

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**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**

---

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

---

Heather M. Langeland  
Pa. Bar I.D. #207387  
PennFuture  
425 Sixth Avenue, Suite 2770  
Pittsburgh, PA 15219  
412-258-6684  
langeland@pennfuture.org

## TABLE OF CONTENTS

PPL’s Arguments are Outside the Scope of These Proceedings. . . . .	1
The Evidence Presented Demonstrates that the 25% Adjustment Factor will be Adequate to Account for Future Changes. . . . .	2
The Implementation Order does not Contain an Error of Law. . . . .	3
The Conclusions Reached in the <i>Implementation Order</i> do not Constitute an Abuse of Discretion. . . . .	4
The Implementation Order does not Violate Due Process . . . . .	5
The Procedure used by the Commission in Adopting the <i>Implementation Order</i> is Outside the Scope of these Proceedings . . . . .	6
The 25% Adjustment Factor Accounts for Future Uncertainties . . . . .	6
Conclusion . . . . .	7

**TABLE OF AUTHORITIES**

*Cases:*

*Salters v. Pa. State Police Municipal Police Officers’ Education & Training Commission*,  
912 A. 2d 347 (Pa. Cmwlth. 2006) .....6

*Statutes:*

66 Pa. C.S. §703(g) .....3

66 Pa. C.S. §2806.1 .....3

71 P.S. §745.5 .....6

*Administrative Decisions:*

*Final Implementation Order, Energy Efficiency and Conservation Program*, Docket Nos.  
M-2012-2289411 and M-2008-2069887 (entered August 3, 2012) .....passim

*Reconsideration Order, Energy Efficiency and Conservation Program*, Docket Nos. M-  
2012-2289411 and M-2008-2069887 (entered September 27, 2012) .....4, 5

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**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**

**REPLY 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 reply brief in the above captioned proceeding.

**PPL’S ARGUMENTS ARE OUTSIDE THE SCOPE OF THESE PROCEEDINGS**

PPL Electric Utilities Corporation (“PPL”) has filed a brief in this matter in which it raises multiple arguments which are outside the scope of these proceedings. 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 (emphasis added).

Instead of raising arguments within this limited scope, PPL argues that the 25% adjustment factor may not be adequate to account for all unknown future changes, that the *Implementation Order* contains an error of law, that the *Implementation Order* constitutes an

abuse of discretion, that the *Implementation Order* violates due process, that the *Implementation Order* was adopted in violation of the requirements of formal rulemaking proceedings, and that there was no evidence in the *Implementation Order* that the 25% adjustment factor accounts for future uncertainties.

Given the condensed schedule imposed by the Commission on these proceedings, it is imperative that the parties stay within the confines of the limited scope of review set forth in the *Implementation Order*. The parties simply are not afforded an opportunity to respond to every conceivable argument that could be raised by an electric distribution company (“EDC”).

**THE EVIDENCE PRESENTED DEMONSTRATES THAT THE 25%  
ADJUSTMENT FACTOR WILL BE ADEQUATE TO ACCOUNT  
FOR FUTURE CHANGES**

PPL’s argument in this regard is based on complete speculation. PPL asserts that the 25% adjustment factor does not account for all unknown future changes. Contrary to this speculative assertion, the evidence presented shows that the 25% adjustment factor is sufficient to account for unknown future changes. Moreover, as noted in PennFuture’s main brief, PPL’s consumption reduction targets are reasonable and conservative and the Statewide Evaluator (“SWE”) increased PPL’s current Phase I acquisitions costs by 44% for Phase II. This point will not be belabored here. It is sufficient to note that the targets are reasonable, and the 25% adder is sufficient to account for future uncertainties. Its entire argument is speculative and insufficient to sustain its burden of proof. Moreover, PPL has the right to challenge any future changes to the Technical Resource Manual (“TRM”) and the Total Resource Cost (“TRC”) Test. Accordingly, the 25% adjustment factor will be adequate to account for future changes.

**THE IMPLEMENTATION ORDER DOES NOT CONTAIN  
AN ERROR OF LAW**

PPL next argues that the *Implementation Order* contains an error of law in that it will not be permitted to challenge its consumption reduction targets. PPL's argument misses the mark. Each statutory provision cited by PPL gives the *Commission* not an *EDC* the ability to alter or amend its Orders. Specifically, 66 Pa. C.S. §703(g), cited by PPL, provides:

*The commission may*, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders.

(emphasis added). This provision provides no support for PPL's argument. This statutory provision does not grant any rights to an EDC, it merely affords the Commission with the power to amend its orders.

Similarly, the other statutory provision relied on by PPL does not grant it the power to challenge its consumption reduction target. PPL relies on Section 2806.1(b)(2) of Act 129. This provision provides:

The commission shall direct an electric distribution company to modify or terminate any part of a plan approved under this section if, after an adequate period for implementation, the commission determines that an energy efficiency or conservation measure included in the plan will not achieve the required reductions in consumption in a cost-effective manner under sections (c) and (d).

There is simply nothing in this provision which would grant an EDC the ability to petition the Commission to alter its consumption reduction targets. Each of these statutory provisions merely

grant power to the Commission, not an EDC. Accordingly, PPL's argument in this regard should be denied.

**THE CONCLUSIONS REACHED IN THE *IMPLEMENTATION ORDER*  
DO NOT CONSTITUTE AN ABUSE OF DISCRETION**

Next, PPL argues that the *Implementation Order* contains an abuse of discretion in that it is based on assumptions that are not known, and that the remedies set forth in the 2012 *Reconsideration Order* are not adequate. As noted in PennFuture's direct testimony, PPL's consumption reduction target is reasonable and conservative. Simply because PPL cannot currently know every conceivable changing condition does not render the 25% adjustment factor insufficient. PPL's entire argument is simply speculation. There has been no credible evidence presented that future changing conditions will prevent PPL from meeting its consumption reduction target.

Moreover, PPL has adequate remedies under the *Implementation Order*. The Commission has noted that an EDC may (1) participate in and challenge any proposed updates to the TRM, and (2) submit evidence in compliance hearings and argue that an alternative estimate of consumption or demand savings is more accurate. *Reconsideration Order* at p. 14.

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 a departure from this well-reasoned conclusion.

### **THE IMPLEMENTATION ORDER DOES NOT VIOLATE DUE PROCESS**

Next, PPL argues that the *Implementation Order* violates its due process rights. Again, this argument is based on nothing but speculation. PPL argues that there could be a change to the TRM or the TRC which could affect its ability to meet its consumption reduction requirement. At best, PPL's argument is premature. If its fears come to fruition and it believes its due process rights have been violated, at that time it may be appropriate for PPL to raise these arguments. As the circumstances stand, PPL's due process rights are not being violated.

Even assuming that now is an appropriate time for PPL to lodge this argument, it would still fail. PPL has been given all the process that it is due. While the *Implementation Order* was adopted by the Commission without evidentiary hearings, it expressly afforded EDCs the ability to petition for an evidentiary hearing as to the consumption reduction targets. That is precisely what PPL has done here. The undersigned would not be offering this Reply Brief had PPL not been given the opportunity to (1) petition for an evidentiary hearing; (2) present direct testimony; (3) cross-examine other witnesses; and (4) brief the issue to the Commission. Indeed, PPL was given the opportunity to attend meetings with the SWE while it was developing the Market



Potential Study. Simply put, PPL has been given notice and opportunity to be heard and to defend in a proceeding before a tribunal having jurisdiction of the case. See, *Salters v. Pa. State Police Municipal Police Officers' Education & Training Commission*, 912 A. 2d 347, 351 (Pa. Cmwlth. 2006). Accordingly, it has been afforded all the due process that is required.

**THE PROCEDURE USED BY THE COMMISSION IN ADOPTING THE IMPLEMENTATION ORDER IS OUTSIDE THE SCOPE OF THESE PROCEEDINGS**

PPL next argues that the *Implementation Order* was adopted in violation of the requirements of formal rulemaking proceedings. This argument is similarly without merit. As noted above, this is an Evidentiary matter with a *limited scope of review*. PPL had the ability to raise this issue in its Petition for Reconsideration, yet chose not to. It is a completely inappropriate argument to raise at this juncture.

Moreover, in support of its argument, PPL points to the requirements of the Regulatory Review Act, 71 P.S. §745.5. However, PPL does not have standing to attack the *Implementation Order* under this statutory provision. The Regulatory Review Act specifically states “[t]his act is not intended to create a right or benefit, substantive or procedural, enforceable at law by a person against another person or against the Commonwealth, its agencies or its officers.” Accordingly, PPL does not have standing to challenge the Commission’s procedures.

**THE 25% ADJUSTMENT FACTOR ACCOUNTS FOR FUTURE UNCERTAINTIES**

Finally, PPL argues that the 25% adjustment factor is insufficient to account for future uncertainties. True to form, this argument is based solely on PPL speculation. Rather, the evidence presented shows that the 25% adjustment factor will be sufficient to account for future

uncertainties, changes to the TRM or TRC or other changes. As noted above, the evidence presented in this matter shows that the consumption reduction target for PPL is reasonable and conservative.<sup>1</sup> This coupled with the 25% adjustment factor is adequate to account for any future uncertainties.

### CONCLUSION

For all the foregoing reasons, PennFuture respectfully asserts that PPL's arguments should be denied, and the Implementation Order upheld in its entirety.

Respectfully Submitted,



Heather M. Langeland

Pa. Bar I.D. #207387

PennFuture

425 Sixth Avenue, Suite 2770

Pittsburgh, PA 15219

412-258-6684

langeland@pennfuture.org

---

<sup>1</sup> While PPL attempts to cast doubt on the credibility of PennFuture's witness, arguing it has "nothing to lose," PPL's own testimony, offered by one of its *employees*, isn't above suspicion for being self-serving. Ms. Lane, by not having a monetary stake in the outcome, could easily be credited as less biased.

## CERTIFICATE OF SERVICE

I, Heather M. Langeland, do hereby certify that a true and accurate copy of the foregoing **REPLY BRIEF OF CITIZENS FOR PENNSYLVANIA'S FUTURE** was served on counsel of record this 31st day of October, 2012 by depositing the same in the United States mail, postage prepaid and addressed to:

Administrative Law Judge Elizabeth H. Barnes  
Office of Administrative Law Judge  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor, L-M West  
Harrisburg, PA 17120

Shaun A. Sparks  
Krystle J. Sacavage  
Pennsylvania Public Utility Commission  
Bureau of Investigation & Enforcement  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor West  
Harrisburg, PA 17120

Johnnie Simms, Esq.  
Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Bldg.  
P.O. Box 3265  
Harrisburg, PA 17120

Pamela C. Polacek, Esq.  
Adeolu A. Bakare  
McNees Wallace & Nurick LLC  
100 Pine Street  
Harrisburg, PA 17108

Jeffrey J. Norton  
Carl R. Shultz  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17101

Christy M. Appleby  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101

Joseph L. Vullo  
Burke Vullo Reilly & Roberts  
1460 Wyoming Avenue  
Forty Fort, PA 18704

Harry S. Geller  
Patrick M. Cicero  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101

Joseph Otis Minott  
Clean Air Council  
135 S. 19<sup>th</sup> Street  
Suite 300  
Philadelphia, PA 19103

Zachary M. Fabish  
Sierra Club  
50 F Street, N.W.  
8<sup>th</sup> Floor  
Washington, DC 20001

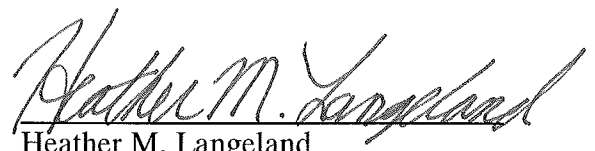
David B. MacGregor, Esq.  
Post & Schell, P.C.  
Four Penn Center  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103

Paul E. Russell, Esq.  
PPL Services Corp.  
Office of General Counsel  
Two North Ninth Street  
Allentown, PA 18106

Andrew S. Tubbs, Esq.  
Post & Schell, P.C.  
17 North Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101

Steven Gray, Esq.  
Office of Small Business Advocate  
Suite 1102, Commerce Bldg.  
300 North Second Street  
Harrisburg, PA 17101

Craig Burgraff, Esq.  
Hawke McKeon & Sniscak  
P.O. Box 1778  
100 N. Tenth Street  
Harrisburg, PA 17105

  
Heather M. Langeland