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File #: 158814

April 21, 2017

***VIA ELECTRONIC FILING***

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

**Re: Energy Efficiency and Conservation Program  
Docket No. M-2012-2289411**

Dear Secretary Chiavetta:

Enclosed for filing is the Petition of PPL Electric Utilities Corporation for Reconsideration in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Devin Ryan

DTR/jl  
Enclosures

cc: Certificate of Service

## CERTIFICATE OF SERVICE

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

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Devin T. Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Energy Efficiency and Conservation                   :  
Program   :   Docket No. M-2012-2289411

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**PETITION OF PPL ELECTRIC UTILITIES CORPORATION  
FOR RECONSIDERATION**

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PPL Electric Utilities Corporation (“PPL Electric” or the “Company”), pursuant to Section 703(g) of the Public Utility Code, 66 Pa.C.S. § 703(g), and the provisions of Section 5.572 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.572, hereby files this Petition requesting reconsideration of a portion of the Commission’s Compliance Order entered April 6, 2017, at Docket No. M-2012-2289411 (“*Phase II Compliance Order*”).

In the *Phase II Compliance Order*, the Commission found that PPL Electric met all of its electric consumption reduction requirements for Phase II of Act 129 of 2008 (“Act 129”), including the requirement to obtain 10% of its required reductions from government, non-profit, and education (“GNE”) entities (“GNE savings carve-out”) and its requirement to obtain 4.5% of its required reductions from low-income customers (“low-income savings carve-out”). See *Phase II Compliance Order*, pp. 29-30; see *Energy Efficiency and Conservation Program*, Docket Nos. M-2012-2289411, M-2008-2069887, at pp. 45, 54 (Order Entered Aug. 3, 2012) (“*Phase II Implementation Order*”) (setting forth the 10% GNE savings carve-out and the 4.5% low-income savings carve-out). Indeed, using only Phase II savings (*i.e.*, without carryover savings from Phase I), PPL Electric exceeded its GNE and low-income savings carve-outs by 11,141 MWh/yr and 10,520 MWh/yr, respectively. See *Phase II Compliance Order*, pp. 26-27.

However, the Commission prohibited PPL Electric from counting the Phase II savings in excess of the GNE and low-income carve-outs toward those carve-outs in Phase III. *Id.* Although the Company exceeded those carve-outs using only Phase II savings, the Commission determined that PPL Electric should only be able to carry over GNE and low-income excess savings if the Company exceeded its overall savings target using only Phase II savings. *See id.* The Commission reasoned that because PPL Electric used Phase I carryover savings to meet its overall Phase II savings requirement, the Company “is not entitled to any carryover savings into Phase III.” *Id.*

PPL Electric respectfully requests that the Commission reconsider this aspect of its decision. To be clear, PPL Electric is not arguing that the Phase II savings in excess of the GNE and low-income carve-outs should be counted toward the overall Phase III energy consumption reduction requirement. The Company only seeks to apply the Phase II GNE and low-income excess savings toward the Phase III GNE and low-income carve-outs. The Company submits that counting these Phase II excess savings toward the Phase III GNE and low-income carve-outs is consistent with the Commission’s energy efficiency and conservation (“EE&C”) orders and PPL Electric’s Commission-approved Phase III EE&C Plan. Moreover, the Commission’s decision is poor public policy and would lead to arbitrary outcomes. For these reasons, and as explained in more detail below, PPL Electric respectfully requests that the Commission reconsider its *Phase II Compliance Order* and permit the Company to carry over its Phase II GNE and low-income excess savings only for the purpose of meeting the Phase III GNE and low-income carve-outs.

## I. INTRODUCTION

1. PPL Electric is a “public utility” and an “electric distribution company” (“EDC”) as defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 102, 2803. PPL Electric furnishes electric service to approximately 1.4 million customers throughout its certificated service territory, which includes all or portions of 29 counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania.

2. Act 129, which became effective on October 15, 2008, created, *inter alia*, an EE&C program, codified in the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 2806.1, 2806.2. This program required each EDC with at least 100,000 customers to adopt and implement a Commission-approved EE&C Plan. *See* 66 Pa. C.S. § 2806.1(b), (l). EE&C Plans are designed to achieve the Act 129 energy conservation and peak load reduction requirements, by specified dates, within the specified cost cap.

3. On August 3, 2012, the Commission entered its Implementation Order for Phase II of Act 129. *See Phase II Implementation Order*, Docket Nos. M-2012-2289411, M-2008-2069887 (Order Entered Aug. 3, 2012). The *Phase II Implementation Order* required EDCs to submit three-year EE&C Plans designed to achieve various energy savings targets. For PPL Electric, the Company had to achieve 821,072 MWh/yr in overall energy savings, 82,107 MWh/yr in savings from the GNE sector, and 36,948 MWh/yr of savings from the low-income sector. *See id.*, pp. 24, 45, 54.

4. On November 15, 2012, PPL Electric filed its Phase II EE&C Plan for the period of June 1, 2013, through May 31, 2016, at Docket No. M-2012-2334388. On March 14, 2013, the Commission entered an Order approving PPL Electric’s Phase II EE&C Plan with certain modifications and directing the Company to file a revised Phase II EE&C Plan consistent with that Order. On July 11, 2013, the Commission entered an Order approving PPL Electric’s

revised Phase II EE&C Plan. Further modifications to the Phase II EE&C Plan were subsequently approved.

5. In accordance with Act 129 and the *Phase II Implementation Order*, PPL Electric submitted quarterly and annual reports throughout Phase II providing details and data concerning the progress and performance of its Phase II EE&C Plan.

6. On November 15, 2016, PPL Electric filed its final annual report for Plan Year 7 (“PY7 Annual Report”) at Docket No. M-2012-2334388, which demonstrated that the Company achieved all of the reductions in energy consumption required by Act 129 and the *Phase II Implementation Order*. Subsequently, the Statewide Evaluator (“SWE”) issued its “Phase II Final Report” to the Commission, which indicated whether the SWE agreed with PPL Electric’s and other EDCs’ reported energy consumption reductions.

7. Based on the SWE’s Phase II Final Report, the Commission issued its *Phase II Compliance Order* on April 6, 2017, which determined whether the EDCs complied with their respective energy savings requirements under Act 129 and the *Phase II Implementation Order*.

8. As further explained below, PPL Electric respectfully requests that the Commission reconsider the portion of its *Phase II Compliance Order* prohibiting the Company from applying Phase II savings in excess of the GNE and low-income carve-outs toward the GNE and low-income carve-outs in Phase III.

## **II. STANDARD FOR GRANT OF RECONSIDERATION HAS BEEN MET**

9. The Commission’s standards for granting reconsideration following final orders are set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982):

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was

said that “[p]arties ..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them....” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

10. As explained below, the *Phase II Compliance Order* erred in prohibiting PPL Electric from counting the Phase II savings in excess of the GNE and low-income carve-outs toward those carve-outs in Phase III.

11. The *Phase II Compliance Order* is the first time that the Commission has indicated that these excess carve-out savings cannot be carried forward into Phase III unless there is also carryover of the overall Phase II consumption reduction target. In making its decision, the Commission has overlooked or not addressed certain considerations, particularly its statements in the *Phase II Implementation Order* and *Phase III Implementation Order*,<sup>1</sup> its approval of PPL Electric’s Phase III EE&C Plan that detailed the use of Phase II GNE and low-income carryover savings, the policy implications of the Commission’s decision, and the arbitrary outcomes that can result from the decision. The new and novel arguments set forth herein have not been previously heard or addressed in this proceeding, as PPL Electric did not have an opportunity to present these arguments to the Commission before it issued the *Phase II Compliance Order*.

12. For these reasons, the Company has satisfied the Commission’s standards for reconsideration under *Duick, supra*. Thus, it is reasonable and appropriate for the Commission to exercise its discretion to grant this Petition and reconsider the portion of the *Phase II Compliance Order* as explained below.

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<sup>1</sup> *Energy Efficiency and Conservation Program*, Docket No. M-2014-2424864 (Order Entered June 19, 2015) (“*Phase III Implementation Order*”).

### **III. ARGUMENTS FOR RECONSIDERATION**

#### **A. CARRYING OVER GNE AND LOW-INCOME EXCESS SAVINGS IS CONSISTENT WITH THE COMMISSION'S EE&C ORDERS**

13. PPL Electric requests that the Commission reconsider its decision because carrying over the Company's Phase II GNE and low-income excess savings is consistent with the Commission's relevant EE&C Orders. First, nothing in the Commission's EE&C Orders states that an EDC is prohibited from carrying over GNE and low-income excess savings if the EDC fails to achieve its overall savings requirement without carryover savings. In fact, the only requirements set forth by the Commission in the *Phase III Implementation Order* were that "carryover savings may only be savings actually obtained in Phase II" and that low-income carryover savings would be "based on an allocation factor determined by the ratio of savings from low-income specific programs." See *Phase III Implementation Order*, pp. 84-85. Moreover, in the *Phase II Implementation Order*, the Commission explicitly stated that "the savings achieved in Phase I should be applied in Phase II at the particular customer sector level." *Phase II Implementation Order*, p. 59 (emphasis added). Here, all of the GNE and low-income excess savings that the Company is seeking to carry over were obtained in Phase II. In other words, none of these excess savings were obtained in Phase I. Moreover, the Phase II low-income excess savings were calculated based on the Commission's allocation factor as required by the *Phase III Implementation Order*. See SWE Phase II Final Report, p. 14. Further, PPL Electric would only apply the Phase II GNE and low-income excess savings toward the Phase III GNE and low-income carve-outs, *i.e.*, at the particular customer sector level. Thus, the Company's carryover of the GNE and low-income savings is consistent with the Commission's *Phase II* and *Phase III Implementation Orders*.

14. Second, the Commission repeatedly has treated the overall savings requirement, the GNE savings carve-out, and the low-income savings carve-out as three separate compliance obligations. As the Commission explained in the *Phase II Implementation Order*, the GNE and low-income carve-outs are “prescribed under subsection (b)” of 66 Pa. C.S. § 2806.1 and, therefore, are “separate and apart” from the overall energy savings and peak demand reduction requirements set forth in subsections (c) and (d). *See Phase II Implementation Order*, pp. 45-46, 55. Moreover, an EDC would face a potential civil penalty under 66 Pa. C.S. § 3301(a) for failing to meet either the GNE or low-income carve-outs in contrast to a potential civil penalty under 66 Pa. C.S. § 2806.1(f)(2) for failing to meet its overall savings requirements. *See Phase II Implementation Order*, pp. 46, 54; *Phase III Implementation Order*, pp. 70, 72. Therefore, since these targets are treated as separate compliance obligations, it is logical to treat their carryover savings similarly and apply Phase II GNE and low-income excess savings to the Phase III GNE and low-income carve-outs.

15. Third, although PPL Electric asked for clarification of this issue in its Comments on the *Phase III Tentative Implementation Order*, the Commission’s *Phase III Implementation Order* did not state anything contradicting the Company’s position. Specifically, in its Comments, PPL Electric asked the Commission to clarify “whether EDCs are permitted to apply Phase II over-compliance savings to Phase III at the customer sector level for low-income and government/educational/nonprofit sector carve-outs, even if there is no over-compliance at the portfolio level.” PPL Electric Comments, Docket No. M-2014-2424864, pp. 64-65 (Apr. 27, 2015). However, nothing in the *Phase III Implementation Order* explicitly addressed this issue. Accordingly, PPL Electric had no reason to believe that its planned carryover of the Phase II GNE and low-income excess savings would be rejected. Indeed, the Commission simply stated

that “EDCs are allowed to bank only those savings obtained in Phase II in excess of their targets for application towards Phase III targets” and that “[t]his directive applies to excess savings in the G/E/NP sector, as well.” *Phase III Implementation Order*, p. 85. Further, concerning “low-income carryover savings to be applied toward the low-income carve-out,” the Commission found that “EDCs will only be allowed to carry over excess low-income savings into Phase III, based on an allocation factor determined by the ratio of savings from low-income specific programs.” *Id.* As explained previously, PPL Electric’s plan to carry over the Phase II GNE and low-income excess savings complies with these requirements. Thus, nothing in the *Phase III Implementation Order* prohibits PPL Electric’s carryover of these excess savings.

16. For these reasons, PPL Electric’s plan to apply Phase II GNE and low-income excess savings to the Phase III GNE and low-income carve-outs, even though there is no Phase II carryover from the overall compliance target, is consistent with the Commission’s EE&C Orders.

**B. CARRYING OVER GNE AND LOW-INCOME EXCESS SAVINGS IS CONSISTENT WITH PPL ELECTRIC’S COMMISSION-APPROVED PHASE III EE&C PLAN**

17. PPL Electric also requests that the Commission reconsider its decision because carrying over the Phase II GNE and low-income excess savings is consistent with the Company’s Commission-approved Phase III EE&C Plan. PPL Electric specifically detailed in its Phase III EE&C Plan that it was planning to count Phase II GNE and low-income excess savings toward the Phase III GNE and low-income carve-outs but not the overall energy savings requirement. *See, e.g.*, PPL Electric Phase III EE&C Plan, Tables 2 and 10. For example, in Table 10 on page 32 of the Plan, PPL Electric estimated that it would have 8,400 MWh/yr of low-income carryover savings, 13,500 MWh/yr of GNE carryover savings, and no carryover savings from the Phase II overall savings target; however, none of the GNE or low-income carryover savings were counted as applying to the Phase III overall savings target. Notably, neither any party in PPL

Electric's Phase III EE&C Plan proceeding nor the Commission in its Order approving the Phase III EE&C Plan disputed this treatment of the GNE and low-income excess savings. *See Petition of PPL Electric Utilities Corp. for Approval of its Act 129 Phase III Energy Efficiency and Conservation Plan*, Docket No. M-2015-2515642 (Order Entered July 8, 2015).

18. Furthermore, since the Phase III EE&C Plan sets forth the Phase II GNE and low-income excess savings, the Commission's decision will require the Company to file for approval of changes to its Phase III EE&C Plan. At the very least, the Company will need to amend its Commission-approved Phase III EE&C Plan to remove all references to the Phase II GNE and low-income carryover savings. Moreover, the Commission's decision could negatively affect PPL Electric's ability to meet its Phase III GNE and low-income savings targets. Although the Company designed its Phase III EE&C Plan to achieve the GNE and low-income carve-outs without any Phase II carryover, the Company will have to evaluate whether any changes to its EE&C programs and measures are necessary to ensure that PPL Electric meets all of its Phase III compliance obligations.

19. For these reasons, even in the absence of excess savings from the overall Phase II savings requirement, PPL Electric's plan to apply Phase II GNE and low-income excess savings to the Phase III GNE and low-income carve-outs is consistent with the Company's Commission-approved EE&C Plan.

**C. THE COMMISSION'S DECISION IS POOR PUBLIC POLICY AND WOULD LEAD TO ARBITRARY OUTCOMES**

20. PPL Electric avers that the Commission should reconsider its decision because it is poor public policy. First, the Commission's decision would encourage an EDC to slow down its GNE and low-income programs toward the end of an EE&C Phase to avoid excess GNE and low-income savings. Because those excess savings would not apply toward the next Phase's

carve-outs, the EDC would better position itself to meet the GNE and low-income carve-outs in the upcoming Phase by slowing down those programs. However, doing so would negatively affect the potential participants in those programs and would disrupt the transition between Phases. *See Phase II Implementation Order*, p. 60 (detailing the issues and harm caused by “disruptive gaps in programs” and “[a]ny lapse of continuity between Phase I and Phase II”). These issues are, in large part, the reason why the Commission enabled EDCs to carry over savings from Phase I to Phase II. *See id.*, pp. 58-60. Moreover, letting programs “go dark” before the end of the Phase contravenes the Commission’s policy. *See Phase III Implementation Order*, p. 83 (“[P]rograms should not be allowed to ‘go dark’ simply because targets have been achieved before the end of a phase.”)

21. Second, the EDC would have an incentive to reallocate its focus and funding toward programs that would be the most effective in achieving the overall savings requirement, particularly after the EDC meets its GNE and low-income savings targets. In fact, it is more costly for PPL Electric to obtain savings from the GNE and low-income sectors. Under PPL Electric’s Phase III EE&C Plan, the GNE and low-income sectors have higher acquisition costs than any other customer sector. *See PPL Electric Phase III EE&C Plan*, p. 32 (detailing acquisition costs of \$0.21/kWh for GNE and \$0.62/kWh for low-income compared to acquisition costs of \$0.17/kWh for residential, \$0.15/kWh for Small Commercial & Industrial (“Small C&I”), and \$0.14/kWh for Large Commercial & Industrial (“Large C&I”). Therefore, it likely would be easier for the Company to exceed its overall energy savings requirement without carryover savings by focusing on the sectors with lower acquisition costs. Considering the Commission’s significant interest in helping customers in the GNE and low-income sectors

reduce their energy consumption, PPL Electric maintains that the Commission's decision likely would negatively affect that goal.

22. In addition, the Commission's decision would lead to arbitrary outcomes. By the Commission's logic, if PPL Electric exceeded its overall Phase II savings requirement by 1 MWh/yr, the Company would be able to carry over 11,141 MWh/yr in GNE savings<sup>2</sup> and 10,520 MWh/yr in low-income savings<sup>3</sup>—total of 21,661 MWh/yr—and apply those savings to its Phase III carve-outs. Conversely, if the Company had to use 1 MWh/yr of Phase I carryover savings to meet its overall requirement, it would not be able to carry over any Phase II GNE or low-income excess savings into Phase III. These examples further reinforce that under the Commission's decision, EDCs will be encouraged: (1) to slow down their GNE and low-income programs if they are not going to achieve the overall savings target without carryover savings; and (2) to focus on obtaining savings from the residential, Small C&I, and Large C&I sectors after meeting their GNE and low-income savings targets.

23. For these reasons, the Commission's decision is poor public policy and would lead to arbitrary outcomes.

24. Based on the foregoing, PPL Electric submits that the *Phase II Compliance Order* erred by prohibiting the Company from counting Phase II GNE and low-income excess savings toward the Phase III GNE and low-income carve-outs. Therefore, PPL Electric respectfully requests that the Commission reconsider that portion of the *Phase II Compliance Order* and allow the Company to carry over its Phase II GNE and low-income excess savings into Phase III only for the purpose of meeting the Phase III GNE and low-income carve-outs.

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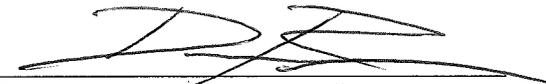
<sup>2</sup> See *Phase II Compliance Order*, p. 27; SWE Phase II Final Report, p. 15.

<sup>3</sup> See *Phase II Compliance Order*, p. 27; SWE Phase II Final Report, p. 14.

IV. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Commission reconsider its decision in the *Phase II Compliance Order* to prohibit PPL Electric from counting Phase II GNE and low-income savings in excess of the Phase II GNE and low-income carve-outs toward the Phase III GNE and low-income carve-outs as described above.

Respectfully submitted,



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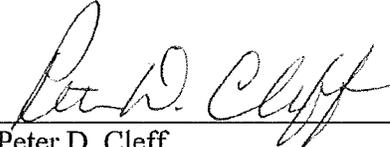
Date: April 21, 2017

Attorneys for PPL Electric Utilities  
Corporation

**VERIFICATION**  
**(Docket No. M-2012-2289411)**

I, Peter D. Cleff, being the Manager-Energy Efficiency Evaluation and Performance at PPL Electric Utilities Corporation, hereby state that the facts set forth are true and correct to the best of my knowledge, information and belief and that I expect that PPL Electric Utilities Corporation to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: April 21, 2017

  
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Peter D. Cleff