

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PPL ENERGY)
COMPANY FOR AN EVIDENTIARY) DOCKET NO. P-2012-2320369
HEARING ON THE ENERGY)
EFFICIENCY BENCHMARKS)
ESTABLISHED FOR THE PERIOD)
JUNE 1, 2013 THROUGH MAY 31, 2016)**

**MAIN BRIEF OF CITIZENS FOR PENNSYLVANIA'S
FUTURE**

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BRIEF OF CITIZENS FOR PENNSYLVANIA’S FUTURE

Now comes Intervenor, Citizens for Pennsylvania’s Future (“PennFuture”), by counsel, Heather M. Langeland, and submits the following brief in the above captioned proceeding.

INTRODUCTION AND PROCEDURAL HISTORY

Act 129 of 2008 amended the Pennsylvania Public Utility Code by adding (*inter alia*) Section 2806.1 to the Public Utility Code, 66 Pa. C.S. § 2806.1 (“Energy Efficiency and Conservation Program”). Section 2806.1 required Pennsylvania electric distribution companies (“EDC”) to file energy efficiency and conservation (“EE&C”) plans by July 1, 2009 containing the plan elements specified in section 2806.1 for Phase I of the EE&C Program. Act 129 also requires the Pennsylvania Public Utility Commission (“Commission”), by November 30, 2013, to evaluate the costs and benefits of the Phase I Program and, if the benefits of the Program are found to exceed their costs, to adopt “additional required incremental reductions in consumption” and “additional incremental requirements for reduction in peak demand.” 66 Pa. C.S. §2806.1(c)(3) and (d)(2).

The Commission retained a Statewide Evaluator (“SWE”) to conduct market potential and baseline studies in order to comply with the requirements for cost-benefit analyses imposed by Act 129. Based on those studies and the Commission’s interpretation of the program cost cap imposed by Act 129, the SWE concluded that “instituting a second phase of Act 129 electric energy efficiency programs will be cost-effective for Pennsylvania ratepayers.” *Phase II Implementation Order*, pp. 11-12. On or about August 3, 2012, the Commission entered its Implementation Order establishing EDC specific consumption reduction targets for Phase II of Act 129. The Commission set the consumption reduction target for PPL Electric Utilities Corporation (“PPL”) at 2.1%. *Id.* at p. 24. Additionally, the *Implementation Order* stated that the SWE’s Market Potential Study methodology averaged the administration costs from Phase I, program years one and two, and increased them by 25% for Phase II. Similarly, the program incentive funding estimates from Phase I were increased by the SWE by 25% for Phase II. *Id.* at 18-19.

The Implementation Order states, “[i]f an EDC desires to contest the facts the Commission relied upon in adopting the consumption reduction requirements . . . it has until August 20, 2012, to file a petition requesting an evidentiary hearing on its specific consumption reduction target. The EDC contesting the consumption reduction requirement shall have the burden of proof in accordance with 66 Pa. C.S. §332(a). The scope of any such proceeding will be narrow and limited to the consumption reduction requirement issue.” *Id.* at 31.

On or about August 20, 2012, PPL filed a Petition seeking an evidentiary hearing. PPL’s Petition stated:

PPL Electric files this Petition requesting an evidentiary hearing as a protective measure. The Company believes that the 2.1% Phase II consumption reduction target is reasonably achievable; however, for it to be achievable the

Commission must affirm that an EDC retains the right to challenge subsequent modifications to the [Technical Reference Manual] (“TRM”) and request modifications to its Phase II targets.

PPL Petition at ¶11. PPL correctly notes that the Commission stated in the *Implementation Order* that the 25% adjustment factor provides for, “future TRM adjustments on savings adjustments in future years without revising program goals.” *Implementation Order* at p. 20. PPL “believes that this statement prohibits it from challenging future modifications to the TRM or from petitioning the Commission to modify its Phase II target due to the Commission’s approval of the 25% adjustment factor.” *PPL Petition* at ¶11. Accordingly, it seeks for the Commission to modify the *Implementation Order* to allow PPL to challenge its goals based on changes to the TRM, federal law, economic conditions or baseline conditions.

On August 20, 2012, PPL also filed a Petition for Reconsideration of the *Implementation Order*. Thereafter, the Commission issued a *Reconsideration Order* on September 27, 2012. As will be explained in greater detail below, the arguments raised in PPL’s Petition for an Evidentiary Hearing have already been addressed in the *Reconsideration Order*, and no evidence has been presented which would warrant different conclusions.

On October 19, 2012 an Evidentiary Hearing was held in this matter. Evidence was presented by the SWE, PennFuture, PPL, Clean Air Council and the Sierra Club.

PennFuture submitted the testimony of Courtney Lane. Ms. Lane is the Senior Energy Policy Analyst at PennFuture and has been employed there since 2005. *Lane Direct Testimony* at Answer to Question 2. She received a Bachelor of Arts degree from Colgate University in 2000 and a Master of Arts degree in Environmental Policy and Planning from Tufts University in 2004. *Id.* at Answer to Question 3. Her career in energy efficiency began in 2004 at Northeast Energy Efficiency Partnerships (“NEEP”) where she was a Research and Policy Analyst. In that

capacity she conducted policy research as well as legislative and regulatory monitoring of energy efficiency policy in New England, New York, and the Mid-Atlantic states, focusing on ratepayer energy efficiency programs. *Id.* at Answer to Question 4.

In 2005, Ms. Lane joined PennFuture, where she works to promote clean energy in Pennsylvania. She played an “absolutely essential” *Lane Cross-Examination* at p. 56, line 10) role in several legislative victories pertaining to the development of clean energy in Pennsylvania including passage of Act 129. *Lane Cross-Examination* at p. 56, line 10. Further, she has testified before and submitted comments to the Commission in various proceedings, including Act 129, retail markets, net metering and the implementation of the Alternative Energy Portfolio Standard. She tracks and analyzes energy legislation and Commission rulemakings to determine how proposed laws and regulations will affect renewable energy and demand side resources. Specific to Act 129, she has participated in all proceedings pertaining to its adoption and implementation as well as its extension for Phase II. She is an active participant in the EDC Act 129 stakeholder meetings and she tracks and monitors EE&C plan development and progress. She has also submitted comments on the Total Resource Cost (“TRC”) Test. *Lane Direct Testimony* at Answer to Question 4.

Additionally, Ms. Lane previously testified on November 19, 2008 at the Commission’s En Banc Hearing on Alternative Energy, Energy Conservation and Efficiency, and Demand Side Response (Docket No. M-00061984). She also testified on March 21, 2012 at the Commission’s Retail Markets Investigation En Banc Hearing (Docket No. I-2011-2237952). *Id.* at Answer to Question 5.

The purpose of Ms. Lane’s testimony was to show that the SWE adequately accounted for changes to the TRM, federal law, economic conditions, and baseline conditions when determining PPL’s recommended Phase II consumption reduction target, and that PPL’s target is reasonable and conservative. She also testified to explain why PPL should not be able to challenge its Phase II consumption reduction targets in the future due to changes in the TRM or TRC.

ARGUMENT

The party seeking affirmative relief from the Commission bears the burden of proof pursuant to Section 332(a) of the Code. 66 Pa. C.S. §332(a). The term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. *Pennsylvania Public Utility Commission v. Corey Transport, LLC*, 2012 Pa. P.U.C. LEXIS 223 (2012) (citing *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. P.U.C. 300 (1976)). For the reasons that follow, PPL has failed to sustain its burden of proof.

THE COMMISSION HAS ALREADY FULLY ADDRESSED PPL’S ARGUMENTS

In its *Reconsideration Order*, the Commission fully addressed PPL’s argument regarding its ability to challenge consumption reduction requirements in the future. Specifically, it noted:

[T]he 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. PPL has not presented any evidence which would warrant departure from the Commission's well reasoned conclusion in the *Reconsideration Order*.

PPL'S CONSUMPTION REDUCTION TARGET IS REASONABLE AND CONSERVATIVE, OBTAINING THE NEED TO LATER CHALLENGE THE TARGET BASED ON CHANGES TO THE TRM, FEDERAL LAW, ECONOMIC CONDITIONS OR BASELINE CONDITIONS

I. PPL's Targets are Reasonable and Conservative

In determining PPL's consumption reduction target, the SWE overestimated PPL's acquisition costs, and thereby underestimated PPL's feasible consumption reduction target. Accordingly, PPL has an ample cushion for meeting its consumption reduction target, even if underlying factors were to change.

In Phase I, PPL's acquisition costs were \$156.23 per first year megawatt-hour ("MWh") savings. *Lane Direct Testimony* at Answer to Question 9. Witness Lane calculated this figure using PPL's July 16, 2012 Program Year 3, Quarter 4 Report to the Commission, which noted that PPL achieved a 1,009,294 MWh reduction at a cost of \$157,686,000. *Lane Direct Testimony* at Answer to Question 9. The SWE, however, assumes an acquisition cost of \$224.71 per first year MWh savings for Phase II. This amounts to a 44% increase over PPL's current Phase I acquisition costs. *Id.* at Answer to Question 10.

Witness Lane's determination that SWE overestimated PPL's acquisition costs is based on several factors. As explained by witness Lane:

This determination is based on several factors. First the SWE states that most of the least-cost measure savings have already been attained by EDCs in Phase I, yet there is no evidence to support that statement. Information from the Pennsylvania Statewide Residential End-Use and Saturation Study, such as current residential Compact Fluorescent Light (“CFL”) saturations of only 17%, appears to contradict this claim.

Further, the Market Potential Study assumes fixed energy efficiency measure costs over time. This assumption leads to an overestimation of program costs and therefore lower proposed savings goals. The tendency is for measure costs to decrease, not remain constant. For example, the cost of CFLs has decreased over the last decade, from about \$10 to \$3 - \$4 dollars per CFL. The same downward trend is expected for LEDs over the next several years, but the SWE assumes fixed measure costs for LEDs (\$20 for general service lamps and \$30 for reflector lamps) in the Market Potential Study.¹

Additionally, the SWE’s projection that non-incentive program costs will increase over time is not supported by any evidence. In Phase II the EDCs will no longer be dealing with start-up costs for most of their programs and will benefit from existing customer awareness and economies of scale. A recent report by Synapse Energy Economics, Inc. supports this assumption that while acquisition costs will fluctuate over time, the trend is for energy efficiency program costs to decrease over time.²

The SWE also fails to take into account programmatic efficiencies. EDC’s have not fully realized the benefits of moving their financial incentive transactions upstream. Upstream incentives typically better leverage EDC funds by buying down wholesale as opposed to retail product pricing. While some progress has been made in the residential lighting market, other opportunities should be explored and pursued in commercial lighting, commercial

¹ ENERGY STAR LED retail lamp prices are assumed to decline from an average of \$30 per lamp in 2012 to \$5 in 2020. Energy Futures Group for Northeast Energy Efficiency Partnerships (NEEP), *Northeast Residential Lighting Strategy*, March 2012. Available at: http://neep.org/uploads/initiatives/NEEP_Residential_Lighting_Strategy_2012.pdf

² Synapse Energy Economics, *The Sustainability and Costs of Increasing Efficiency Impacts: Evidence from Experience to Date*, 2008. Available at: <http://aceee.org/proceedings-paper/ss08/panel08/paper30>

and residential HVAC and hot water equipment, consumer electronics and appliances. The Market Potential Study also assumes that when multiple measures “compete” for the same baseline technology that equal numbers of those measures are installed. This is a simplified and in many cases an incorrect assumption. In reality, EDCs will want to design an EE&C plan that maximizes savings by more aggressively promoting the most efficient technologies with the least cost.

Id. at Answer to Question 15.

PPL attempts to downplay this overestimation of the acquisition costs by arguing that the Energy Independence and Security Act (“EISA”) reduces lighting savings by approximately 25% to 40%. *Cleff Direct* at p. 16, lines 12-14. Contrary to this argument, Ms. Lane testified as to the impact of the EISA on PPL’s Phase II acquisition costs:

[It] is PennFuture’s opinion that the SWE actually overestimates the impacts that EISA will have on the ability of EDCs to obtain further savings from the lighting sector. As PennFuture indicated in its comments on the Tentative Implementation Order, the Market Potential Study did not reflect an accurate interpretation of the EISA standards. Specifically, only three residential CFL measures are characterized: 100 watt, 75 watt and 40 watt CFL replacements. The 2012-2014 provisions of EISA only apply to general service lamps. There are over 20 lamp categories excluded from EISA coverage including reflector lamps, globe and candelabra lamps, three-way lamps, and more. Energy efficiency program administrators in other states have been increasing the focus of their CFL program efforts on these and other “specialty” CFL lamp categories since savings from these lamps will be higher as their baselines and will not need to be adjusted upwards for EISA related efficiency improvements. The Market Potential Study does not appear to explicitly address these classes of lamps that are exempt from EISA coverage. This assumption arbitrarily lowers the potential savings from lighting in Phase II of Act 129.

Lane Direct at Answer to Question 16.

In addition to being artificially reduced by SWE's overestimation of PPL's acquisition costs, PPL's consumption reduction target for Phase II has been made easier to achieve in two other ways. First, PPL's annual percentage reduction for Phase II is lower than for Phase I. In Phase I, PPL's consumption reduction target is 3% by May 31, 2013, which is 0.75% per year. PPL's Phase II target is 0.70% per year. Additionally, PPL will not need to meet any peak demand reduction requirement in Phase II. *Id.* at Answer to Question 11. Overall, PPL's consumption reduction target is conservative and reasonable.

B. PPL Should Not be Permitted to Challenge its Phase II Consumption Reduction Target Based on Changes to the TRM, Federal Law, Economic Conditions or Baseline Conditions

Although, as demonstrated above, its targets are reasonable and conservative, PPL advocates that it should be permitted to challenge its Phase II Consumption Reduction Target based on changes to the TRM, federal law, economic conditions or baseline conditions. This argument ignores several important points. As noted by witness Lane:

It is clear that the SWE took factors like changes to the TRM, changes in federal law, economic conditions and changing baseline conditions into account when determining PPL's recommended Phase II consumption reduction target. Specifically, the SWE states that "Program potential savings are less than currently expected with Phase I implementation. This is largely due to the impacts of federal legislation, changing baseline conditions and increasing saturation of energy efficient equipment."³ This is evident in the fact that the SWE increased PPL's current Phase I acquisition costs by 44% for Phase II and lowered its consumption reduction requirement.

In addition, if the Commission thought it would have been appropriate to change the Phase II goals based on each TRM update, it would have recommended annual

³ Market Potential Study at page 7.

consumption reduction targets that change each year to reflect market conditions and TRM modifications. However, the Commission did not create annual reduction targets; it saw value in a firm three-year target. Since Phase II is a multi-year goal and not an annual goal, the SWE rightfully increased Phase II acquisition costs to account for uncertainties that may arise during the three-year period.

Lastly, one of the main drivers behind a multi-year consumption reduction target is to create certainty in the energy efficiency marketplace. If reduction targets can be changed throughout the plan period, this will create uncertainty and confusion among contractors, customers and retailers.

Id. at Answer to Question 17. As the SWE took these potential changes into account, and the Commission thought multi-year goals were appropriate, PPL's argument is without merit. In addition, regardless of whether or not there are changes made to the TRM, EE&C plans will likely be amended in Phase II due to learned program efficiencies and inefficiencies or changes in customer preference as was the case in Phase I. Mr. Cleff affirms this point by stating that "some changes PPL made to its EE&C plan during Phase I were derived by just changes in the marketplace, consumer preferences." (*Cleff Cross-Examination* at p. 35, lines 4-7). Allowing for Phase II consumption reduction goals to change in addition to allowing EE&C plans to be modified would compound uncertainty in the marketplace. The Commission acknowledges this concern its Energy Efficiency and Conservation Program Reconsideration Order, Docket No. M-2012-2289411/ M-2008-206887 ("Reconsideration Order"). The Commission states that "PPL's requests to subject Phase II required consumption reductions to potential revision... would only add unnecessary burdens on all interested parties, create unnecessary uncertainty and in fact, allowing parties to petition for a change in the consumption reduction requirements would present the EDCs with the moving target scenario PPL's proposal purports to cure."

(Reconsideration Order, p. 16). If PPL's argument was accepted, it would result in further uncertainty and confusion.

Moreover, the TRM was modified during Phase I and the EDCs were able to adequately adjust. The Commission provided updated 2009, 2010, 2011 and 2012 editions of the TRM to incorporate changes and improvements from recent research, data, and the needs and experiences of the EDCs. *Id.* at Answer to Question 21. When changes were made to the TRM during Phase I, the EDCs petitioned the Commission to make changes to their EE&C plans based upon those changes, discovered efficiencies and inefficiencies, and best learned practices. *Id.* at Answer to Question 23. This same flexibility will be retained in Phase II. The Commission allows EDCs to propose plan changes in conjunction with the EDC's annual report filing required by Act 129 at 66 Pa. C.S. §2806.1(i)(1). In addition, the Implementation Order expands the expedited review process for approving minor EE&C plan changes proposed by the EDCs. *Id.* at Answer to Question 24. In response to changes to the TRM or baseline conditions there are additional mechanisms used by other program administrators to help gain more savings at lower costs that PPL has yet to realize. For example, PPL could move its Act 129 financial incentive transactions upstream. Upstream incentives typically better leverage EDC funds by buying down wholesale as opposed to retail product pricing. While some progress has been made in the residential lighting sector, other opportunities remain in commercial lighting, commercial and residential HVAC and domestic hot water equipment, and consumer electronics and appliances.

Indeed, as Witness Lane explained, updates to the TRM could result in increases to the amount of savings attributed to measures and programs: "The Commission has added new measures at the request of the EDCs and revised TRM values that have increased the amount of savings attributed to measures and programs contained in one or more EDC EE&C plan. The

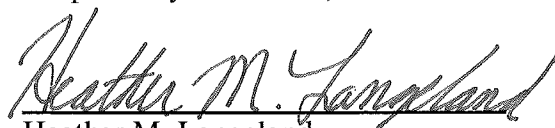
Commission states in the Reconsideration Order that it anticipates doing the same in the future as more information becomes available.” *Id.* at Answer to Question 22. Finally, as a practical matter, future changes to the TRM or the TRC are simply speculative. *Cleff Cross-Examination* at p. 43 lines 9-18.

In addition to speculative changes to the TRM, federal law, economic conditions or baseline conditions provide no basis for the Commission to alter the clear language in the *Implementation Order* restricting PPL from later challenging its consumption reduction targets. *See Implementation Order* at p. 20. The matters raised by PPL have already been considered by the Commission and the SWE. Allowing PPL the unfettered discretion to challenge its targets would unduly burden the Commission and the parties to this proceeding, and would unnecessarily create uncertainty over PPL’s targets. Accordingly, PPL has not met its burden in showing that it should be permitted to later challenge its consumption reduction targets.

CONCLUSION

For the foregoing reasons, PennFuture respectfully requests that the Commission sustain the *Implementation Order* be upheld in its entirety.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I, Heather M. Langeland, do hereby certify that a true and accurate copy of the foregoing **BRIEF OF CITIZENS FOR PENNSYLVANIA'S FUTURE** was served on counsel of record this 26th day of October, 2012 by depositing the same in the United States mail, postage prepaid and addressed to:

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