

COMMONWEALTH OF PENNSYLVANIA



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October 26, 2012

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17101

Re: Petition of PPL Electric Utilities  
Corporation for an Evidentiary Hearing on  
the Energy Efficiency Benchmarks  
Established for the Period June 1, 2013  
through May 31, 2016  
Docket No. P-2012-2320369

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Main Brief in the above-captioned proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,

A handwritten signature in cursive script that reads "Christy M. Appleby".

Christy M. Appleby  
Assistant Consumer Advocate  
PA. Attorney ID# 85824

Enclosures

cc: Hon. Elizabeth H. Barnes, ALJ  
Certificate of Service

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation :  
For an Evidentiary Hearing on the Energy : Docket No. P-2012-2320369  
Efficiency Benchmarks Established for the :  
Period June 1, 2013 through May 31, 2016 :

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MAIN BRIEF  
OF THE OFFICE OF CONSUMER ADVOCATE

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Dated: October 26, 2012

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## I. Introduction and Procedural History

Pursuant to Act 129 of 2008 (Act 129), the seven largest Electric Distribution Companies (EDCs) in the Commonwealth were required to file Energy Efficiency and Conservation (EE&C) plans with the Pennsylvania Public Utility Commission (Commission). Act 129 set out a series of mandates required for each Plan and charged the Commission with the implementation and review of each EDC's Plan. 66 Pa.C.S. § 2806.1. On January 16, 2009, the Commission adopted an Implementation Order at Docket No. M-2008-2069887 establishing the standards each plan must meet and providing guidance on the procedures to be followed for submittal, review and approval of all aspects of the EDC EE&C Plans. Energy Efficiency and Conservation Program, Docket No. M-2008-2069887 (Order entered January 16, 2009) (Implementation Order). The Commission was also charged with the responsibility to evaluate the costs and benefits of the EE&C Program by November 30, 2013, and every five years thereafter. 66 Pa.C.S. § 2806.1(c)(3). The Commission must adopt additional incremental reductions in consumption if the benefits of the EE&C Program exceed its costs. Id.

The passage of Act 129 presented Pennsylvania with the opportunity to further expand the Commonwealth's work on energy efficiency and demand response for the benefit of all customers. The Office of Consumer Advocate (OCA) participated actively in the development of the Phase I EE&C Plans under Act 129 and has actively participated in the ongoing EDC stakeholder groups that have continued to work on the implementation of these programs. The OCA has supported the development of energy efficiency and demand response programs by Pennsylvania utilities for more than two decades. The OCA's work in these areas has reaffirmed its support for these programs, and the OCA looks forward to continuing to work on the Phase II Plans.

In a March 1, 2012 Secretarial Letter, the Commission requested Comments on a number of topics to aid in designing and implementing Phase II of the Act 129 EE&C programs applicable to the Commonwealth's seven largest EDCs. The OCA and other stakeholders provided Comments on April 17, 2012, and on May 11, 2012, the Commission entered its Tentative Order regarding Phase II of the EE&C Plans. Energy Efficiency and Conservation Program Tentative Order, Docket Nos. M-2012-2289411 and M-2008-2069887 (Tentative Order entered May 11, 2012)(Tentative Order). The Commission also released a Baseline Energy Efficiency Study and a Market Potential Study conducted by the Statewide Evaluator (SWE) to assess the further potential for energy efficiency in the service territories of Pennsylvania's major EDCs. In accordance with the Tentative Order, the OCA and other stakeholders filed Comments on June 25, 2012 and Reply Comments on July 9, 2012.

On August 3, 2012, the Commission adopted its Final Order regarding Phase II EE&C plans. Energy Efficiency and Conservation Program Final Implementation Order, Docket Nos. M-2012-2289411 and M-2008-2069887 (Order Entered August 3, 2012) (Final Order). The Final Order established the requirements for Phase II of the Act 129 Energy Efficiency plans, including the establishment of new consumption reduction targets for the period of June 1, 2013 through May 31, 2016. PPL's consumption reduction target was set at 2.1%, with a three-year program acquisition cost of \$224.71/MWh, to be achieved using a three-year total budget of \$184,504,128. Final Order at 24; SWE St. 1, Electric Energy Efficiency Potential for Pennsylvania, at 10. The Order stated that an EDC could submit a Petition for Evidentiary Hearing no later than August 20, 2012 for the limited purpose of challenging the consumption reduction requirements. If no Petition was filed, the consumption reduction requirements would be deemed accepted. Final Order at 31.

On August 20, 2012, PPL filed a Petition for an Evidentiary Hearing. The OCA notes that on August 20, 2012, PPL also filed its Petition of PPL Electric Utilities Corporation for Reconsideration of the Commission's Final Order. Two other EDCs, PECO Energy Company and FirstEnergy, also filed Petitions for Reconsideration. Thereafter, the Commission issued a Reconsideration Order on September 27, 2012 which addressed the three Petitions. Energy Efficiency and Conservation Program, Docket Nos. M-2012-2289411 and M-2008-2069887 (Order entered September 27, 2012) (Reconsideration Order). As will be discussed, the OCA submits that both of the Company's claims in its Petition for Evidentiary Hearings have been addressed in the Reconsideration Order. Nothing contained in this record compels a different result on these issues than that provided by the Commission in its Reconsideration Order. See, Reconsideration Order at 13-18.

The matter was assigned to the Office of Administrative Law Judge and was further assigned to ALJ Elizabeth H. Barnes. A prehearing conference was held on September 10, 2012 at which time a procedural schedule was adopted. On September 28, 2012, PPL submitted the Direct Testimony of Peter D. Cleff. On October 12, 2012, PennFuture submitted the Direct Testimony of Courtney Lane. On October 17, 2012, PPL submitted the written Rebuttal Testimony of Peter D. Cleff. A hearing was held on October 18, 2012. In accordance with the ALJ's Scheduling Order, the OCA hereby submits its Main Brief in this matter.

## II. ARGUMENT

At the outset, it is important to note that PPL has clearly stated in this proceeding that it is not seeking to change its consumption reduction target set by the Commission in its Final Order in this proceeding. PPL St. 1 at 11. PPL witness Peter D. Cleff testified in his Direct Testimony that PPL's Phase II target of 2.1% is reasonably achievable. PPL St. 1 at 7. PPL has instead requested that the Commission: 1) affirm PPL's right to challenge the Technical Reference Manual (TRM) in the future and 2) affirm PPL's right to challenge the consumption reduction goals in the future. PPL St. 1 at 2-3. In Mr. Cleff's Direct Testimony, PPL further explained that it was requesting the ability to challenge subsequent changes to the Technical Reference Manual (TRM), Total Resource Cost (TRC) test or any other Commission requirement which may impact the calculation of the savings needed to meet the Phase II consumption reduction requirements. PPL also requested that the Commission state that the Commission's determination of its consumption reduction targets based on the Statewide Evaluator (SWE) study does not restrict PPL from also requesting that the Commission modify its consumption reduction targets in the future. PPL St. 1 at 2-3.

PPL also filed a Petition for Reconsideration of the Commission's Final Order. In its Petition for Reconsideration, PPL raised these same two issues regarding the right to challenge changes to the TRM and the right to challenge its consumption reduction targets in the future. PPL requested that the Commission revise its Final Order to affirmatively state that the approval of the SWE's 25% adjustment factor and the EDC acceptance of the Phase II consumption reduction targets would not: "(1) preclude EDCs from challenging future modifications to the TRM; or (2) prohibit EDCs from petitioning the Commission to modify its



Phase II consumption reduction target based upon future changes to the TRM or other market changes that are not presently known.” Reconsideration Order at 13; PPL St. 1 at 3.

In its Reconsideration Order, the Commission denied PPL’s requested relief. PPL argues in its Direct and Rebuttal Testimony that the Commission did not sufficiently address PPL’s concerns in its Reconsideration Order. The OCA submits, however, that the Reconsideration Order fully addressed PPL’s concerns and properly resolved its requests. The evidence presented by PPL in the Evidentiary Hearing proceeding record does not provide any reason to adopt a different result.

The Commission’s Reconsideration Order specifically addressed the first issue raised by PPL regarding its right to challenge any future changes to the TRM. The Commission stated:

PPL has not pointed to any language in the Phase II Implementation Order that expressly restricts a party from so challenging future proposed changes to the TRM. As such, PPL’s assertion that the Phase II Implementation Order restricts it or any other party from challenging any proposed future changes or updates to the TRM is without merit. The TRM establishes a standard for the expected consumption and demand savings for various projects. The TRM is subject to updating and, in any future proceeding in which the EDC’s compliance with the consumption or demand reduction targets are at issue, the EDC will remain free to submit evidence and argument that an alternative estimate of consumption or demand savings is more accurate. In the absence of such evidence, the Commission and parties can rely on the TRM as the default measure of estimated consumption and demand savings.

Accordingly, we affirm in this order that all interested parties may participate, and are encouraged to do so, in any future proceedings that propose changes or updates to the TRM. Such participation may take the form of support or challenge to any proposed change or update to the TRM. Moreover, the TRM measures are subject to challenge in any subsequent proceeding in which an EDC’s compliance is at issue.

Reconsideration Order at 15. The OCA submits that the Commission has affirmed that the Company has the right to challenge any future proposed changes to the TRM. As such, PPL's first issue is moot.

The OCA submits that the Commission has also fully addressed PPL's second request regarding its ability to challenge consumption reduction requirements in the future. In its Reconsideration Order, the Commission determined:

In summary, the Commission finds that there are many factors, beyond and including the TRM, that could impact, both positively and negatively, the amount of electric energy savings attributable to an EDC's EE&C plan. Thus, if we were to adopt PPL's proposal, to allow future challenges to the established consumption reduction requirements, would create a scenario where such requirements would be constantly subject to increases and reductions as the many factors that affect an EDC's ability to obtain consumption reductions becomes known. As such, for the reasons expressed in this Order and based on the facts and arguments presented in the Petitions, we decline to subject the EDCs, statutory advocates, this Commission and its staff, and all other interested parties to what would invariably result in perpetual proceedings on the consumption reduction requirements the Commission was mandated to establish.

Reconsideration Order at 18.

The primary argument that PPL makes in this proceeding in support of its requests is that the 25% adder to the base acquisition costs included in the SWE study may not be sufficient to cover all uncertainties related to the TRM changes or future conditions. In the SWE Direct Testimony of Richard F. Spellman and Patrick A. Burns, however, the SWE testified that "[t]hese initial Phase II acquisition costs were then increased by a standard 25% in an effort to account for future uncertainties and anticipated cost increases." SWE St. 4 at 3. In other words, the 25% adder was specifically designed to account for the uncertainties identified by PPL. Even PPL witness Cleff acknowledged that while it is more common to decrease the level of savings available, "[i]n updating the TRM, the Commission does approve the addition of new measures and, on occasion, increases the amount of savings attributed to measures." PPL

St. 1-R at 14. Thus, the uncertainty identified by PPL can work in PPL's favor in achieving its goals, not just in the opposite direction. The Commission also addressed the potential for increases in the savings from TRM changes and the addition of measures to the TRM in its

Reconsideration Order:

We also note that the Commission has in the past added new measures at the request of the EDCs and revised TRM values, both of which have increased the amount of savings the TRM has attributed to measures and programs contained in one or more EDC EE&C plan. We anticipate doing the same in the future as more credible and reliable information becomes available. Thus, contrary to PPL's implied assertion, not all TRM changes will reduce the electric energy savings attributable to a measure or program being implemented by an EDC.

Reconsideration Order at 17-18.

Penn Future witness Courtney Lane testified that the acquisition costs may be on the high side, providing adequate room to address any uncertainties. Ms. Lane testified:

My opinion is that PPL should not be allowed to challenge its consumption reduction target during the course of Phase II. The SWE increased PPL's acquisition costs by 44% over what they were achieving at the end of Program Year 3 and lowered their consumption reduction target for Phase II.

The acquisition costs used to determine the PPL's Phase II consumption reduction targets are sufficiently inflated to cover any future changes to the TRM or other market uncertainty based on PPL's most recent experience, a review of the SWE's Market Potential Study and the fact that PPL will not need to meet any peak demand reduction goals in Phase II.

Furthermore, PPL retains the right to challenge any changes to the TRM and has the ability to modify its Phase II EE&C plan based on any future updates or changing market conditions. PPL also has the flexibility to include energy efficiency measures and programs that do not pass the TRC test due to the fact that only its full EE&C plan needs to pass the test.

Lastly, permitting EDCs to challenge their targets during the three-year period would harm the energy efficiency marketplace by creating regulatory and market uncertainty.

PennFuture St. 1 at 10-11.

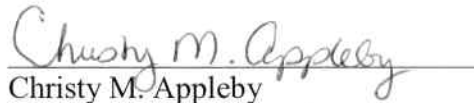
The Commission's Final Order specifically allowed the EDCs the opportunity to challenge the consumption reduction goals in the instant proceeding. Final Order at 31. Even though PPL has presented scenarios in its testimony under which the Company argues that it might not be able to achieve the consumption reduction requirements, PPL has not presented a specific proposal to challenge the consumption reduction goals determined by the SWE. Instead, PPL has argued that the 25% adder is insufficient to meet changes to the TRM and posits potential hypothetical examples or other uncertainties that may make it more difficult to achieve its goals. But when asked on cross-examination about what consumption reduction target it would propose, PPL witness Cleff would not definitively state a level. Tr. at 46-47. PPL has not proposed any alternative consumption reduction goal in its testimony and acknowledges that it expects to be able to achieve the goals at this time. PPL St. 1 at 7.

The OCA submits that nothing presented in PPL's testimony adds to the evidentiary record such that the Commission should change its position set forth in the Reconsideration Order. Phase II cannot be appropriately and effectively operated if the consumption reduction targets are constantly subject to re-evaluation and challenge. Additionally, the OCA notes that the Company experienced the same potential issues with respect to its Phase I goal. The OCA submits that the consumption reduction goals should be maintained as set forth in the Final Order and that PPL's request to be permitted to challenge the consumption reduction goals in the future should be denied as it was in the Reconsideration Order.

### III. CONCLUSION

For the foregoing reasons and the reasons stated in the Commission's Reconsideration Order, the OCA submits that PPL's request for clarification of its right to challenge proposed changes to the TRM in a future proceeding has already been affirmed by the Commission's Reconsideration Order and does not need to be further addressed here. The OCA further submits that PPL's request to be able to challenge the consumption reduction goals in the future should be denied for the reasons stated above and in the Commission's Reconsideration Order.

Respectfully submitted,



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CERTIFICATE OF SERVICE

Re: Petition of PPL Electric Utilities Corporation for an Evidentiary Hearing on the Energy Efficiency Benchmarks Established for the Period June 1, 2013 through May 31, 2016  
Docket No. P-2012-2320369

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Main Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 26th day of October 2012.

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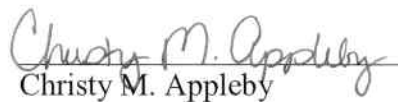
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