PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held October 15, 2009

Commissioners Present

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman, Statement
Kim Pizzingrilli, Statement
Wayne E. Gardner
Robert F. Powelson, Statement, Partial Dissent

Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan	Docket No. M-2009-2093216

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OPINION AND ORDER

BY THE COMMISSION:

I. Introduction

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition of PPL Electric Utilities Corporation (PPL or Company) for Approval of its Energy Efficiency and Conservation Plan (EE&C Plan, or Plan), filed on July 1, 2009.

II. Background

A. Act 129

Governor Edward G. Rendell signed Act 129 of 2008 (Act or Act 129) into law on October 15, 2008. Act 129 has several goals including reducing energy consumption and demand. Act 129 took effect thirty days thereafter on November 14, 2008. Among other things, Act 129 amended the Public Utility Code (Code), 66 Pa. C.S. §§ 101 *et seq*., to require the Commission to develop and adopt an Energy Efficiency and Conservation Program (EE&C Program) by January 15, 2009. The Commission's EE&C Program is to include the following:

(1) A procedure for approving energy efficiency and conservation (EE&C) plans submitted by electric distribution companies (EDCs).

(2) A process to evaluate and verify the results of each plan and the program as a whole.

(3) A process to analyze the costs and benefits of each plan in accordance with a total resource cost test.

(4) A process to analyze how the program as a whole and each plan will enable the electric distribution companies to meet or exceed the Act's consumption reduction requirements.

(5) Standards to ensure that each plan uses a variety of measures that are applied equitably to all customer classes.

(6) A process through which recommendations can be made for the employment of additional consumption reduction measures.

(7) A procedure to require and approve the competitive bidding of all contracts with conservation service providers (CSPs).

(8) A procedure through which the Commission will review and modify, if necessary, all contracts with CSPs prior to execution.

(9) A procedure to ensure compliance with the requirements of Sections 2806.1(c) and (d) of the Code, 66 Pa. C.S. §§ 2806.1(c) and (d).

(10) A requirement for the participation of CSPs in the implementation of all or part of a plan.

(11) A cost recovery mechanism to ensure that measures approved are financed by the customer class that directly receives the energy and conservation benefits.

66 Pa. C.S. § 2806.1(a)(1)-(11).

On October 21, 2008, the Commission issued a Secretarial Letter seeking comments on each of the individual aspects of the EE&C Program outlined in 66 Pa. C.S. § 2806.1(a)(1)-(11). Pursuant to an October 29, 2008 Secretarial Letter at Docket No. M-00061984, comments were due November 3, 2008. In addition, the Commission held a special *en banc* hearing on alternative energy, energy conservation and efficiency, and demand side response on November 19, 2008. Comments in reply to those comments expressed at the *en banc* hearing were due no later than December 1, 2008.

On November 26, 2008, the Commission circulated a draft staff proposal and further questions relative to the Act 129 implementation plan. Comments on the draft proposal were due December 8, 2008. An EE&C Program stakeholder meeting was held on December 10, 2008. Reply comments were due by December 19, 2008.

By Opinion and Order entered January 16, 2009, at Docket No. M-2008-2069887, *In re: Energy Efficiency and Conservation Program* (*Implementation Order*), the Commission established the standards that EE&C plans must meet and provided guidance on the procedures to be followed for submittal, review, and approval of all aspects of EDC plans.

On January 30, 2009, the Energy Association of Pennsylvania (Energy Association) filed a Petition for Clarification and Reconsideration of the *Implementation Order*. On February 2, 2009, the Industrial Energy Consumers of Pennsylvania (IECPA) filed a Petition for Clarification of the *Implementation Order*. By Opinion and Order entered June 2, 2009, at Docket No. M-2008-2069887 (*Reconsideration Order*) the Energy Association's Petition was denied and IECPA's was granted. In the *Reconsideration Order*, the Commission declined to extend the peak load reduction compliance period to the summer of 2013, (June 1, 2013 through September 30, 2013), as requested by the Energy Association. The Commission also declined to adopt the Energy Association's request that the Commission measure only an EDC's capability to reduce peak demand, as opposed to an actual reduction of peak demand. Finally, the Commission granted the IECPA's request to allow all parties, not just the EDCs, an opportunity to submit reply briefs in the plan approval proceedings.

Act 129 establishes a requirement for the participation of CSPs in the implementation of all or part of a plan. 66 Pa. C.S. § 2806.1(a)(10). The Commission was required to establish, by March 1, 2009, a registry of approved persons qualified to provide conservation services to all classes of customers. 66 Pa. C.S. § 2806.2(a). The

Commission instituted a process at Docket No. M-2008-2074154 to establish the qualification requirements CSPs must meet to be included on the registry. On December 22, 2008, the Commission entered an order tentatively establishing the CSP Registry (*Tentative Order)*. The *Tentative Order* was to become final unless adverse comments were received on or before January 2, 2009. Adverse comments were timely received.

By Opinion and Order entered February 5, 2009, at Docket No. M-2008-2074154 (*In re: Implementation of Act 129 of 2008 Phase 2 – Registry of Conservation Service Providers* (*Final CSP Order*), the Commission established the minimum experience and qualification requirements each CSP must meet to be included in the CSP registry.

In the *Implementation Order,* at 13, the Commission stated that it would utilize the Technical Reference Manual (TRM) to help fulfill the evaluation process requirements contained in Act 129. The TRM was previously adopted by the Commission in the Alternate Energy Portfolio Standards Act proceedings at Docket No. M-00051865. The Commission noted, however, that the TRM may need to be updated and expanded to fulfill the requirements of Act 129. The Commission stated that it would update and expand the TRM at Docket No. M-00051865 to provide for additional energy efficient technologies. On February 20, 2009, the Commission issued a Secretarial Letter seeking comments on a proposed TRM update. Following the receipt of comments and reply comments, and a meeting with interested stakeholders, the Commission, on June 1, 2009, entered its Opinion and Order at Docket No. M-00051865 adopting the 2009 version of the TRM.[1]

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[1] *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Reserves* – Technical Reference Manual Update, Docket No. M-00051856 (Order entered June 1, 2009) (*TRM Order*)

The *Implementation Order*, at 14, also noted that Act 129 requires that the Commission's EE&C Program include an analysis of the costs and benefits of each EDC's EE&C plan, in accordance with a total resource cost test (TRC Test), be approved by the Commission. 66 Pa. C.S. § 2806.1(a)(3). Act 129 requires an EDC to demonstrate that its plan is cost-effective using the TRC Test, and that the plan provide a diverse cross section of alternatives for customers of all rate classes. 66 Pa. C.S. § 2806.1(b)(1)(i)(I). Act 129 defines a "total resource cost test" as "a standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures." 66 Pa. C.S. § 2806.1(m).

The Commission stated in the *Implementation Order* that the TRC Test set forth in *The California Standard Practice Manual – Economic Analysis of Demand-Side Programs and Projects*, July 2002,[2] (*California Manual*) provides a starting point, but acknowledged that modifications might be necessary to meet any unique requirements of Act 129 and Pennsylvania's electric industry. The Commission therefore instituted a separate proceeding at Docket No. M-2009-2108601 to review the *California Manual.* On May 29, 2009, the Commission circulated a TRC Test proposal and requested comments relative to TRC testing in Pennsylvania. By Opinion and Order entered June 23, 2009, at Docket No. M-2009-2108601 *In re: Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test (TRC Test Order)*, the Commission set forth the nature of the TRC Test to be used in Pennsylvania.

Finally, on April 21, 2009, the Commission issued a Request for Proposals, seeking an Act 129 Statewide Evaluator to assist in evaluating the EDCs' EE&C

[2] This manual can be found at: http://www.clarkstrategicpartners.net/files/calif_standard_practice_manual.pdf.

programs. At its Public Meeting of June 25, 2009, the Commission selected GDS Associates Inc. Engineers and Consultants as the Act 129 Statewide Evaluator.

III. Procedural History

As stated above, PPL filed its Plan on July 1, 2009. A Notice published in the *Pennsylvania Bulletin* on July 18, 2009, set forth that the deadline for filing answers along with comments and recommendations addressing the Plan was August 7, 2009. Numerous Parties intervened prior to or at the prehearing conference, including the Office of Trial Staff (OTS), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Commonwealth of Pennsylvania, Department of Environmental Protection (DEP), Pennsylvania Association of Community Organizations for Reform Now (ACORN), Citizens for Pennsylvania's Future (PennFuture), UGI Utilities, Inc. – Gas Division, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc. (collectively UGI), Sustainable Energy Fund for Central Eastern PA (SEF), PP&L Industrial Customer Alliance (PPLICA), Field Diagnostics Services, Inc. (FDSI), Richards Energy Group, Inc. (Richards), EnerNOC, Inc. (EnerNOC), Comperio Energy LLC d/b/a ClearChoice Energy (ClearChoice), and Eric J. Epstein.[3]

The Plan was referred to Administrative Law Judge (ALJ) Susan D. Colwell, who held a public hearing at Bethlehem, Pennsylvania on July 29, 2009. ALJ Colwell also held an evidentiary hearing on August 17, 2009, in Harrisburg, Pennsylvania. Main Briefs were filed by PPL, the OCA, the OSBA, the OTS, Comperio Energy, EnerNOC, Inc., Eric J. Epstein, PPLICA, SEF, UGI, ACORN, DEP, Richards, and FDSI on August 28, 2009, and Reply Briefs were filed by PPL, the OCA, the OSBA,

[3] Comments to the PPL Plan were filed by the OCA, the OSBA, the OTS, EnerNOC, E-Cubed, Envinity, Inc., Affordable Energy Now, SEF, PPLICA, Keystone Help, PA Home Energy, DEP, PennFuture, Keystone Energy Efficiency Alliance, and Eric Epstein.

the OTS, Comperio Energy, EnerNOC, Inc., Eric J. Epstein, PPLICA, SEF, and UGI on September 9, 2009.

On September 14, 2009, ALJ Colwell certified the record to the Commission for consideration and disposition.

IV. Description of the Plan

A. Requirements of Act 129

Act 129 requires that an EDC's plan reduce electric consumption by at least one percent of its expected consumption for June 1, 2009, through May 31, 2010, adjusted for weather and extraordinary loads. This one percent reduction is to be accomplished by May 31, 2011. 66 Pa. C.S. § 2806.1(c)(1). By May 31, 2013, the total annual weather-normalized consumption is to be reduced by a minimum of three percent. 66 Pa. C.S. § 2806.1(c)(2). Also, by May 31, 2013, peak demand is to be reduced by a minimum of four and one-half percent of the EDC's annual system peak demand in the 100 hours of highest demand, measured against the EDC's peak demand during the period of June 1, 2007, through May 31, 2008. 66 Pa. C.S. § 2806.1(d)(1).

Act 129 also establishes the following plan requirements:

(1) The plan shall include specific proposals to implement energy efficiency and conservation measures to achieve or exceed the required reductions in consumption.

(2) A minimum of ten percent of the required reductions in consumption shall be obtained from units of federal, state and local government, including municipalities, school districts, institutions of higher education, and nonprofit entities.

(3) The plan shall explain how quality assurance (QA) and performance will be measured, verified and evaluated.

(4) The plan shall state the manner in which the plan will achieve the requirements of the program and will achieve or exceed the required reductions in consumption.

(5) The plan shall include a contract with one or more conservation service providers selected by competitive bid to implement the plan or a portion of the plan.

(6) The plan shall include estimates of the cost of implementation of the energy efficiency and conservation measures in the plans.

(7) The plan shall include specific energy efficiency measures for households at or below 150 percent of the federal poverty income guidelines. The number of measures shall be proportionate to those households' share of the total energy usage in the service territory. The EDC shall coordinate these measures with other programs administered by the Commission or another federal or state agency. The expenditures of an EDC under this clause shall be in addition to those made under the Commission's Regulations at 52 Pa. Code Chapter 58.

(8) The plan shall include a proposed cost-recovery tariff mechanism to fund the EE&C measures and to ensure full and current recovery of the prudent and reasonable costs of the plan, including administrative costs.

(9) The EDC shall demonstrate that the plan is cost-effective, using a TRC Test approved by the Commission, and provides a diverse cross section of alternatives for customers of all rate classes.

(10) The plan shall require an annual independent evaluation of its cost-effectiveness and a full review of the results of each five-year plan and, to the extent practical, how the plan will be adjusted on a going-forward basis as a result of the evaluation.

(11) The plan shall include an analysis of the EDC's administrative costs.

66 Pa. C.S. § 2806.1(b)(1)(i)(A)-(K).

Act 129 permits an EDC to recover, on a full and current basis from customers, all reasonable and prudent costs incurred in the provision or management of an EE&C plan. The costs, however, are limited to two percent of the EDC's total annual revenue as of December 11, 2006. 66 Pa. C.S. § 2806.1(g) and (k). Act 129 also provides that the Commission is to recover from EDCs its costs of implementing the EE&C Program. 66 Pa. C.S. § 2806.1(h).

B. The PPL EE&C Plan

The EE&C Plan as filed and described by PPL includes a broad portfolio of energy efficiency, conservation practices and peak load reductions, and energy education initiatives.[4] PPL's Plan is designed to provide customer benefits and to meet the energy saving and peak load reduction goals set forth in Act 129. The Plan includes a range of energy efficiency and demand response programs that include every customer segment in PPL's service territory. These programs are the key components of a comprehensive electric energy efficiency initiative designed to achieve the 1,146,000 MWh of reduced energy consumption and 297 MW of peak demand reductions required by Act 129.

The Plan addresses each of the requirements in 66 Pa. C.S. § 2806.1(b)(1)(i), as well as the filing requirements contained in the Commission's *Implementation Order*, and follows the template provided in the May 7, 2009 Secretarial Letter at Docket No. M-2008-2069887. The Plan is divided into the following nine sections: (1) Overview of Plan; (2) Energy-Efficiency Portfolio/Program Summary Tables and Charts; (3) Program Descriptions; (4) Program Management and Implementation Strategies; (5) Reporting and Tracking Systems; (6) Quality Assurance

[4] No Party to this proceeding took issue with the comprehensive summary of the Plan that PPL provided in its main brief. We will, therefore, accept that summary as representative of the Plan.

and Evaluation, Measurement and Verification; (7) Cost-Recovery Mechanism; (8) Cost-Effectiveness; and (9) Plan Compliance Information and Other Key Issues.

PPL's stated primary objective is to deliver a portfolio of cost effective programs that will meet customers' needs, fulfill PPL's Plan objectives, as defined in Section 1.1.2 of the EE&C Plan, and achieve the results required by Act 129.

PPL offers the following description of its approach:

> [PPL's] portfolio reflects a strategic approach that is targeted, yet flexible enough to adjust and expand, as warranted, to meet changing market conditions and progress toward Plan goals. Further, the portfolio offered by PPL Electric focuses on depth and sustainability of savings by offering customers a logical continuum of actions coupled with increasingly valuable incentives for cost-effective efficiency strategies. It will allow customers to make use of existing technical analyses, focus on organizational priorities, and employ a phased implementation approach. The portfolio builds on customer, trade ally, and stakeholder relationships through training, education, hardware, marketing strategies and customer support. PPL Electric's portfolio will capitalize on energy efficiency initiatives advanced by other organizations in the Commonwealth, as well as PPL Electric's existing programs, market knowledge, and community presence to efficiently meet program goals and target market sectors. Further, it will support the local economy by reducing customer energy costs, utilizing local labor whenever practical and by promoting the adoption and use of high quality equipment.

PPL MB at 4-5.

The Plan and its "portfolio strategy," consist of fourteen (14) programs:[5]

1. Efficient Equipment Incentive Program

[5] A full description of each of the fourteen programs is set forth in Section 3 of the EE&C Plan as filed. PPL Electric Exhibit 1, § 3.

2. Residential Energy Assessment & Weatherization
3. Compact Fluorescent Lighting Campaign
4. Appliance Recycling Program
5. ENERGY STAR® New Homes Program
6. Renewable Energy Program
7. Direct Load Control Program
8. Time of Use Rates
9. Energy-efficiency Behavior & Education
10. Low-income Winter Relief Assistance Program (WRAP)
11. Low-income E-Power Wise
12. Commercial and Industrial Custom Incentive Program
13. HVAC Tune-Up Program
14. Load Curtailment Program

All of the programs are voluntary and, subject to the budget limitations for each program, a customer may elect to participate in any program for which he or she is eligible. PPL MB at 5-6.

PPL's Plan includes measures and programs to achieve PPL's calculated electricity consumption and peak load reduction targets of:

a. 1% energy savings by 2011, which is 382,000 MWh or 44 average MW;

b. 3% energy savings by 2013, which is 1,146,000 MWh or 132 average MW; and

c. 4.5% peak load reduction by 2013, which is 297 MW.[6]

PPL calculates that approximately six percent (6%) of its total load comes from low-income customers and, therefore, has designed its Act 129 programs to achieve approximately six percent (6%) of its energy consumption and peak load reductions from

[6] PPL will meet this reduction requirement by September 30, 2012, as required by the Commission's *Implementation Order*.

the low-income sector. PPL Exhibit 1, § 9.1.3. Additional multi-sector programs, including both efficiency and demand reduction programs, are available and will be promoted to low-income customers to produce energy and demand savings in that sector. To meet the energy and demand reduction set aside for the low-income sector, PPL states that it will leverage its existing delivery infrastructure, implement new grassroots social marketing efforts targeted to low-income communities and community groups, reach out to new low-income market partners to develop and implement co-marketing strategies, and expand its low-income WRAP program to reach new customers and increase measure installation. PPL MB at 7-8.

PPL's Plan includes programs to achieve ten percent (10%) of total Plan reductions from institutional facilities, such as local governments, school districts, colleges, and nonprofit organizations. PPL Exhibit 1, § 9.1.2. It also offers at least one energy efficiency and one demand response program to each customer class. Further, it seeks to leverage economies of scale and other efficiencies by offering programs across multiple customer sectors as appropriate. PPL MB at 8.

The Plan includes procedures to measure, evaluate, and verify performance of the programs and the Plan as a whole. It also outlines a process for annual, independent evaluation of the results and the cost-effectiveness of the Plan using TRM wherever applicable. PPL MB at 8; PPL Exhibit 1 § 3.1.2.

PPL's Plan allocates the cost of measures to the same customer class that receives the benefit of those measures. PPL MB at 8; PPL Exhibit 1 § 8. PPL proposes a reconcilable adjustment clause for recovery of all applicable costs. PPL MB at 8. Marketing and education functions, customer care and quality assurance, program

tracking, and evaluation, monitoring, and verification will be common features of all programs. The Plan is supported by financial incentives and a delivery approach focused on customers. Implementation activities range from simple, common energy efficiency and demand response measures that can be installed with minimal oversight or administrative burdens to more complex measures that are vetted through a technical analysis and may (but are not required to) be part of a facility-wide energy management strategy. PPL MB at 8-9.

V. Discussion

In Commission proceedings, the proponent of a rule or order bears the burden of proof. 66 Pa. C.S. § 332(a). To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

We note that any issue that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

A. Act 129 Conservation and Demand Reduction Requirements

1. Overall Conservation Requirements

The *Implementation Order*, at 8, noted that both the one percent consumption reduction, to be met by May 31, 2011, and the three percent consumption reduction, to be met by May 31, 2013, are to be measured against the EDC's expected consumption as forecasted by the Commission for June 1, 2009, through May 31, 2010. 66 Pa. C.S. §§ 2806.1(c)(1) and (2). Each EDC that was required to file an EE&C plan was required to file its consumption forecast for the period of June 1, 2009, through May 31, 2010, by February 9, 2009.

In *Energy Consumption and Peak Demand Reduction Targets*, Docket No. M-2008-2069887 (Order entered March 30, 2009) (*Reduction Target Order*), the Commission approved PPL's forecast of 38,214,368 MWh, its proposed one percent reduction of 382,144 MWh as of May 31, 2011, and its proposed three percent reduction of 1,146,431 MWh as of May 31, 2013. *Reduction Target Order* at 3, 5.

The Plan must include specific proposals to achieve or exceed these required reductions in consumption. 66 Pa. C.S. § 2806.1(b)(1)(i)(A) . The Commission is required to analyze how the program and individual plans will enable the EDC to achieve or exceed the requirements for reductions in consumption. 66 Pa. C.S. § 2806.1(a)(4). The Commission is also required to develop procedures to ensure compliance with these requirements. 66 Pa. C.S. § 2806.1(a)(9).

a. 2011 Requirements

PPL's Plan proposes total energy savings of 419,907 MWh by the end of Program Year 2010 (May 31, 2011), which is a 1.1% savings. PPL Exhibit 1 at 18.

b. 2013 Requirements

Total energy savings expected at the end of Program Year 2012 (May 31, 2013) total 1,361,979 MWh, or a 3.6% consumption reduction for PPL. PPL Exhibit 1 at 18.

2. Overall Demand Reduction Requirements

The *Implementation Order*, at 9, noted that the four and one-half percent reduction in peak demand, to be met by May 31, 2013, is to be measured against the EDC's historical peak load for June 1, 2007, through May 31, 2008. 66 Pa. C.S. § 2806.1(d). Each EDC required to file an EE&C plan was also required to file, by February 9, 2009, certain peak load data for the period June 1, 2007, through May 31, 2008. To be in compliance with this directive, each EDC must demonstrate that its plan produced demand savings during the 100 hours of highest demand for the period June 1, 2012, through September 30, 2012, equal to at least 4.5% of the average of the 100 highest peak hours during the period from June 1, 2007 to September 30, 2007. *Implementation Order* at 29. *See also*, *Reconsideration Order* at 4-8.

In the *Reduction Target Order*, the Commission approved PPL's calculation of its average historical peak loads for the top 100 hours as 6,592 MW and its proposed four and one-half percent reduction of 297 MW as of May 31, 2013.

The Plan must include specific proposals to achieve or exceed the required reductions in consumption. 66 Pa. C.S. § 2806.1(b)(1)(i)(A) . The Commission is required to analyze how the program and individual plans will enable the EDC to achieve or exceed the requirements for reductions in consumption. 66 Pa. C.S. § 2806.1(a)(4). The Commission is also required to develop procedures to ensure compliance with these requirements. 66 Pa. C.S. § 2806.1(a)(9).

The PPL Plan projects peak demand savings of 423.8 MW by May 31, 2013, equivalent to a 6.4% reduction. PPL Exhibit 1 at 18.

a. Positions of the Parties

No Parties filed any objections to the conservation and demand reduction requirements.

b. Disposition

The Commission agrees with PPL that its Plan, as submitted, can meet the 4.5% peak demand reduction target by September 30, 2012, as mandated by the Act and the *Implementation Order*. We will, therefore, maintain the energy consumption and peak demand reduction targets approved in the *Reduction Targets Order*.

3. Requirements for a Variety of Programs Equitably Distributed

The Commission's EE&C Program must include "standards to ensure that each plan includes a variety of energy efficiency and conservation measures and will provide the measures equitably to all classes of customers." 66 Pa. C.S. § 2806.1(a)(5). Each EDC is required to demonstrate that its plan "provides a diverse cross section of alternatives for customers of all rate classes." 66 Pa. C.S. § 2806.1(b)(1)(i)(i).

PPL's Plan contains fourteen different programs distributed across all of its customer classes. PPL Exhibit No. 1 at 1. PPL has provided at least one energy efficiency and one demand response program for each class in accordance with the Commission's Implementation Order, and in fact, PPL offers multiple programs for each customer class. PPL Exhibit No. 1, Table 6.

a. Positions of the Parties

The OCA reviewed both the required Budget and Parity Analysis Summary found in Table 7 of PPL's EE&C Plan and the information contained in the charts below in evaluating whether the portfolio proposed by PPL achieved a reasonable and equitable balance in its portfolio. The OCA also conducted this review keeping in mind the specific requirements of Act 129 for low-income customers, government/non-profit sector and the need for the Plan to be cost-effective under the Total Resource Cost Test.

Chart 1

Class	Current Revenues (2008)*	Percent of Current Revs.	Projected Spending (Over Total Plan)**	Spending Percent of the Total Budget
Residential	$1,476,444,164	45.4%	$104,573,538	43%
Small Commercial and Industrial	$1,027,237,882	31.6%	$85,751,508	35%
Large Commercial & Industrial-Primary Voltage and Higher	$743,252,314	22.8%	$30,303,594	12%

OCA Cross-Examination Exhibit No. 2; Table 7 of PPL Exhibit No. 1.

Chart 2

Customer Class	KWH Sales	% of Total
	(millions)	
Residential	14,412	38%
Small C&I	11,377	30%
Large C&I	12,049	32%
Other	23	0%
Total	37,862	100%

OCA Hahn St. No. 1 at 13.

Chart 3

Class	Projected Rate ($/kWh)	Revenue Increase (Rate Inc. / Current Rev)
Residential	$0.00219/kWh	2.3%
Small Commercial and Industrial	$0.00299/kWh	3.3%
Large Commercial & Industrial-Primary Voltage and Higher	$0.432/kW	1.3%

PPL Exhibit JMK-2.

The OCA avers that, when these charts are reviewed, keeping in mind the other requirements of Act 129 for particular customer segments, budgetary constraints and the need for the Plan to pass the TRC Test, PPL projects a portfolio that appears to be balanced and cost-effective. PPLICA notes that the Plan appears to comply with Act 129 requirements, but the Large C&I program does not pass the cost-benefit test. PPLICA MB at 6-7; PPL Statement No. 2-R, Rebuttal Testimony of M. Houssein Haeri, at 1-2. ACORN supports the Plan and notes it achieves 5% of total program savings. Plan, Table 4, at 18; ACORN MB at 6-8. PPL contends that the Plan complies with 66 Pa. C.S. § 2806.1(a)(5). PPL MB at 15.

b. Disposition

We agree with PPL, the OCA, PPLICA, and ACORN that this section is in overall compliance with Act 129, the possibility that the Large C&I program may not pass the cost-benefits test notwithstanding. After careful review of the analysis offered by the OCA, we concur that PPL has assembled a portfolio that is balanced and cost-effective. It is evident that PPL has filed a variety of energy efficiency and conservation programs that are equitably distributed among all classes of customers. Therefore, we

agree that PPL's Plan complies with 66 Pa. C.S. § 2806.1(a)(5) and 66 Pa. C.S. § 2806.1(b)(1)(i)(i).

4. Ten Percent Government/Non-Profit Requirement

Act 129 requires that "a minimum of 10% of the required reductions in consumption . . . shall be obtained from units of federal, state and local government, including municipalities, school districts, institutions of higher education and nonprofit entities." 66 Pa. C.S. § 2806.1(b)(1)(i)(B).

PPL states that its EE&C Plan designates activities to achieve 10% of total Plan reductions from institutional facilities—local governments, school districts, colleges, and nonprofit organizations. Institutional customers are eligible for the same programs as their underlying rate class but marketing and other delivery details will be designed to address the specific needs of institutional customers. PPL Exhibit 1 at 2. PPL's expected compliance with this requirement is set forth in Table 4 of PPL Exhibit No. 1.

a. Positions of the Parties

The OCA states that Table 4 of the Plan shows that the government/non-profit sector energy savings in Plan Year (PY) 2012 is 134,554 MWh, or 9.9% of the Plan total energy savings of 1,361,979 MWh. However, as shown in Table 6 of the Plan, the net lifetime MWh savings for all of the government/non-profit programs total 1,513,581 MWh, which is 10.7% to the total required savings for the Plan of 14,149,089 MWh. The OCA believes that compliance over the lifetime of the program measures is

consistent with the Act's requirement, and that this requirement of Section 2806.1(b)(1)(i)(B) has been met.[7]

b. Disposition

We agree with the OCA and PPL that these measures meet the specific requirements of Section 2806.1 (b)(1)(i)(B) of Act 129. We note that no record evidence has been supplied to refute the government/non-profit sector energy savings projected on Table 4 and Table 6 of the Plan. PPL's EE&C Plan appears to have been designed to achieve 10% of total Plan reductions from institutional facilities—local governments, school districts, colleges, and nonprofit organizations.

5. Low-income Program Requirements

Act 129 provides that:

> The plan shall include specific energy efficiency measures for households at or below 150% of the federal poverty income guidelines. The number of measures shall be proportionate to those households' share of the total energy usage in the service territory. The electric distribution company shall coordinate measures under this clause with other programs administered by the commission or another federal or state agency. The expenditures of an electric distribution company under this clause shall be in addition to expenditures made

[7] The OSBA suggests that Small Commercial and Industrial (C&I) customers will subsidize Government/Non-Profit customers. OSBA Knecht St. No. 1, at 3. DEP supports measures in PPL's Plan that address traffic signals (PPL Plan at 155). However, they note that reliance solely on prescriptive rebate measures in the Efficiency Equipment Incentive Program (PPL Plan Sections 3.2, 3.3, and 3.5) fail to provide significant long lasting reductions in energy consumption. DEP Guttman St. 1 at 14; DEP MB at 6. PPL notes that this measure complies with Act 129. PPL Exhibit 1, at 2; PPL MB at 16.

> under Pa. Code Ch. 58 (relating to residential low income usage reduction programs).

66 Pa. C.S. § 2806.1(b)(i)(G).

PPL calculates that approximately 6% of its total load comes from low-income customers and therefore has designed its Act 129 programs to achieve approximately 6% of the energy consumption and peak load reductions from the low-income sector. PPL Exhibit 1 at 220. As discussed in Section 3.2.1 of the PPL Plan, the Company has developed two programs specifically for the low-income sector, the Low-Income WRAP and the E-Power Wise programs. PPL Exhibit 1 at 220. Additional multi-sector programs, including both efficiency and demand reduction programs, are available and will be promoted to low-income customers and will accrue energy and demand savings in that sector. PPL Exhibit 1 at 220-21. In order to meet the energy and demand reduction set aside for the low-income sector, PPL will leverage its existing delivery infrastructure, implement new grassroots social marketing efforts targeted to low-income communities and community groups, reach out to new low-income market partners to develop and implement co-marketing strategies, and expand its low-income WRAP to reach new customers and increase measure installation. PPL Exhibit 1 at 221.

a. Positions of the Parties

The OCA submits that the most effective way to implement this Section is to require each EDC to assure that a specific percentage of the overall savings to be achieved from the Plan are realized through programs and measures directed to the low-income customer segment. This approach would parallel the set-aside approach for the government/non-profit sector. Section 2806.1(b)(1)(i)(B). As set forth in OCA Cross-Examination Exhibit 1:

> According to 2000 census data, 16.5% of PPL Electric's residential customers are "low-income" as defined by Act 129. PPL Electric estimates that its average low-income customer has the same average energy consumption as its average residential customer. The load forecast approved by the PUC as the Act 129 "baseline" is 38,214,368 mWh/yr for all customer sectors and 14,560,303 mWh/year for the residential customer sector. Therefore, the low-income customer load is 0.165*14,560,303 =2,402,000 mWh/year which is approximately 6% of PPL Electric's total load.

OCA Cross-Examination Exhibit 1. As explained by the OCA's witness, Mr. Hahn:

> These programs must be in addition to and coordinated with existing low-income programs. As discussed in Mr. Haeri's testimony (p. 10), the total savings from low-income programs should be approximately 6% of the Plan's savings, which is equal to low income usage as a percentage of total usage in PPL's service territory…As discussed in the Plan, the Company will increase the funding of its existing low-income Winter Relief Assistance Program ("WRAP") by 60% in addition to having new programs targeted at low-income customers to address this issue.

OCA Hahn St. 1 at 7.

Under the Plan, the Company will seek to achieve consumption reductions of 68,562 MWh by PY 2012 (which is 6% of the required reduction) from the low-income sector and demand savings of 23,421 KW (7.9% of the required reduction). PPL EE&C Plan, Section 1, Table 4. The OCA submits that the Company's methodology for determining the low-income set-aside requirement, and its Plan for meeting the requirement, is reasonable and in compliance with Act 129.

Mr. Epstein argues that the Plan contains no provisions for financially distressed customers even though Act 129 mandates that the EE&C Plan include such specific measures. Epstein MB at 5. Mr. Epstein asserts that PPL should have used the 2007 estimated household census data rather than the actual 2000 census. Mr. Epstein stated that PPL has not indicated how the Universal Service Program and Act 129 costs will be segregated. Epstein MB at 10.

ACORN "endorses PPL's intention to serve this group [low-income] as the statute requires." ACORN Statement No. 1, Testimony of Ian Phillips at 9. Additionally, ACORN, advocating on behalf of low-income customers, supports the low-income programs contained in the Plan. ACORN MB at 13. The ACORN endorsement together with the OCA endorsement of PPL's Low-income Program further inclines the Commission to accept that the PPL Plan is in conformity with the requirements of the Act.

b. Disposition

66 Pa. C.S. § 2806.1(b)(i)(G) reads in pertinent part as follows:

> (G) The plan shall include specific energy efficiency measures[8] for households at or below 150% of the Federal poverty income guidelines.

We understand the analysis performed by PPL to determine the total savings from low-income programs should be approximately 6% of the Plan's savings. PPL has filed a plan that includes specific energy efficiency measures for households at or below 150% of the federal poverty income guidelines. It appears that the number

[8] The term "energy efficiency measure" is not separately defined, but the term "energy efficiency and conservation measures" is defined at 66 Pa. C.S. § 2806.1(m)

of measures is proportionate to the low-income households' share of the total energy usage in the PPL service territory though the many interpretations of 66 Pa. C.S. § 2806(b)(i)(G) in each of the Act 129 cases will be the subject of further comment, below.

With regard to Mr. Epstein's specific concerns, we note that the Company has developed two programs specifically for the low-income sector. PPL Electric Exhibit 1 at 220. The first is the Low-Income WRAP, which is an expansion of the current WRAP. PPL Electric Exhibit 1 at 94-99. The program provides free energy audits, energy-efficiency measures, and energy education to income-qualified participants. The second low-income specific program, the E-Power Wise Program, provides low-income customers with energy-efficiency education and low cost energy-efficiency measures for self installation. PPL Electric Exhibit 1 at 100-105. As with the Low-Income WRAP, the E-Power Wise Program targets PPL Electric customers at or below 150% of the federal poverty level. Moreover, nothing bars low-income customers from participating in any of the other programs in the Plan, provided the eligibility requirements are met.

We note, however, that in the Act 129 proceedings now before us the interpretation of 66 Pa. C.S. § 2806.1(b)(i)(G) has been contentious. The express language of this subsection, is quite clear, and its interpretation does not require complicated explanations. Its implementation, however, is another matter.

According to Section 2806.1(b)(i)(G), the number of energy efficiency measures that must be dedicated to low-income customers is calculated by first determining the percentage of total energy usage that is attributable to the low-income customer group. This percentage is the percentage of the Plan's total energy efficiency measures that must be dedicated to low-income customers. In other words, if an EDC's plan contains forty measures, and the low-income customer group's share of total energy

usage for the service territory is 5%, then the plan must have two measures dedicated to increasing energy efficiency for low-income customers.

While the term "energy efficiency and conservation measures" is defined at Section 2806.1(m), there is no information as to how measures should be quantified for apportionment to the low-income customer group. There also is no indication about the time frame for implementation of this requirement over the five-year life of the EDC's plan.

Full implementation of Section 2806.1(b)(i)(G) will take some time. The usage data referred to in Act 129 is not readily available. At this time, EDCs do not maintain information on energy usage by customer income level that can be used to determine the share of total energy usage in the service territory that is attributed to low-income customers. As such, we are forced to use estimates and the tools at hand in order to achieve the goals of Act 129. At this time, the best way to evaluate a plan's compliance with this requirement is to review the method used by the EDC to calculate the low-income customer share for reasonableness and any census or other demographic data used in the calculation for relevance and reliability.

Under Act 129, energy usage must be used to determine the proportionate share of measures that must be provided for low-income customers. Section 2806.1(b)(i)(G) states that "the number of measures must be proportionate to those households' share of the total energy usage in the service territory." *See* 66 Pa. C.S. § 2806.1(b)(i)(G).

Again, the difficulty with this provision lies in its implementation. There is no information kept on energy usage or EDC revenue by customer income level that can be used to determine the share of total energy usage in the service territory that is attributed to low-income customers. While we will use estimates and the tools at hand in

order to achieve the goals of Act 129 today, we will develop the tools necessary to reach full compliance for the next group of EE&C plans.

So we are not forced to use substitute data in the future, the Commission will convene a working group that will be charged with developing implementation standards for deploying proportional energy efficiency and conservation measures to low-income customers. The working group, will be composed of representatives from EDCs, consumer advocates, community-based organizations and other interested parties. Specifically, the working group will be charged with identifying the standardized data to be used to determine the proper proportion for low-income households. If necessary, the working group may address other matters that require clarification before the annual reconciliation process. The group shall provide its recommendations for consideration by the Commission no later than February 16, 2010.

6. Issues Relating to Individual Conservation and Demand Reduction Programs

In the course of this proceeding, several issues have been raised by the Parties concerning the specifics of certain programs contained in the Plan. We will summarize each program below and address Parties' concerns. Although all issues related to each program have been considered, we will address only those which may have a significant and meaningful impact on the design and effectiveness of a particular program or its components.

a. Residential

(1) Positions of the Parties

SEF states that the entire PPL Plan should be rejected. SEF Costlow St. 1 at 2. Richards states that the Plan does not benefit customers who buy their generation

from an EGS. Richards [Frank] Richards St. 1 at 4. ACORN asserts that the Commission should ensure that non-profit agencies "receive specific attention under the Plan." ACORN St. 1 at 14. The OSBA takes no position on residential programs, but the OSBA does not want Small C&I customers to subsidize residential programs. OSBA MB at 7. DEP suggests that PPL should provide financial assistance for a statewide Whole Home Performance Program. They further state that PPL does not require a Home Performance with Energy Star audit. DEP MB at 11-12.

PPL argues that SEF provides no basis to reject the entire Plan. PPL MB at 17-18. PPL notes that its programs are designed to provide a cohesive structure intended to support non-profit sector customers through a logical continuum of energy efficiency actions. PPL Exhibit 1 § 3.1.1.1; PPL MB at 23. PPL disagrees with Richards's assertion that the Plan does not benefit customers who buy their generation from an EGS. PPL Cleff St. 1-R, at 14; PPL MB at 22-23.

(2) Disposition

We agree with PPL that SEF has shown no basis for rejecting the entire Plan. We are not persuaded that the treatment of incentives as costs relative to the TRC Test and the analysis as raised by SEF constitute a critical deficiency in the Plan. We do however note that this is a complicated issue and believe that further study is warranted. We therefore refer this issue to the working group convened to discuss TRC/TRM issues regarding fuel switching for further discussion. We disagree with ACORN that the Commission should ensure that non-profit agencies receive specific attention under the Plan. This assertion is clearly beyond the requirements and the express intent of Act 129. We reject DEP's submission that PPL should provide financial assistance for a statewide Whole Home Performance Program because DEP did not provide a TRC Test indicating that a Whole Home Program is more cost-effective than the home audit program proposed by PPL. The Commission will address proper cost allocation when PPL has

actual costs and when PPL seeks recovery of those actual costs. Accordingly, we shall not require any adjustment in this area at this time.

b. Commercial

(1) Positions of the Parties

PPL has included in its Plan an HVAC Tune-up Program designed to increase the operating performance of electric HVAC systems in commercial buildings. PPL Exhibit 1 at 129. FDSI supports the HVAC program for small commercial and industrial customers, but suggests four improvements to the program: (1) increase the number of measures available for the HVAC Tune-up Program; (2) expand the program to all customer classes; (3) establish guidelines to ensure that HVAC tune-ups are performed in accordance with appropriate protocols and procedures; and (4) require automated systems diagnostics. FDSI MB at 7.

(2) Disposition

We reject FDSI's suggested changes to the Plan. Throughout this proceeding, there is a certain tension between what some Parties may consider an "optimum" Plan and what is a "compliant" Plan. While we appreciate the recommendations of FDSI, we find that PPL's conservation and demand reduction measures for the commercial sector meet the standards of Act 129.

c. Industrial

(1) Positions of the Parties

PPL has included an Efficient Equipment Incentive Program and a Load Curtailment Program for Large C&I customers in its Plan. PPL Exhibit 1, § 3.4. PPLICA suggests that the PPL Large C&I energy efficiency program complies with Act 129, and PPLICA supports it with a reservation to the expected participation by industrial customers and with a reservation of the right to later scrutinize or oppose these programs in the context of the Annual Review process. PPLICA MB at 9-10. The OSBA supports the measures proposed by PPL for the C&I class provided that Small C&I do not subsidize large industrial customers. OSBA MB at 7-8.

(2) Disposition

Neither the PPLICA position nor the OSBA position constitutes an objection to this part of PPL's Plan. Therefore, finding the PPL Plan in this respect otherwise reasonable, we find that PPL's industrial sector measures meet the standards of Act 129.

7. Proposals for Improvement of EDC Plan

An EE&C Program must include "procedures to make recommendations as to additional measures that will enable an electric distribution company to improve its plan and exceed the required reductions in consumption." 66 Pa. C.S. § 2806.1(a)(6).

a. Residential

PPL proposes fourteen residential programs as set forth in PPL's Plan. PPL Exhibit 1, § 3.2. It is the intention of the Commission, through this Opinion and Order, to meet the requirements of Act 129 and to rule on PPL's Petition for approval of its EE&C Plan.

(1) Positions of the Parties

DEP states that PPL's failure to implement a Whole Home Performance Program on a statewide basis is not in the public interest. DEP MB at 12; DEP Guttman St. 1 at 17. The OSBA supports any proposed residential programs as long as Small C&I customers do not subsidize residential customers. OSBA MB at 8. The OCA supports PPL's Plan with the limitation that the fuel substitution component is limited to customers on rate RTS. OCA MB at 17; OCA St. 1 at 18.

PPL agrees with the OCA position with respect to fuel substitution. PPL Cleff St. 1-R at 12. PPL's response to DEP is that each customer should have the opportunity to choose the type of energy efficiency measures that are most appropriate for that customer whether the customer wants to pursue a Whole Facility Approach through its Custom Incentive Program or by applying many measures in the Efficient Equipment Program. Also, PPL does not prohibit customers from using energy service companies. PPL MB at 40-41; PPL Cleff St. 1-R, 9-10.

(2) Disposition

We find no overriding benefit or statutory requirement to mandate a state-wide Whole Home Performance Program as set forth by DEP at this time. We accept

PPL's residential measures as proposed as compliant with the requirements of Act 129, and we accept PPL's proposals for Plan improvements. We encourage EDCs to continue to collaboratively work together to recommend plan improvements to the Commission so as to improve the consistency of EE&C programs on a state-wide basis.

b. Commercial

PPL offers various measures and incentives for the commercial sector. *See* PPL Exhibit 1, § 3.3

(1) Positions of the Parties

The OSBA offers tentative support for PPL's measures for Plan improvements for Small C&I customers. OSBA MB at 9. However, the OSBA questions the level of incentives proposed and suggests that these should be examined on an on-going basis. OSBA MB at 11.

(2) Disposition

We find that PPL's commercial measures comply with the requirements of Act 129. The OSBA suggestion that incentives be reviewed on an on-going basis is well-taken, and PPL has agreed to the same.

c. Industrial

PPL offers various industrial measures as part of its Plan. *See* PPL Exhibit 1, § 3.4.

(1) Positions of the Parties

The OSBA supports the industrial measures as long as they do not require Small C&I customers to subsidize these measures. OSBA MB at 11.

(2) Disposition

The limited response from the Parties with respect to this section does not necessitate an extensive disposition. We agree with the OSBA that the industrial measures comply with Act 129.

B. Cost Issues

1. Plan Cost Issues

Pursuant to 66 Pa. C.S. § 2806.1(b)(1)(i)(K), each EE&C plan must include an analysis of the EDC's administrative costs as well as an estimate of the total cost of implementing the measures in the plan. 66 Pa. C.S. § 2806.1(b)(1)(i)(F). The total cost of the plan cannot exceed two percent of the EDC's total annual revenue as of December 31, 2006. 66 Pa. C.S. § 2806.1(g). In addition, Act 129 states "no more than 2% of funds available to implement a plan under this subsection shall be allocated for experimental equipment or devices." 66 Pa. C.S. § 2806.1(b)(1)(iii).

a. Application of the Two Percent Cost Cap

(1) Positions of the Parties

In its EE&C Plan, PPL reports its total annual revenues for calendar year 2006 as $3,075,068,824. PPL Exh. 1 Amended at 200. Applying the two percent cost limitation established by Act 129 results in a cost cap figure of $61,501,376. PPL notes that the *Implementation Order* concluded that this limitation on the total cost of any plan should be interpreted as an annual amount rather than an amount for the full term of the Plan. PPL Exh. 1 Amended at 200. However, rather than applying the calculated cap amount of $61.5 million on a strictly annual basis, PPL believes that it should be applied on a total Plan basis. PPL Exh. 2, ¶ 36. In other words, PPL requests that it be authorized to spend a total of $246 million over the four-year term of its EE&C Plan (4 x $61.5 million), regardless of whether or not it exceeds the $61.5 million annual amount in any one year. As PPL explains:

> The Company proposes to separately calculate the applicable EE&C costs for each of the three major customer classes on its system, *i.e.*, (1) residential, (2) small commercial and industrial, and (3) large commercial and industrial. EE&C Plan §§ 1.7, 7.4. These costs will vary in each program year of the EE&C Plan. In some program years, they may be greater than the annual two percent (2%) cost cap; in other program years, they may be less than the cap. However, over the four program years, the total costs of the EE&C Plan for all customer classes will not exceed $246 million.

PPL Exh. 2, ¶ 38. PPL is seeking a waiver from applying the two percent cost cap on a strictly annual basis. PPL Exh. 2, ¶ 45.

PPL also states that the total cost of its EE&C Plan includes the costs that the Company incurred to develop the Plan. PPL MB at 65. As PPL further explains:

> [I]n an order entered on May 28, 2009 at Docket No. P-2009-2091818, the Commission granted PPL Electric's request to defer such plan development costs on its balance sheet as a regulatory asset. Accordingly, the Company proposes to

> amortize and recover those deferred costs ratably over the 42-month life of its initial EE&C Plan (*i.e.*, December 1, 2009 through May 31, 2013). PPL Electric St. 4, p. 5. The amortization of those costs will be included within the $246 million spending cap.

PPL MB at 65.

Although most of the Parties in this proceeding appear to accept the interpretation of the two percent cost cap as an annual amount, as well as PPL's application of the cost cap on a total Plan period basis, certain Parties have raised objections to these proposals. PPLICA argues that, despite our determination in the *Implementation Order* that the two percent cap should be applied annually, the plain language of Act 129 does not allow this conclusion. PPLICA MB at 13-14. According to PPLICA:

> [T]he clear and unambiguous language of Act 129 limits the total cost of EE&C plans to an amount that "shall not exceed 2% of the electric distribution company's total annual revenue as of December 31, 2006." 66 Pa. C.S. § 2806.1(g). The plain language of the statute does not allow for Commission discretion or interpretation of this amount. The plain language of a statute cannot be ignored, and must be given effect. The PUC's reliance on additional purported indicia of statutory intent is unnecessary in this situation.

PPLICA MB at 14 (footnotes omitted).

PPLICA states that it recognizes that the Commission espoused a different view in the *Implementation Order*, but argues that the *Implementation Order* was not a Final Order subject to appeal. PPLICA MB at 14; PPLICA RB at 17-18. Therefore, PPLICA asserts that it is reiterating its concern in this adjudicatory proceeding to

preserve its right to appeal the Final Order on this basis and is not recommending that the Commission reject PPL's Plan on this basis. PPLICA MB at 14; PPLICA RB at 16.

Mr. Epstein objects to PPL's proposal to apply the mandated cost cap on a total Plan period basis rather than a strictly annual basis. In this regard, Mr. Epstein states: "[T]he Act imposes a 2% maximum based upon annual revenues received by the EDC in the year ended December 31, 2006, excluding the cost of Low-income Reduction Programs. (66 Pa. C.S. § 2806.1(g)). There is no mention of the term average revenue." Epstein MB at 20; Epstein RB at 16.

In response to these objections, PPL states that it has relied upon the Commission's determination in the *Implementation Order* regarding the interpretation of the cost cap as an annual amount, stating that, if this determination is altered, it would seriously jeopardize the potential success of the Plan. PPL MB at 56. With regard to Mr. Epstein's objection to PPL's proposed total Plan cap, the Company argues as follows:

> Because many of its EE&C programs will require some time to ramp up, PPL Electric anticipates that spending in the early years of its Plan will be less than 2%, and spending in the later years will be greater. PPL Electric St. 4, p. 5. Notably, the total spending over the four years will not exceed the Company's cap of $246 million. *Id.* Therefore, because of this spending fluctuation, it is appropriate to grant PPL Electric, to the extent necessary, a waiver of the strict annual cost cap of $61.5 million and allow the Company to use $246 million for the total cost of the Plan.

PPL MB at 57. Additionally, PPL argues that the OCA and other stakeholders support PPL's approach. PPL MB at 57.

(2) Disposition

We will first address the issue whether the Act 129 provision limiting an EDC's EE&C plan costs to two percent of 2006 revenues is an annual plan expenditure limit or a total four year plan expenditure limit. Specifically, the relevant portion of Section 2806.1(g) of the Act states that "the total cost of any plan required under this section shall not exceed 2% of the electric distribution company's total annual revenue as of December 31, 2006." 66 Pa. C.S. § 2806.1(g). We previously addressed this issue in the *Implementation Order*. As we stated there:

> With regard to the two percent limitation provision of the Act, we agree with PPL that this limitation on the "total cost of any plan" should be interpreted as an annual amount, rather than an amount for the full five-year period. Since the statutory limitation in this subsection is computed based on annual revenues as of December 31, 2006, we believe it is reasonable to require that the resulting allowable cost figure be applied on an annual basis as well. In addition, we note that the plans are subject to annual review and annual cost recovery under the Act, 66 Pa. C.S. §§ 2806.1(h) and (k). Finally, based upon the information presented in the comments and experience in other states, it appears that the statutory goals for consumption and demand savings are not likely to be achievable if the two percent limit was read as applicable to the entire multi-year EE&C program.

Implementation Order at 34 (footnotes omitted).

This Commission's rationale for interpreting the two percent cost limitation as an annual amount, as outlined in the *Implementation Order*, points out the ambiguousness of this section. Therefore, we may consider the consequences of a particular interpretation to determine the intent of the General Assembly. *See* 1 Pa. C.S. § 1921(c).

The evidence contained in PPL's Plan proceedings provides substantial support for our previous conclusion that the statutory goals for consumption and demand savings are not achievable if the two percent limit applied to the entire multi-year EE&C program. The evidence of record shows that PPL's plan just meets the statutory consumption and demand targets with budgets that spend almost the entire two percent annual cost cap. As the plan covers four years, the Commission would have to reduce the planned expenditures by about three-fourths of the current amount if we were to adopt a two percent cap for an entire multi-year PPL plan. Such a reduction in spending would result in a corresponding reduction in consumption and demand energy savings, making it impossible for the PPL to meet the statutorily imposed consumption and demand targets, unless the PPL shareholders contribute what amounts to almost three-fourths of the necessary funding to avoid a penalty of up to $20,000,000. Such a result would constitute an unconstitutional taking. "Regulation amounts to a taking when government forces 'some people alone to bear public burdens, which, in all fairness and justice, should be borne by the public as a whole.'" *Pa. PUC v. Pennsylvania Gas and Water Company*, 424 A.2d 1213, 1218 (Pa. 1980) (quoting *Armstrong v. U.S.*, 364 U.S. 40, 49 (1960)).

As the General Assembly declared in the preamble of Act 129, "[i]t is in the public interest to adopt energy efficiency and conservation measures and to implement energy procurement requirements designed to ensure that electricity obtained reduces the possibility of electric price instability, promotes economic growth and ensures affordable and available electric service to all residents." As PPL's EE&C Plan is in the public interest, the costs of the Plan must be borne by the public as a whole. PPL's request for a waiver from applying the two percent cost cap on a strictly annual basis is granted.

b. Costs Relating to the Statewide Evaluator

Act 129 requires the Commission to establish an evaluation process that monitors and verifies data collection, quality assurance and the results of each EDC's EE&C plan as well as the program as a whole, in accordance with the TRC Test. While Act 129 requires each EDC's plan to explain how quality assurance and performance will be measured, verified and evaluated, it also requires the Commission to monitor and verify EDC data collection, quality assurance processes and performance measures, by customer class. 66 Pa. C.S. § 2806.1(a). This evaluation is to be conducted every year, as each EDC must submit an annual report by July 15th, documenting the effectiveness of its plan, energy savings measurement and verification, an evaluation of the cost effectiveness of expenditures and any other information the Commission requires. 66 Pa. C.S. § 2806.1(i). Each EDC must also identify necessary adjustments to its plan based on the results of the annual and five-year reviews. 66 Pa. C.S. § 2806.1(b)(2).

Act 129 further requires that by November 30, 2013, and every five years thereafter, the Commission must evaluate the costs and benefits of the program as a whole as well as the costs and benefits of the individual EE&C plans submitted by the EDCs to the Commission. This evaluation applies to reductions in consumption as well as reductions in peak demand and it must be consistent with the TRC Test. If the benefits of the program exceed the costs, the Commission must adopt additional required incremental reductions in consumption. 66 Pa. C.S. § 2806.1(c)(3), (d)(2).

In order to audit program results and to confirm the specific energy reduction target requirements specified in Act 129, the Commission retained the services of a statewide evaluator who will monitor and verify EDC data collection, quality assurance processes and performance measures, by customer class as required by Section 2806.1(2) and (3). Section 2806.1(h) of Act 129 states that the Commission shall recover from the EDCs its costs of implementing the overall EE&C program. 66 Pa. C.S. § 2806.1(h). The cost of the statewide evaluator falls into this category.

(1) Positions of the Parties

PPL states in its EE&C Plan that the amounts it has budgeted for the recovery of Plan costs from applicable customer classes will be adjusted to include the annual costs the Company will incur to pay for the statewide evaluator.[9] PPL Exh. 1 Amended at 208. However, PPL asserts that such costs should not be included under the Company's two percent cost cap. PPL Exh. 1 Amended at 208. In support of this assertion, PPL argues as follows:

> In establishing that cost cap, Section 2806.1(g) [of Act 129] specifically characterizes the cap as a limitation on the "total costs of any plan required under this section." Because the costs of the statewide Act 129 evaluator are not the costs of PPL Electric's EE&C Plan, they are not subject to the limitation set forth in Section 2806.1(g).

PPL Exh. 1 Amended at 208.

PPL notes that the *Implementation Order*, at page 33, requires an EDC to carefully estimate the costs of all EE&C programs. However, PPL contends that, since the cost of the statewide evaluator is not an amount that the Company can quantify with any certainty, it should not be part of the cost cap. PPL MB at 58-59. Also, PPL argues that the costs of operating the Commission are recovered through statewide assessments imposed pursuant to Section 510 of the Public Utility Code and that there is nothing in Act 129 to indicate that the legislature intended to abandon this process for the cost of the statewide evaluator hired by the Commission as part of its obligation under Act 129. PPL MB at 59.

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[9] PPL's budgeted cost recovery amounts will be discussed more fully in the "Cost Recovery Issues" section, below.

The OTS, the OCA, PPLICA, and Mr. Epstein all object to the PPL's position that costs relating to the statewide evaluator should not be subject to the two percent cost cap. The OTS argues that such costs are prudent and reasonable and directly related to the development of PPL's Plan. OTS MB at 7-8. Similarly, the OCA contends that the statewide evaluator costs are a necessary component of the measurement, evaluation, and verification needed to ensure that the Plan complies with Act 129 and should therefore be subject to the two percent cap. OCA MB at 20-21. The OCA notes that Section 2806.1(g) specifically excludes the cost of low-income usage reduction programs from the cost cap and argues that, if the General Assembly had intended for other exclusions, it would have so stated. OCA RB at 5. The OCA further argues that including the statewide evaluator costs within the cap will not impact PPL's ability to meet the required reduction targets since the forecasted energy savings exceed the requirements of Act 129. OCA MB at 20. With regard to PPL's contention that statewide evaluator costs should be recovered through the Section 510 assessment process, the OCA asserts that Section 510 assessments are recovered through PPL's base rates, and are not subject to recovery via an automatic adjustment mechanism as proposed by PPL here. The OCA therefore concludes that PPL's argument on this matter is belied by the Company's own treatment of the statewide evaluator costs. OCA RB at 5-6.

PPLICA supports the positions of the OTS and the OCA and argues further that, if the General Assembly had intended to allow a separate surcharge for the costs of the statewide evaluator or other Commission costs, it would have included this in Act 129. PPLICA MB at 15. Mr. Epstein contends that the cost of the statewide evaluator is similar to the cost of hiring a CSP to accomplish the goals of Act 129, noting that the Company has not objected to the inclusion of the latter costs in the two percent cap. Epstein MB at 21.

(2) Disposition

The cost of an individual EDC's plan is limited by Act 129 to two percent of the EDC's total annual revenue as of December 31, 2006. 66 Pa. C.S. § 2806.1(g). However, the statewide evaluator expense, while necessary to the implementation of the overall program administered by the Commission, is not a cost component of the EDCs' individual plans. Since the EDCs have no control over the level of this expense, it is appropriate that the EDCs not be required to include the cost of the statewide evaluator within the two percent limitation on the cost of their individual plans.

Furthermore, Section 2806.1(k)(1) states that each EDC shall recover all reasonable and prudent costs incurred in the provision or management of its EE&C plan on a full and current basis through a reconcilable surcharge. Therefore, the cost recovery of the statewide evaluator should be included in the reconcilable surcharge that will be used to recover those costs of the individual EE&C plans.

We conclude, therefore, that the expense related to the statewide evaluator is not a cost component of PPL's Plan. Rather, it is a cost component of the overall program instituted by the Commission. Accordingly, we find that PPL's cost recovery for its respective share of the cost for the statewide evaluator will not be subject to the two percent cap on the cost of its Plan.

2. Cost Effectiveness/Cost-Benefit Issues

Two areas that require review and analysis related to cost effectiveness exist in the Plan. First, it is important to verify that PPL followed the methodology laid out in the Commission's approved *TRC Test Order*[10] in preparing their cost-benefit analysis. Second, verification is required that PPL's Plan passes the TRC Test with a total Plan cost-benefit ratio of greater than 1:0.[11]

a. Positions of the Parties

No Parties offered comments on the overall TRC or disputed the analysis.

b. Disposition

Our disposition is that PPL's cost effectiveness test should be accepted.

The creation of the cost effectiveness analyses using the Commission-approved TRC Test required the use of many assumptions regarding current and future energy prices. Given that such forecasting is very assumption dependent, the intention of the TRC Test was to ensure that all EDCs were using the same basic methodology to calculate the costs and benefits of their EE&C plans to eliminate potential discrepancies in calculations across companies. In some scenarios, companies used marginal deviations from the *TRC Test Order* methodology to more accurately reflect the circumstances affecting their particular plans. Where these deviations did not lead to material differences in the resulting cost effectiveness analysis, our disposition is that the Plan's TRC Test should be approved. Furthermore, any such differences may be resolved by a stakeholder group as prescribed by the *TRC Test Order*:

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[10] *TRC Test Order* at 9-19.

[11] *Implementation Order* at 16.

> Many issues involved in the EE&C plans, program implementation, and operation of the TRC test will be ongoing. As will be seen, several specific issues are identified below which will require additional consideration and discussion. Accordingly, we have determined to convene a stakeholder group to address these issues, as well as future issues which will undoubtedly arise as the plans move forward. A future Secretarial letter will announce details of the stakeholder group.[12]

PPL used the Commission-approved *TRC Test Order* in its amended filing to create its cost-benefit analysis. It did not deviate from the *TRC Test Order* and its avoided cost calculations were in agreement with the methodology set forth therein.[13] Based on the calculations in PPL's analysis, PPL's Plan passes the TRC Test with a cost-benefit ratio of 2.89.[14] Therefore, our disposition is that PPL's cost effectiveness test should be accepted.

3. Cost Allocation Issues

With regard to cost recovery, the Commission's EE&C Program is required to "ensure that measures approved are financed by the same customer class that will receive the direct energy and conservation benefits." 66 Pa. C.S. § 2806.1(a)(11).

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12 *TRC Test Order* 7.

13 PPL Amended EE&C Plan at 9 (Table 1) and 210-219.

14 PPL Amended EE&C Plan at 17.

a. Proper Allocation of EE&C Plan Costs

(1) Positions of the Parties

In its EE&C Plan, PPL indicates that it has followed the *Implementation Order* in its assignment of costs to customer classes. PPL Exh. 1 Amended at 209. In this regard, PPL avers that, wherever possible, it has directly assigned costs relating to each EE&C measure to those classes that will receive the benefits. PPL Exh. 1 Amended at 209. Moreover, PPL indicates that, for the large C&I class, there may be some costs that are more appropriately assigned directly to the individual customer who is undertaking the particular measure and receiving its benefit. PPL Exh. 1 Amended at 208. For those costs that relate to measures that are applicable to more than one customer class or that provide system-wide benefits, PPL states that it has allocated those costs using an allocation factor equal to the percentage of the EE&C costs directly assigned to each customer class to the total of EE&C costs directly assigned to all customer classes. PPL Exh. 1 Amended at 209. PPL sets forth its portfolio-specific assignment of EE&C costs and its allocation of common costs in Tables 135 and 136, respectively, in its EE&C Plan. PPL Exh. 1 Amended at 201-206. A summary of all of PPL's portfolio EE&C costs is set forth in Table 137. PPL Exh. 1 Amended at 207.

For the most part, the Parties appear to accept PPL's assignment of its EE&C costs to the various customer classes. However, both Richards and UGI address certain issues relating to cost allocation.[15] Richards opposes the direct assignment of costs to individual customers. Richards asserts that, under such a proposal, a customer who receives an incentive to participate in a particular program would be responsible for the cost of that incentive, which would result in the return of any incentive payments to which that customer was entitled. Thus, Richards argues that the customer would have

[15] The OSBA and Richards also raise other matters in the "Cost Allocation Issues" sections of their briefs that will be addressed under "Cost Recovery," below.

no incentive to participate in the program in the first place. Richards MB at 15. Furthermore, Richards contends that this would mean that the customer would pay twice for the program: once through the return of the incentive payments and again by paying for costs associated with every other participant. Richards MB at 15.

UGI presents no objections to the Company's cost allocation methodologies, but offers recommendations for the allocation of costs relating to certain EE&C programs it has proposed in this proceeding in conjunction with its position on fuel switching.[16] Specifically, UGI submits that the costs of proposed residential heating and water heating options should be borne by residential customers, and the costs of its proposed CHP Program should be borne by the commercial customers. UGI MB at 23; UGI RB at 18.

[16] The issue of fuel switching is discussed in "Other Issues," below.

(2) Disposition

We agree with Richards that the direct assignment of some EE&C costs to an individual customer may be problematic. We note that the costs of PPL's EE&C programs include both utility costs and participant costs, as set forth in the cost tables included in the Company's EE&C Plan. PPL Exh. 1 Amended at 201-207. To directly assign and recover *utility* costs from an individual customer would amount to transforming such costs into *participant* costs. Also, as Richards argues, where any of these costs represent customer incentive payments, the direct assignment of these costs would amount to a return of customer incentives to the Company, which would defeat the purpose of the incentives.

Act 129 requires that approved EE&C measures be "financed by the same customer *class* that will receive the direct energy and conservation benefit." 66 Pa. C.S. § 2806.1(a)(11) (emphasis added). Nothing in Act 129 requires that costs relating to an EE&C measure be assigned to, or financed by, an *individual customer* who benefits from the measure. Nor do we consider it inappropriate for all customers in a given class to contribute to the costs of programs that may not directly benefit each individual customer in that class. As PPL itself has argued in connection with another issue addressed in this proceeding,[17] even customers who do not participate in certain EE&C programs will benefit from the lower wholesale energy and capacity prices that will result over time from lower electricity consumption due to the successful implementation of all EE&C programs. PPL MB at 12. Therefore, we conclude that costs relating to EE&C measures that may benefit one individual customer more than others would, nevertheless, are better allocated to the entire class in which that customer resides, rather than to that customer alone.

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[17] *See* "Time-Of-Use Program" (TOU) under "Cost Recovery Issues," below.

Although there may be instances in which the direct assignment of EE&C costs to an individual customer would make sense, PPL has not specifically identified or explained any such instances, nor has it responded to the position of Richards regarding this issue in its briefs. Therefore, we maintain that, as a general principle, directly assigning EE&C costs to an individual customer—as opposed to an individual customer *class*—is not logical, and we will reject PPL's proposal to do so.

With regard to the question of how the costs relating to UGI's proposals should be allocated, we find this issue to be moot since, as discussed more fully below, we will decline to adopt UGI's fuel switching proposals.[18]

4. Cost Recovery Issues

Act 129 provides that an EDC "shall recover on a full and current basis from customers, through a reconcilable adjustment clause under Section 1307, all reasonable and prudent costs incurred in the provision or management of [an EE&C] plan." 66 Pa. C.S. § 2806.1(k). Act 129 states:

> The plan shall include a proposed cost-recovery tariff mechanism, in accordance with Section 1307 (relating to sliding scale or rates; adjustments), to fund the energy efficiency and conservation measures and to ensure full and current recovery of the prudent and reasonable costs of the plan, including administrative costs, as approved by the commission.

66 Pa. C.S. § 2806.1(b)(1)(i)(h).

[18] See the "Other Issues" section, below.

a. Separate Line Item Billing

(1) Positions of the Parties

PPL proposes to implement a cost recovery mechanism in the form of an Act 129 Compliance Rider ("ACR") to be included in its tariff. A *pro forma* version of this proposed tariff rider is set forth in the Company's EE&C Plan. PPL Exh. 1 Amended, Appendix F; PPL Exh. JMK-1. PPL asserts that, because all the programs included in its EE&C Plan will benefit both shopping and non-shopping customers, the Company has designed its cost recovery mechanism to be non-bypassable. PPL Exh. 1 Amended at 208. This mechanism will be used to separately determine the EE&C cost recovery rates for the Residential, Small C&I, and Large C&I customer classes. PPL Exh. 1 Amended, Appendix F; PPL Exh. JMK-1. Furthermore, PPL proposes that the cost recovery mechanism be applied to the distribution charges for each customer class rather than appear as a separate line item on customers' bills. In support of this proposal, PPL argues as follows:

> PPL Electric proposed the ACR as a rider to be included in the distribution charges on customers' bills, in the same manner as the Company's Universal Service Rider ("USR") is included in the distribution charges on residential customers' bills, for several reasons. First, PPL Electric's bills have become very complicated over the past several years [and] adding another line item to the bill may unnecessarily confuse customers. PPL Electric St. 4-R, p. 5. Most of PPL Electric's customers prefer simpler bills with fewer line items. *Id.* Second, the estimated level of the ACR is small and no purpose would be served by placing a separate line item for such a small amount on customers' bills ($2 per month). *Id., see* PPL Electric Exhibit JMK-4. Third, the Company's proposed approach is consistent with the Commission-approved approach it currently is following with other Section 1307 (e) cost recovery mechanisms such as the

> USR, Remand Rider-1 and Remand Rider-2. *Id.* Fourth, a number of stakeholders indicated their preference to reflect this relatively small charge as part of the Company's distribution rates. *Id.*

PPL MB at 72-73.

The OSBA, PPLICA, and Mr. Epstein all oppose PPL's proposal to apply the ACR to its distribution charges rather than including it as a separate line item on customers' bills. The OSBA argues that the EE&C costs are not distribution costs and that treating them as such violates the Electricity Generation Customer Choice and Competition Act (Competition Act),[19] which mandates unbundled charges for transmission, distribution and generation and requires that rates for each of these services be based primarily on a cost-of-service study. OSBA MB at 13-14. Likewise, the OSBA asserts that universal service charges are also properly allocated in a cost-of- service study in a distribution rate case, while EE&C costs are to be recovered directly from the rate classes that cause those costs. OSBA RB at 8-9. The OSBA avers that a separate charge for conservation, when coupled with communication efforts from the Company to promote its EE&C Plan, is likely to be better received by customers, who would be more confused by seeing an increase in their distribution rates caused by the inclusion of the EE&C costs in those rates. OSBA MB at 14. Thus, the OSBA recommends that the Plan be modified to list the cost recovery mechanism as a separate line item on a customer's bill. OSBA MB at 14.

PPLICA also contends that applying the cost recovery mechanism to distribution charges will cause customer confusion and would pose an obstacle to transparency by preventing customers from having the ability to see actual costs associated with an EE&C program. PPLICA MB at 29. PPLICA strongly disagrees with PPL's contention that its proposed ACR would represent a small amount on customers'

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[19] 66 Pa. C.S. § 2801, et seq.

bills, arguing that this would only be true for residential customers. PPLICA RB at 7. PPLICA asserts that the ACR will exceed Large C&I customers' distribution rates. PPLICA RB at 7. PPLICA asserts that separately stating and identifying the EE&C cost recovery charge will provide transparency and clarity regarding this charge and will send the appropriate price signals to customers regarding how to reduce the portion of their costs attributable to the EE&C Plan. PPLICA MB at 29; PPLICA RB at 7-8. PPLICA recommends that PPL be required to separate its EE&C costs from its distribution costs and include the EE&C costs as a separate line item on a customer's bill. PPLICA MB at 29. Alternatively, should the Commission be unwilling to direct this measure for all customer classes, PPLICA asserts that PPL should be required to implement separate line item billing of EE&C costs for the Small and Large C&I class, for whom such information will provide undeniable benefits according to PPLICA. PPLICA RB at 8.

Mr. Epstein argues that including the cost recovery mechanism in distribution charges hides the true cost within the bill. Epstein MB at 21. Mr. Epstein asserts that "the Company should impose a separate flat charge for two reasons: (1) ratepayers would be informed as to how much the program costs them; and (2) under the variable rate proposed by PPL, those that benefit from the program and reduce consumption will also pay less into the program. Epstein MB at 21.

In response to the OSBA's assertion that applying the ACR to distribution charges violates the unbundling provision of the Competition Act, PPL argues that the OSBA confuses unbundling issues with billing issues, and that the Company has fully complied with the rate unbundling requirements of the Competition Act. PPL RB at 33. PPL contends that the issue of how much detail to provide on a customer's bill is a separate and discrete issue. PPL RB at 33.

(2) Disposition

Consistent with the current Commission-approved approach regarding Section 1307(e) cost recovery mechanisms such as the Universal Service Funding Mechanism ("USFM") and the Universal Service Program Long Term Evaluator, we conclude that an EDC's EE&C program costs should be included in the distribution rate on residential customers' bills, rather than as a separate line item. As stated in the Competition Act:

> There are certain public purpose costs, including programs for low-income assistance, energy conservation and others, which have been implemented and supported by public utilities' bundled rates. The public purpose is to be promoted by continuing universal service and energy conservation policies, protections and services, and full recovery of such costs is to be permitted through a non-bypassable rate mechanism.

66 Pa. C.S. § 2802(17).

This interpretation is consistent with our regulations concerning billing format at 52 Pa. Code § 54.4(3) and billing information at 52 Pa. Code § 56.15. Past practice recognizes distribution rates as the appropriate vehicle to incorporate rolled up cost-centers or to recover the costs of providing service that is not otherwise classified as transmission or generation. We find that the costs associated with an EE&C program are such costs and, therefore, should be included within an EDC's distribution charge. Furthermore, we agree with PPL that including the EE&C costs in the distribution charge does not violate the unbundling provisions of the Competition Act, which states that "[t]he commission shall require the unbundling of electric utility services, tariffs and customers bills to separate the charges for generation, transmission and distribution." 66 Pa. C.S. § 2804(3). Including the EE&C costs within the distribution charge will not,

in any way, undo the Company's unbundled rate structure, which will continue to include separate charges for generation, transmission and distribution services as required by the Competition Act. Accordingly, we will adopt PPL's proposal to apply its ACR to the distribution charges on residential customers' bills.

We will, however, make an exception for both the large and small C&I customer classes. We are persuaded by the OSBA and the reasoning of PPLICA that because of the potentially sizeable increases associated with the ACR for these customer classes, a separate line delineation of these charges will provide transparency and clarity. In the current economic environment, the itemization and identification of costs is increasingly critical for businesses. Therefore, we will reject PPL's proposal to apply its ACR to the distribution charges on small and large C&I customers' bills.

b. Levelized Cost Recovery and Reconciliation

(1) Positions of the Parties

PPL asserts that although its EE&C costs will vary from year to year, the Company proposes to recover those costs on a levelized basis. PPL Exh. 1 Amended at 208. PPL describes this levelized recovery process, along with its proposed reconciliation process, as follows:

> Annual budget amounts for each customer class will be developed on a levelized basis for the four years of the Company's proposed EE&C Plan. On a total system basis, that levelization will equate to an EE&C Plan budget in program year one of approximately $30 million and EE&C Plan budgets in program years two through four of approximately $72 million per year. These budget amounts will be adjusted to include the annual costs that PPL Electric will incur to pay for the statewide Act 129 evaluator.

* * *

> The adjusted budget amounts will be included each year in the Company's cost recovery mechanism. These amounts will be recovered from customers in the residential and small commercial and industrial classes on a levelized cents per kWh basis. They will be recovered from customers in the large commercial and industrial class on a levelized dollar per kW basis. In addition, for this group of customers, there may be some costs that are more appropriately assigned directly to the individual customer who is undertaking the measure and receiving its benefit.
>
> For each customer class, PPL Electric proposes to separately reconcile the revenues collected under the cost recovery mechanism with the adjusted budget amounts for that year. This reconciliation, which will be performed on an annual basis, primarily will reflect variations in actual sales from forecasted sales. The Company does not propose to reconcile the revenues collected under the cost recovery mechanism to its actual spending levels in each year. As discussed above, those spending levels can vary from year-to-year.
>
> In addition to the annual reconciliation, PPL electric proposes to make "mid-course" corrections in the cost recovery mechanism to reflect major changes to any of its EE&C programs. Finally, at the end of the four-year EE&C Plan, the Company will reconcile total revenue collected to its total budget for the four-year EE&C Plan. Of course, the annual reconciliation, any "mid-course" corrections and the end of Plan reconciliation all will be subject to Commission review and approval before PPL electric actually adjusts customers' rates.

PPL Exh. 1 Amended at 208-209.

The OCA, the OSBA, SEF, and Mr. Epstein have all offered opinions regarding PPL's proposed levelized cost recovery and reconciliation process. The OCA supports the levelized recovery proposal, arguing that it "will allow the Company the flexibility to spend each year based on program ramp up needs, program success and

market conditions (within the total spending cap) to maximize Plan implementation without undue volatility in customer rates." OCA MB at 19. The OCA states that it "supports this approach particularly for residential customers to avoid undue volatility and confusion in rates." OCA MB at 19. The OCA also supports PPL's proposal to make mid-course corrections in its cost recovery mechanism, and recommends that the need for such mid-course corrections be considered through a stakeholder process. OCA MB at 24. The OCA also supports PPL's proposal to seek Commission approval for these corrections and suggests that the Annual Review to be conducted by the Commission could provide an appropriate forum for such changes. OCA MB at 24.

The OSBA objects to PPL's proposal to annually reconcile only recovered revenues to expected revenues rather than reconciling recovered revenues to actual incurred costs. OSBA MB at 14-15. As argued by the OSBA's witness Mr. Knecht:

> Despite its best efforts, PPL's program cost estimates for each rate class group are based primarily on educated guesses regarding customer participation. PPL readily acknowledges that there is significant uncertainty regarding customer participation rates in each program. As such, PPL could experience significant variations in total costs incurred and in the mix of costs among the various rate class groups.
>
> I therefore suggest that the reconciliation of the ACR explicitly include both revenue and cost reconciliation. At the end of each year, PPL should compare both forecast revenues and forecast costs with actual revenues and actual costs on a rate class group basis, and include the total net variance in the ACR charges. I do not believe that PPL's "levelized" methodology is a bar to reconciling both revenues and costs relative to the approved Plan.

OSBA Knecht St. No. 1 at 7-8 (footnote omitted).

SEF also opposes PPL's Plan to reconcile annual revenues collected to budgeted revenues rather than to actual program expenses. SEF MB at 37-38. SEF argues that "[t]his not only hides the true annual cost of the program from customers, but also results in a slower implementation schedule as PPL targets increased levels of funding for target measurement years." SEF MB at 38. Thus, SEF contends that reconciling only to budget revenues hinders the public policy goals of aggressive implementation established by the General Assembly in Act 129, as discussed in the *Implementation Order*. SEF MB at 38-39.

Mr. Epstein avers that reconciliation should be to actual expenses at the end of the year. Mr. Epstein contends that such a process provides the most exact identification of cost to the EDC. Epstein MB at 21. Mr. Epstein further argues that this process "is consistent with the Commission's determination that the total cost of any plan in regard to the 2% limitation, 'should be interpreted as an annual amount, rather than an amount for the entire five-year period.'" Epstein MB at 22.

In response to these positions, PPL asserts that reconciling its projected rates to actual program expenditures would defeat the purpose of a levelized rate. According to PPL, "[b]ecause the proposed programs and related spending will be ramped in over approximately the first 18 months of the Company's proposed EE&C Plan, the reconciliation process recommended by the OSBA could produce wide disparities between annual cost recovery and spending, and, thereby, defeat the purpose of a levelized rate for the term of the plan." PPL MB at 64. PPL concludes that because of the potential for these disparities, and the advantages of the Company's approach, its reconciliation proposal should be approved. PPL MB at 64-65.

(2) Disposition

We will adopt PPL's levelized cost recovery plan as well as its reconciliation proposal. We agree with the OCA that the Company's levelized recovery approach will avoid undue volatility and customer confusion regarding rates. As for the reconciliation process, we find the Company's proposal to annually reconcile actual revenues collected to budgeted revenues to be the most logical approach, given the levelized recovery process. We agree with PPL that adopting a plan that would reconcile revenues collected with actual program expenditures for each year as proposed by the OSBA, SEF, and Mr. Epstein would defeat the purpose of the levelized recovery process since the rate changes resulting from such a reconciliation plan would introduce the kind of volatility the levelized recovery process is meant to prevent. Therefore, we will reject the positions of the OSBA, SEF, and Mr. Epstein with regard to this issue.

However, we will require PPL to reconcile total actual revenues collected to its total actual program expenditures at the conclusion of its EE&C Program, as the Company proposes. We also support PPL's proposal to make mid-course corrections to its cost recovery mechanism, and we encourage the use of a stakeholder process to consider the need for such corrections as the OCA recommends. Finally, as PPL proposes, we will require the Company to seek Commission approval of any mid-course corrections it intends to make.

By way of further explanation of our decision, each EE&C plan covers four years. Section 2806.1(g) of Act 129, states that "[t]he total cost of any plan required under this section shall not exceed 2% of the electric distribution company's total annual revenue as of December 31, 2006." 66 Pa. C.S. § 2806.1(g). As the EE&C plans cover four years and the 2% of total annual revenues can reasonably be interpreted as an annual cost limit, the "total cost" of any four year plan cannot exceed the aggregate of the four annual 2% limit amounts. The contrary interpretation would not be reasonable because it

would either not allow sufficient funds to accomplish the objectives of the act or would require EDC shareholders to fund the majority of the funding.

Section 2806.1(k) of Act 129 directs that the EDCs "shall recover on a full and current basis from customers, through a reconcilable adjustment clause under section 1307, all reasonable and prudent costs incurred in the provision or management of a plan provided under this section." 66 Pa. C.S. § 2806.1(k). This section directs that the EDCs are to recover the total reasonable and prudent costs of a four year plan, which is of course limited by Section 2806.1(g). While this section mentions recovery on a full and current basis (probably to preclude long-term deferral of EDC cost recovery), we note that while the EDC will be receiving some funds early, as complete reconciliation will occur at the end of the four year plan period. At that time the Commission will direct what the amount of refunds or collections for over or under recovery will be, and the period in which the reconciliation will occur.

Furthermore, section 1307(e)(3) of the Public Utility Code permits the Commission, for good cause, to extend the time period under which EDCs refund or collect over or under collections for an annual automatic adjustment clause. See 66 Pa. C.S. § 1307(e)(3). The Commission finds that there is sufficient good cause in the record and in the structure of Act 129. All stakeholders supported the levelized cost recovery as it would prevent rate volatility. The delay only involves a minor one, possibly two year delay. Such levelized rates are in accordance with common ratemaking principles and tools, such as cost normalization.

c. Interest Charges

(1) Positions of the Parties

As part of the EE&C cost recovery annual reconciliation process, PPL proposes to collect or pay interest on under or over-collections, respectively. As stated in PPL's proposed ACR set forth in its *pro forma* tariff rider: "Interest shall be computed monthly at the appropriate rate, as provided for in Section 1308(d) of the Public Utility Code, from the month the over or under-collection occurs to the effective month that the over-collection is refunded or the under-collection is recouped." PPL Exh. 1 Amended, Appendix F; PPL Exh. JMK-1.

While PPL's proposed ACR contemplates using the same interest rate for both over and under-collections, the OTS recommends that the ACR be modified to allow for interest charges in the amount of eight percent (8%) for over-collections, and six percent (6%) for under-collections. OTS MB at 9-10. The OTS bases its recommendation for such asymmetrical interest charges on the fact that under PPL's proposed levelized cost recovery plan, the level of revenue collected by the Company during the first two years of its Plan will exceed its level of spending on EE&C measures by $17.5 million. Thus, the OTS asserts that PPL will receive a substantial over-collection in these first two years, providing a windfall to the Company. OTS MB at 11-12. The OTS notes that it is not until the fourth year of PPL's Plan that the amount of this over-collection will be used for program costs. OTS MB at 12-13. Thus, the OTS concludes as follows:

> A company with the financial acumen of PPL will surely benefit from $17.5 million of excess funds retained for an extended period of time. OTS continues to support the proposed levelized cost recovery mechanism; however, it cannot be approved without providing some measure of relief

> to the ratepayers who are supplying the funds for the proposed EE&C programs. OTS proposes to do so through the application of eight percent (8%) interest on the over-collected funds. The application of the OTS proposed interest rates is a modest resolution, but it demonstrates that there is value to the timing of the receipt of funds and acknowledges that ratepayers should share in the benefit that is sure to flow to the Company.

OTS MB at 13.

By way of offering precedent for its proposal, the OTS notes that a provision for such asymmetric interest rates is contained in Section 1307(f) of the Public Utility Code applicable to the recovery of natural gas costs, as well as in the Commission's regulations governing default electric service at 52 Pa. Code § 54.187. OTS MB at 10-11.

The OTS further asserts that any payment to customers of the eight percent interest on over-collections must not be recoverable by PPL as a cost of its EE&C Plan because any profit the Company earns on the $17.5 million amount over-collected in the first two years will be outside of the Plan. OTS MB at 14. Furthermore, the OTS argues that excluding the payment of interest on over-collections from the recoverable costs of the Plan is necessary to ensure that customers do not fund their own interest payments. OTS MB at 14. The OTS also opposes the recovery of the interest payments in any other proceeding. OTS MB at 14.

The OCA opposes the application of interest charges on both over- and under-collections. OCA MB at 20. As argued by its witness, Mr. Hahn:

> I do not recommend adoption of this feature. The [two percent] spending constraint should not include any interest charges. In other words, PPL has an average annual amount

> of $61.5 million, not $61.5 million plus interest. Also, with levelization, the interest would likely balance out over time. PPL should not be allowed to collect or charge any interest from customers.

OCA Hahn St. No. 1 at 15.

Therefore, the OCA concludes that the Company should not collect or charge any interest, particularly if such interest would result in customers paying more than $246 million for the Plan. OCA MB at 20.

In response, PPL states its belief that "the normal provision for symmetrical interest, consistent with Section 1308(d), should apply in this proceeding." PPL MB at 66. PPL contends that purchased gas cost proceedings and default electric service proceedings are the only two instances in which utilities are required to apply asymmetrical interest rates and that there is no provision in Act 129 requiring such interest rates. PPL MB at 66. Moreover, PPL submits that as a policy matter, asymmetrical interest is not appropriate in this proceeding. As the Company argues:

> The rationale for asymmetrical interest rates presumably is to reduce any incentive for utilities to overestimate their costs and overcollect through automatic adjustment clauses. This policy may have merit when a gas or electric utility is estimating the future cost of gas in a Section 1307(f) proceeding or when an EDC is estimating the cost of acquiring POLR supply. In the context of Act 129, however, the cost of the program is known, *i.e.*, two percent (2%) of annual revenues, and there is no incentive or ability to overestimate costs.

PPL MB at 67. PPL asserts that the normal provision for symmetrical interest, consistent with Section 1308(d), should apply to over- and under-collections. PPL MB at 66-67.

Additionally, PPL objects to the OTS position that interest costs should be excluded from the Company's total allowable EE&C Plan cost and should not otherwise be recovered in any future proceeding. PPL states that it considers interest costs related to its EE&C Plan to be an element of managing recovery of the Plan costs and therefore believes that such interest costs are recoverable. PPL MB at 65.

(2) Disposition

Act 129 does not address whether over/under collections are subject to interest. The *Implementation Order* and case law also are silent on this issue. The Act does require recovery of "all reasonable and prudent costs incurred in the provision or management of a plan under this section" on a full and current basis through a reconcilable adjustment clause under Section 1307 of the Code. 66 Pa. C.S. § 2806.1(k)(1).

Although the Company references Section 1308(d) of the Public Utility Code in support of its proposal for symmetrical interest charges, we note that this section relates specifically to interest on refunds of amounts collected as a result of a general rate increase that has gone into effect by operation of law, and is later found by the Commission to be unjustified. It does not address interest relating to the reconciliation of over or under-collections of amounts collected through the kind of cost recovery mechanism at issue here. As for the OTS' proposed asymmetrical interest charges, we submit that although the OTS provided some theoretical basis for its position, it offered no evidence to support the idea that an interest rate for over-collections that is two percent above that for under-collections would properly compensate customers for the time value of money as the OTS suggests.

With no statutory directive or case law requirement to impose interest, we conclude that over/under-collections are not subject to interest.

d. Government/Non-Profit Customers

(1) Positions of the Parties

The OSBA is troubled by the fact that PPL's proposed EE&C cost recovery mechanism will recover costs from three customer classes—Residential, Small C&I, and Large C&I—rather than from each of the rate classes set forth in its tariff. Specifically, the OSBA objects to PPL's inclusion of the Government/Non-Profit customers in the Small C&I class for cost recovery purposes. OSBA MB at 12-13. The OSBA argues that because PPL does not offer information on the relative size of the Government/Non-Profit customers, it is possible that the Small C&I class may be unduly burdened by its requirement to pay for the energy conservation targets relating to the Government/Non-Profit customers. OSBA MB at 13. According to the OSBA, it cannot be assumed that spreading the EE&C costs across all customers in a distribution class will have no significant impact on the Government/Non-Profit customers in that class. OSBA RB At 7. The OSBA concludes that such subsidization of another class by the Small C&I customers is contrary to the requirement set forth in Section 2806.1(a)(11) of the Act that costs for approved EE&C measures be financed by the same customer class that will receive the benefits of those measures. OSBA RB at 6. Furthermore, the OSBA avers that combining the Government/Non-Profit customers with the Small C&I class for cost recovery appears to be in conflict with Section 2806.1(b)(i)(B) of the Act, which treats the Government/Non-Profit group as a separate class which must produce an explicitly mandated share of the reduced consumption. OSBA MB at 13. The OSBA recommends that the Government/Non-Profit customers be treated as a separate class for cost recovery purposes. OSBA MB at 13.

In response to the OSBA's position, PPL asserts that it did not allocate all of the EE&C costs for the Government/Non-Profit customers (referred to by PPL as "institutional customers") to the Small C&I class. Rather, it allocated 84.79% of those

costs to the Small C&I class, while allocating the remaining costs to the Residential and Large C&I class. PPL MB at 62. According to the Company, this allocation was based upon a ratio of the actual number of institutional customers in each of the three customer classes to the total number of institutional customers on its system. PPL MB at 62. PPL concludes that this shows that the Small C&I customers will not be unduly burdened with for Act 129 programs relating to the Government/Non-Profit customers as the OSBA contends. PPL MB at 62.

Additionally, PPL argues that placing the Government/Non-Profit customers in a separate class for cost recovery is not necessary because all Act 129 costs will be tracked by class and charged accordingly. PPL RB at 28. Moreover, PPL asserts that a separate rate class for Government/Non-Profit customers is inconsistent with the Company's current rate class designations, which do not include a Government/Non-Profit class since these customers are a subset of either the Residential, Small C&I, or Large C&I class, depending on their characteristics. PPL RB at 28-29.

(2) Disposition

We reject the OSBA's proposal to treat Government/Non-Profit customers as a separate class for purposes of the cost recovery mechanism. As PPL argues, the Government/Non-Profit customers are not otherwise treated as a separate class in the Company's tariff, and there is no evidence in this case to support separate treatment for EE&C cost recovery purposes. Moreover, Section 2806.1(a)(10) of the Act simply requires EE&C measures to be financed by the same customer class that receives the direct energy and conservation benefits of those measures. If, as here, a utility did not have a separate rate class that only included units of government, school districts, institutions of higher education and non-profit entities prior to the effective date of Act 129, we do not believe the General Assembly intended to mandate that the utility re-write its tariff to create such a rate class. Such an undertaking would impose costs on

utilities (and their ratepayers) without enhancing energy efficiency or reducing energy consumption.

A more reasonable interpretation of Section 2806.1(a)(10) under these circumstances is that the costs of measures benefitting governments, school districts, institutions of higher education and non-profit entities must be assigned in a reasonable manner to the rate class(es) in which those customers are embedded. We find that the Company has done so by basing its allocation on a ratio of the actual number of Government/Non-Profit customers in each of its three customer classes to the total number of Government/Non-Profit customers on its system, as set forth above.

As noted, the OSBA contends that it cannot be assumed that spreading the EE&C costs across all customers in a distribution class will have no significant impact on the Government/Non-Profit customers in that class. However, the opposite argument can also be made: It cannot be assumed that spreading such costs among all customers in a class *will* have a significant impact on the Government/Non-Profit customers. Indeed, the OSBA presents no evidence to support its contention that any significant subsidization will occur. Also, while the OSBA points out that Act 129 requires a specific share of an EDC's reduced consumption to come from the Government/Non-Profit customers, this does not support the argument that a separate class must be created for these customers for cost recovery purposes. In this regard, we note that Act 129 also requires specific treatment of low-income customers (see 66 Pa. C.S. § 2806.1(b)(i)(G)), but no Party has suggested, nor do we require, that low-income customers who are part of the Residential class be separated from that class for purposes of cost recovery. As the costs to implement EE&C programs for low-income customers will be borne by the entire Residential class, so is it reasonable to require that the costs to implement such programs for Government/Non-Profit customers be borne by the specific class in which those customers reside.

For the reasons discussed above, we reject the OSBA's proposal to create a separate class for Government/Non-Profit customers for purposes of EE&C cost recovery.

e. Rate Design for Large C&I Customers

(1) Positions of the Parties

As noted above, PPL is proposing to recover the EE&C costs relating to Large C&I customers through its ACR on a levelized dollar per kW basis, and further states that "for this group of customers, there may be some costs that are more appropriately assigned directly to the individual customer who is undertaking the measure and receiving its benefit." PPL Exh. 1 Amended at 208. Although PPLICA supports the recovery of Plan costs via the ACR from large C&I customers on a demand charge basis, PPLICA initially recommended utilizing the PLC instead of PPL's billing demand. PPLICA explains that the PLC is based on PJM's five peaks during the prior year, and the rate is established on an annual basis. PPLICA avers that utilizing the PLC would encourage large C&I customers to engage in efficiency and load control measures during PJM's five annual peaks which would "further the demand reduction goals of Act 129." PPLICA MB at 22-24. In addition, as confirmed by PPL at the evidentiary hearing, because the PLCs are determined annually, a demand charge based on a PLC will provide a consistent charge to customers and constant, reliable cost recovery. PPL Tr. at 249-250.

(2) Disposition

PPLICA has presented compelling evidence to support its rate design proposal. For the reasons set forth in PPLICA's argument, above, PPLICA's proposal to

recover EE&C Plan costs on a demand charge basis using a customer's PLC will be adopted for large C&I customers.

f. Time-Of-Use Program

(1) Positions of the Parties

Richards notes that PPL's proposed Time-Of-Use (TOU) program, which is part of the Company's EE&C Plan, will not be available to PPL customers who shop for their generation supply. Richards contends that these shopping customers should not be required to contribute to the costs of this program. Richards MB at 14. In order to prevent this situation, Richards proposes that the shopping customer be provided with a lower charge or a credit on its bill. Richards MB at 14. By way of citing precedent for this proposal, Richards notes that the Commission has refused to impose on other rate classes the costs of Universal Service Funds dedicated to assist only the residential class. Richards MB at 14.

In response to Richards's proposal, PPL argues as follows:

> The Commission's *Implementation Order* provides that "[w]hen the EE&C plans to be offered by EDCs will benefit both shopping and non-shopping customers, the cost recovery mechanism shall be non-bypassable, and structured such that it will not affect the EDC's price to compare." As explained in PPL Electric's MB (p. 23), all customers, shopping and non-shopping, who take advantage of the programs included in the EE&C Plan will reduce their electricity consumption and save money regardless of their generation supplier. Further, all customers, even those who do not participate in the Company's programs, will benefit from lower wholesale energy and capacity prices over time due to lower electricity

> consumption. *Id.* Therefore, Richards Energy's proposal should be rejected as it is inconsistent with the policy stated in the *Implementation Order*.

PPL RB at 11-12 (footnote omitted).

(2) Disposition

We understand the proposal of Richards to require PPL to provide a lower charge or a credit to shopping customers with respect to the costs of its proposed TOU program. However, it is premature to rule on this issue until we know the actual costs. These costs are default service costs which should be allocated to Default Service customers pursuant to our Default Service Policy Statement at 52 Pa. Code §§ 69.1801 *et seq.* With this modification we adopt the PPLTOU proposal subject to further consideration as part of the Annual Review process.

g. Expiration of Cost Recovery Mechanism

(1) Positions of the Parties

In its EE&C Plan, PPL states that it is not proposing an expiration date for its cost recovery mechanism. PPL Exh. 1 Amended at 209. In support of this position, PPL explains as follows:

> First, the mechanism will be needed to refund any over collection or recover any under collection existing at the end of the four-year EE&C Plan. Second, as discussed below, the Company may be able to reduce the overall costs of its EE&C Plan by entering into contracts with CSPs that extend beyond May 31, 2013. If that approach is approved by the Commission, the cost recovery mechanism will be needed to

> collect the costs incurred during the latter years of those contracts.

PPL Exh. 1 Amended at 209.

A number of Parties have offered opinions on the Company's proposal to extend its cost recovery mechanism beyond May 31, 2013. The OTS submits that any rate for EE&C programs that extend beyond May 31, 2013, should be reviewed and adjusted annually based upon the projected program costs and experienced revenue recovery. OTS MB at 15-16. The OTS contends that this "will ensure the proper matching of any future rider revenues with program expenditures and, since it would be performed on an annual basis, would also serve to reduce the OTS recommended accumulation of interest costs related to any such over/under-collection." OTS MB at 16.

PPLICA opposes the extension of PPL's cost recovery mechanism beyond May 31, 2013, except for the limited purpose of addressing any over or under-collections of Plan costs. PPLICA MB at 25. PPLICA argues that Act 129 includes a specific process—described in Section 2806.1(c)(3) and Section 2806.1(d)(2)—to determine whether any EE&C plan should extend beyond the initial plan period. PPLICA MB At 24-25. PPLICA asserts that the initial plans terminate at the end of forty-two months unless the Commission affirmatively determines that the actual benefits outweigh the actual costs and establishes new goals, and that the cost recovery mechanisms may extend beyond the initial term solely to reconcile any over- or under-recovery of costs. PPLICA MB at 26. PPLICA avers that extending both contracts and cost recovery may not be cost justified because the additional costs relating to the extension of the contracts may be greater than the additional costs incurred by the Company under the shorter-term contracts. PPLICA MB at 26. Moreover, PPLICA contends that PPL's proposal violates Act 129. In this regard, PPLICA argues as follows:

> PPL is permitted by Act 129 to collect from customers during the term of the plan amounts not to exceed 2% of the

> Company's 2006 revenues. Under either scenario proposed by PPL it appears that Act 129 will be violated by either: (a) exceeding the 2% cost cap; or (b) extending cost recovery for the 2012 reductions beyond the initial 42 months of the Plan. PPLICA does not object to payments going to customers or CSPs beyond the 42 month period; however, those amounts must be collected from the Large C&I class during the 42 month collection period and must not exceed the 2% statutory cap.

PPLICA MB at 27.

EnerNOC states that it strongly disagrees with PPLICA's position. EnerNOC RB at 11. EnerNOC asserts that its interpretation of Section 2806.1(c)(3) is that "the intent of the Legislature was to have the EDCs maintain the status quo with the [demand response] program, while the potential for <u>further</u> (not 'existing') reductions was being assessed by the Commission." EnerNOC MB at 12 (emphasis in original). EnerNOC further contends that "it makes absolutely no financial nor practical sense to end a [demand response] program operating at a lower cost only to have to, in all likelihood, restart the same program at a significantly higher cost." EnerNOC MB at 14. Thus, EnerNOC supports the continuation of PPL's proposed demand response program beyond the 2013 time frame. EnerNOC MB at 14. Although EnerNOC does not specifically frame its position in terms of the cost recovery mechanism, it presumably would also support the continuation of such a mechanism to the extent that it relates to the demand response (or any other) program.

SEF asserts that PPL's proposal to extend the cost recovery mechanism should be rejected "since transferring program costs to future years decreases the present value of the program costs, thereby artificially devaluing the costs used to determine if the program is cost effective." SEF MB at 39.

Richards supports PPL's proposal to continue the duration of the funding for a particular project, even if that project is not completed by the termination date of the Plan. Richards submits that "the customer must be assured that a promised level of funding will remain available for the entire duration of the project and not be subject to any artificial deadline or the May 31, 2013 termination date of this Plan." Richards MB at 12. Richards proposes that the Commission approve the concept of a funding set-aside for a particular project upon commitment of the customer to participate, and that PPL should insure that the level of funding is also committed and will remain available. Richards MB at 12.

(2) Disposition

We accept PPL's proposal to continue its cost recovery mechanism beyond May 31, 2013, on the condition that such cost recovery does not exceed the mandated two percent cost cap. In this regard, we first note that the cost recovery mechanism must necessarily continue beyond May 31, 2013, for reconciliation purposes and to refund any over-collection or recover any under-collection, as PPL argues. More fundamental, however, is the fact that although Act 129 specifies May 31, 2013, as the date on which final consumption and demand goals must be met under an EDC's plan, it does not explicitly require that any EE&C programs, or the cost recovery mechanisms, terminate by that date. Section 2806.1(c)(3) and (d)(2) of the Act specifies that the Commission must evaluate the results and effectiveness of each EDC's plan by November 30, 2013, and may adopt additional incremental requirements for consumption and/or demand reductions at that time. Furthermore, Section 2806.1(b)(ii) requires the EDC to file a new EE&C plan every five years. The new plan would, presumably, include new proposed EE&C programs and a new cost recovery mechanism. Apart from these requirements, however, there is nothing in Act 129 that specifies that an EDC's original EE&C plan—or any programs implemented thereunder—must end by a certain date.

Notwithstanding the foregoing argument, however, PPL is still bound by the Act to maintain its total level of cost recovery within the two percent cap, and any costs the Company may incur by continuing an EE&C program beyond the term of the plan will not be recoverable under its ACR, or any other process or mechanism, if such costs exceed the maximum amount determined under the cap. Thus, while there may be benefits to continuing certain programs—or unwanted consequences to discontinuing them—as some of the Parties contend, the requirement that the Company stay within the cost cap must be the deciding factor as to whether or not the cost recovery mechanism may continue to operate beyond May 31, 2013. Therefore, as set forth above, we will adopt PPL's proposal to continue its cost recovery mechanism beyond May 31, 2013, for the purpose of addressing any over- or under-collections and for the purpose of any ongoing program cost recovery, provide that such cost recovery does not exceed the total amount of Plan costs as determined under the two percent cost cap.

h. Recovery of EE&C Capital Assets

(1) Positions of the Parties

The OTS submits that "any and all capital assets funded with EE&C revenues should be excluded from a rate base claim, should not be included as a corresponding depreciation expense claim and should not subsequently earn a return on equity." OTS MB at 16. Thus, the OTS recommends that "the Commission make clear that all expenditures financed by EE&C revenue be excluded from base rates. OTS RB at 9.

PPL asserts that the OTS' concern is unfounded, because "[a]ll EE&C costs and revenue included in the Company's proposed ACR will be segregated from base rates and will be subject to standard Commission Section 1307 review and audit to confirm this separation." PPL MB at 63. Moreover, PPL states that there are no capital

costs included in its proposed ACR, and therefore the OTS' concerns are not applicable to the Company's EE&C Plan. PPL MB at 63.

(2) Disposition

While we echo the OTS' position against the inclusion of any EE&C-related capital assets in PPL's rate base, we accept PPL's assurances that no such capital costs are included in its ACR or would be placed into rate base.

i. Demand Response Resources

(1) Positions of the Parties

The OCA submits that PPL should be required to bid qualifying energy efficiency and demand response resources into the PJM Reliability Pricing Model auction process and credit customers for the value received in its cost recovery mechanism. OCA MB at 21. The OCA further explains its position as follows:

> As of May 2009, PJM has modified its Reliability Pricing Model (RPM) auction process to allow for the inclusion of energy efficiency and demand response resources. Qualifying energy efficiency and demand response resources can now bid into the PJM auctions as a capacity resource and, if cleared, receive capacity payments. [OCA witness] Mr. Hahn recommended that:
>
> > [t]he Company avail itself of participation in existing market mechanisms, such as PJM's Reliability Pricing Model ("RPM") auctions, and return any benefits from such mechanisms to customers as a credit.
>
> OCA St. No. 1 at 16. The OCA submits that PPL should be directed to explore this option and to bid its qualifying

> resources into the RPM auctions. Capacity payments can provide a significant value that should then be credited to customers through the cost recovery mechanism to offset the costs that they must bear under the Act.

OCA MB at 21.

In response, PPL asserts the following:

> PPL Electric plans to follow this approach to the maximum extent possible for the peak load reductions associated with energy efficiency measures. However, PPL Electric expects that the CSP(s) for the Act 129 demand response programs (Direct Load Control and Load Curtailment) will bid those peak load reductions into the RPM auction (to the extent that those MWs were not previously committed from PJM's DR programs) and share those benefits with its customers.

PPL MB at 24.

(2) Disposition

We agree with and hereby adopt the OCA's proposal on this issue with the qualification that bidding cannot occur for resources already committed under PJM Load reduction programs. The PPL demand response program and the PJM demand response programs are fundamentally different, but complimentary. PPL is correct that CSPs will likely participate, and share revenues with customers from RPM bidding in various auctions, incremental and baseline. This may drive down the cost of needed incentives. However, we do not require that the two be linked because some customers may wish to contract for separate services with different CSPs.

j. Annual Review of Costs

(1) Positions of the Parties

The OTS submits that, "due to the fact that all proposed costs are based on budgeted amounts and that this is the first time an EE&C Plan has been filed, all costs that are tentatively approved should continue to be subject to review." OTS MB at 8. The OTS asserts that such a review can be completed in conjunction with the Annual Review and reconciliation of PPL's cost recovery mechanism. OTS MB at 8. The OSBA contends that PPL has not provided detailed justification for the magnitude of the incentives it proposes to offer customers who participate in its various EE&C programs. OSBA MB at 10-11. The OSBA asserts that specific program participants will benefit substantially from the incentives offered, but all customers will be required to pay for them. OSBA MB at 10. Therefore, the OSBA recommends that as part of an annual reconciliation filing, PPL should present a detailed justification for the magnitude of these customer incentives. The OSBA concludes that "[b]ased on that data, parties could propose, and the Commission could consider, adjustments to the subsidies offered to participants in the various programs on a going-forward basis." OSBA MB at 11.

(2) Disposition

With regard to this issue, the *Implementation Order* states the following:

> The annual review and reconciliation for each EDC's cost recovery mechanism will occur pursuant to a public hearing, if required due to petitions filed by interveners, and will include an evaluation of the reasonableness of all program costs and their allocation to the applicable customer classes. Such annual review and reconciliation will be scheduled to coincide with our review of the annual report on the EDC's plan submitted in accordance with 66 Pa. C.S. § 2806.1(i),

> and all calculations and supporting cost documentation shall be provided at the time that report is filed.

Implementation Order at 38. Thus, the OTS' proposal will be satisfied pursuant to the *Implementation Order*.

With respect to the scope and content of the Annual Review, it is the Commission's intention to provide each of the EDCs with a Secretarial letter identifying issues that the Commission would like to see addressed as well data the Commission needs to perform its review. That Secretarial letter will be in the nature of minimum requirements which may be expanded by each EDC and the stakeholder group as appropriate.

C. CSP Issues

The Commission's EE&C Program must include a requirement for the participation of CSPs in the implementation of all or part of a plan. 66 Pa. C.S. § 2806.1(a)(10). The Commission is required to establish procedures requiring EDCs to competitively bid all contracts with CSPs. 66 Pa. C.S. § 2806.1(a)(7). The Commission is also required to establish procedures to review all proposed contracts with CSPs prior to execution of the contract. 66 Pa. C.S. § 2806.1(a)(8). The Commission has the authority to order the modification of a contract to ensure that plans meet consumption reduction requirements. *Id.*

Consequently, each EDC must include in its plan a contract with one or more CSPs selected by competitive bid to implement all or part of the plan as approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(E). The *Implementation Order*, at 25, noted that, due to the aggressive design and implementation schedule set forth in Act 129, EDCs were not expected to have all bids for and contracts with CSPs completed by the

July 1, 2009 Plan filing. However, the Commission stated that each filed plan was expected to include at least one contract with a CSP. The *Implementation Order* established the criteria that the Commission will use in approving request for proposals (RFP) procedures and standard form contracts for CSPs.

1. Multiple CSPs for Demand Response Program

a. Positions of the Parties

As originally presented in its EE&C Plan, PPL's proposed Load Curtailment Program contemplated using a single CSP[20] to manage and administer the program. PPL Exh. 1 Amended at 149. However, in response to a request by ClearChoice that multiple demand response CSPs be used, PPL states that it will not limit this program to a single CSP, but will solicit bids from multiple demand response CSPs to provide blocks of firm curtailable load and/or direct load control. PPL MB at 33-34. PPL states that the size of these blocks is expected to be between 5 MW and 25 MW, and asserts that it will select the most cost-effective combination of these firm load reduction blocks. PPL MB at 34. PPL further states that it "does not intend to favor any demand response CSP over another, and it would be difficult to do so because of the turnkey nature of the related programs." PPL MB at 34.

EnerNOC strongly opposes PPL's proposal to require the bidding of load blocks to multiple CSPs, contending that separating participants into 25 MW blocks will make them too small to aggregate effectively. EnerNOC RB at 4. EnerNOC argues that such a block approach would make it less economical for a CSP to run a program, and would be extremely challenging to operate and manage. EnerNOC RB at 4-5. EnerNOC

[20] To the extent that it relates to demand response programs as discussed herein, the term "CSP" may refer to either "Conservation Service Provider," or "Curtailment Service Provider."

asserts that there are a number of market influences that will not be controllable under this approach, and those could easily create confusion and program failure. EnerNOC RB at 5. In this regard, EnerNOC elaborates as follows:

> First, there would be no control over what revenue percentage split that the other CSPs would offer to their customers. Second, if one CSP had over-enrolled its program, that would, in turn, make it more difficult for other CSPs to realize their program commitments. Third, multiple CSPs providing customers with different marketing campaigns and different messaging will make it confusing for customers. The important market details, including information on what it means to participate in a Demand Response Program, the hours that a customer is required to curtail usage, and other program details, communicated in different ways to customers will create substantial confusion in the market. Customers will have unrealistic expectations about the program, and there could be a rise in consumer complaints before the Commission, which could also slow down the implementation of the program.

EnerNOC RB at 5-6.

EnerNOC concludes that a "successful demand response program is achieved by utilizing an RFP process that ultimately chooses the most qualified CSP to implement the entire demand response program effectively and reliably." EnerNOC RB at 6.

b. Disposition

We accept PPL's proposal on this issue. Although EnerNOC raises a number of objections, PPL should be free to implement its demand response program in a way that it believes will be most effective for its success. It is not our intention to micromanage an EDC's demand response programs, and we are reluctant to order

changes in the details of such programs without definitive evidence that such changes would improve the programs in clear and measurable ways. In accordance with Section 2806.1(b)(i)(J), all aspects of PPL's EE&C Plan, including its demand response program, will be subject to an annual evaluation of its cost effectiveness. At that point, PPL's demand response program will be fully evaluated, and it can then be determined whether or not the Company's proposed approach was appropriate.

At this time, PPL's Plan to solicit bids from multiple CSPs for blocks of firm curtailable load and/or direct load control is reasonable and represents a fair and competitive process since the Company does not intend to favor any demand response CSP over another. Accordingly, we will adopt PPL's position on this issue, and reject that of EnerNOC.

2. Competition among CSPs for Demand Response Program

a. Positions of the Parties

ClearChoice presents a number of proposals relating to the participation of CSPs in PPL's demand response program. These proposals are represented as an attempt to promote a competitive and non-discriminatory environment with respect to such participation. In this regard, ClearChoice states that "promoting competition among demand response providers is a logical extension of the Commonwealth's policy objective of promoting competition in the generation market." ClearChoice MB at 9. Thus, ClearChoice asserts that "the prevention of anticompetitive or discriminatory conduct and the unlawful exercise of market power must be considered in the structure of PPL's demand response programs under the EE&C Plan." ClearChoice MB at 10. To this end, ClearChoice recommends:

> (1) That any marketing by PPL be competitively neutral so as not to prefer the use of one curtailment service provider over another, and all information provided to CSPs participating in the PPL program also be provided to non participating CSPs.
>
> (2) That the Commission cap the amount of demand reduction that a single provider can be awarded under the Plan at 50% of the demand reduction required by the plan in order to ensure that multiple providers can participate. This approach as analogous to the load caps on default generation service procurement.
>
> (3) That PPL's demand response program include a 25 % set-aside for disadvantaged business with the proviso that disadvantaged business would not have to post collateral as a condition of participating in the program.

ClearChoice MB at 11, 13.

In support of the last proposal, ClearChoice cites page 26 of the *Implementation Order*, which lists, as one of the minimum criteria for Commission review and approval of the CSP bidding process, the encouragement of efforts "to acquire bids from 'disadvantaged businesses' (i.e., minority-owned, women-owned, persons-with-disability-owned, small companies, companies located in Enterprise Zones, and similar entities) consistent with the Commission's Policy Statements at 52 Pa. Code §§ 69.804, 69.807 and 69.808." ClearChoice MB at 12. ClearChoice contends that as a disadvantaged business, it lacks the capital to post collateral as a performance guarantee in EDC curtailment programs and asserts that "[t]he essence of what makes a disadvantaged business 'disadvantaged' is the limited capital to fund its operations." ClearChoice MB at 12.

EnerNOC strongly disagrees with ClearChoice's representation that PPL's demand response program is somehow discriminatory in nature and needs correction. EnerNOC RB at 6. First, EnerNOC objects to ClearChoice's marketing proposal, contending that it "would only cause confusion in program marketing and

implementation, particularly if the marketing materials promoted CSPs that were not selected as the most qualified demand response provider for the service area." EnerNOC RB at 7-8.

EnerNOC also objects to ClearChoice's proposed 50% demand reduction cap for a single CSP, arguing that this would create a situation in which multiple CSPs were crowding the market and attempting to implement the same program. EnerNOC RB at 8. EnerNOC avers that this would drive the customer acquisition costs higher and make the resources obtained less reliable. EnerNOC RB at 8.

As for ClearChoice's proposals regarding disadvantaged businesses, EnerNOC asserts that "[n]owhere in the Code or the [Implementation] Order does it define 'disadvantaged business' as one with 'limited' capital. EnerNOC RB at 9. EnerNOC states its belief that the rationale behind the Commission's citing to its Policy Statements in the *Implementation Order* was to ensure that no inherent discrimination between two equally qualified businesses takes place. EnerNOC RB at 9.

Finally, EnerNOC states that it supports an open and competitive RFP to bid on by equally qualified opponents and "does not support set-asides for inexperienced, under-capitalized, or otherwise unqualified participants." EnerNOC RB at 10. Thus, EnerNOC requests that PPL be required to submit competitive RFPs and to choose one CSP that is the most qualified to implement and run the Company's demand response program. EnerNOC RB at 11.

PPL also opposes the proposals of ClearChoice, asserting that they are "thinly veiled efforts to promote ClearChoice as a demand response CSP." PPL RB at 15. With regard to ClearChoice's marketing proposals, PPL indicates that customers may participate in the demand response programs of PPL, PJM, or both. If customers choose PPL's program, they must enroll through the Company's program and they must

use the Company's demand response CSP(s). PPL RB at 18. PPL also asserts that the CSPs who are selected to deliver firm MW reductions for the Company's programs will be responsible for marketing and recruiting participants. PPL RB at 18.

With regard to ClearChoice's proposal to cap the demand reduction amount at 50% for any one CSP, PPL argues that "the granularity of the blocks to be bid on by the CSPs alleviates the need for any cap on the amount of demand response a single provider can serve because the limited size of the blocks will allow for a robust bidding process from entities of all sizes and means." PPL RB at 16.

Finally, with regard to ClearChoice's proposals regarding the 25% set-aside and the waiver of collateral requirement for disadvantaged businesses, PPL notes that neither of these proposals is addressed on the record, and each of them is raised for the first time in ClearChoice's MB. PPL RB at 16. PPL argues that ClearChoice's proposals are not supported in testimony and should not be considered in this proceeding. PPL RB at 16. In addressing the proposals on its merits, PPL argues that the 25% set-aside could negatively affect the competitive nature of the bid process and not result in the best price. PPL RB at 16. Moreover, PPL asserts that it is not clear how ClearChoice would propose that PPL determine the 25% set-aside. PPL RB at 17. PPL also avers that the requested waiver of collateral provisions is inappropriate, explaining that the posting of collateral is very important because it is the only way the Company can ensure a CSP's performance. PPL RB at 17. Furthermore, like EnerNOC, PPL questions ClearChoice's characterization of a disadvantaged business as one with limited capital. PPL RB at 17. PPL argues that "[t]here is nothing in the record that indicates that these businesses could not post collateral, and there is no evidence that these businesses only have limited capital." PPL RB at 17. Therefore, PPL asserts that ClearChoice's proposals should be rejected. PPL RB at 17.

b. Disposition

We will reject the position of ClearChoice with respect to PPL's demand response program. Although ClearChoice provides a number of proposals in this regard—ostensibly to improve the competitiveness of the program—ClearChoice offers no evidence to suggest that PPL's program is competitively unfair, or will hinder the ability of any CSP, including ClearChoice, to bid on the RFP. Nor has ClearChoice provided any definitive evidence to illustrate how its proposals will improve PPL's demand response program beyond adding elements favorable to ClearChoice itself. Moreover, as the Company notes, some of ClearChoice's proposals—specifically, the 25% set-aside and the waiver of collateral requirements for disadvantaged businesses—were raised for the first time in ClearChoice's main brief and are not based on any record evidence.

As we stated above, an EDC should be free to implement its demand response programs in a way that it believes will be most effective for the programs' success, and it is not the place of the Commission to micromanage such programs. PPL's demand response program will be fully reviewed during the annual evaluation of the Company's Plan in accordance with Section 2806.1(b)(i)(J) of the Act, and the Commission will be in a better position at that time to consider changes and improvements in the program based on actual results. At this time, we find PPL's demand response program to be fair and reasonable from a competitive standpoint, and we reject the proposals of ClearChoice on this issue.

When Act 129 is read in its entirety, the General Assembly clearly delineated its intent to place the responsibility for developing and implementing these EE&C plans in the hands of the EDCs. To begin with, Section 2806.1(b) of the Act is entitled "Duties of electric distribution companies." 66 Pa. C.S. § 2806.1(b). Chief among these duties is the requirement of the EDC to "develop and file an energy

efficiency and conservation plan . . . to meet the requirements of subsection (a) and the requirements for reductions in consumption under subsections (c) and (d)." 66 Pa. C.S. § 2806.1(b)(1)(i). Significantly, this section requires EDCs to submit a plan that "shall include specific proposals to implement energy efficiency and conservation measures to achieve or exceed the required reduction in consumption under subsection (c) and (d)." 66 Pa. C.S. § 2806.1(b)(1)(i)(A). If the General Assembly had intended to require implementation of all plan measures by CSPs, it would have specifically stated that the plans shall include specific proposals for CSPs to implement energy efficiency and conservation measures to achieve or exceed the required reductions, but did not. The General Assembly clearly knew how to reference CSPs and their role, as it listed CSPs in subsection (E). See 66 Pa. C.S. § 2806.1(b)(1)(i)(E).

The most persuasive indication of the General Assembly's intent in regard to the question of whether an EDC can implement its plan is contained in the penalty provisions of Act 129. Specifically, this section of Act 129 states that the penalty provisions "shall apply to an electric distribution company that fails to achieve the reductions in consumption required under subsection (c) or (d)." 66 Pa. C.S. § 2806.1(f)(2). This subsection of the Act further states that "the electric distribution company shall be subject to a civil penalty not less than $1,000,000 and not to exceed $20,000,000 for failure to achieve the required reductions in consumption under (c) or (d)." 66 Pa. C.S. § 2806.1(f)(2)(i). It is inconceivable to this Commission that the General Assembly would place all the liability for achieving the mandated energy savings targets on the EDCs and then not allow them to implement any portion of an EE&C plan. In determining the intent of the General Assembly, it is presumed that the General Assembly did not intend an absurd, impossible or unreasonable result. 1 Pa. C.S. § 1922(1).

However, we also agree with ClearChoice that care must be taken in marketing the PPL program using funding available under Act 129 to avoid subsidizing

the marketing of the PJM programs by participating CSPs or by encouraging customers who express interest in the PJM programs to deal with CSPs who also offer the PPL program. We agree that any marketing by PPL be competitively neutral so as not to prefer the use of one CSP over another. PPL's education on PJM Demand Side Response should be non-discriminatory. No marketing advantage should be given to any CSP participating in the PPL curtailment program.

3. Low-income Workers

a. Positions of the Parties

ACORN proposes that PPL incorporate into its RFP process an incentive for CSPs that hire low-income individuals into their workforce. ACORN MB at 17. ACORN explains its position as follows: Part of the driving force behind Act 129 is the desire to help Pennsylvanians, particularly low-income Pennsylvanians, cope with the increasing cost of electricity. While Act 129's principal focus is on reducing electric bills through efficiency and conservation, it is perfectly consistent with the intent of the statute to help low-income customers afford electricity by helping them acquire jobs that will lift them out of poverty. By placing into its RFP process an incentive for conservation service providers that hire low-income workers, PPL can help low-income families better pay for electric service while helping all consumers reduce electric usage. ACORN MB at 17-18.

In response to this proposal, PPL states that it declines to formally adopt the recommendations of ACORN at this time, but will discuss the matter with CSPs. PPL MB at 67. PPL further explains its position as follows:

> At this time, PPL Electric does not propose to revise the [Commission] approved CSP [contract] to include the hiring

> criteria proposed by ACORN because such a change may require Commission staff review. Staff review is required for any future CSP contracts that are materially different from the standard form contract approved on April 17, 2009. Moreover, it would be inappropriate to place ACORN's recommended hiring criteria on CSPs without further discussing the matter with current CSPs and potential CSP bidders. PPL Electric will take ACORN's recommendation under advisement and will discuss potential hiring criteria with CSPs, however, it declines to formally adopt ACORN's recommendation.

PPL MB at 68.

b. Disposition

Act 129 does not mandate that the CSP bidding process include evaluation criteria regarding a willingness to employ low-income workers. On the other hand, there is nothing in Act 129 that would prohibit an EDC from actively seeking to employ low-income people, assuming there is no issue with the qualifications or experience of such applicants. Mandating such a standard, however, would present a number of difficulties, not the least of which involves whether the Commission has jurisdiction over the hiring practices of EDC contractors. In addition, the definition of "low-income" would be at issue. Finally, it would be difficult to impossible for the Commission to enforce a standard involving private and subjective information. For these reasons, we will not require PPL to hire low-income workers.

4. The Cadmus Group

a. Positions of the Parties

PPL hired the Cadmus Group, an environmental and energy consulting firm, to assist in the preparation of its EE&C Plan. PPL Exh. 1 Amended at 5. Mr. Epstein recommends that the expenses related to the Cadmus group be denied. Epstein MB at 20. In support of this position, Mr. Epstein asserts that "the Cadmus group was apparently never registered as a CSP despite the fact that it appears to fit within the definition of a CSP." Epstein St. No.1 at 10.

In response, PPL states that Mr. Epstein's assertion is incorrect and notes that "[t]he Cadmus group is listed in the registry of CSPs who meet the Commission's minimum qualifications to provide consultation, design, administration, management or advisory services to an electric distribution company regarding energy efficiency and conservation plans required under Act 129." PPL MB at 67.

b. Disposition

We take administrative notice of the fact that the Cadmus Group has been approved by this Commission as a CSP, and is listed on our registry of approved CSPs, which is available on the Commission's website.[21] Because the *Implementation Order* specifies that an EDC may recover the incremental costs incurred to design, create, and obtain Commission approval of its EE&C Plan (*Implementation Order*, at 33) and because PPL incurred such costs in retaining the Cadmus Group—a duly registered CSP—to assist it in the preparation of its Plan, we reject Mr. Epstein's recommendation that the expenses related to the Cadmus Group be denied.

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[21] See http://www.puc.state.pa.us/electric/electric_CSP_registry.aspx

D. Implementation and Evaluation Issues

1. Implementation Issues

a. Positions of the Parties

To the extent that a specific issue with respect to Plan implementation can be identified, the sole issue raised in this proceeding relates to the stakeholder process. Mr. Epstein is critical of "infrequent [stakeholder] meetings and states that he has a "general concern" in that PPL is "less than straightforward in its discussion of projected programming costs." Epstein St. No. 1 at 4.

In its Main Brief, PPL reiterates that it anticipates periodic stakeholder meetings at least twice per year during the term of the Plan to review overall status and commits to solicit input from stakeholders periodically. PPL MB at 69; PPL Electric St. 1 at 15. PPL also states that more frequent meetings will be held if specific problems or issues arise. PPL MB at 69. PPL replies to Mr. Epstein's concerns as "unwarranted." To support this reply, PPL points to the efforts that PPL has already made to include stakeholders' comments in the development of the EE&C Plan as well as PPL's openness to further stakeholder involvement as the Plan is implemented. PPL MB at 69-70.

b. Disposition

Using a collaborative process during the development of the Plan was beneficial for the Company and other interested Parties. Similarly, we believe the use of a collaborative process during the implementation of the Plan will be beneficial for expeditiously identifying and resolving issues that arise during the period covered by the Plan. Consequently, we will require that PPL meet with stakeholders as needed, but no

less than twice annually (as PPL offered), until May 31, 2013, unless otherwise ordered by the Commission.

We are mindful, however, that PPL is the Party that bears the risk of penalties in the event of non-compliance with the mandates of Act 129. We will not micro-manage the Company's compliance efforts. The Company shall therefore be responsible for determining the topics to be covered in stakeholder meetings and all other aspects of the on-going stakeholder process.

The participation of Mr. Epstein and other public advocates in this case helps to assure that the stakeholder process will be both vibrant and ongoing. In his testimony, Mr. Epstein raises concerns with respect to PPL's willingness to engage with stakeholders and PPL's ability to justify costs, but these issues must be addressed on a going-forward basis. The overarching issue presently before us is whether PPL has produced an EE&C Plan that meets the requirements of Act 129, and we find no implementation issues presented by Mr. Epstein or any other Party that would lead us to question whether the Plan will be implemented in conformity with the law.

2. Quality Assurance Issues

The Commission's EE&C Program is to include an evaluation process, including a process to monitor and verify data collection, quality assurance and results of each plan and the program. 66 Pa. C.S. § 2806.1(a)(2). Consistent with this requirement, each EDC's plan is to "explain how quality assurance and performance will be measured, verified and evaluated." 66 Pa. C.S. § 2806(b)(1)(i). PPL states that it intends to monitor and review the progress of its program regularly to determine its effectiveness. PPL MB at 71; PPL St. 2-R, at 5. PPL also contends that Plan activities will be monitored and the results will be tracked and reported to the Commission using an

Energy-efficiency Management Information System. PPL MB at 70; PPL Electric Exhibit 1, § 5.

a. Positions of the Parties

While Quality Assurance issues, *per se*, are not specifically contested in this case, DEP has recommended that PPL require certification standards for its contractors. DEP St. 1 at 28. PPL asserts that it will require certifications from its CSPs who will be under contract with PPL. PPL MB at 70.

b. Disposition

We find that PPL has taken adequate steps, at this point, to assure quality both through its Energy-Efficiency Management Information System and contractor certification requirement. We will consider the quality of the data provided and the comments of the Parties, at the time of the Annual Review.

3. Monitoring and Reporting Issues

As stated above, the Commission's EE&C Program is to include an evaluation process, including a process to monitor and verify data collection, quality assurance and results of each plan and the program. 66 Pa. C.S. § 2806.1(a)(2). Consistent with this requirement, each EDC's plan is to "explain how quality assurance and performance will be measured, verified and evaluated." 66 Pa. C.S. § 2806(b)(1)(i). Each EDC is also required to submit an annual report to the Commission relating to the results of its EE&C plan. 66 Pa. C.S. § 2806.1(i)(1). For approved plans, the Commission will permit EDCs and other interested stakeholders and statutory advocates to propose plan changes in conjunction with the EDC's annual report filing required by the Act at 66 Pa. C.S. § 2806.1(i)(1), (*EE&C Implementation Order*, at 24.)

a. Positions of the Parties

The OSBA supports the procedure outlined in the Commission's *Implementation Order*, January 16, 2009, at 38 and under 66 Pa. C.S. § 1307(e)(3), which subjects the EE&C plan to thorough review and which makes adjustments to the plan on a going-forward basis. OSBA Knecht St. 1 at 11 and OSBA MB at 16-17. UGI Utilities supports the Commission requiring the EDCs to report the frequency of customers switching to electric appliances from gas appliances. UGI Raab St. 1 at 26, 47 and UGI MB at 24.

PPL proposes that Plan activities be monitored and the results be tracked and reported to the Commission using an Energy-Efficiency Management Information System. PPL MB at 70; PPL Exhibit 1, § 5. PPL intends to monitor and review the progress of its program regularly to determine its effectiveness. Progress evaluation is a part of this process and will have as one of its elements the effectiveness of incentive amounts to motivate customers to participate in programs offered under the Plan. PPL Haeri St. 2-R at 5.

b. Disposition

We agree that PPL's tracking and reporting mechanism (Energy-Efficiency Management Information System) is reasonable and adequate, and that the review process adequately evaluates the effectiveness of the incentives; therefore, we reject the OSBA's request for further justification for incentive levels. We support UGI's request to require EDCs to report the frequency of customers switching to electric appliances from gas appliances or to gas appliances from electric appliances. PPL must also report data on replacement appliances and systems. This data is to be included in PPL's annual report.

4. Evaluation Issues

As stated above, the Commission's EE&C Program is to include an evaluation process, including a process to monitor and verify data collection, quality assurance and results of each plan and the program. 66 Pa. C.S. § 2806.1(a)(2). Consistent with this requirement, each EDC's plan must require an annual independent evaluation of its cost-effectiveness as well as a full review of each five-year plan. To the extent possible, the plan must also state how it will be adjusted on a going-forward basis as a result of the evaluation. 66 Pa. C.S. § 2806.1(b)(1)(i)(j).

a. Positions of the Parties

The OCA recommends that the Commission direct the Company to convene an ongoing stakeholder process during the implementation of the Plan. OCA Hahn St. 1 at 16. This would include progress reports on the selection of Conservation Service Providers, the expected cost, the progress toward implementation, penetration rates and savings levels achieved to date, and cost recovery to date. The OCA suggests that PPL work with the stakeholders group to review implementation issues, program issues that arise, and the development of educational or promotional materials. OCA MB at 22-24. The OSBA believes the mandates from Act 129 (66 Pa. C.S. § 2806.1(a) and 66 Pa. C.S. § 2806.1(b)(1)(i)(J)) to determine the reasonableness of the costs of the Plan and an annual evaluation of cost effectiveness is consistent with the OSBA's recommendation for Plan review each year and Plan adjustments. OSBA MB at 18.

DEP supports establishing criteria under which the Plan may be modified without Commission approval. DEP MB at 13.

PPL expects that the Plan will be revised to reflect new conditions. PPL Exhibit 1 at 23-24. PPL proposes the following to ensure stakeholder and Commission

involvement with revisions. For minor changes, PPL will notify the Commission through its quarterly and annual EE&C report to the Commission. For major changes, PPL will notify stakeholders and the Commission, discuss these changes with stakeholders and seek appropriate Commission approval. Major change is defined as one that will increase the cost of the program by more than $5 million or more than 10%, whichever is greater. PPL MB at 73-74.

b. Disposition

As we have stated, above, we will direct PPL to meet with stakeholders as needed, but no less than twice annually, until May 31, 2013, unless otherwise ordered by the Commission.

We disagree with the OCA's detailed recommendation for a formalized input process and detailed data reporting requirements from PPL.

The statewide evaluator will work closely with PPL's evaluator to determine the level of detail necessary to provide sufficient impact and process evaluation to properly determine the effects of the Plan and offer suggestions for Plan improvement.

With respect to changes to the plan, we find that an EDC cannot shift program funds within a customer class, or between customer classes without prior Commission approval. Doing so would constitute a modification of the EDC's approved plan. The General Assembly authorized the Commission, not the EDC, to make decisions in regard to modifying an approved Act 129 Plan.

Section 2806.1 (b)(2) expressly states that the "Commission shall direct" an EDC to modify or terminate any part of its approved plan if, after an adequate period for

implementation, "the Commission determines that an energy efficiency or conservation measure will not achieve the required reductions in consumption in a cost-effective manner." 66 Pa. C.S. § 2806(b)(2). Section 2806.1(b)(3) sets forth the action an EDC is required to take in response to a Commission direction to modify or terminate part of the approved plan. Specifically, the EDC is required to submit a revised plan describing the actions to be taken, to offer substitute measures, or to increase the availability of existing measures in the plan to achieve the reductions in consumption. 66 Pa. C.S. § 2806.1(b)(3).

Because the EDC's Act 129 Plan will be approved by Commission Order, procedures for rescission and amendment of Commission orders must be followed to amend that Order and to assure due process for all affected Parties. See 66 Pa. C.S. § 703(g) (relating to fixing of hearing: rescission and amendment of orders). Accordingly, if the EDC believes that it is necessary to modify its Act 129 Plan, the EDC may file a petition requesting that the Commission rescind and amend its prior Order approving the plan. See 52 Pa. Code §§ 5.41 (relating to petitions generally) and 5.572 (relating to petitions for relief).

The EDC's petition should explain the specific reasons supporting its requested modifications to its approved plan, i.e., the shifting of funds between programs or customer classes, the discontinuation of a program, etc. The petition should also contain a request to modify its cost recovery mechanism. Evidence supporting the modification of the plan and the cost recovery mechanism shall be submitted with the petition. The petition shall be served on all Parties participating in the EDC's Act 129 Plan proceeding. If the EDC believes that the need for modification of its plan is immediate, the EDC can request expedited consideration of its petition. However, procedures for rescission and amendment of Commission orders must be followed to amend that Order and to assure due process to all affected parties.

E. Other Issues

1. Projects with Funding from Pennsylvania's Act 1[22] and the ARRA.[23]

For purposes of the TRC Test and Act 129 compliance, the question has arisen as to whether an EDC should be allowed to claim the full energy savings from projects and programs that also receive funds from state or federal programs in addition to the EDC's Act 129 expenditures. Parties have also questioned whether energy savings from any EDC project or program that receives such additional funds must be proportionally allocated between the EDC and the other funding sources based on the EDC's share of the total funding for the projects. The *TRC Test Order* provided that:

> EDCs will be able to fully include a measure's benefits in the TRC Test if any portion of the measure is attributable to Act 129. For the purposes of TRC testing, if the end-use customer is a recipient of an incentive/rebate from an Act 129 program, even if the customer is also a recipient of an Act 1 incentive or rebate for the same equipment or service, we conclude that the entire savings of that equipment or service can also be claimed by the EDC for TRC testing purposes.

TRC Test Order at 25.

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[22] The Alternative Energy Investment Act, 73 P.S. §§ 1649.101-1649.711, *et seq.* Act 1 of 2008 (Act 1) provides incentives including grants, loans, rebates, and tax credits for individuals, businesses, nonprofit economic development organizations, and political subdivisions. Incentives are provided for energy efficiency measures, energy conservation measures, and alternative energy generators. Act 1 programs are administered by DEP, the Pennsylvania Department of Economic Development, the Pennsylvania Treasury Department, and the Pennsylvania Housing and Finance Agency.

[23] American Recovery and Reinvestment Act of 2009. *See* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1enr.pdf.

a. Positions of the Parties

DEP asserts that, for purposes of the *TRC Test* and Act 129 compliance, an EDC should not be allowed to claim the full energy savings from projects and programs that also receive funds from state or federal programs in addition to the EDC's Act 129 expenditures. DEP St. No. 1 at 5-12. DEP argues that the energy savings from any EDC project or program that receives such additional funds should be proportionally allocated between the EDC and the other funding sources based on the EDC's share of the total funding for the projects. This would include such additional incentives as rebates for energy efficient appliances. DEP claims that an EDC should not be able to claim the full energy savings of any rebate or other project that also receives funding from other sources, such as Act 1 or ARRA. DEP states that a lack of coordination between programs will lead to inefficiency due to over-subsidizing ratepayers to take advantage of these programs. As a consequence, DEP suggests that the EDCs and the Commonwealth should coordinate their efforts and apportion "credit" for any energy savings. DEP claims that failure to apportion credit will violate its commitments to the federal Department of Energy (DOE) not to use funds from the ARRA to supplant or replace state or ratepayer funds. DEP further states that the *TRC Test Order* at 25 only allows the EDC to claim full energy savings from such projects for purposes of the cost effectiveness test and not to measure Plan compliance. DEP MB at 13-15.

PPL disputes DEP's arguments concerning rebates or projects that receive funding from sources other than Act 129. PPL notes that the Commission has already decided this issue with regard to Act 1 funds in the *TRC Test Order* at page 25 and suggests that the same conclusion can logically be drawn with regard to funds from the ARRA. PPL St. 1-R at 4. PPL states that ARRA funds are permitted to supplement existing state or ratepayer programs such as Act 129 as long as they do not replace funding for these existing programs. PPL suggests that because Act 129 requires EDCs to recommend corresponding state and federal programs to ratepayers (Section 2806.1(j))

and because an EDC must meet its EE&C goals in the absence of federal funding, such federal and state programs are clearly supplementing rather than supplanting Act 129 programs. Additionally, PPL states that in a recent revised funding application, DEP identified upcoming conservation plans from Act 129, so the DOE is aware of these programs. PPL St. 4-R at 8-9. PPL also notes that its EE&C Plan was created based on the Commission's decision in the *TRC Test Order* that full energy savings could be claimed by the EDC despite any additional funding and that its Plan will not meet its energy reductions goals if the Commission adopts DEP's proposal. Finally, PPL states that DEP's proposal to track customer participation in all possible programs would be time-consuming, cost prohibitive, extremely complex, and possibly intrusive to the customer. PPL MB at 19-22.

b. Disposition

In determining whether an EDC may take credit for all energy savings for measures that also are funded in part by ARRA and/or Act 1, we note that Act 129 specifically provides, in pertinent part, that an EE&C measure may be funded "in whole or in part" by the EDC. 66 Pa. C.S. § 2806.1(m). Neither Act 1 nor Act 129 provides that it is mutually exclusive of the other. In implementing ARRA, DOE clearly contemplated that ARRA funds could be used in conjunction with other funding. We conclude that the Commission should not accept DEP's proposition to prorate or otherwise distribute the energy savings from EE&C projects that receive funding from state or federal sources outside an EDC's respective Act 129 Plans.

Even if a particular measure is funded in part by ARRA and/or Act 1, so long as a portion of the measure is attributable to Act 129, an EDC may take credit for all the energy savings attributable to that measure. We addressed this very issue in our *TRC Test Order*, finding that:

> EDCs will be able to fully include a measure's benefits in the TRC test if any portion of the measure is attributable to Act 129. For the purposes of TRC testing, if the end-use customer is a recipient of an incentive/rebate from an Act 129 program, even if the customer is also a recipient of an Act 1 incentive or rebate for the same equipment or service, we conclude that the entire savings of that equipment or service can also be claimed by the EDC for TRC testing purposes.

TRC Test Order at 25.

We remain convinced that the public interest will best be served by taking advantage of all the incentives or rebates available. Rather than pit one government program against another, the programs should complement each other and, optimally, produce a greater savings than the programs would generate working in isolation.

We did not, however, expressly mention ARRA funding when we said that an EDC could fully include the benefits of an Act 129 EE&C measure that is also partially funded by Act 1 funds. To extent that the ARRA funded benefits are consistent with the rationale underlying our decision relative to Act 1, we expressly provided that ARRA incentive payments should be considered benefits in TRC testing. *TRC Test Order* at 23. Furthermore, since Act 129 funding is fixed, any additional funds, whether from Act 1, ARRA, or elsewhere, will be used to supplement, not replace, funds from the EDC. The decision not to require proration of benefits clearly does not violate the guidelines for ARRA funding. We find that this result is a necessary, reasonable, consistent and logical application of the express provisions of our *TRC Test Order*.

Further, given that PPPL has developed its plan based on the Commission's express decision in the *TRC Test Order*, changing the attribution of energy savings from these projects could seriously compromise the ability of PPL to comply with its EE&C goals. Additionally, the cost and complexity of prorating the energy savings among multiple programs would be cost-prohibitive and non-productive. We see no reason to change that determination.

Accordingly, PPL will be able to fully include a measure's energy savings and demand reductions if any portion of the measure is attributable to Act 129. For the purposes of Act 129 energy savings and demand reduction requirements and any other or ancillary aspect of Act 129 evaluations, if the end-use customer is a recipient of an incentive/rebate from an Act 129 program, even if the customer is also a recipient of an Act 1 incentive or rebate or ARRA funding for the same equipment or service, we conclude that the entire savings of that equipment or service can also be claimed by PPL for TRC testing purposes.

2. DEP's Alternative Calculation of Energy Savings

a. Positions of the Parties

DEP asserts that the Company's Plan jeopardizes the Commonwealth's ability to obtain future funding under the ARRA. DEP MB at 14. DEP contends that the DOE requires the states to make a written commitment that certain ARRA funds will not be used to supplant or replace existing projects funded by the state, ratepayers, or other funding. DEP alleges that allowing PPL to "leverage" ARRA funds and "then claim full credit for the energy savings achieved in no way supplements Act 129 – it completely supplants it and threatens to violate the Department's commitment to DOE."

PPL avers that DEP's conclusion that ARRA funds will supplant Act 129 funding is incorrect and not supported by the record in this proceeding for the following reasons.

PPL submits that the Commission, in the *TRC Test Order* concluded that EDCs will be able to fully include a measure's benefits in the TRC Test if any portion of the measure is attributable to Act 129.[24] Although the Commission specifically refers to Act 1 in the *TRC Test Order*, that same conclusion would also apply if the customer received funding from ARRA or any other non-EDC source.

PPL also states that the ARRA increases the total amount of funds available for energy-efficiency and conservation efforts in Pennsylvania, but it does *not* supplant any funding. PPL Cleff St. 1-R at 5. PPL submits that its programs are designed to complement, not compete with, existing energy-efficiency programs. PPL Exhibit 1 at 221. The Plan encourages customers to use incentives from as many sources as possible for an energy-efficiency project. In fact, Act 129 requires EDCs to provide information to customers about other sources of funding for energy efficiency, presumably to maximize the available incentives for a customer's project. 66 Pa. C.S. § 2806.1(j).

Finally, PPL submits that DOE has posted answers to ARRA questions raised by state officials on its website, and two of the questions and answers (Nos. 9 and 15) address the interplay between ARRA funding, with regard to the State Energy Program ("SEP"), and ratepayer-funded initiatives. PPL Cleff St. 1-R at 6. The questions and answers are reproduced below with the answers in italics:

> 9. What is allowable for funding ratepayer-funded incentive programs with utilities? Under SEP rules, states cannot use DOE funding to replace ratepayers' funds, but can supplement

[24] *TRC Test Order* at 25.

these funds by offering incentives above and beyond those funded with ratepayer funds. Can we simply add ARRA funds to a rebate program to allow more rebates by using ratepayer and ARRA funds? Does it matter whose funds are spent first? If ARRA funds are spent first, does this not supplant ratepayer funds? If the ARRA funds have to be spent when ratepayer funds are exhausted, does that present problems with spending ARRA funds within a certain time frame?

The state must provide assurance that state funds do not supplant program funds and that they are spent in the required timeframe. As long as the ARRA funds increase the total amount of funds available for rebates—they may not replace originally available funds that are then removed from the program—this would be acceptable. The rebate program should be designed to ensure that all sources of funds are spent within the applicable budget period.

ARRA funds also should be spent and tracked according to program guidance. The state should coordinate rebate activities with the ARRA appliance rebate program when funds become available.

15. Can ARRA funds be used for utility incentive programs? Can ARRA money be used to replace current funding? If funding for an incentive has run out, can ARRA money be used to provide additional incentives? Can ARRA funding be used to create new incentives from utilities? Can ARRA funding be used to increase the amount of a utility incentive? What uses of ARRA funding are prohibited for utility incentive programs?

ARRA funds cannot be used to supplant (replace) current funding. The funds can be used to: (1) supplement current funding; (2) fund activities that no longer have funding available; and (3) implement new initiatives such as new incentives from utilities. The current prohibited expenditures apply to all SEP-funded activities.

PPL Cleff St. 1-R at 6.

PPL comments that, consistent with the answer to No. 9 and as noted above, ARRA funds increase the total amount of funds available for energy-efficiency and conservation efforts in Pennsylvania. PPL Cleff St. 1-R at 7. Moreover, consistent with the answer to No. 15, PPL states its Plan does not propose that any ARRA funds supplant or replace any Act 129 funding.

The Company submits that DEP's proposal, if adopted, would have a negative effect on PPL's ability to meet its reduction targets. PPL Cleff St. 1-R at 7. Prorating savings would likely result in customers' projects not meeting the cost effective eligibility requirements of PPL's commercial and industrial programs. The Company states that limiting or potentially eliminating PPL's ability to participate in any commercial and industrial customer project that receives Act 1/ARRA funding would be devastating because 65% of PPL's Plan reductions are expected to come from commercial and industrial customers.

b. Disposition

The Commission's *TRC Test Order* considered the issue of incentives outside of the Plan:

> In the TRC test proposal, we proposed that incentive payments from sources outside of the Act 129 programs should be considered benefits that decrease costs to customers participating in programs and should be accounted for in the TRC calculations. These incentives, whether they be rebates or tax credits, would reduce the participating customers' costs, and they should, therefore, be reflected in lower program costs and be factored into an EDC's TRC test.
>
> [I]t is possible that customers may participate simultaneously with Act 1 programs and Act 129 programs. This raises the issue as to how the savings benefits will be attributed to the

> two programs. We said in the TRC test proposal that, as a practical matter, it would be very difficult and time consuming to determine on a case-by-case basis the precise role an Act 1 incentive/rebate versus an Act 129 incentive/rebate played in motivating the customer to participate in the program. Thus, it would be virtually impossible to determine how to attribute savings to each program in proportion to the degree of motivation each incentive played in the customer's decision.
>
> "Accordingly, EDCs will be able to fully include a measure's benefits if any portion of the measure is attributable to Act 129. For the purposes of TRC testing, if the end-use customer is a recipient of an incentive/rebate from an Act 129 program, even if the customer is also a recipient of an Act 1 incentive or rebate for the same equipment or service, we conclude that the entire savings of that equipment or service can also be claimed by the EDC for TRC testing purposes. [first sentence is not correct – delete "in the TRC test".

TRC Order at 21-22 and 24-5.

In view of the foregoing, we reject DEP's proposal to preclude PPL from counting the full energy savings of projects jointly funded by PPL Act 129 programs and other government sources.

3. Fuel Switching

a. Positions of the Parties

PPL proposes to offer roughly 14,000 customers who use RTS thermal storage heating a $550 incentive to switch to a natural gas furnace. PPL Exhibit 1 at 44. This is the single natural gas fuel substitution incentive proposed by PPL.

UGI avers that PPL should include a specific program in the Plan that encourages customers to convert from electric to natural gas appliances. UGI MB at 10.

UGI argues is that if the Plan encouraged direct end use of natural gas it would improve the Plan under the Commission's *TRC Test Order*. UGI Raab St. 1 at 12. UGI advocates that the Commission require PPL's Plan to be substantially revised to include broad based fuel-switching programs.

PPL notes that UGI does not assert that PPL's EE&C Plan will not meet the Act 129 requirements without the proposed fuel switching program. PPL avers that the Commission recognized that fuel switching is a complicated topic that requires additional time and effort to fully address, and it established a fuel-switching working group to identify, research and address these issues.

PPL provides four reasons for rejection of UGI's fuel switching proposal:

> (1) adding fuel conversion measures in the EE&C Plan at this juncture would require substantial additional information, particularly on gas availability and gas avoided costs which are not available, and would involve complex regulatory policy, and economic issues;
>
> (2) improving energy efficiency with fuel conversion is contradictory because it would result in customers reducing their electric use, by increasing their consumption of natural gas;
>
> (3) implementing fuel conversion would likely promote inter-fuel competition;
>
> (4) encouraging conversion to gas may expose PPL's customers to gas price volatility.

PPL Haeri St. 2-SR at 2-3.

In addition, PPL submits that although UGI's proposed programs may result in customers reducing their electric usage, the programs will not contribute to PPL meeting its Act 129 peak demand reduction requirements due to the fact that the

presumed savings will primarily accrue during the winter (heating season), which is outside the designated 100 summer peak hours. PPL MB at 53.

b. Disposition

Act 129 does not expressly address switching between electric power and natural gas; however, it does state the following in defining "Energy efficiency and conservation measures":

> (1) Technologies, management practices or other measures employed by retail customers that reduce electricity consumption or demand if all of the following apply:
>
> (i) The technology, practice or other measure is installed on or after the effective date of this section at the location of a retail customer.
>
> (ii) The technology, practice or other measure reduces consumption of energy or peak load by the retail customer.
>
> (iii) The cost of the acquisition or installation of the measure is directly incurred in whole or in part by the electric distribution company.
>
> (2) Energy efficiency and conservation measures shall include solar or solar photovoltaic panels, energy efficient windows and doors, energy efficient lighting, including exit sign retrofit, high bay fluorescent retrofit and pedestrian and traffic signal conversion, geothermal heating, insulation, air sealing, reflective roof coatings, energy efficient heating and cooling equipment or systems and energy efficient appliances and other technologies, practices or measures approved by the commission.

66 Pa. C.S. § 2806.1(m) (Definitions). Although the definition does not mention natural gas, *per se*, we believe it is reasonable to assume that some uses of gas may be energy

efficient. Nonetheless, as discussed *supra*, it is premature to prohibit EDCs from including fuel switching or fuel substitution in their plans at this time.

We addressed this issue in our *TRM Order* where we stated:

> The Commission recognizes that fuel switching is a complicated topic that will require additional time and effort to fully address. As the TRM will provide vital guidance to EDCs in developing their EE&C plans, which are due to be filed by July 1, 2009, there is not enough time to convene a working group to address all the related issues, fuel switching will not be included in this TRM. The Commission will convene a fuel switching working group in the near future to identify, research and address issues related fuel switching. Depending on the outcome of this working group, fuel switching may be incorporated into a future version of the TRM.

TRM Order at 9.

We initiated the fuel switching working group at that time and directed that it report back to us with recommendations by June 1, 2010. *Id.* at 19. We approve PPL's fuel switching proposal; however, in order to address this issue in a more timely manner, we will direct the working group to accelerate its efforts so that it will submit a recommendation to revise the TRM and TRC with regard to fuel switching programs by March 31, 2010. Following our resolution of this issue, PPL may petition the Commission to approve appropriate revisions to its Plan.

4. Load Curtailment Coordination

a. Positions of the Parties

PPL has proposed a load curtailment program for the small and large commercial and industrial sectors. PPL Exhibit 1 at 136, 148. ClearChoice and Richards request that PPL coordinate its Load Curtailment Programs with PJM's programs and not require customers to leave PJM's programs and use PPL's CSP(s) exclusively. ClearChoice Pengidore St. 1 at 6; Richards [Frank] Richards St. 1 at 4. PPL witness Cleff testified that the Company's Load Curtailment Program is independent from PJM's programs and, therefore, customers are free to participate in PPL's program only, PJM's programs only, or both. PPL Cleff St. 1-R at 13. In addition, Mr. Cleff testified that a customer that has an existing contract with a PJM curtailment service provider other than PPL's CSP may participate in PPL's program alone, a PJM program alone or may participate in both. Tr. 169. Further, Mr. Cleff stated that if a customer is a PJM member and acts as its own curtailment service provider, the customer is allowed to participate in PPL's program. Tr. 169.

b. Disposition

We find the concerns expressed by ClearChoice and Richards are resolved by the fact that PPL has stated that customers are free to participate in the PJM programs in a variety of ways and that PPL's Plan in no way restricts the way in which a customer may choose to participate. Therefore, we find it unnecessary to grant the requests made by ClearChoice and Richards.

5. Distributed Generation

a. Positions of the Parties

PPL proposes a Load Curtailment Program that is intended to reduce the peak demand by providing an incentive to reduce energy usage during peak hours in the summer period. The PPL Plan anticipates obtaining participation by no less than 300 customers through 2010, with a total reduction of 98 MW. PPL Exhibit 1 at 148. PPL submits that customers will be notified of peak-hour events and will be requested to decrease load during that period by shifting or eliminating load or using back-up generation that meets environmental regulations. PPL Exhibit 1 at 148–149.

DEP recommends that the Commission prohibit distributed generation at a customer's facility to achieve peak load reductions. DEP Guttman St. 1 at 23. DEP states that using distributed generation to reduce peak demand is not permitted under Act 129. DEP asserts that the definitions of both "energy efficiency and conservation measures" and "peak demand" indicate that the only acceptable strategies to reduce peak demand is to reduce overall consumption or shift consumption to non-peak hours and that it is clear that reducing consumption of electricity during the highest specified period simply cannot occur by generating electricity with a behind the meter source other than solar energy. DEP MB at 9.

DEP also submits that grid demand reduction that is merely replaced by higher emitting distributed generation has negative air impacts and is an unacceptable strategy for Pennsylvania. It states that DEP's regulations were written at a time when emergency generators were only used as back up sources of power – not as distributed generation resources. As such, many of these generators fall outside DEP's regulatory control and are not required to have permits or emission controls. DEP MB at 9-10.

DEP avers that the increased use of emergency generators will negatively impact Pennsylvania's air quality and because those resources will be deployed when ozone levels are the highest, the detrimental impact to human health could be quite significant and should be avoided. DEP MB at 10-11.

PPL submits that this recommendation should be rejected. PPL states that if customers participate in a load curtailment program and interrupt their load, any customer-sited generation that is behind-the-meter is the customer's decision and will reduce their electricity peak demand from the EDC. DEP's concern appears to be with the emission standards for distributed generating units and not with PPL's Plan. PPL expects all customer-sited generation to have the proper environmental permits and to comply with those permits.

b. Disposition

We disagree with DEP's assertions and believe that Act 129 does not eliminate distributed generation for use in meeting energy and demand reduction goals. Rather, Act 129 is silent with respect to the use of distributed energy resources. The Act does not dictate how EDCs must meet the reduction goals, only that they must. Act 129 appropriately leaves these matters to the discretion of the EDCs, pursuant to the Commission's review.

The definition of "peak demand" explicitly states that, for an EDC, "the term shall mean the sum of the metered consumption for all retail customers over that period." 66 Pa. C.S. § 2806.1(m). It is undeniable that the use of distributed energy resources during peak hours will reduce a company's metered consumption during those periods. Because on-site generation is generally located "behind the meter," distributed energy resources also reduce the metered consumption of the retail customer, which is

one of the qualifying factors for "energy efficiency and conservation measures," as defined by the Act.

Program administrators will be required to comply with all Federal, State and Local requirements relating to distributed generation. Therefore, a distributed generation program will reduce peak demand in full compliance with both Act 129 and current Commonwealth regulations.

Moreover, back-up generators can be an effective type of demand response programming. Back-up generation is a low cost piece in achieving demand reduction. So long as the units operate within the terms of their permits, CSPs should be allowed to call upon these back-up generators in order to achieve the commitments of the Contracted Demand Response Program.

Thus, the Commission has no immediate reservations regarding a strategy of targeting eligible C&I customers who have existing backup generation resources, or are interested in having grid-connected generating units installed at their facilities, in order to realize energy savings and peak demand reductions. Act 129 does not dictate how EDCs must meet these goals, only that they must meet them. Since Act 129 appropriately leaves these matters to the discretion of the EDCs, pursuant to the Commission's review, we only encourage the EDCs to be cognizant of this issue. For these reasons, we conclude that the proposal to restrict the dispatch of distributed energy resources should be rejected.

6. "Branding" Issues

The Commission offers the following guidance that marketing of the PPL EE&C Plan should focus on the programs – not branding of PPL. For example,

references to branding PPL as the "trusted energy advisor" should be stricken, in favor of solid energy related advice.

With respect to CFLs, legitimate issues were raised with regard to penetration rates and free-ridership. The Commission recommends that the stakeholders group report to the Commission on this issue within three months and in the annual report.

7. Bill-financing Issue

Consistent with our Retail Markets Order, *PPL Electric Utilities Corporation Retail Markets*, Docket No. M-2009-2104271, Opinion and Order entered August 11, 2009, any issue with respect to On-bill Financing associated with this Opinion and Order shall be referred to the Retail Market Working Group for discussion and reporting.

VI. Conclusion

For the reasons set forth above, we will grant in part and deny in part the Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan, consistent with this Opinion and Order. Pursuant to Section 2806.1(e)(2)(ii) of the Act, PPL Electric Utilities Corporation shall file with this Commission and serve on all parties of record in this proceeding a revised Energy Efficiency and Conservation Plan consistent with the modifications directed in this Opinion and Order, within sixty (60) days of the entry of this Opinion and Order. 66 Pa. C.S. §2806.1(e)(2)(ii). Interested parties will have ten days to file comments on the revised portions of the plan, with reply comments due ten days thereafter. The Commission will approve or reject the revised plan at a public meeting within 60 days of

the Company's revised portions of the plan filing. See *Implementation Order* at 12-13. PPL Electric Utilities Corporation is permitted to implement any portion of its Plan that was approved and not modified by this Opinion and Order; **THEREFORE;**

IT IS ORDERED:

1. That the Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan is granted to the extent that it is consistent with this Opinion and Order.

2. That PPL Electric Utilities Corporation's Energy Efficiency and Conservation Plan is approved consistent with this Opinion and Order.

3. That PPL Electric Utilities Corporation's energy consumption and peak demand reduction targets approved in the *Energy Consumption and Peak Demand Reduction Targets Order*, Docket No. M-2008-2069887, are affirmed by this Opinion and Order for the implementation of PPL's EE&C Plan.

4. That PPL Electric Utilities Corporation's Plan complies with Act 129, 66 Pa. C.S. § 2806.1(a)(5) and 66 Pa. C.S. § 2806.1(b)(1)(i), in that PPL Electric Utilities Corporation has achieved a portfolio that is balanced and cost-effective.

5. That PPL Electric Utilities Corporation's Plan meets the specific requirements of Act 129, Section 2806.1 (b)(1)(i)(B), of Act 129 in that a minimum of ten percent (10%) of the required reductions in consumption will be obtained from units of federal, state and local government, including municipalities, school districts, institutions of higher education and nonprofit entities.

6. That PPL Electric Utilities Corporation's Plan meets the threshold requirement of Act 129, Section 2806.1(b)(1)(i)(B) in that consumption and peak demand reduction measures are proportionate to the low-income households' share of the total energy usage in the PPL service territory; however, to ensure that EDCs will be able to meet the energy usage requirement of the Act, the Commission will convene a working group that will be charged with developing implementation standards for compliance with Section 2806(b)(i)(G).

7. That PPL Electric Utilities Corporation's Plan includes an appropriate analysis of PPL's administrative costs as required by Act 129, 66 Pa. C.S. § 2806.1(b)(1)(i)(K), as well as an estimate of the total cost of implementing the measures in the Plan as required by Act 129, 66 Pa. C.S. § 2806.1(b)(1)(i)(F).

8. That PPL Electric Utilities Corporation's request for a waiver of the application of the two percent (2%) cost cap on the total cost of PPL Electric Utilities Corporation's Efficiency and Conservation Plan on an annual basis, is granted.

9. That PPL Electric Utilities Corporation shall identify necessary adjustments to its Plan based on the results of the annual and five-year reviews as required by Act 129, 66 Pa. C.S. § 2806.1(b)(2).

10. That, consistent with the requirements of Act 129, Section 2806.1(k)(1), PPL Electric Utilities Corporation's cost recovery for its respective share of the cost for the statewide evaluator will not be subject to the two percent cap (2%) on the cost of the Efficiency and Conservation Plan, and PPL's cost recovery for its respective share of the cost for the statewide evaluator should be included in the reconcilable surcharge used to recover costs of individual Energy Efficiency and Conservation Plans .

11. That, consistent with the provisions of the *TRC Test Order* at Docket No. M-2009-2108601, PPL Electric Utilities Corporation's Plan has passed the TRC Test with a total Plan cost-benefit ratio of greater than 1.0.

12. That the measures in PPL Electric Utilities Corporation's Energy Efficiency and Conservation Plan as approved are financed by the same customer class that will receive the direct energy and conservation benefits as required by Act 129 at 66 Pa. C.S. § 2806.1(a)(11).

13. That, although there may be instances in which the direct assignment of EE&C costs to an individual customer would make sense, PPL Electric Utilities Corporation has not specifically identified nor explained any such instances and we deny PPL Electric Utilities Corporation's request to directly assign Efficiency and Conservation costs to an individual customer.

14. That with regard to the issue of how costs relating to UGI's proposed changes to Efficiency and Conservation programs should be allocated, we find this issue to be moot as we decline to adopt UGI's fuel switching proposals, but that the Commission's Working Group convened to address fuel switching issues shall address as part of its report to the Commission the fuel switching issues raised in this proceeding by UGI.

15. That, consistent with 66 Pa. C.S. § 2802(17), our regulations at 52 Pa. Code § 54.4(3) and 52 Pa. Code § 56.15 and the Commission-approved approach regarding Section 1307(e) cost recovery mechanisms, PPL Electric Utilities Corporation's Efficiency and Conservation program costs shall be included in the distribution rate on residential customers' bills, rather than as a separate line item, but that PPL Electric Utilities Corporation's Efficiency and Conservation program costs shall be set forth as a separate line item for large C&I customers.

16. That we adopt PPL Electric Utilities Corporation's levelized cost recovery plan as well as its reconciliation proposal; however, we will require PPL Electric Utilities Corporation to reconcile total revenues collected to its total Plan budget at the conclusion of its Efficiency and Conservation Program.

17. That we encourage the use of a stakeholder process to consider the need for corrections to make mid-course corrections to PPL Electric Utilities Corporation's cost recovery mechanism; however, we require PPL Electric Utilities Corporation to seek Commission approval of any mid-course changes to the Plan that it intends to make.

18. That PPL Electric Utilities Corporation's proposal as part of the Energy Efficiency and Conservation Plan cost recovery annual reconciliation process to collect or pay interest on under- or over-collections, respectively, is denied.

19. That, consistent with our Retail Markets Order, *PPL Electric Utilities Corporation Retail Markets*, Docket No. M-2009-2104271, Opinion and Order entered August 11, 2009, any issue with respect to On-bill Financing associated with this Opinion and Order shall be referred to the Retail Market Working Group for discussion and reporting; further, the treatment of incentives as costs relative to the TRC Test and analysis as raised by the Sustainable Energy Fund for Central Eastern PA is hereby referred to the fuel switching working group for further discussion as that working group will be dealing with issues regarding updating the TRC/TRM.

20. That, consistent with the provision of Act 129 at 2806.1(a)(10), the Office of Small Business Advocate's proposal to treat Government/Non-Profit customers as a separate class for purposes of the cost recovery mechanism is denied.

21. That PPL Electric Utilities Corporation shall consider as a possible improvement to its Plan whether the Residential Energy Assessment and Weatherization Program should include window A/C customers and shall advise the Commission within sixty (60) days whether such a modification to its Plan is appropriate.

22. That the Peak Load Contribution rate design modification to recover Energy Efficiency and Conservation Plan costs from large Commercial and Industrial customers proposed by the PP&L Industrial Customer Alliance is granted.

23. That PPL Electric Utilities Corporation's proposed use of monthly billing demand is adopted, with the stipulation that PPL Electric Utilities Corporation shall include this measure in its tariff.

24. That the proposal of Richards Energy Group, Inc., to require PPL Electric Utilities Corporation to provide a lower charge or a credit to shopping customers with respect to the costs of its proposed Time-of-Use program is denied.

25. That PPL Electric Utilities Corporation's proposal to continue its cost recovery mechanism beyond May 31, 2013, is approved, on the condition that such cost recovery does not exceed the mandated two percent (2%) cost cap.

26. That PPL Electric Utilities Corporation's proposal to require the bidding of firm curtailable load and/or direct load blocks to multiple Curtailment Service Providers/Conservation Service Providers is approved.

27. That, at this time, we believe PPL Electric Utilities Corporation's Demand Response Program to be fair and reasonable from a competitive standpoint, and the proposals of ClearChoice Energy to amend that program are denied.

28. That the proposal of the Pennsylvania Association of Community Organizations for Reform that PPL Electric Utilities Corporation incorporate into its RFP process an incentive for CSPs to hire low-income individuals into a CSP's workforce is denied.

29. That Mr. Eric J. Epstein's recommendation that PPL Electric Utilities Corporation's expenses related to the Cadmus Group be denied is itself denied.

30. That PPL Electric Utilities Corporation is required to meet with stakeholders as needed, but no less than twice annually, until May 31, 2013, unless otherwise ordered by the Commission with the results of those meetings to be reported as part of PPL Electric Utilities Corporation's Annual Review.

31. That PPL Electric Utilities Corporation implement the steps it has proposed to assure quality both through its Energy-Efficiency Management Information System and contractor certification, subject to a consideration of the quality of the data provided and subject to the comments of the Parties at each Annual Review, and that the Office of Consumer Advocate's recommendation for a formalized input process and detailed data reporting requirements from PPL is denied.

32. That, at this point, PPL Electric Utilities Corporation's Energy-Efficiency Management Information System is adequate for the purposes described, and the proposed review process adequately evaluates the effectiveness of Plan incentives.

33. That UGI's request to require Electric Distribution Companies to report the frequency of customers switching to electric appliances from gas appliances is granted.

34. That PPL Electric Utilities Corporation may not shift EE&C Plan program funds within a customer class, or between customer classes, without prior Commission approval.

35. That PPL Electric Utilities Corporation be allowed to fully include a measure's benefits in the TRC Test if any portion of the measure is attributable to Act 129, and that for the purposes of TRC testing and any other or ancillary aspect of Act 129 evaluations, if an end-use customer is a recipient of an incentive/rebate from an Act 129 program, even if the customer is also a recipient of an Act 1 incentive or rebate or ARRA funding for the same equipment or service, the entire savings of that equipment or service may also be claimed by PPL Electric Utilities Corporation for TRC testing purposes.

36. That DEP's proposal to preclude PPL Electric Utilities Corporation from counting the full energy savings of projects jointly funded by PPL Electric Utilities Corporation's Act 129 programs and other government sources is denied.

37. That PPL's fuel switching proposal is approved; however, UGI's proposal requiring PPL Electric Utilities Corporation to include a specific program in its Plan that encourages customers to convert from electric to natural gas appliances is denied as premature, though we will allow PPL Electric Utilities Corporation's inclusion of fuel switching components as filed for Rate RTS customers. Further, that the Commission's Working Group convened to address fuel switching issues shall address as part of its report to the Commission due by March 31, 2010, the fuel switching issues raised in this proceeding by UGI.

38. That the request of Comperio Energy LLC d/b/a ClearChoice Energy and Richards Energy Group that PPL Electric Utilities Corporation coordinate its load curtailment programs with PJM's programs and not require customers to leave PJM's programs and use PPL Electric Utilities Corporation's CSP(s) exclusively is granted.

39. That Pennsylvania Department of Environmental Protection's recommendation that the Commission prohibit distributed generation at a customer's facility to achieve peak load reductions is denied.

40. That the Commission will convene, and PPL Electric Utilities Corporation will participate in, a working group composed of affected electric distribution company representatives, consumer advocates, community-based organizations and other interested parties to identify the standardized data to be used in determining the proper proportion of low-income households for compliance with Section 2806.1(b)(i)(G). The group shall provide its recommendations for consideration by the Commission no later than February 16, 2010.

41. That any directive, requirement or disposition contained in the body of this Opinion and Order that is not the subject of an individual Ordering Paragraph, will have the full force and effect as if fully contained in this part.

42. That a copy of this Opinion and Order be served on all of the parties of record and on Steven Pincus, Assistant General Counsel for the PJM Interconnection, LLC.

43. That the Commission hereby directs PPL Electric Utilities Corporation to make the necessary tariff filings to implement the Energy Efficiency and Conservation Plan as approved by this Opinion and order, including the relevant Section 1307(e) surcharge to recover Plan costs.

44. That PPL Electric Utilities Corporation shall submit with its revised Energy Efficiency and Conservation Plan a separate Energy Efficiency and Conservation Plan cost recovery mechanism for its large commercial and industrial customers, along

with appropriate tariffs, that is based on a demand charge utilizing a customer's PJM Interconnection, L.L.C. Peak Load Contribution.

45. That all revisions to PPL Electric Utilities Corporation's Energy Efficiency and Conservation plan shall comply with this Opinion and Order and shall be submitted to the Commission and to all parties of record in this proceeding, and to the PJM Interconnection, LLC, within sixty (60) days of the date of entry of this Opinion and Order.

46. That PPL Electric Utilities Corporation shall file with this Commission and serve on all parties of record in this proceeding a revised Energy Efficiency and Conservation Plan consistent with the modifications directed in this Opinion and Order, within sixty (60) days of the entry of this Opinion and Order. Interested parties will have ten days to file comments on the revised portions of the Energy Efficiency and Conservation Plan, with reply comments due ten days thereafter. The Commission will approve or reject the revised portions of the Energy Efficiency and Conservation Plan at a public meeting within 60 days of the Company's revised plan filing.

47. That PPL Electric Utilities Corporation is permitted to implement any portion of its Energy Efficiency and Conservation Plan that was approved without modification by this Opinion and order.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: October 15, 2009

ORDER ENTERED: October 26, 2009