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February 26, 2018

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

VIA ELECTRONIC FILING

RE: Petition of PPL Electric Utilities Corporation for Approval of its Act 129 Phase III Energy Efficiency and Conservation Plan; Docket No. M-2015-2515642

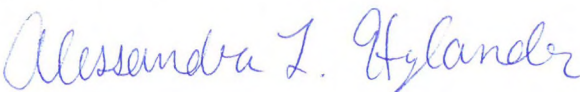
Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission PP&L Industrial Customer Alliance's ("PPLICA") Answer to the Petition for Leave to Withdraw of PPL Electric Utilities Corporation in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Alessandra L. Hylander

Counsel to the PP&L Industrial Customer Alliance

Enclosure

c: Administrative Law Judge Benjamin J. Myers (via Email and First-Class Mail)
Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities :
Corporation for Approval of its Act 129 : M-2015-2515642
Phase III Energy Efficiency and :
Conservation Plan :

**ANSWER OF THE PP&L INDUSTRIAL CUSTOMER ALLIANCE TO THE PETITION
OF PPL ELECTRIC UTILITIES CORPORATION
FOR LEAVE TO WITHDRAW WITHOUT PREJUDICE**

TO ADMINISTRATIVE LAW JUDGE BENJAMIN J. MYERS:

Pursuant to 52 Pa. Code §§ 5.61 and 5.94, the PP&L Industrial Customer Alliance ("PPLICA") hereby respectfully submits this Answer in Opposition to PPL Electric Utilities Corporation's ("PPL" or "Company") Petition for Leave to withdraw without prejudice the Remainder of its June 6, 2017 Energy Efficiency and Conservation ("EE&C") Plan Change Petition ("Petition to Withdraw").

In support of this Answer, PPLICA states as follows:

I. BACKGROUND

1. On November 30, 2015, PPL filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") a Petition for approval of its Act 129 Phase III EE&C Plan ("Phase III Plan"). Several parties intervened in that proceeding, filed testimony, and participated in an evidentiary hearing on January 29, 2016. By an Opinion and Order entered on March 17, 2016, in the above-captioned proceeding, the PUC approved PPL's Phase III Plan with

modifications.¹ In compliance, PPL filed a revised Phase III Plan which the PUC approved on June 27, 2016.²

2. On September 21, 2016, PPL filed a Petition for Approval of a Minor Change to its Phase III Plan ("Minor Change Petition"). In its Minor Change Petition, PPL sought the Commission's approval to modify the eligibility requirements for measures implemented in the Custom Program of PPL's Phase III Plan. Several parties participated in the Minor Change Petition proceeding and filed comments responding to portions of PPL's proposal. On November 4, 2016, the PUC issued a Secretarial Letter that granted PPL's Minor Change Petition.

3. On June 6, 2017, PPL filed another Petition for Approval of Changes to its Act 129 Phase III EE&C Plan ("June 6 Petition"), in which the Company proposed 13 changes to its Phase III Plan. Several parties, including PPLICA, filed comments addressing the content and merit of PPL's various proposals. Ultimately, on November 21, 2017, the PUC entered an Opinion and Order granting PPL's June 6 Petition in part³ Although granting many of PPL's proposed changes, the Opinion and Order referred the following issue to the Office of Administrative Law Judge for hearings and a recommended decision:

Proposed Change No. 10 – Allow for Enhanced Incentives for Localized Energy efficiency or Demand Reduction to Be Offered as a Pilot under the Appliance Recycling, Energy Efficient Home, Demand Response and Nonresidential Energy Efficiency Programs.⁴

¹ *Petition of PPL Elec. Utils. Corp. for Approval of its Act 129 Phase III Energy Efficiency and Conservation Plan*, Docket No. M-2015-2515642 (Mar. 17, 2016).

² *Petition of PPL Elec. Utils. Corp. for Approval of its Act 129 Phase III Energy Efficiency and Conservation Plan*, Docket No. M-2015-2515641 (June 27, 2016).

³ *Petition of PPL Elec. Utils. Corp. for Approval of its Act 129 Phase III Energy Efficiency and Conservation Plan*, Docket No. M-2015-2515642 (Nov. 21, 2017).

⁴ *Id.* at pp. 32-37, 42.

4. On December 8, 2017, Administrative Law Judge ("ALJ") Benjamin J. Myers issued a Prehearing Conference Order scheduling a prehearing conference for this matter on February 7, 2018. Various parties submitted prehearing memoranda in accordance with the ALJ's Prehearing Conference Order. PPLICA also served discovery upon PPL regarding the Enhanced Localized Incentives Pilot ("Pilot"). Ultimately, ALJ Myers cancelled the Prehearing Conference due to inclement weather. Around this time, PPL also attempted settlement discussions with the other parties.

5. On February 8, 2018, the ALJ sent an email to the parties noting PPL's prehearing memorandum indicated that PPL intended to withdraw the Pilot without prejudice to a future filing or proceeding. The ALJ asked (1) whether any parties opposed the Company's withdrawal; and (2) whether a Prehearing Conference was required at that time, given the pending withdrawal. PPLICA indicated it would object to PPL's request to the extent that PPL would seek to withdraw the proposed change without prejudice. PPL replied that it would file a petition to withdraw the proposed change by February 16, 2018, and did not believe that a Prehearing Conference would be necessary unless its request was ultimately denied.

6. On February 9, 2018, the ALJ notified the parties that a prehearing conference would not be rescheduled until after PPL's Petition to Withdraw had been decided. As indicated above, PPL subsequently filed its Petition to Withdraw the proposed Pilot on February 16, 2018.

II. STANDARD OF REVIEW

7. Pursuant to Section 5.94(a) of the PUC's regulations, "a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate

document."⁵ Such petition must justify the withdrawal.⁶ In ruling upon that petition, the ALJ or the Commission may consider the petition, objections thereto, and the public interest.⁷

III. ANSWER IN OPPOSITION TO PPL'S PETITION TO WITHDRAW

The PUC should deny PPL's Petition to Withdraw to the extent that PPL wishes to withdraw that filing without prejudice as to the remainder of its Phase III Plan. The proposed Pilot seeks to modify PPL's Appliance Recycling, Energy Efficient Home, Demand Response, and Nonresidential Energy Efficiency Programs to permit PPL to potentially offer a pilot program that would provide "enhanced incentives for localized energy efficiency or demand reduction."⁸ PPL avers that "these enhanced incentives would be offered, if necessary, as a pilot to specific locations to help PPL Electric evaluate how location-specific incentives influence customers' participation, how they impact grid operations, and whether they can be used to defer distribution system upgrades."⁹

Both PPLICA and OCA raised concerns about PPL's proposal in their Comments. PPLICA filed Comments asking the Commission to deny the proposal due to the potential for interclass cost subsidization and the unfairness and discriminatory practice offering customers different rebate levels under the same program based on geographical location.¹⁰ PPL now seeks to withdraw this proposal which, PPLICA would not generally oppose. However, PPL's Petition to Withdraw fails to provide any assurance that parties to this proceeding would not be forced to again litigate the same proposed Pilot as part of another Petition for Plan Change. This is

⁵ 52 Pa. Code § 5.94(a).

⁶ *Id.*

⁷ *See id.*

⁸ Petition to Withdraw, at 5.

⁹ *Id.*

¹⁰ *See* PPLICA Comments, at 4.

particularly concerning because at its December 13, 2017, EE&C Plan Stakeholder Meeting, PPL informed participants of its intention to file a third Petition for Plan Change in 2018.¹¹ As PPLICA and other parties have already expended resources to file Comments, file Reply Comments, propound discovery, secure witnesses, and otherwise participate in this proceeding, exposing parties to a risk of expending duplicative resources runs contrary to the public interest and principles of judicial economy. PPL should be permitted to withdraw the proposed Pilot, but subject to a condition that it will not refile this proposal for the duration of its Phase III Plan, which ends on May 31, 2021.

None of the arguments in PPL's Petition to Withdraw compel an alternate result. As set forth below, the arguments in PPL's Petition to Withdraw fail to cite any credible public interest consideration commensurate with the unreasonableness of PPL's proposal to withdraw the proposed Pilot and reserve the right to submit the same pilot as part of another Petition for Plan Change, which could occur as soon as later in 2018.

First, PPL alleges that its request to withdraw the proposed change without prejudice is "largely unopposed."¹² PPL avers that "[o]nly PPLICA opposes the Company's request to withdraw the proposed change without prejudice, even though PPLICA objected to the Enhanced Localized Incentives Pilot in its Comments and Reply Comments."¹³ As clarified above, PPLICA's objection to the Petition for Withdrawal is entirely consistent with its Comments and Reply Comments, as PPLICA does not object to the withdrawal of the proposed Pilot in general, but rather solely objects to PPL's intent to withdraw the Pilot without prejudice so it can refile the Pilot at any time during Phase III.

¹¹ See Appendix A, p. 49.

¹² Petition to Withdraw, at 6.

¹³ *Id.*

Second, PPL suggests that withdrawing the Pilot will avoid litigation expenses.¹⁴ The benefits of avoiding litigation are meaningless if stakeholders are forced to litigate this issue again when PPL files its 2018 Petition for Plan Change.¹⁵ Indeed, PPLICA seeks to avoid duplicative litigation expenses by ensuring that PPL will not refile the proposed Pilot for the duration of its Phase III Plan.

Third, PPL suggests that Commission precedent supports withdrawal of the proposed Pilot without prejudice. PPL argues that, absent an abuse of process or litigation of a proceeding beyond the point of an evidentiary hearing, the PUC has generally allowed litigants to withdraw pleadings without prejudice.¹⁶ The Commission must reject PPL's attempt to create an unreasonably narrow standard of review lacking precedential support.¹⁷ As stated in Section 5.94 of its Regulations, the Commission's review of a Petition to Withdraw necessitates consideration of the public interest, not a limited evaluation of whether a party has committed "abuse of process" or whether the litigation has progressed beyond evidentiary hearings.¹⁸

¹⁴ *Id.*

¹⁵ See Appendix A, p. 49.

¹⁶ Petition to Withdraw, at 7.

¹⁷ PPL cited a total of six (6) cases in support of its argument that the PUC generally grants Petitions to Withdraw "absent an abuse of process or litigation of a proceeding beyond the point of an evidentiary hearing." Withdrawal Petition, at 7, note 11. Although not clarified in the Withdrawal Petition, three (3) of these cases involved unopposed Petitions for Withdrawal, where the lack of opposition served as the primary consideration in granting the Petitions. See *Pa. PUC v. Cawley Bros. Van Lines, Inc.*, Docket No. C-2011223523 (Feb. 19, 2013), at 2 (Initial Decision); see also *Phila HGI Assoc., LP v. PECO Energy Co.*, Docket No. C-2008-2069070, *et al.* (Oct. 30, 2014), at 5 (Initial Decision); see also *Application of A Life Transition Serv. LLC*, Docket No. A-2014-2437543 (Apr. 21, 2015), at 3 (Initial Decision). In two (2) of the cited cases, the Commission granted withdrawal without prejudice because a withdrawal with prejudice would violate Commission regulations or procedures, but gave no indication of an intention to set an exclusive standard of review. See *In re Application of Dela & Hudson Ry. Co., Inc.*, Docket No. A-00119606 (Dec. 10, 2014), at 5 (Recommended Decision); see also *Phone Talk Inc. v. The Bell Tele. Co. of Pa.*, Docket No. C-882009, *et al.*, 1992 Pa. PUC LEXIS 53, (Order entered June 19, 1992), at *9-13. Similarly, in one (1) cited case the Commission denied a contested Petition for Withdrawal without prejudice where the litigation had proceeded beyond evidentiary hearings, but again gave no indication of an intention to set an exclusive standard of review. See *Application of J. Andrews Assocs., Inc. d/b/a Seven-Utility Mgmt. Consultants, LLC*, Docket No. A-2011-2241747 (Order entered Dec. 20, 2012), at 7-9.

¹⁸ See 52 Pa. Code § 5.94.

The PUC has established a process for EDCs to request to change their approved EE&C Plans. PPL has generally requested to change its EE&C Plan each year, especially during the current Phase III. Allowing PPL to submit a plan change and then withdraw that change after the parties have submitted comments opposing the change subverts the Stakeholder process and encourages "trial balloon" proposals that are not fully supported or thought out. It is contrary to public interest to allow the resubmission of the Pilot during Phase III, and may rise to the level of abusing the plan change process.

Fourth, PPL mistakenly avers that the Commission's *Minor EE&C Plan Change Order* favors approval of its proposed withdrawal. However, PPL concedes that in that Order, the PUC merely indicated that if a proposed minor change is referred to the Office of ALJ for hearings, parties have the opportunity to request permission to withdraw their objection or the proposed change without prejudice after such referral.¹⁹ In other words, the Commission granted parties the right to seek permission to withdraw their proposals without prejudice, but did not confer parties a right to withdraw proposals without prejudice. The acknowledgment of parties' right to seek relief from the Commission is not an indication of support for each instance in which a party may pursue such relief.

Fifth, PPL suggests that PPLICA's position contradicts its prior withdrawal of a pleading without prejudice over PPL's objection. PPL selectively recites the procedural history from PPLICA's January 19, 2010, Complaint against PPL regarding its Transmission Service Charge ("TSC") Reconciliation for 2009 and the Final TSC for 2010.²⁰ The Company indicates that "five days before PPLICA's direct testimony was due, PPLICA filed a Petition for Leave to Withdraw

¹⁹ Petition to Withdraw, at 7.

²⁰ *Id.* at 8.

its Complaint without prejudice" and noted that PPLICA was permitted to withdraw the TSC Complaint without prejudice because the Commission viewed it as a "simple procedural request, and should be granted without conditions or Commission pronouncements related to the merits of the issues raised by the Complaint, or issues that may or may not be raised in other proceedings."²¹

However, PPL's Petition to Withdraw ignores critical details distinguishing the facts surrounding the TSC Complaint from the present circumstances. PPL fails to note that PPLICA sought withdrawal of the TSC Complaint because the Commission: (1) issued discovery requests to PPL under a TSC Reconciliation docket addressing the reconciliation anomalies raised in PPLICA's TSC Complaint; and (2) opened a generic investigation into TSC reconciliation practices.²² The ALJ in the TSC Complaint proceeding observed that granting withdrawal of PPLICA's TSC Complaint with prejudice would impair ongoing litigation in the other dockets. Therefore, in granting withdrawal of PPLICA's Complaint without prejudice, the ALJ declared: "[w]e decline to delve into the issues that appropriately are within the scope of either *PPL's 2010 TSC Reconciliation* proceeding or the *TSC Investigation*, which are not before us today."²³

To the contrary, PPLICA's request for a withdrawal with prejudice here seeks far more focused relief, as PPL would only be barred from proposing the Pilot in another Petition for Plan Change during the Phase III Plan period. Had PPL, in the TSC Complaint proceeding, sought only to bar PPLICA from filing another Complaint addressing the particular reconciliation, then the circumstances would be more analogous. However, PPL sought to condition withdrawal of

²¹ *Id.*

²² See *PPL Electric Utilities Corp. Proposed Transmission Service Charge (TSC) Reconciliation for the Twelve Months Ending November 30, 2010*, Docket No. M-2010-2213754 (Order entered May 19, 2011); see also *Investigation re Transmission Reconciliation Service Charge (TSC) Reconciliation Methods*, Docket No. M-2011-2239714 (Order entered May 19, 2011).

²³ See *PPLICA v. PPL Elec. Utils. Corp.*, Docket No. C-2010-2153656 (Order entered Jan 12, 2012), at 9.

PPLICA's TSC Complaint on a directive barring PPLICA from contesting PPL's TSC calculations *in any proceeding*, which would have hindered other Commission investigations. Therefore, PPLICA's request for withdrawal with prejudice here in no way contradicts its prior opposition to PPL's request in the TSC Complaint proceeding.

Finally, PPL argues that PPLICA's request for withdrawal with prejudice, should be denied because granting the withdrawal with prejudice would essentially convey the relief sought in PPLICA's Comments. According to PPL, granting the withdrawal with prejudice would provide the same result for PPLICA as a denial on the merits, because PPL would always reserve the right to submit the proposed Pilot as part of its Phase IV EE&C Plan.

Initially, it is not clear why any potential for a withdrawal to arrive at the same result as granting PPLICA's originally sought relief would be relevant to the Commission's disposition of PPL's requested withdrawal. PPL bears the burden to prove the merits of the proposed change to its EE&C Plan, not PPLICA.²⁴ Moreover, the premise that a withdrawal with prejudice would benefit PPLICA in the same manner as a denial of the proposal on the merits is demonstrably untrue. If the Commission granted the relief sought in PPLICA's Comments, then PPLICA would have favorable precedent to oppose approval of the same or similar proposals in any proceeding, including PPL's Phase IV EE&C Plan filing. Allowing PPL to withdraw the proposed Pilot with prejudice as to subsequent Phase III Petitions for Plan Changes would not confer such precedential benefits to PPLICA.


²⁴ Opinion and Order, *Petition of PPL Electric Utilities Corp. for Approval of its Act 129 Phase III Energy Efficiency & Conservation Plan*, Docket No. M-2015-2515642, page 22 (entered Mar. 17, 2016) (noting that "As the proponent of a rule or order, the Company has the burden of proof in this proceeding in accordance with Section 332(a) of the Code, 66 Pa. C.S. § 332(a)").

IV. CONCLUSION

WHEREFORE, the PP&L Industrial Customer Alliance respectfully requests that the Pennsylvania Public Utility Commission deny PPL Electric Utilities Corporation's Petition to Withdraw the remainder of the June 6, 2017 Petition for Approval of Changes to its Act 129 Phase III Energy Efficiency & Conservation Plan without prejudice to a future filing or proceeding.

Respectfully submitted,

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