 139 and 140, on October 31, 2013. Upon notice that the Commission had reassigned the filings to 2013 Docket Nos., PPLICA refiled the letters to Docket Nos. M-2013-2389549 and M-2013-2389551 on November 1, 2013.

⁴ PPLICA's members are listed on the cover page of these Exceptions.

a Main Brief on September 9, 2014. PPL filed a Response Brief on September 30, 2014. PPLICA further filed a Reply Brief on October 14, 2014.

On December 24, 2014, ALJ Colwell issued a Recommended Decision ("R.D.") denying PPLICA's Complaints. Pursuant to the Secretarial Letter attached thereto, PPLICA hereby files the below Exceptions to the R.D.

II. EXCEPTIONS

A. Exception No. 1: The R.D. Erred in Finding that PPLICA Bears the Burden of Proof in This Proceeding. (R.D. pp. 9-12).

The R.D. erroneously concluded that PPLICA bears the burden of proof in this proceeding. In doing so, the R.D. misconstrued the arguments set forth in PPLICA's briefs and drew unsupported distinctions between the "Commission-made" rates doctrine and the proposed rates standard from Section 315 of the Public Utility Code. *See* R.D., p. 9. As demonstrated in PPLICA's Main and Reply Briefs, the rates recovered through Supplement Nos. 139 and 140 were not formally approved by the Commission and, although permitted to become effective by staff, remained proposed rates. Accordingly, the R.D.'s observation that PPLICA failed to show that the rates collected through Supplement Nos. 139 and 140 are proposed rates is incorrect.

The R.D. correctly identifies the relevant statutory authority, but adopts an oversimplified interpretation of the statutory language. As stated in the R.D., Section 315 of the Public Utility Code places the burden of proof on the public utility where a complaint challenges proposed rates, indicating that the complainant will bear the burden of proof when challenging existing rates. *See* R.D., p. 9. However, the R.D. finds that PPLICA failed to show that the rates at issue are proposed rates and instead relied on the Commission-made rates doctrine. *See* R.D., p. 10.

The R.D. bases its distinction between the proposed rates standard and the Commission-made rates doctrine on PPL's flawed arguments. As cited in the R.D., PPL argues that "[i]t is

well established that the Commission-made rates doctrine is not applicable to 1307 automatic adjustment clauses." *See* R.D., p. 10. To the contrary, the caselaw cited by PPL shows that the Commission does not consider the Commission-made rates doctrine to be "inapplicable" to Section 1307 automatic adjustment clauses. Rather, the Commission has applied the doctrine and found that the active recovery of rates through an automatic adjustment clauses does convey the protection of a Commission-made rate. For example, a case cited by PPL for the proposition that the Commission-made rates doctrine is inapplicable to Section 1307 automatic adjustment clauses actually states that "all fuel revenues and expenses, whether in the GCR or in base rates, are subject to review within our GCR procedure and are not commission-made rates." *Investigation of Gas Cost Rate No. 5*, Docket Nos. M-78050055, *et al*, 1984 WL 1022187 (Pa.P.U.C.) (Order entered March 16, 2984). This statement does not render the Commission-made rates doctrine irrelevant or inapplicable to Gas Cost Rate at issue in *Investigation of Gas Cost Rate No. 5*, but rather shows that, contrary to Section 1308 rates that must be formally approved prior to assessment to ratepayers, rates collected through an automatic adjustment clause may not be protected by the Commission-made rates doctrine.

Consistent with the analysis in *Investigation of Gas Cost Rate No. 5*, the Commission-made rate doctrine does is not inconsistent with the proposed rate standards set forth in Section 315 of the Public Utility Code. The R.D. draws an unsupported distinction between the Commission-made rates doctrine and the proposed rates standard based on PPL's erroneous claim that "PPLICA fails to articulate how rates that are currently being charged to customers can be considered 'proposed' rates as opposed to 'existing' rates." R.D., p. 10. Both the R.D. and PPL mistakenly assume that the distinction between a proposed rate and an existing rate turns on whether the rate has been collected from customers. However, as indicated in *Investigation of*

Gas Cost Rate No. 5, the appropriate demarcation between existing and proposed rates is whether the rates in question were approved by the Commission.

Automatic adjustment clauses such as PPL's ACR-1 and ACR-2 can be used to implement substantial rate changes on less notice than the statutory 60-days notice required by Section 1308(a) of the Public Utility Code, 66 Pa. C.S. § 1308(a). In this proceeding, PPL increased its ACR-1 and ACR-2 for the Large C&I Class by 162% on 10-days notice. *See R.D.*, p. 7. A Commission ruling that the automatic adjustment clause shifted the burden of proof regarding the lawfulness of this substantial rate change to PPL's customers after the 10-day notice period expired would deprive customers of their due process rights under this and all automatic adjustment mechanisms that sanction rate changes on less than the statutory notice period. The purpose of automatic adjustment clauses is to balance the interests of the utilities in implementing "mechanical" rate adjustments for certain costs with the ratepayers' due process rights, not to fundamentally alter the burden of proof. *See Nat'l Fuel Gas Distribution Corp. v. Pennsylvania Pub. Util. Comm'n*, 473 A.2d 1109, 1119 (1984) (hereinafter "*NFG*").

The Commission has addressed the fundamental purpose of automatic adjustment clauses and clarified the importance of preserving due process rights for customers. The Commonwealth Court addressed the purpose of automatic adjustment clauses, finding that "the Pennsylvania Supreme Court has recognized that the Commission does require prior approval and that this factor is important to establishing the constitutionality of the GCR automatic rate adjustment mechanism." *See NFG* 472 A.2d at 1118 *citing Allegheny Ludlum Steel Corp. v. Pennsylvania Public Utility Commission*, 459 A.2d 1218, 1222 (1983). Importantly, the court determined that prior approval includes both approval of the 1307 mechanism and any actual rates derived therefrom. *See NFG* 472 A.2d at 1118. Accordingly, the court found that the Commission may approve a tariff methodology, but must still approve the resulting rates. *See id.* This approval is conveyed through the annual

reporting and public hearing process required pursuant to Section 1307(e). *See* 66 Pa. C.S. § 1307(e); *see also* Secretarial Letter approving Act 129 Compliance Rider Surcharge Effective June 1, 2012, Docket No. M-2012-2302069.

As discussed in PPLICA's Reply Brief, Supplement Nos. 139 and 140 were not approved by the Commission before PPLICA filed its Complaints. *See* PPLICA R.B., p. 6. The cursory Bureau of Audits review does not convey Commission approval as such authority was not delegated to staff pursuant to Section 5.44 of the Commission's Regulations. *See* PPLICA M.B., p. 12; *see also* PPLICA R.B., p. 6. As discussed above, interim rate adjustments such as Supplement Nos. 139 and 140 are reviewed by the Bureau of Audit and permitted to become effective without formal Commission approval. *PPL Electric Utilities Corporation Act 129 Compliance Rider – Phase I*, Secretarial Letter, M-2013-2389549 (November 1, 2013) ("Supplement No. 139 SL"); *PPL Electric Utilities Corporation Act 129 Compliance Rider – Phase II*, Secretarial Letter, M-2013-2389551 (November 1, 2013) ("Supplement No. 140 SL"). To the contrary, PPL submits annual ACR-1 and ACR-2 proposed rate changes that are first reviewed by the Bureau of Audits *and* subject to additional Commission review, where the Commission either adopts or rejects the findings from the Bureau of Audits at a Public Meeting. *See id.* Therefore, consistent with the due process requirements applicable to automatic adjustment clauses, interim adjustments to PPL's ACR-1 or ACR-2, although permitted to become effective upon 10-days notice, remain proposed rates subject to continuous Commission approval, including approval through the 1307(e) annual review process.

The R.D.'s finding that PPLICA bears the burden of proof relies on a faulty premise and should be reversed. The rates implement through Supplement Nos. 139 and 140 were not approved by the Commission and remained proposed rates as of the filing of PPLICA's Complaints. Alternatively, even if PPLICA bears the burden of proof, PPLICA has carried 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* PPLICA R.B., p. 6.

B. Exception No. 2: Supplement Nos. 139 and 140 Are Not Consistent With PPL's Tariff. (R.D. pp. 17, 20).

The R.D. overlooked the fact that the procedures set forth in PPL's ACR tariffs provide no authority for Supplement Nos. 139 and 140. The R.D. focuses exclusively on PPLICA's claim that Supplement Nos. 139 and 140 constitute major changes to PPL's EE&C Plans. *See* R.D., p. 20. Although these claims remain valid, PPLICA additionally set forth evidence showing that Supplement Nos. 139 and 140 conflict with express provisions of PPL's tariff prohibiting the Company from shifting costs between customer classes through an interim rate adjustment and directing the Company to reconcile collected costs to actual costs. As PPL was not authorized to file an interim rate adjustment shifting costs between customer classes or reconcile collected costs to budgeted costs instead of actual costs, the Commission must deny recovery of the revenues proposed through Supplement Nos. 139 and 140 to preserve the integrity of PPL's tariff and its Orders approving PPL's EE&C Plans.

The R.D. emphasizes PPL's obligation to follow Commission-approved tariff provisions, but proceeds to overlook key violations observed in PPLICA's briefs. After reviewing the cost recovery and reconciliation provisions applicable to Act 129 EE&C Plans, the R.D. recounts the well-established rule that "a tariff provision has the full force and effect of law and is binding on the utility and its customers." *See* R.D., p. 17. Unfortunately, in determining the appropriate interpretation of PPL's ACR tariffs, the R.D. addresses only the question of whether Supplement Nos. 139 and 140 constitute "major changes" necessitating Commission approval. *See* R.D.,

p. 20.⁵ This approach ignores the evidence showing that Supplement Nos. 139 and 140 were filed in violation of PPL's tariff.

The R.D. acknowledges that PPL filed Supplement Nos. 139 and 140 pursuant to its authority to file interim rate adjustments, but ignores the tariff language limiting interim rate adjustments to intraclass variances. As presented in PPLICA's Reply Brief, the tariff language authorizing interim rate adjustments for PPL's EE&C rates references only intraclass rate adjustments. *See* PPLICA Stmt. No. 1, Appendix C, p. 46. Specifically, the tariff provides as follows:

Upon determination that *a customer class's* ACR-1, if left unchanged, would result in a material over or undercollection of Phase 1 [*sic*] 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 R.B., p. 7 *citing* PPLICA Stmt. No. 1, Appendix C, p. 46. (Emphasis added). Importantly, the tariff outlines this authority in the section addressing *the annual reconciliation, not the end-of-phase reconciliation*. *See* PPLICA Stmt. No. 1, Appendix C, p. 46. As described in the R.D., the annual reconciliation only accounts for adjustments to reflect overcollections due to higher or lower sales volumes, which affects solely *intraclass revenues*. *See* R.D., p. 25; *see* PPLICA R.B., p. 7. This limitation is particularly evident when the language is considered in the context of the general rule that EE&C costs cannot be shifted between customer classes without express Commission approval. *See* PPLICA R.B., p. 7.

Additionally, PPL's EE&C tariffs also set forth specific proscriptions for the end-of-phase reconciliations. Again, the R.D.'s emphasis on the question of whether Supplement No. 139 constituted a major change obscures the equally important question of whether the

⁵ As explained in Exception No. 4, the R.D. erroneously concluded that Supplement Nos. 139 and 140 were not major changes.

Tariff Supplements are consistent with the reconciliation provisions approved by the Commission. In pertinent part, PPL's ACR-1 tariff establishes that "[a]t the conclusion of the Phase I EE&C Plan on May 31, 2013, collections for each customer class will be reconciled to the total cost of the EE&C Plan allowed by the Commission for that customer class." See PPLICA M.B., p. 22 *citing* PPLICA Stmt. No. 1, Appendix C, p. 46; *see also* PPL Phase I Order, p. 64 (directing PPL to reconcile collections to actual costs). In plain and unequivocal terms, this language confirms that PPL was obligated to reconcile the collections for each customer class against the costs actually allowed for each customer class. The amount "allowed" for the class is the class expenditures approved in the Plan. For Phase I, the Commission explicitly approved an allocation of GNI measure costs to the Large C&I class that was much lower than what PPL disbursed. The costs in excess of that allocation were not "allowed" for the Large C&I class.

The R.D. understates the impact and importance of this error. The R.D. briefly states that "[w]hen the Company made its reconciliation filing, it did not update the allocation factors for the three GNI classes." See R.D., p. 25. PPL does not have "GNI" customer classes. There are Residential, Small C&I, and Large C&I customer classes, to which PPL initially allocated, *i.e.* budgeted, a specific percentage of the GNI sector costs. See PPLICA M.B., p. 27. The customer class budgets collected from each class throughout the Phase I period included the following cost assignments: 84.79% Small C&I, 1.16% Large C&I, and 14.05% Residential. See PPLICA M.B., p. 27 *citing* PPLICA Stmt. No. 1, Appendix C, p. 55. However, when conducting the Phase I reconciliation, PPL confirmed that the GNI costs reported as actual costs in the filing included the previously-approved allocations instead of the actual disbursements. See PPLICA M.B., p. 23 *citing* Tr. 142-143, 150 (PPL Witness Bethany Johnson confirming on cross-examination that GNI costs reported as actual costs as of April 30, 2013, included projected

allocations). Accordingly, none of the customer class totals reconciled by the Company at the end of its Phase I Plan properly reflected the actual customer class disbursements because each customer class was based on the previously approved allocation of total GNI costs. As explained in Exception No. 3 *infra*, PPL's disbursement of the Large C&I GNI grants in a manner that was inconsistent with the previously approved allocation violated its Commission-approved Plan and required a major plan change filing.

The R.D. appears to excuse PPL's failure to reconcile budgeted costs to actual costs because of an unexpected surge in GNI applications received after May 31, 2013. This "surge" is a classic red herring argument propped up by the Company. In truth, the additional applications received after May 31, 2013 bear little relevance to the Company's failure to reconcile projected GNI costs for each class to actual GNI disbursements for each customer class. As clearly demonstrated by the month-to-month GNI collections listed in Exhibit JP-1 to PPLICA Stmt. No. 1, the ratio of GNI costs incurred on behalf of each customer class remained relatively constant throughout PPL's Phase I Plan. *See* PPLICA M.B., p. 20. From the very beginning, it was clear that PPL was approving projects from Large C&I GNI accounts that would exceed the Commission-approved allocation. *See* Exhibit JP-1 to PPLICA Stmt. No. 1 (showing that PPL had exceeded the total Commission-approved Large C&I allocation of GNI expenses by July 2010). As further discussed below, the surge of applications received after May 31, 2013 only affected the total amount of GNI costs incurred, it did not affect the relative percentage of GNI costs incurred for each customer class.

The record fully discredits any claim that the "surge" justifies Supplement Nos. 139 and 140. For example, Exhibit JP-1 to PPLICA Stmt. No. 1 shows that PPL only incurred a total of approximately \$4.9 million in total GNI costs after May 31, 2013, of which \$1.54 million was

incurred on behalf of Large C&I customers. Therefore, only \$1.54 million of the total \$12.2 million in costs reallocated to Large C&I customers through Supplement No. 139 can be attributed to the surge. *See* PPLICA M.B., p. 6. The more significant driver of Supplement No. 139, and the parallel adjustment implemented through Supplement No. 140, was PPL's failure to reconcile projected costs to the actual costs incurred throughout the Phase I Plan. The gravity of this error was also illustrated through Exhibit JP-1 to PPLICA Stmt. No. 1. As evidenced therein, the percentage of GNI costs incurred on behalf of Large C&I customers in each month from 2010 – 2013, *i.e.* both before and after the surge, was approximately 40%, compared to approximately 60% for Small C&I customers. *See id.*; *see also* PPLICA M.B., p. 32. Accordingly, while PPL budgeted approximately \$300,000 of its total GNI sector costs to the Large C&I class, the Company actually spent a total of \$9.4 million of total GNI sector costs on Large C&I customers, of which approximately \$7.8 million was incurred before the "surge." *See* Exhibit JP-1 to PPLICA Stmt. No. 1.

Aside from PPL's failure to notify customers and stakeholders that its costs had significantly exceeded its budgeted allocations, PPL certainly had a duty to at least conduct a reconciliation reflecting the actual customer class costs, including GNI costs, particularly since the Company has acknowledged that it was tracking the actual GNI costs by customer class and had the information available at the time the reconciliation was calculated. *See* PPLICA R.B., pp. 19-20. PPL instead reconciled Large C&I collections against the budgeted \$300,000 costs instead of the actual \$7.8 million in costs incurred by the end of PPL's Phase I Plan. Regardless of the subsequent surge in GNI applications, PPL had an obligation to conduct a reconciliation reflecting the actual GNI costs incurred on behalf of each customer class and the Company failed to do so.

Similarly, Supplement No. 140 did not implement an intraclass rate change, but rather shifted costs between customer classes. As discussed above, the interim rate adjustment mechanism set forth in PPL's tariff allows the Company to make interim adjustments to reflect variances due to sales volumes, but remains subject to the prohibition against interclass cost shifting established by the Minor Plan Change Order. *See* PPLICA M.B., pp. 28-29; *see also* PPLICA R.B., p. 7. PPL used the interim rate adjustment for different purposes and implemented a change to interclass budgeted allocations shifting \$12.5 million to Large C&I customers because PPL unilaterally determined that the Phase I actual costs should be reflected in the Phase II budget allocation. *See* PPLICA R.B., p. 14. However, well-intentioned, this is indeed a major change and therefore improperly filed as an interim rate adjustment.

The Company's failure to conduct a reconciliation consistent with its tariff or modify its Phase II budgeted allocation through the procedures established by the Commission adversely affected its customers. Customers relied on the reconciliation report provided by PPL and accepted the Company's representation that the rates placed into effect on June 1, 2013 included actual costs through the end of Phase I. If PPL had conducted a reconciliation consistent with its tariff, the GNI adjustments implemented through Supplement No. 139 would be limited to the additional \$1.54 million in costs attributable to the increase in GNI costs for Large C&I customers incurred through the surge. Additionally, if PPL had proposed the revised Phase II budget allocation through a Petition for a Major Plan Change, the Commission would have had an opportunity to review stakeholder input and preserve due process by formally approving the modification. PPL should not be permitted to conduct a flawed reconciliation, disregard PUC procedures, and then force customers to incur tremendous unanticipated expenses due to its errors. For these reasons, Supplement Nos. 139 and 140 should be denied.

C. Exception No. 3: The Costs to be Recovered through Supplement Nos. 139 and 140 Were Not Prudently Incurred and Therefore Fail to Qualify for Cost Recovery Under Act 129.
(R.D. pp. 19, 22).

The R.D.'s finding that PPL's actions in carrying out its EE&C Plan were consistent with the Commission's statutes, regulations or orders conflicts with the Commission's Act 129 Implementation Order, Act 129 itself, and the binding obligations imposed by Section 1301 of the Public Utility Code. The R.D. characterizes the Commission's obligations in approving PPL's EE&C as a monolithic duty to apply levelized rates to minimize rate volatility throughout the duration of each EE&C Plan. *See* R.D., p. 25. This analysis overlooks other concerns identified in the Commission's Implementation Orders, such as the importance of stakeholder participation and the necessity to avoid significant over or undercollections for reconciliation at the end of each EE&C Plan. Further, the ALJ's limited analysis fails to recognize that PPL's administration of the EE&C Plans remains subject to the Commission's general ratemaking authority pursuant to Section 1301 of the Public Utility Code. In consideration of these protections, the ALJ erred in finding that Supplement Nos. 139 and 140 are consistent with the Commission's statutes, regulations, and orders.

The R.D. takes a very narrow view of the Company's obligations in administering its EE&C Plan. The R.D. essentially distills the Company's responsibilities to the preservation of levelized rates and concludes that the "the possibility for the projections for program usage might be significantly off the mark despite earnest attempts to accurately predict rate class usage was foreseeable at the time of the EE&C Plan approval and was apparently seen by the Commission as an acceptable risk." *See* R.D., p. 25. As such, the R.D. exonerates PPL from any duty to inform either itself or its customers of the tracking of actual costs throughout its EE&C Plan. Specifically, the R.D. avers as follows:

However, the question of whether a responsible utility should have been closely tracking data and performing comparisons between actual and estimated costs and revenues is simply theoretical. There is no actual requirement that the Company engage in these comparisons prior to the reconciliation at the end of the Plan.

R.D., p. 22. These findings are inconsistent with the customer protections set forth in the Commission's Implementation Order, Act 129, and the Public Utility Code.

PPLICA has identified numerous customer protections designed to protect customers from the kind of significant and unanticipated rate adjustments proposed by PPL through Supplement Nos. 139 and 140. First, consistent with Act 129, the Commission limited costs recoverable through EE&C Plans to the costs approved by the Commission for each customer class. *See* PPLICA M.B, p. 15. Act 129 only allows EDCs to recover "prudent and reasonable" plan costs. *See id.* at 17. The Phase I Implementation Order incorporated this limitation, signifying the Commission's intent to provide customers with a degree of certainty regarding the costs potentially recoverable from each class as follows:

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.

PPLICA M.B., p. 15 *citing* Phase I Implementation Order, p. 38 (Emphasis added). As discussed in PPLICA's Main Brief, PPL opted to administer its Phase I EE&C Plan using five customer sectors, Residential, Low-Income, Small C&I, Large C&I and GNI, instead of the three customer classes reflected in its tariff, *i.e.* the Residential, Small C&I, and Large C&I customer classes. *See* PPLICA M.B., p. 15. However, pursuant to the Phase I Implementation Order, PPL remained obligated to assign costs on a customer class basis, which the Company did by assigning all Low-Income sector costs to Residential customers and assigning a portion of its budgeted GNI costs to each customer class. *See id.* As discussed more fully in PPLICA's

Exception No. 4, *infra*, the Company violated this protection by administering its Phase I Plan inconsistently with the Commission's approved customer class budgets, and by utilizing Supplement Nos. 139 and 140 to recover GNI costs from Large C&I customers outside of the budgeted GNI costs assigned to such customers.

Second, while the Commission approved PPL's request to implement levelized rates, the Commission also expressed concern that the levelized rate should be subject to potential mid-course corrections to address concerns raised by stakeholders. *See* PPLICA M.B., p. 16. The Commission, by emphasizing the necessity of stakeholder involvement, clearly declined to prioritize levelized rates above all other ratemaking concerns. *See id.* However, if the Commission adopts the R.D., the protection afforded by its support for stakeholder participation will be rendered meaningless as to PPL's GNI costs because stakeholders cannot meaningfully review or discuss PPL's GNI costs unless the Company actively monitors and reports its comparisons of actual costs and budgeted allocations. *See id.* This is a necessary corollary of the fact that the GNI sector costs do not overlap with any particular customer class, which should obligate PPL to constantly monitor and report actual GNI costs as necessary to preserve the integrity of the stakeholder process.

Third, even if PPL's EE&C Plans remained silent on the Company's duty to monitor and report actual costs, the Commission's general authority over rates charged by public utilities provide sufficient authority to deny Supplement Nos. 139 and 140 for failure to meet the standards for just and reasonable rates. As discussed in PPLICA's Exception No. 1, the rates charged through Supplement Nos. 139 and 140 remain subject to Commission review. As such, the Commission remains authorized to find such rates to be in violation of the prudence and just and reasonable standards. *See* PPLICA M.B, p. 17. The parties could have engaged in a

meaningful discussion of the focus of the GNI measures and whether changes to the previously-approved interclass allocation were just, reasonable and appropriate. PPLICA Witness Jeffrey Pollock outlined the principal reasons justifying such a finding in this case:

When a rate is known to be significantly over(or under)-collecting, the appropriate step would be to either revise the rate or change the program such that the costs were more in line with the rate so that when the rate is eventually reconciled, it will not have a significant undue impact on customers. This can be done with a rate that has been structured to provide levelized recovery when the utility monitors its cost assumptions and realizes that a significant amount of additional costs will be shifted from one class to another, as has been proposed here. Thus, even if Mr. Cleff's contention was correct, PPL's administration of the ACR-1 rider was contrary to accepted ratemaking practices.

PPLICA M.B., pp. 17-18 *citing* PPLICA Stmt. No. 1, p. 10. The Commission should deny the R.D.'s tacit acceptance of PPL's lack of diligence and invoke its authority to preserve the highest ratemaking standards for public utilities entrusted as stewards of customer revenues.

PPL's failure to monitor actual GNI costs and communicate with stakeholders severely hampered the effectiveness of the stakeholder process and would adversely affect customers if the Commission approves Supplement Nos. 139 and 140. Contrary to the R.D.'s concern that tracking and immediately updating rates would create "wildly fluctuating" rates contrary to the levelized rate structure, the real outcome would be to allow to PPL and its stakeholders to engage in productive and meaningful discussions regarding the operation and funding of the EE&C Plans, including situations that could result in significant over and undercollections between customer classes. *See* R.D., p. 25; *but cf.* PPLICA R.B., p. 22. As articulated by PPLICA Witness Jeffrey Pollock:

Had PPL properly monitored the cost recovery mechanism, as it committed to do, it could have brought the cost shifting issue to the attention of the Stakeholders and the Commission. Through the stakeholder process, remedies could have been proposed and eventually implemented that could have mitigated the cost shift thereby eliminating the need to now make substantial changes in the cost recovery mechanism.

PPLICA M.B., p. 24 *citing* PPLICA Stmt. No. 1, p. 17. Mr. Pollock's vision seems far more in accordance with the Commission's intent in requiring the Company to participate in semi-annual stakeholder meetings than the R.D.'s "laissez-faire" approach.

Finally, Section 2806.1(a)(11) regarding customer class cost recovery, does not absolve the EDC if costs were recovered contrary to the approved Plan. The R.D. reiterates PPL's refrain that "the Public Utility Code requires that the EE&C Plan include cost recovery to ensure that measures approved are financed by the same customer class that will receive the direct energy and conservation benefits." *See* R.D., p. 14 *citing* 66 Pa. C.S. 2806.1(a)(11). Although accurately stated, this provision does not in any way exempt PPL from the separate and independent requirement that EE&C tariffs only authorize recovery of "prudent and reasonable costs of the plan, including administrative costs, as approved by the commission." *See* 66 Pa. C.S. § 2806(b)(H); *see also* PPLICA R.B., pp. 8-9. Nor does it absolve PPL of its obligation to implement the EE&C Plan as approved by the Commission, including submission of any changes for approval unless those changes have been executed under the Implementation Orders. These statutes combine to require that all costs recovered by PPL for EE&C expenses correspond to Commission's standards for prudence and reasonableness, both through prescribed directives and general ratemaking practices. *See supra*, p. 14; *see* PPLICA M.B, p. 17. To find that PPL acted properly because it must assign all costs to the responsible class places the cart far before horse, and would send a signal to all EDCs that EE&C costs can be freely spent based on the purported claim that the expense itself justifies cost recovery. The only relevance of Section 2806.1(a)(11) to this proceeding is that the statute supports PPLICA's proposal that PPL should be responsible for the imprudent cost recovery from Large C&I customers, meaning that refunds to Large C&I customers should not be recouped through additional charges to Residential or Small

C&I customers, as they received no benefit from PPL's errant GNI expenses. *See* PPLICA R.B., p. 9.

The Commission should not reward PPL for its flawed management of GNI costs. The Company's Large C&I customers deserved an opportunity to be heard and should not be subjected to a combined \$25 million tariff adjustment where the issues and errors leading up to the adjustment were known to the Company, but undisclosed to customers for approximately four years. The Commission did not design PPL's Phase I EE&C Plan with the intention that customers would be subject to a \$25 million rate adjustment four months after the Company files its end-of-phase reconciliation. To enforce the provisions of its Implementation Order, Act 129, PPL's Phase I Order, and the general ratemaking provisions of the Public Utility Code, while ensuring that PPL and other EDCs apply the requisite diligence in future proceedings, the Commission should deny Supplement Nos. 139 and 140.

D. Exception No. 4: By Ignoring the Commission-Approved Allocation of GNI Expenses, PPL Implemented Two Major Plan Changes Without Seeking or Obtaining Authority from the Commission. (R.D. pp. 20-22).

The R.D.'s finding that Supplement Nos. 139 and 140 do not constitute a change to PPL's EE&C Plan was in error. The R.D. reaches this conclusion by finding that that GNI sector costs were not budgeted for each customer class. *See* R.D., p. 20. Despite the Company's protestations to the contrary, the Commission-approved Phase I EE&C Plan shows that the Commission reviewed and approved customer class budgets incorporating the GNI allocations. Accordingly, absent an approved request to modify the allocations, PPL was bound to recover no more than the maximum allocation for each customer class. Therefore, PPL violated its Phase I EE&C Plan by incurring costs in excess of the Commission-approved amounts for each customer

class. The Company has also modified its Phase II EE&C Plan without adhering to the Commission's mandated Major Change Process.

The R.D. fails to present a fully accurate recitation of the Commission's rules regarding minor and major changes to EE&C Plans. The R.D. correctly defines the three changes identified by the Commission as "minor changes." *See* R.D., pp. 26-27 *citing Energy Efficiency and Conservation Program*, Docket No. M-2008-206987 (June 10, 2011) ("Minor Plan Change Order"). As set forth therein, the Commission defines a minor changes as follows:

1. The elimination of a measure that is underperforming, no longer viable for reasons of cost-effectiveness, savings or market penetration or has met its approved budgeted funding, participation level or amount of savings;
2. The transfer of funds from one measure or program to another measure or program *within the same customer class*; and
3. Adding a measure or changing the conditions of a measure, such as its eligibility requirements, technical description, rebate structure or amount, projected savings, estimated incremental costs, projected number of participants, or other conditions so long as the change does not increase the overall costs to that customer class.

See PPLICA M.B, p. 29 *citing* Minor Plan Change Order, p. 20; *See also* PPLICA Stmt. No. 1, p. 14. (Emphasis added). The R.D. concedes that Supplement Nos. 139 and 140 fall outside the scope of minor changes, but also declines to designate the Supplements as major changes. *See* R.D., p. 21. Instead, the R.D. concludes that the Supplements did not implement any changes at all and simply adjusted the "amount of money to be recovered from the rate classes due to the oversubscription of the GNI programs..." *Id.* The exemption of this interclass cost shift from a major change designation conflicts with the Commission's prior directive confirming that any shifting of costs between customer classes shall be considered to be a change to the Company's EE&C Plan. *See* PPLICA M.B., p. 28. The Commission addressed this matter in the following excerpt from the PPL Phase I Order:

With respect to changes to the plan, we find that an EDC cannot shift program funds within a customer class, or between customer classes, without prior Commission approval. Doing so would constitute a modification of the EDC's approved plan. The General Assembly authorized the Commission, not the EDC, to make decisions in regard to modifying an approved Act 129 Plan.

PPL Phase I Order, p. 92. Notably, even the Order approving PPL's Phase I Plan confirmed that the use of customer sectors does not exempt PPL from its duty to preserve the integrity of rates charged to customer classes by affirmatively seeking Commission approval before adjusting the revenues assigned to each class. *See* PPLICA R.B., pp. 15-16.

The crux of the R.D.'s finding as to whether Supplement Nos. 139 and 140 constitute major changes to PPL's EE&C Plans rests on its categorization of PPL's allocation of GNI costs as meaningless estimated costs. The R.D. avers that the allocation of GNI sector costs to Large C&I customers creates nothing more than an estimate of GNI costs that may or may not coincide with actual costs eventually recovered from Large C&I customers upon final reconciliation of the EE&C Plan. *See* R.D., p. 15. However, the Commission has repeatedly clarified that costs are only recoverable under Act 129 where such costs have been assigned to a customer class and approved by the Commission. *See* PPLICA M.B., p. 25.

As such, when the Commission approved PPL's Phase I EE&C Plan, the Commission did not base its approval of PPL's budget upon the 5 customer sector budgets submitted by PPL, but instead relied on a budget and parity analysis prepared by OCA, which compared the budgeted EE&C costs on a *customer class basis*, including the GNI budget allocations for each class. *See Id.* at 26 *citing* PPL Phase I EE&C Plan, Table 7. Therefore, the R.D. is incorrect in finding that the Phase I Plan omits GNI budgets for each customer class. *See* R.D., p. 15; *cf.* PPLICA M.B., p. 26.

To the contrary, the actual Phase I GNI allocations for each customer class were presented in PPLICA's Main Brief as follows:

As confirmed by PPL, the initial Phase I EE&C Plan assigned GNI costs as follows: 84.79% Small C&I, 1.16% Large C&I, and 14.05% Residential. [Citation omitted]. Applied to the total GNI program budget, these percentages represent the maximum amount that PPL was authorized to recover from each rate class under its Commission-approved EE&C Plan. Based on the total GNI budget of approximately \$27 million, PPL was authorized to recover \$22.9 million from Small C&I customers, \$3.8 million from Residential customers, and \$300,000 from Large C&I customers.

See PPLICA M.B., pp. 27-28. With Commission approval of customer class budgets incorporating the above GNI allocations, PPL should have filed a Petition to modify its assignment of GNI costs when it became aware the initial \$300,000 Large C&I budget for GNI sector costs would not be sufficient to meet the demand. *See* PPLICA M.B., p. 30.⁶ Instead, PPL ignored all bounds of reasonableness and exceeded the 1% allocation to Large C&I customers during almost every single month of the Phase I Plan, incurring no less than 36% of total GNI costs on behalf of Large C&I customers in each month from October 2010 through August 2013. *See* PPLICA R.B., p. 14.

While PPL's efforts to proactively revise its Phase II GNI allocations reflect a more practical purpose, the Company still lacked authority to modify the Commission-approved GNI cost allocations without proceeding with a formal Petition to modify the Plan. Although both Supplement Nos. 139 and 140 constitute Major Plan Changes, Supplement No. 140 implements perhaps the more egregious violation because the adjustment prospectively changed not just the amount of the budgeted allocation, but the underlying basis approved by the Commission. *See* PPLICA M.B., p. 27 note 8.; *see also* R.D., p. 14. PPL initially set the budgeted GNI allocation

⁶ To be clear, this process would not require PPL to file a Plan Change Petition every month because to change would only be necessary where the total actual costs for each customer class approach the maximum budgeted amount for the class, not where monthly collections are simply higher or lower than average. *See* PPLICA R.B., p. 14.

for Phase II based on the "number of participants expected from each [customer] class." *See* R.D., p. 14; *see also* PPLICA Stmt. No. 1, p. 10. In approving the Phase II Plan, the Commission approved both the actual budgeted allocation and the methodology applied to calculate the allocation, where PPL assigned GNI costs based on the number of GNI accounts in each customer class. *See* PPLICA Stmt. No. 1, p. 10. However, through Supplement No. 140, PPL modified this methodology based on its assumption that changing the allocation to reflect actual costs from Phase I is reasonable. *See* Supplement No. 140, Transmittal Letter, p. 2.

No matter how well-intentioned, PPL lacks authority to modify the Phase II allocation basis approved by the Commission. The Company's unilateral decision to change the per-customer allocation and adopt a budgeted allocation based on actual Phase I GNI costs eliminated all opportunity for other stakeholders to present the Commission with alternatives and reach a determination as to the most appropriate budgeted allocation. *See* PPLICA M.B., pp. 33-34. For example, a properly scrutinized record might reveal that the absence of demand response in Phase II merits some adjustment to actual Phase I costs, or that other differences between the two EE&C Plans should be considered rather than directly using the Phase I costs as the basis for the Phase II GNI budgeted allocation. Regardless of PPL's belief in the reasonableness of the change to the methodology of its Phase II allocation, such adjustments to Commission-approved procedures that shift costs between customer classes cannot be adopted as a matter of right and must be presented for formal review as Major Change to the EE&C Plan. *See* PPLICA M.B., p. 5.

The R.D. fails to reach the appropriate findings due in large part to a willingness to exempt PPL from numerous customer safeguards intended to minimize rate volatility. *See* R.D., pp. 19, 25. This approach throws the proverbial "baby out with the bathwater" by because

eroding customer protections because PPL administers its EE&C Plan through customer sectors instead of customer classes. By way of comparison, PPL has demonstrated a thorough understanding of the importance of monitoring, preserving, and if necessary, adjusting customer class budgets for costs incurred on behalf of a single customer class. *See* PPLICA M.B., pp. 21-22. For example, PPL has filed Petitions requesting authority to modify shift costs between Residential and Small C&I EE&C Programs, including under or oversubscribed Compact Fluorescent Light bulb ("CFLs") or Direct Load Control ("DLC"). *See* PPLICA M.B., p. 21. The fact that GNI sectors overlap customer classes should not eviscerate the Commission's overall intent to protect customers from unexpected budget increases.

The Commission must recognize that implementation of Tariff Supplements shifting approximately \$25 million in EE&C costs to a customer class upon 10-days notice completely contradicts the purpose of Act 129's cost recovery mechanisms. By defining minor changes as changes that do not shift costs between customer classes, the Commission clearly established an intention to protect customer classes from unexpected and significant increases to EE&C rates by directing EDCs to request Commission approval for EE&C Plan changes shifting costs between customer classes. PPL modified its Phase I Plan by paying GNI rebates far in excess of the \$300,000 budgeted allocation approved by the Commission, failing to disclose the skyrocketing Large C&I GNI costs to customers, and further failing to incorporate such actual costs (even the \$7.8 million in actual Large C&I GNI costs known before the post-May 2013 "surge") in the end-of-phase reconciliation. The Company further modified its Phase II Plan by changing the allocation methodology. The Commission did not allow for interim rate adjustments to encourage utilities to circumvent the Minor Plan Change Order. Otherwise, instead of filing a Petition to increase the Small C&I CFL budget, PPL could just start selling more CFLs to Small

C&I customers and file a subsequent interim rate adjustment to recover the undercollection from Residential customers. The Commission must take action to provide the same degree of protection for Large C&I customers and encourage EDCs to maintain diligent stewardship of ratepayer funds collected pursuant to Act 129.

III. CONCLUSION

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


- (1) Grant the Exceptions of the PP&L Industrial Customer Alliance;
- (2) 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;
- (3) 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;
- (4) 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;
- (5) 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;
- (6) 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; and

- (7) 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.

Respectfully submitted,

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