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February 7, 2013

VIA ELECTRONIC FILING

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

RE: Petition of PPL Electric Utilities Corporation for Approval of an Energy Efficiency and Conservation Plan - Docket No. M-2012-2334388; **REPLY BRIEF**

Dear Secretary Chiavetta

Enclosed for filing with the Pennsylvania Public Utility Commission is the Reply Brief of UGI Penn Natural Gas., Inc. and UGI Central Penn Gas, Inc. ("UGI Distribution Companies") in the above-referenced matter. A copy of the enclosed has been served in accordance with the attached Certificate of Service.

If you have any questions, please advise.

Very truly yours,



Christopher M. Arfaa

Counsel for UGI Distribution Companies

CMA/das
Enclosure

cc: Honorable Dennis J. Buckley
Per Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Dated this 7th day of February, 2013

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation
for Approval of its Act 129 Phase II Energy
Efficiency and Conservation Plan

Docket No. M-2012-2334388

**REPLY BRIEF OF
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UGI PENN NATURAL GAS, INC.
AND
UGI CENTRAL PENN GAS, INC.**

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Dated: February 7, 2013

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Pursuant to 52 Pa. Code §§ 5.501-5.502, UGI Utilities, Inc. – Gas Division, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc. (collectively, the “UGI Distribution Companies” or “UGI”), by and through their counsel, Hawke McKeon & Sniscak LLP, submit their Reply Brief in accordance with the Second Prehearing Order dated December 12, 2012 in the above-captioned matter.

I. INTRODUCTION

In its Main Brief, UGI Distribution Companies demonstrated, using the Commission’s own methodology, that its proposed fuel switching alternatives were significantly more cost effective and energy efficient than the corresponding electric-only proposals in PPL’s Plan. PPL’s brief contains no response whatsoever to UGI’s analysis, and none was provided in the evidentiary record. UGI has therefore established that its fuel switching proposals are incontestably superior in meeting Act 129’s goals of energy efficiency and cost effectiveness and constitute a better deal for PPL’s ratepayers. Moreover, the direct use of natural gas – the cleanest of the fossil fuels – provides significant energy conservation benefits over electric power, because of the loss of energy in the generation, transmission and distribution of electricity.

Equally important, UGI’s fuel switching proposals give *consumers* the option to choose natural gas alternative for their hot water heating and home heating needs. As even PPL acknowledged, “It is more appropriate for a customer to decide how to heat their homes”¹ UGI’s proposals place this choice where it belongs – with the customer.

PPL nevertheless asks the Commission to ignore the clear superiority of UGI’s proposals and to instead approve its Plan without any robust fuel switching measures. PPL advances four

¹ PPL Main Brief at 50.

primary arguments in support of its position. *First*, PPL argues that the Commission cannot require PPL to adopt these fuel switching proposals – no matter how efficient or cost effective. *Second*, PPL raises a hodgepodge of ‘policy’ arguments against UGI’s proposals which are contrary to the letter or spirit of Act 129 and which only serve to illustrate PPL’s overall hostility to fuel switching. PPL’s sole substantive objection to UGI’s proposals, which relates to rebate levels, is based on a false premise that is expressly contradicted by undisputed evidence of record. *Third*, PPL continues to claim that the “pilot” fuel switching program it advanced in rebuttal is sufficient to address the concerns about the absence of adequate fuel switching measures, despite the fact that the program would make natural gas fuel switching measures available to only 100 of the nearly 15,000 customers expected to participate in PPL’s residential water heating and space heating programs and thus would produce negligible gains in energy efficiency and ratepayer benefits. *Finally*, PPL opposes the modest tracking provisions proposed by UGI, apparently for no other reason than general principle.

None of these objections is valid. PPL has failed to meet its burden of showing that its EEC Plan is a prudent and effective use of ratepayer funds and in the public interest. UGI therefore respectfully requests that the Commission reject PPL’s Plan as filed and require it to implement the fuel switching programs and tracking provisions proposed by UGI.

II. ARGUMENT

A. The Commission Has The Authority And Responsibility To Order Modification Of PPL’s EEC Plan To Provide Natural Gas Fuel Switching Measures.

PPL’s view of this proceeding is that, since it has “carefully examined” and rejected robust fuel switching measures such as those proposed by UGI, “this should be the end of the

inquiry”² This view is misguided. On the contrary, the Commission has the power *and the responsibility* to modify parts of EEC Plans that are not sufficiently cost-effective and energy efficient and replace them with components that make better uses of ratepayer funds – even where those replacement components involve fuel switching.

1. The Commission’s role in this proceeding is not merely to rubber-stamp PPL’s proposals.

To the extent that PPL is claiming that the Commission lacks the authority to modify PPL’s Plan by requiring adoption of UGI’s fuel switching proposals, that claim is simply not correct. To the contrary, the Commission has the power to require that natural gas fuel switching measures be included in an EDC’s EEC plan where – as here – such measures are substantially more cost effective, produce significantly more electricity savings, and empower customers to take control of their utility bills to a far greater degree than the measures proposed by the EDC.

In these circumstances, the text, the purpose, and the Commission’s orders implementing Act 129 *not only permit, but require* that the PPL’s Plan be rejected as filed and modified to incorporate the UGI Distribution Companies’ fuel switching proposals.

There can be little doubt that Act 129 permits the Commission to modify an EDC’s proposed EEC Plan and require improvements to make it more cost-effective and energy efficient. Section 2806.1(b) provides that an EDC’s EEC plan “shall include specific proposals to implement energy efficiency and conservation measures.”³ It further provides that the consumer and small business advocates and interested members of the public may submit recommendations “as to how the electric distribution company could improve its plan.”⁴ After

² PPL Main Brief at 42.

³ 66 Pa. C.S. § 2806.1(b)(1)(i)(A).

⁴ 66 Pa. C.S. § 2806.1(e)(1).

considering the merits of the EDC's proposals and other parties' recommendations, the Commission shall approve or disapprove the plan.⁵ The language of the statute thus establishes that: (a) the energy efficiency and conservation measures put forward by the EDC are no more than "*proposals*" to be considered by the Commission; (b) third parties may *recommend alternatives* to these proposals; and (c) the Commission may *disapprove* the EDC's plan after considering third-party recommendations. The Commission's responsibility and authority to modify an EEC plan's proposed energy efficiency and conservation measures are underscored by the requirement that such measures "*shall include . . . energy efficient heating and cooling equipment or systems and energy efficient appliances and other technologies, practices or measures approved by the Commission.*"⁶ Thus, if the Commission approves a third party's recommended energy efficiency and conservation measure, it *shall* be included in the EEC plan under consideration. PPL's contrary interpretation would render these provisions superfluous. Since every Pennsylvania statute must be construed, if possible, "to give effect to all its provisions,"⁷ Act 129 must be read to authorize and direct the Commission to reject EEC proposals that do not include adequate energy efficiency and conservation measures and to order the adoption of third party proposals that do.⁸

⁵ 66 Pa. C.S. § 2806.1(e)(2).

⁶ 66 Pa. C.S. § 2806.1(m) (definition of "Energy and conservation measures") (emphasis added).

⁷ 1 Pa. C.S. § 1921(a) ("Every statute shall be construed, if possible, to give effect to all its provisions.").

⁸ The Commission's general powers under the Public Utility Code remove any doubt as to the Commission's authority and responsibility to order PPL to incorporate the UGI Distribution Companies' proposals into their EEC Plans. See 66 Pa. C.S. § 501(a) ("In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof . . .").

As Chairman Powelson has observed, the Commission must ensure that “any future Act 129 programs are effective uses of consumers’ money.”⁹ It cannot do so if the selection of energy efficiency and conservation programs is left solely to the discretion of the EDCs. Act 129 has mandated energy and peak load reductions with only program cost recovery, subject to cost caps and no possibility of recovering lost revenues until future base rate cases. As a result, *effective* Act 129 EEC plans are likely to lead to decreased EDC distribution revenues and earnings. EDC financial interests therefore are unlikely to be aligned with the public interest in promoting the most cost-effective or most energy-effective conservation measures,¹⁰ and, as demonstrated by PPL’s advocacy in this proceeding, EDCs are likely to vigorously defend less cost-effective measures that preserve at least some electric load.

Given these incentives, the Commission cannot implement Act 129 as the General Assembly intended merely by passively rubber-stamping an EDC’s energy efficiency and conservation programs.¹¹ Indeed, the Commission has not hesitated to order EDCs to modify their EEC plans when it deemed such modifications necessary. For example, in reviewing West Penn’s Phase I EEC plan, the Commission rejected the company’s Distributed Generation Program “due to the fact that, as proposed, it is costly, has an extremely low TRC and is not needed to meet the mandated peak demand target,¹² and thus was not “appropriate in a program

⁹ Statement of Chairman Robert F. Powelson, Secretarial Letter Seeking Comments on Planning Issues for Act 129 Energy Efficiency and Conservation Programs after May 31, 2013, Docket No. M-2012-2289411 (March 1, 2012) (“Powelson Statement”).

¹⁰ See Petition of UGI Utilities, Inc. – Electric Division for Approval of Its Energy Efficiency and Conservation Plan, Docket No. M-2010-2210316, Opinion and Order entered Oct, 19, 2011, at 21 (“2011 UGI EEC Plan Order”) (“[W]e fully appreciate the financial disincentive that the lost revenues that result from a successful EE&C plan has on a utility.”); see also Responsive Comments of the UGI Distribution Companies, Act 129 Fuel Switching Working Group (submitted March 12, 2010).

¹¹ 1 Pa. C.S. § 1922(5) (In ascertaining the intention of the General Assembly, it may be presumed “[t]hat the General Assembly intends to favor the public interest as against any private interest.”).

¹² *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093218, Order entered October 23, 2009, at 42 (“*West Penn Oct. 23, 2009 Order*”).

funded by the ratepayers.”¹³ The Commission also rejected West Penn’s Contract Demand Response Program as filed and ordered modification of the program to address the Commission’s concerns.¹⁴ Similarly, the Commission rejected PECO Energy’s “Renewable Resources Program” because the low benefit/cost ratio of the program indicated that the program “may not be an effective use of ratepayer funds.”¹⁵

2. PPL’s reliance on prior Commission statements regarding fuel switching is incomplete and misguided.

PPL relies heavily on the results of the Fuel Switching Working Group (“FSWG”) to support its view that the Commission cannot require it to adopt UGI’s fuel switching proposals.¹⁶ Plainly, proceedings such as the working group cannot negate the express language of Act 129 that gives the Commission power to modify an EDC’s Act 129 Plan. But in fact, the Commission’s adoption of the FSWG’s recommendations plainly supports adoption of UGI’s fuel switching proposals.

As PPL recognizes, the Commission convened the FSWG at the time it was considering the EDCs’ Phase I plans, in order to consider fully the technical and other issues surrounding fuel switching.¹⁷ The FSWG Staff Report concluded, in the passage relied upon by PPL:

Staff . . . believes that fuel switching measures should be available to EDCs and their stakeholders when considering the best means of achieving energy efficiency goals. However, *just as no other particular energy efficiency program or measure has been*

¹³ West Penn Oct. 23, 2009 Order at 43.

¹⁴ West Penn Oct. 23, 2009 Order at 107.

¹⁵ Petition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program, Docket No. M-2009-2093215, Order entered October 28, 2009, at 51 (“PECO Oct. 28, 2009 Order”). The Commission also ordered modifications to the UGI Distribution Companies’ EDC affiliate’s EEC Plan. See 2011 UGI EEC Plan Order (requiring EDC to modify EEC plan by, among other things, eliminating revenue recovery rider, reducing residential fuel switching incentive rebate levels, and reducing total program expenditures).

¹⁶ PPL Main Brief at 40-43.

¹⁷ See Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan, Docket No. M-2009-2093216, Opinion and Order at 105 (Oct. 26, 2009).

*mandated, fuel switching programs should not be mandated either.*¹⁸

The Commission's adoption of the FSWG Staff Report recommendations indicates that the Commission has established a policy of treating fuel switching *just like any other energy efficiency measure* that it has the power to reject or modify pursuant to Act 129. It does not and cannot mean, as PPL assumes, that the decision on whether or not to implement fuel switching – one of the most effective means available to reduce energy consumption and consumer costs – is totally left to the EDCs.

The PUC has devoted substantial resources to investigating fuel switching and developing tools to evaluate the efficacy of fuel switching measures. It is *undisputed* that the natural gas fuel switching measures proposed by UGI, if adopted, would save *far more* electricity and produce *far more* cost savings than the electric water heating and space heating measures proposed by PPL. Under these circumstances, the Commission is not required to accept PPL's unilateral, arbitrary rejection of those proposals.

B. PPL's Objections To Fuel Switching Generally And To UGI's Proposals Specifically Are Invalid And Reveal PPL's Inappropriate Hostility To Fuel Switching Measures

1. The record does not support the claim that PPL "carefully examined" fuel switching proposals.

In its effort to convince the Commission to defer to its decision to exclude water heating and space heating fuel switching measures from its Plan, PPL claims that it "carefully examined" fuel switching proposals and then (except for the inclusion of CHP in the Custom Incentive

¹⁸ *The Act 129 Fuel Switching Work Group Staff Report*, Docket No. M-00051865, Staff Report at 6 (filed April 30, 2010). Although the Secretarial Letter adopting the Report contained an abbreviated summary of this recommendation, the Letter indicates that the Commission adopted the recommendations actually contained in the report. Secretarial Letter adopting Staff Report, Docket M-00051865 (entered May 21, 2010).

Program) decided against including them in its Phase II Plan.¹⁹ To the contrary, the record shows that PPL never adequately considered fuel switching in developing its Phase II Plan, even though UGI participated in the stakeholder meetings and even though fuel switching was one of the top suggestions during those meetings and identified by PPL as such.

At the start of this proceeding, Chairman Powelson strongly urged all stakeholders to “participate in this process” in order “to perform a thorough examination of these [EEC] programs and the benefits to consumers.”²⁰ Accordingly, UGI participated in the stakeholder process and proposed the inclusion of natural gas fuel switching in PPL’s Phase II EEC Plan.²¹ Yet PPL does not appear to have seriously considered including fuel switching measures in developing its Plan. PPL’s testimony does not even list fuel switching as one of the programs it considered, nor does its description of the stakeholder process mention UGI’s participation.²²

It is now apparent that, although PPL specifically identified fuel switching as a high potential energy efficiency measure during the stakeholder process,²³ the company never gave fuel switching programs any serious consideration. Indeed, in discovery PPL candidly admitted that it “*did not consider fuel substitution* (converting from electric to gas, oil, propane, or other energy sources) for residential space heating, water heating, cooking, or clothes drying.”²⁴ Instead, only in the rebuttal phase of this case did PPL unveil its so-called “pilot,” which – as discussed in greater detail below – is totally inadequate.

¹⁹ PPL Main Brief at 40.

²⁰ Powelson Statement.

²¹ UGI Statement No. 1 (Raab) at 22.

²² See PPL Electric Companies’ Energy Efficiency and Conservation Plan, Act 129 Phase II, Sec. 1.2.6 and n.5 (description of stakeholder process and list of participants).

²³ Mr. Raab testified that PPL’s own written summary of their June 5th Stakeholder meeting lists fuel switching for residential customers as the top suggestion arising from that meeting. UGI Statement No. 1 (Raab) at 22.

²⁴ Exhibit UGI-4 (PPL response to UGI Set I interrogatories).

In short, PPL apparently decided to exclude fuel switching measures, no matter how cost effective or energy efficient, from its EEC Plan based on policy reasons. As discussed below, those “policy” reasons are not valid.

2. PPL’s arguments against fuel switching are without merit.

PPL has raised a number of so-called policy arguments to justify its refusal to consider robust fuel switching applications in its Act 129 EEC Plan. None of these arguments is sufficient to overcome the significant energy and cost advantages offered by UGI’s proposals.

First, PPL boldly argues that it is “not appropriate to include extensive fuel switching measures in is EE&C Plan” because it would “increase[e] consumption of natural gas.”²⁵ While this may be true, it is irrelevant because the key is whether fuel switching proposals promote overall energy conservation. UGI has conclusively demonstrated that its proposals are more cost effective and energy efficient than PPL’s, primarily because natural gas is more energy efficient, and that switching to natural gas – where it is available – is therefore more energy efficient. As UGI witness Mr. Raab explained:

[i]t takes about three times as much *source* energy (this includes the energy needed to generate and distribute a fuel) to deliver a unit of electricity to the site as gas, since only about 1/3 of the fuel energy that enters the power plant reaches the house. The rest is lost due to inefficiency at the power plant and the power lines. ***Therefore, an electric water heater that appears to be 50% “better” than a gas one (0.9 Energy Factor versus 0.6 Energy Factor) actually uses much more source energy than the average gas water heater.***²⁶

Therefore, as UGI witness Mr. Raab explained with respect to UGI’s proposal for natural gas water heaters, “[e]ven factoring in the increased natural gas use associated with a natural

²⁵ PPL Main Brief at 43.

²⁶ UGI Statement No. 1 (Raab) at 10 (quoting the American Council for an Energy Efficient Economy).

gas water heater, a program that promotes the installation of natural gas water heaters saves 14% *more* energy than PPL’s proposed program.”²⁷

Moreover, the Commission has already decided that fuel switching is a valid component of an Act 129 Plan so there is nothing “inappropriate” at all about doing so here. Indeed, the whole purpose of the FSWG was to develop analytical tools so that fuel switching could be included in Act 129 Plans.

Second, PPL claims that including fuel switching in EEC Plans is “unfair” to PPL’s customers because they will ultimately pay the costs to implement these programs.²⁸ This reflects a fundamental misunderstanding of the goals of Act 129. There is no unfairness in asking PPL’s customers to fund cost-effective fuel switching programs, any more than it is unfair to ask PPL’s customers to bear the cost of any Act 129 program – including those that reinforce their dependence on electricity supplied by PPL. PPL ratepayers will be paying for PPL’s Phase II program under the Act 129 funding mechanisms in any event, and it is therefore in their interests to obtain the energy savings at the least cost possible – regardless of how those savings are ultimately accomplished. Whether those programs benefit companies that sell insulation or CFLs, NGDCs, or any other conservation service provider is irrelevant to Act 129’s goals of energy conservation at the lowest possible cost.

On the other hand, it *would* be unfair to PPL’s ratepayers to adopt measures that are not cost-effective, particularly where there are fuel switching measures available to the same customer segment. That is the case here. UGI has provided uncontradicted evidence that its fuel switching proposals are significantly more cost effective using a TRC analysis than PPL’s

²⁷ UGI Statement No. 1(Raab) at p. 9.

²⁸ PPL Main Brief at 44.

corresponding measures – they provide a much bigger bang for the ratepayers’ buck.²⁹ UGI’s proposals are significantly fairer and a much better deal for PPL’s ratepayers.

Third, PPL claims that UGI’s proposals are “incomplete” because they do not account for any incentives that “may” be offered to electric customers by natural gas distribution companies for the installation of fuel switching measures.³⁰ Yet there is no evidence of such incentives in the record, as PPL even concedes.³¹ Nor is there any relevance of such incentives to PPL’s responsibilities under Act 129, which sets forth the obligations of EDCs.

Finally, PPL claims that UGI’s fuel switching proposals are “discriminatory” because they do not include wood or propane fuel switching measures.³² However, the fuel switching cost inputs of the Commission’s 2013 TRC Test are limited to natural gas measures.³³ Therefore, the cost effectiveness of an EEC plan that incorporates fuel switching measures other than natural gas cannot be demonstrated “using a total resource cost test approved by the commission” as expressly required by Act 129.³⁴ Nor are the proposals “discriminatory” because not all PPL customers have access to natural gas, any more than any EEC measures that are available only to a specific customer segment are “discriminatory.”

All of these “policy” arguments are little more than manifestations of hostility toward fuel switching. While this hostility might be understandable, it is important for the Commission

²⁹ See UGI Main Brief at 11-18 (summarizing the substantial economic benefits of UGI’s fuel switching proposals.)

³⁰ PPL Main Brief at 45-46.

³¹ PPL Main Brief notes that “there already *may be* rebates offered by natural gas companies . . .” and that “without this information” (i.e., about such rebates) UGI’s proposals cannot be evaluated. PPL Main Brief at 45-46 (emphasis supplied).

³² PPL Main Brief at 46.

³³ See *Re 2012 PA Total Resource Cost (TRC) Test*, Docket Nos. M-2012-2300653, M-2009-2108601, Order at 41-43 (Aug.30, 2012); Similarly, the fuel switching protocols of the TRM are limited to natural gas measures. See 2013 Pennsylvania Technical Reference Manual §§ 2.18, 2.19, 2.20.

³⁴ See 66 Pa. C.S. § 2806.1(b)(1)(i)(I) (“The electric distribution company shall demonstrate that the plan is cost effective using a total resource cost test approved by the commission and provides a diverse cross section of alternatives for customers of all rate classes.”); see also *id.* § 2806.1(a)(3) (Commission’s energy efficiency and conservation program shall include, *inter alia*: “An analysis of the cost and benefit of each plan submitted under subsection (b) in accordance with a total resource cost test approved by the commission.”).

to recognize that the financial interests of the EDCs are not necessarily aligned with selecting the most cost-effective and energy efficient measures for their Act 129 Plans. When UGI's fuel switching proposals are evaluated on the merits, it is clear that they are superior.

3. UGI's proposed rebates are calculated based on incremental costs and reflect the actual savings and consumer benefits produced by natural gas fuel switching measures.

PPL also criticizes UGI's proposed rebates under the fuel switching proposals.³⁵ This criticism represents a misunderstanding and distortion of the rebate levels.

First, with respect to UGI's proposed incentives for conversion to efficient natural gas water heaters, the rebate levels are *exactly the same* (\$300) as those offered by PPL for installation of HPWHs.³⁶ With respect to water heaters, UGI is simply requesting that UGI open its existing program to permit consumers to choose natural gas water heaters where they are able to do so.

Second, UGI proposes higher rebate levels for the installation of natural gas furnaces, but these higher amounts are appropriate and consistent with the methodology PPL claims it supports. PPL witness Cleff testified that "Both Mr. Raab and Mr Costlow *appear* to recommend rebate levels based upon the level of energy savings that could be achieved by a customer switching from electric to natural gas"³⁷ However, Mr. Cleff's assumption -- for which he provides no support -- is not correct. Mr. Raab clearly stated that, with respect to high efficiency natural gas furnaces, "the incentive level is set roughly equal to the incremental cost of the measures installed."³⁸

³⁵ PPL Main Brief at 47.

³⁶ See UGI Main Brief at 5, 17-18; UGI Statement No. 1 (Raab) at 16.

³⁷ PPL Statement 4R (Cleff) at 11 (emphasis supplied).

³⁸ UGI Statement No.1 (Raab) at 19.

Moreover, as Mr Raab explained, even with the higher incentive for natural gas furnace installations, the TRC benefits for this proposed modification are dramatically higher than for the corresponding PPL measure. The TRC benefit/cost ratio for UGI's proposal is *four times greater* than PPL's SEER 15 component (2.56 versus 0.56), for a total of over \$30 million of additional potential TRC benefits.³⁹ The TRC benefit/cost ratio for UGI's proposal is about *three times greater* than PPL's SEER 16 component (2.06 versus .66), for a total of over \$36 million of additional potential TRC benefits for PPL's customers.⁴⁰ Thus, even at the higher rebate levels, UGI's proposal is still a much better deal for PPL's customers.

C. There Is No Need For A "Pilot" For Fuel Switching Measures.

PPL touts its "voluntary" program to provide incentives to a mere 100 customers to install energy efficient fossil fueled water heaters or furnaces. As demonstrated in UGI's Main Brief,⁴¹ this pilot program is too little, too late. It provides consumer choice to less than *seven-tenths of one percent* (0.7%) of the almost 15,000 customers who PPL expects will be provided incentives to use electric water heaters or heat pumps,⁴² and it does nothing to improve the overall energy efficiency of PPL's Plan.

Equally important, PPL provides no justification for limiting customer participation in this program, aside from the cursory statement that it intends "to learn more about the potential for fuel switching in its service territory by evaluating market reaction, achieved savings and cost effectiveness."⁴³ PPL had no "pilot" programs in its Phase I Plan. For example, there was no "pilot" for its Appliance Recycling Program, Residential Retail Programs, or the E-Power Wise Program. Yet according to PPL's testimony, it was able to "carefully evaluate . . . each Phase I

³⁹ *Id.* at 21-22.

⁴⁰ *Id.* at 21.

⁴¹ UGI Main Brief at 24-26,

⁴² Tr. at 51-54 (cross examination of Mr. Cleff).

⁴³ PPL Statement 4R (Cleff) at 9-10.

program to determine its viability for Phase II”⁴⁴ without the need to structure them as “pilots.” Moreover, PPL has already pledged to carefully evaluate the performance of all its Phase II programs, including evaluation of cost-effectiveness and quality assurance.⁴⁵ The existing processes to evaluate, measure and verify (“EM&V”) programs, and to provide periodic reports to the Commission, is certainly sufficiently robust to evaluate “market reaction, achieved savings and cost effectiveness” for an expanded fuel switching programs. Finally, the Commission has already established through the FSWG that fuel switching from electric to natural gas is a viable conservation measure, as evidenced by its inclusion in the PA TRM. This fact alone would preclude the need for a “pilot” program for fuel switching.

In short, there is no need for any “pilot” for fuel switching. PPL has provided no justification for limiting customer choice for (and customer cost savings from) efficient natural gas water heaters and furnaces to a mere 100 of PPL’s 1.4 million customers over the next three years.

Finally, PPL proposes to block participation by low income customers in this program—a form of redlining that is particularly objectionable and discriminatory. As CAUSE-PA has also recognized, low-income customers who have access to natural gas will benefit enormously from switching fuels and should be encouraged to do so.⁴⁶ It is clearly not in the public interest for low income customers to use electric alternatives that are far less cost effective and energy efficient.

⁴⁴ PPL Statement No. 1 (Grassi) at 7.

⁴⁵ *Id.* at 16-18. These activities include evaluation of customer satisfaction and program quality, and the provision of quarterly, annual and ad hoc reports to the Commission and the Statewide Evaluator (“SWE”). *Id.*

⁴⁶ See CAUSE-PA Statement No. 1-R (“PPL should modify its plan to allow for the use of natural gas hot water heaters in its low-income WRAP program in cases where a low-income household already has natural gas service.”) OCA also recognized the superior energy efficiency of gas water heaters over HPWHs, and recommended that incentives for HPWH not be available for customers with access to natural gas. OCA St, No. 1 (Crandall) at 19-21).

D. PPL's Objections To Reporting Fuel Switching Data Are Without Merit.

UGI has proposed that PPL's reporting requirements for fuel switching be enhanced and made consistent with the reporting requirements the Commission imposed on the First Energy Companies in their Phase I proceedings. Specifically, the First Energy Companies were required to "track appropriate data regarding fuel switching, in coordination with the Statewide Evaluator, including at least the following: (1) type of appliance or equipment being replaced; (2) the availability of natural gas at the customer's location or immediate area; and (3) whether electric appliances or equipment were installed in areas where natural gas is available."⁴⁷ PPL should be required to do the same.

PPL opposes these requirements because of the additional "administrative costs" and claims that "it is unclear what would be gained" from this tracking.⁴⁸ PPL's complaint about administrative costs rings hollow, particularly in light of PPL's emphasis on the thorough nature of the evaluation and tracking efforts it claims it will undertake with the Statewide Evaluator. Any additional costs from gathering more robust fuel switching information would be minimal.

In any event, the tracking requested by UGI (and required by the Commission in other cases) is necessary to assess whether PPL's programs are actually promoting energy efficiency, or just increasing electric appliance sales. As UGI witness Mr. Raab testified, replacement of a natural gas appliance with even a high efficiency electric appliance "can have significant energy

⁴⁷ Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans, Docket Nos. M-2009-2092222, M-2009-2112952 and M-2009-2112956, Opinion and Order entered Oct. 28, 2009, at 129-130 (ordering paragraphs 10, 19); Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan, Docket No. M-2009-2093218, Opinion and Order entered Oct. 23, 2009, at 52; see id. at 104 (ordering paragraph 9).

⁴⁸ PPL Main Brief at 50-51.

efficiency consequences” on the customer’s entire energy load.⁴⁹ Switching from natural gas to electric appliances may actually increase electric usage and decrease overall energy efficiency.

PPL’s failure to report instances of conversion from natural gas water heating and space heating measures to electric will prevent the Commission from actively supervising PPL’s incentive programs. As PPL should know, this could raise antitrust concerns. PPL has previously defended antitrust challenges to PPL programs that promoted electric measures over fuel switching measures by asserting immunity under the “state action” doctrine.⁵⁰ In *Yeager’s Fuels, Inc. v. Pennsylvania Power & Light Co.*, the court rejected PP&L’s state action defense with respect to a certain program because the Commission’s review of the program was based on incomplete information.⁵¹ In opposing the reporting requirements recommended by the UGI Distribution Companies, PPL not only exposes itself to potential antitrust liability but also risks disruption of the Commission’s Act 129 conservation program.

III. CONCLUSION

For all of the foregoing reasons, and for the reasons stated in their Main Brief, the UGI Distribution Companies respectfully request that the Commission disapprove PPL’s EEC Plan as filed and direct PPL to:

1. Modify the Residential Retail and Prescriptive Equipment Incentive programs to provide the same \$300 incentive available to customers who install an electric heat pump hot water heater to every customer who installs a natural gas water heater with

⁴⁹ UGI Main Brief at 28.

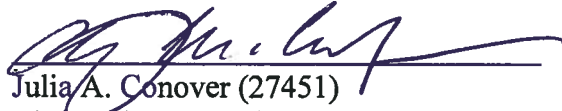
⁵⁰ The state action doctrine immunizes a private party from antitrust liability where the party establishes that (1) the state has articulated “a clear and affirmative policy” to allow the challenged conduct, and (2) the state provides “active supervision” of the challenged conduct. *Yeager’s Fuel, Inc. v. Pennsylvania Power & Light Co.*, 22 F.3d 1260, 1265 (3d Cir. 1994) (quoting *Ticor Title Ins. Co. v. FTC*, 504 U.S. 621, 631 (1992)), *reh’g denied*.

⁵¹ *Yeager’s Fuel, Inc. v. Pennsylvania Power & Light Co.*, 1995-1 Trade Cas. (CCH) ¶ 71,034, 1995 WL 348503 (E.D. Pa. June 6, 1995). Similarly, the Ninth Circuit has held that anticompetitive tariff provisions would fail to satisfy the “active supervision” component of the two-pronged test for state action antitrust immunity if the utility withheld key information requested by the utilities commission that was necessary to permit it to make an informed decision on whether the tariff should be approved. *Cost Management Services, Inc. v. Washington Natural Gas Co.*, 99 F.3d 937, 943 (9th Cir. 1996).

an energy factor (“EF”) greater than 67%, the efficiency of an Energy Star® natural gas water heater.

2. Modify the Low-Income WRAP program to install, at no cost to the customer, a natural gas water heater with an EF greater than 67% in homes where natural gas is available.
3. Modify the Residential Retail and Prescriptive Equipment Incentive programs to replace or augment PPL’s incentive of \$100 for a SEER 15 air source heat pump (“ASHP”) with a PPL incentive of \$1,400 for the installation of a natural gas furnace with an annual fuel use efficiency (“AFUE”) greater than 95%, and a SEER 15 electric central air conditioning unit. PPL shall further modify these programs to replace or augment the incentive provided for installation of a SEER 16 ASHP with a PPL incentive of \$2,500 for the installation of a natural gas furnace with AFUE greater than 95% and a SEER 16 electric central air conditioning unit. PPL shall accommodate this modification by (a) lowering participant levels, (b) funding the same participant levels by a reduction in funding to measures with lower cost effectiveness than those proposed by UGI, or (c) a combination of (a) and (b).
4. Modify the customer education, awareness and outreach programs to inform PPL’s customers of the true savings that would be achieved by employing natural gas water heating and space heating measures and to give such measures the same level of exposure as other efficient equipment measures.
5. Modify the monitoring and reporting requirements to include instances when an electric heat pump rebate has been paid to an existing natural gas customer. And,
6. Modify the Custom Incentive Program to (a) provide Combined Heat and Power (“CHP”) projects with the same \$0.08/kWh incentive based on verified savings that is provided to other projects, and (b) apply to CHP projects the same TRC qualification threshold of 1.0 that is applied to other projects to determine eligibility for incentives under the Custom Incentive Program.

Respectfully submitted,



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