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File #: 163427

May 10, 2018

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**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:

Enclosed please find the Replies of PPL Electric Utilities Corporation to the Exceptions of the PP&L Industrial Customer Alliance for filing in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DTR/jl  
Enclosures

cc: Honorable Benjamin J. Myers  
Certificate of Service

**CERTIFICATE OF SERVICE**  
**(Docket No. M-2015-2515642)**

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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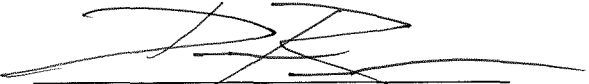
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Date: May 10, 2018



Devin T. Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLIES OF PPL ELECTRIC UTILITIES CORPORATION TO THE  
EXCEPTIONS OF THE PP&L INDUSTRIAL CUSTOMER ALLIANCE**

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PPL Electric Utilities Corporation (“PPL Electric” or the “Company”), pursuant to 52 Pa. Code § 5.535, hereby respectfully submits these Replies to the Exceptions of the PP&L Industrial Customer Alliance (“PPLICA”). In its Exceptions, PPLICA has challenged Administrative Law Judge Benjamin J. Myers’s (“ALJ”) Recommended Decision granting PPL Electric’s Petition for Leave to Withdraw Without Prejudice the Remainder of Its June 6, 2017 Energy Efficiency and Conservation (“EE&C”) Plan Change Petition.

For the reasons explained below, PPL Electric respectfully requests that the Pennsylvania Public Utility Commission’s (“Commission”) deny PPLICA’s Exceptions and adopt the Recommended Decision without modification.

**I. INTRODUCTION**

On November 30, 2015, PPL Electric filed its initial Phase III EE&C Plan with the Commission pursuant to Act 129 and various related Commission orders. The Commission approved PPL Electric’s initial Phase III EE&C Plan, with modifications, on March 17, 2016. Pursuant to the March 2016 Order, PPL Electric submitted a compliance filing on April 22, 2016. The Company subsequently filed an Errata to its compliance filing on May 24, 2016. The Commission approved PPL Electric’s compliance filing, as amended, on June 27, 2016.

On September 21, 2016, PPL Electric filed a petition for approval of a minor plan change to its Phase III EE&C Plan (“Revision 1”). On November 4, 2016, the Commission issued a Secretarial Letter evidencing that its staff had approved of the minor plan change. On November 14, 2016, PPLICA filed a petition for appeal of the Commission staff’s decision. PPL Electric filed an answer to PPLICA’s petition on November 28, 2016. On January 26, 2017, the Commission denied PPLICA’s petition for appeal.

On June 6, 2017, PPL Electric filed a petition for approval of major and minor changes to its Phase III EE&C Plan (“Revision 2” or “June 6, 2017 Petition”). Because the June 6, 2017 Petition included both major and minor changes, the Company opted to proceed under the Commission’s review procedures for major changes. On November 21, 2017, the Commission entered its Order approving most of the proposed changes, as clarified by the Company. One proposed minor change—the Enhanced Localized Incentives Pilot—was referred to the Office of Administrative Law Judge (“OALJ”) for hearings and a recommended decision. Therefore, this proposed change was the only remaining aspect of the June 6, 2017 Petition pending before the Commission.

On December 7, 2017, a Notice was issued scheduling a prehearing conference for February 7, 2018, at 10:00 AM in Hearing Room 2 of the Commonwealth Keystone Building in Harrisburg, Pennsylvania.

On December 8, 2017, the ALJ issued a Prehearing Conference Order directing the parties to file prehearing memoranda on or before January 31, 2018.

On January 25, 2018, PPLICA served its first set of interrogatories on PPL Electric concerning the Enhanced Localized Incentives Pilot.

On January 31, 2018, counsel for PPL Electric sent an email to the ALJ and the parties, requesting that the Company provide the ALJ with an update on settlement discussions by February 2, 2018, and that the parties submit prehearing memoranda on February 5, 2018. The ALJ responded with an email granting PPL Electric's request.

Also on January 31, 2018, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") filed its prehearing memo.

On February 5, 2018, prehearing memoranda were filed by PPL Electric, PPLICA, the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Commission on Economic Opportunity ("CEO"), and the Sustainable Energy Fund of Central Eastern Pennsylvania ("SEF").

Due to inclement weather, the prehearing conference scheduled for February 7, 2018, was cancelled.

On February 8, 2018, the ALJ sent an email to the parties, noting PPL Electric's statement in its prehearing memo that it intended to withdraw the Enhanced Localized Incentives Pilot without prejudice to a future filing or proceeding. The ALJ inquired as to: (1) whether any parties would oppose the Company's withdrawal; and (2) whether a prehearing conference was necessary at this time, given the proposed withdrawal.

All of the following parties responded to the ALJ, indicating that they did not oppose the Company's request: (1) OCA; (2) OSBA; (3) CAUSE-PA; (4) CEO; (5) SEF; (6) Wal-Mart Stores East, LP and Sam's East, Inc. (collectively, "Walmart"); and (7) the Retail Energy Supply Association ("RESA").

PPLICA responded that it would object to PPL Electric's request to the extent the Company sought to withdraw the proposed change without prejudice.

PPL Electric responded that it would file a Petition to Withdraw the proposed change by February 16, 2018, and did not believe a prehearing conference was necessary unless its request were ultimately denied.

On February 9, 2018, the ALJ sent an email to the parties stating that a prehearing conference would not be rescheduled at this time.

On February 16, 2018, PPL Electric filed its Petition for Leave to Withdraw Without Prejudice the Remainder of its June 6, 2017 EE&C Plan Change Petition.

On February 26, 2018, PPLICA filed its Answer to PPL Electric's Petition for Leave to Withdraw, opposing a withdrawal without prejudice.

On April 9, 2018, the ALJ issued his Recommended Decision ("RD") rejecting PPLICA's arguments and granting PPL Electric's Petition for Leave to Withdraw without prejudice.

On April 30, 2018, PPLICA filed its Exceptions to the RD.

For the reasons explained in more detail below, PPLICA's Exceptions are without merit, and the Commission should adopt the ALJ's well-reasoned RD without modification.

## **II. REPLIES TO EXCEPTIONS**

### **A. REPLY TO EXCEPTION NO. 1 – THE RD CORRECTLY DESCRIBED PPLICA'S POSITION**

PPLICA alleges that the RD erred in stating that PPLICA advanced contradictory arguments by first opposing the proposed EE&C Plan change and then opposing the withdrawal of that change without prejudice. (PPLICA Exceptions, p. 3) PPLICA avers that the RD overlooks that it does not oppose a withdrawal of the change, only a withdrawal without prejudice. (PPLICA Exceptions, p. 3) PPLICA's arguments are without merit.

First, throughout the RD, the ALJ accurately described PPLICA's requested relief and position on the Company's proposed withdrawal. (RD at 5-9) For example, on page 5, the RD stated that "PPLICA did not object to the withdrawal in and of itself but did object to the withdrawal being without prejudice." (RD at 5) Further, on page 6, the RD observed that "PPLICA's only objection is not to the withdrawal itself – but to PPL's request that it be without prejudice." (RD at 6) Indeed, whether the withdrawal should be granted without prejudice or with prejudice for the remainder of Phase III was the principal issue before the ALJ. (RD at 5-9) Therefore, PPLICA's claim that the RD overlooked its specific opposition to the withdrawal completely lacks merit.

Second, the RD never stated that PPLICA's position was contradictory. (RD at 9) In actuality, the RD explained:

As previously indicated, public interest must ultimately be considered in determining whether PPL's withdrawal should be with or without prejudice. It would be somewhat contradictory for a party on one hand to make an argument that a proposed change to the EE&C plan is not sound or otherwise in the public interest and then argue that the withdrawal of that proposed change would also not be in that same interest.

(RD at 9) (emphasis added) In other words, the RD merely stated that it would be somewhat contradictory for a party to oppose an EE&C Plan change and then oppose any withdrawal of change. (RD at 9) As recounted by the RD several times, however, PPLICA only opposed a withdrawal without prejudice. (See RD at 9) Therefore, the RD never specifically held that PPLICA's position was contradictory.<sup>1</sup>

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<sup>1</sup> Even if this passage was intended to describe PPLICA's position specifically, PPLICA omits that the RD only stated that PPLICA's position was "somewhat" contradictory. (RD at 9) Moreover, it is wholly unclear how this statement would rise to the level of warranting a reversal of the well-reasoned RD.



In fact, the RD observed that even if PPLICA's request were granted, nothing would prevent PPL Electric from "propos[ing] the same or a similar change as part of its Phase IV Plan." (RD at 9) "[T]he only difference between a withdrawal with prejudice and a withdrawal without, would be whether the battle is fought before or after May 31, 2021." (RD at 9) Therefore, as explained in PPL Electric's Petition, a withdrawal with prejudice for the remainder of Phase III would essentially grant PPLICA the relief it sought in its Comments—a denial of the proposed change for Phase III. (Petition to Withdraw ¶ 29) Thus, there is no difference between a denial of the proposed change and a withdrawal with prejudice for the remainder of Phase III. (Petition to Withdraw ¶ 29)

For these reasons, PPLICA's Exception No. 1 should be rejected.

**B. REPLY TO EXCEPTION NO. 2 – THE RD PROPERLY CONSIDERED AND REJECTED PPLICA'S ARGUMENTS AGAINST THE WITHDRAWAL WITHOUT PREJUDICE**

PPLICA contends that the RD erred in granting the withdrawal of the minor EE&C Plan change without prejudice and finding that PPLICA failed to demonstrate how a withdrawal with prejudice for the remainder of Phase III was in the public interest. (PPLICA Exceptions, pp. 4-5) In support, PPLICA alleges that the RD "fail[ed] to appropriately recognize the harm of rejecting PPLICA's request for withdrawal 'with prejudice'" and "disregard[ed] the Commission's intent to reduce costs, time and resources related to litigating and administering Phase III EE&C Plans." (PPLICA Exceptions, p. 4) Moreover, PPLICA claims that "allowing PPL to submit a plan change and then withdraw that change after the parties have submitted comments opposing the change subverts the Commission's stakeholder processes" and is against the public interest. (PPLICA Exceptions, p. 5) PPLICA's contentions are without merit.

The RD correctly found that all of the factors for determining if a pleading should be withdrawn with or without prejudice weighed in favor of PPL Electric. (RD at 7-9) Specifically,

the RD considered “(1) the behavior of a party, (2) the timing of the request, and (3) whether Commission processes may be abused.” (RD at 7) In this case, “no such red flags have been raised by PPL during the Phase III approval process.” (RD at 7)

First, the Company’s behavior was entirely reasonable. As explained in the Company’s Petition to Withdraw, PPL Electric requested that the minor EE&C Plan change be withdrawn without prejudice to a future filing or proceeding given the opposition to the change and the issues and concerns raised by PPLICA and OCA. (Petition to Withdraw ¶ 20) Rather than force the parties to incur the substantial costs of a fully litigated proceeding, PPL Electric ultimately determined it would be prudent to withdraw the proposed change without prejudice to a future filing or proceeding. (Petition to Withdraw ¶ 23) Indeed, PPL Electric only sought to withdraw the proposed change after engaging in settlement negotiations with parties to try to “avoid the time and expense of a prehearing conference and subsequent litigation.” (RD at 8)

Second, the litigation has not progressed to a point where a withdrawal without prejudice would be unreasonable. The Company requested the withdrawal before even a prehearing conference was held. (RD at 3, 8) In contrast, the RD noted that PPLICA previously was granted a request to withdraw a pleading without prejudice over PPL Electric’s objection after “a prehearing conference had been held and a litigation schedule had been established” and “[f]ive days before PPLICA’s direct testimony was due.” (RD at 8) Even though that litigation progressed much farther than the instant proceeding, the Commission still held that “PPLICA’s requested to withdraw its complaint should be viewed 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.” (RD at 8)

(emphasis added) (internal quotation marks omitted) (quoting *PPLICA v. PPL Elec. Utils. Corp.*, Docket No. C-2010-2153656, 2012 Pa. PUC LEXIS 39 (Order entered Jan. 12, 2012))

Third, PPL Electric's request cannot, as alleged by PPLICA, be held to subvert or abuse the Commission's processes. To the contrary, the Company's request is entirely consistent with the Commission's *Minor EE&C Plan Change Order*. See *Energy Efficiency and Conservation Program*, Docket No. M-2008-2069887, 2011 Pa. PUC LEXIS 1796 (Order entered June 10, 2011) ("*Minor EE&C Plan Change Order*"). In that order, the Commission stated that if a proposed minor change is referred to the Office of Administrative Law Judge for hearings, "parties have the opportunity to request permission to withdraw their objection or the proposed change without prejudice after such referral, if they choose." (RD at 3-4) (emphasis added) (quoting *Minor EE&C Plan Change Order*, 2011 Pa. PUC LEXIS 1796, at \*16) Here, PPL Electric followed the Commission's pronouncement in that order and after the referral to OALJ, requested that the proposed minor change be withdrawn without prejudice.

In addition, contrary to PPLICA's claim, the RD did not overlook PPLICA's alleged harm if the withdrawal is granted without prejudice. The RD explicitly stated that "[i]t is understandable that PPLICA does not wish to fight the same battle again if PPL decides to request a similar minor change to its EE&C plan at some future date." (RD at 9) However, even if PPL Electric were to propose the same or a similar change in the future, "the only difference between a withdrawal with prejudice and a withdrawal without . . . would be whether the battle is fought before or after May 31, 2021." (RD at 9) Indeed, PPLICA's alleged harm is entirely speculative, as it is dependent on PPL Electric proposing the same or a similar minor plan change before the end of Phase III. Moreover, any alleged harm would be miniscule because, thus far, the parties generally have only incurred the time and expense of preparing and

submitting limited comments on the proposal.<sup>2</sup> Indeed, as explained previously, the proceeding has not progressed nearly as far as when PPLICA withdrew a pleading without prejudice over PPL Electric's objection "[f]ive days before PPLICA's direct testimony was due." (RD at 8) Therefore, as the RD held, PPLICA's argument "fails to establish how a withdrawal of PPL's remaining proposed change without prejudice would be counter to public interest." (RD at 9)

Finally, the PPLICA erroneously contends that the RD disregarded the Commission's *Final Phase III Implementation Order*,<sup>3</sup> where it adopted a five-year EE&C program to, among other things, save "costs, time and resources related to litigating and administering the EE&C plans." (PPLICA Exceptions, pp. 4-5) PPLICA did not raise this argument in its Answer to PPL Electric's Petition. (*See* PPLICA Answer to Petition to Withdraw) Accordingly, the RD cannot disregard an argument that PPLICA failed to set forth in its Answer.

Nevertheless, PPLICA misinterprets and overstates this passage from the Commission's *Final Phase III Implementation Order*. The Commission merely outlined that it adopted a five-year phase for Phase III to conserve the costs, time, and resources spent in litigating the initial filing of the EDCs' EE&C Plans. Any shorter term would force the parties to incur substantial time and expense of litigating new EE&C Plans on a more frequent basis, such as the three years between Phases II and III. Furthermore, under PPLICA's logic, any change proposed by an EDC that is subsequently withdrawn could not be proposed again until the subsequent Phase. However, for Phase III, the Commission specifically stated that "EDCs can submit EE&C Plan changes" and adopted the EE&C Plan change processes set forth in its *Minor EE&C Plan Change Order*. *Final Phase III Implementation Order*, pp. 13, 114-18. Under those processes, a

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<sup>2</sup> See KEEA Comments, pp. 4-6 (July 6, 2017); OCA Comments, pp. 9-10 (July 6, 2017); PPLICA Comments, pp. 3-4 (July 6, 2017); PPLICA Reply Comments, pp. 3-4 (July 26, 2017). PPLICA also propounded limited discovery and filed pleadings opposing PPL Electric's requested withdrawal without prejudice.

<sup>3</sup> *Energy Efficiency and Conservation Program*, Docket No. M-2014-2424864 (Order entered June 19, 2015) ("*Final Phase III Implementation Order*").


party may request to withdraw a minor change “without prejudice” after it is referred to OALJ. *Minor EE&C Plan Change Order*, 2011 Pa. PUC LEXIS 1796, at \*16 (emphasis added). Thus, PPLICA’s argument that the RD is inconsistent with the *Final Phase III Implementation Order* lacks merit.

Based on the foregoing, PPLICA’s Exception No. 2 should be denied.

### III. CONCLUSION

WHEREFORE, for all the foregoing reasons, as well as those more fully explained in the Recommended Decision of Administrative Law Judge Benjamin J. Myers, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission: (1) deny the Exceptions filed by the PP&L Industrial Customer Alliance; (2) adopt the Recommended Decision without modification; and (3) grant PPL Electric Utilities Corporation leave to withdraw the remainder of the June 6, 2017 Petition for Approval of Changes to Its Act 129 Phase III Energy Efficiency and Conservation Plan without prejudice to a future filing or proceeding.

Respectfully submitted,



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Dated: May 10, 2018

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