**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held August 27, 2020

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

David W. Sweet, Vice Chairman

John F. Coleman, Jr.

Ralph V. Yanora

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| Petition of UGI Utilities, Inc. - Electric Division for Approval of Modifications to its Phase III Energy Efficiency and Conservation Plan | M-2018-3004144 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition of UGI Utilities, Inc. - Electric Division (UGI Electric or the Company) for Approval of Changes to its Act 129 Phase III Energy Efficiency and Conservation Plan (EE&C Plan or Phase III EE&C Plan) (Petition) filed on March 27, 2020, in the above-captioned proceeding. The Petition seeks approval of two proposed major modifications to the Company’s EE&C Plan under the major change process set forth in the Commission’s *Energy Efficiency and Conservation Program Implementation Order*,Docket No. M-2008-2069887 (Order Entered January 16, 2009) (*Implementation Order)* and the Commission’s Order in *Energy Efficiency and Conservation Program*, Docket No. M-2008-2069887 (Order entered June 10, 2011) (*Minor Plan Change Order*) at 20-21. No Comments or Reply Comments were received. For the reasons stated herein, we will grant UGI Electric’s Petition, in part, and deny it, in part.

# I. Procedural History

Act 129 of 2008, P.L. 1592 (Act 129) amended the Public Utility Code (Code), 66 Pa. C.S. §§ 101, *et seq*., to, *inter alia*, require the Commission to develop and adopt an EE&C Plan by January 15, 2009. Under Act 129, the Commission’s EE&C program requires electric distribution companies (EDCs) to adopt and implement cost-effective energy efficiency and conservation plans to reduce energy demand and energy consumption within the service territory of each EDC. 66 Pa. C.S. § 2806.1(a). However, Act 129 exempted EDCs with fewer than 100,000 customers from the EE&C Program. 66 Pa. C.S. § 2806.1(l). On December 23, 2009, the Commission issued a Secretarial Letter at Docket No. M-2009-2142851, encouraging EDCs with fewer than 100,000 customers to voluntarily file EE&C Plans for Commission approval.

Pursuant to the Commission’s request for voluntary compliance, UGI Electric, as an EDC serving fewer than 100,000 customers, filed a Petition requesting approval of its voluntary Phase I EE&C Plan. *See* Petition of UGI Electric at Docket No. M‑2010‑2210316, filed November 9, 2010. On April 10, 2012, the Commission issued a Secretarial Letter that granted UGI Electric’s request to begin implementing its EE&C Plan within three months of the date of that letter.

On April 9, 2015, UGI Electric filed a Petition at Docket No. M‑2010‑2210316 to extend its Phase I EE&C Plan until its Phase II EE&C Plan was approved. The Commission approved UGI Electric’s Petition by Order entered May 19, 2015.

Also, on April 9, 2015, UGI Electric filed a Petition at Docket No.

M-2015-2477174, seeking Commission approval of its Phase II EE&C Plan. On June 9, 2016, the Commission entered an Order approving the Phase II EE&C Plan. *See Petition of UGI Utilities, Inc. – Electric Division for Approval of Phase II of its Energy Efficiency and Conservation Plan*,Docket No. M-2015-2477174 (Order Entered June 9, 2016) (*Phase II Order)*. UGI Electric’s Phase II EE&C Plan was set to expire on May 31, 2018.

On March 22, 2017, UGI Electric filed a Petition to amend the *Phase II Order* and extend its Phase II EE&C Plan by one year or until May 31, 2019 (Phase II Extension Petition). The Commission approved the Phase II Extension Petition by its Order entered on May 4, 2017. On August 31, 2017, UGI Electric filed a Petition for approval of changes to its Phase II EE&C Plan, which were approved by the Commission on December 21, 2017.

On August 21, 2018, UGI Electric filed a Petition for approval of its Phase III EE&C Plan at Docket No. M-2018-3004144, which included EE&C programs for the five-year period of June 1, 2019, through May 31, 2024. The Parties reached a Settlement of all issues, and on January 31, 2019, filed a Joint Petition for Approval of Settlement (Joint Petition).[[1]](#footnote-1) On March 14, 2019, the Commission entered an Order approving the Joint Petition.

On April 22, 2020, UGI Electric filed an Amendment to its Phase III EE&C Plan in accordance with the Settlement, to include a Residential Low-Income Program, starting in program year two (PY 2). By Secretarial Letter dated May 13, 2020, the Commission determined that the Amendment filing was consistent with the requirements of the Settlement.

As previously noted, UGI Electric filed the instant Petition on March 27, 2020, which was served on the OCA, the OSBA, and CEO. UGI Electric stated in its Petition that it consulted with the OCA, the OSBA, and the CEO. UGI Electric averred that it is authorized to represent that those Parties do not oppose the requested relief in the Petition. Petition at 3. No Comments or Reply Comments were received.

# II. Discussion

## **Legal and Procedural Standards**

When considering petitions to stay the effect of Commission Orders, the Commission has adopted the standards set forth in *Pa. PUC v. Process Gas Consumers Group*, 502 Pa. 545, 467 A.2d 805 (1983) (*Process Gas*). The Commission can and has denied a party’s request for a stay but has granted an extension of time to submit a filing, *nunc pro tunc*. *See Pennsylvania Public Utility Commission; v.; Verizon Pennsylvania Inc.; Rhythms Links, Inc.; v.; Verizon Pennsylvania Inc.*, Docket No. R-00994697; R‑00994697C0001 (Opinion and Order entered September 4, 2011).

Pursuant to Section 2806.1(a)(6) of the Code, 66 Pa. C.S. § 2806.1(a)(6), we established procedures in our *Implementation Order* that permit the Commission, an EDC or any interested party to make recommendations for improvements to an EDC’s EE&C Plan. We addressed the procedure for modifications pursuant to Section 2806.1 of the Code, as follows:

Regarding approved plans, the Commission will permit EDCs and other interested stakeholders, as well as the 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). The Commission will establish a deadline for the filing of annual reports by the EDCs following the approval of the EDCs’ plans in 2009. These annual reports are to be served on OCA, OSBA and OTS. The Commission will also post the annual reports on a web page dedicated to the EE&C program. The Commission and any interested party can make a recommendation for plan improvement or object to an EDC’s proposed plan revision within 30 days of the annual report filing. EDCs will have 20 days to file replies, after which the Commission will determine whether to rule on the recommended changes or refer the matter to an ALJ for hearings and a recommended decision.

*Implementation Order* at 24.

In addition, the expedited process for reviewing EDCs’ requests for minor changes to their Act 129 EE&C Plans was established in our *Minor Plan Change Order*. *See Minor Plan Change Order* at 18-20. Minor EE&C Plan changes that can be reviewed under the expedited review process are defined as follows:

1. The elimination of a measure that is underperforming, no longer viable for reasons of cost-effectiveness, savings or market penetration or has met its approved budgeted funding, participation level or amount of savings;

2. The transfer of funds from one measure or program to another measure or program within the same customer class; and

3. Adding a measure or changing the conditions of a measure, such as its eligibility requirements, technical description, rebate structure or amount, projected savings, estimated incremental costs, projected number of participants, or other conditions so long as the change does not increase the overall costs to that customer class.

*Id*. at 19-20.

Also, within the *Minor Plan Change Order*, the Commission stated that EDCs seeking approval of changes that do not fit within the Minor EE&C Plan change criteria must file a petition requesting that the Commission rescind and amend its prior order approving the plan in accordance with 52 Pa. Code §§ 5.41 (relating to petitions generally) and 5.572 (relating to petitions for relief). The Commission stated that this petition should explain the specific reasons supporting the proposed modifications, evidence supporting the modifications to the plan and any cost recovery mechanism. The Commission directed that the petition be served on all parties, who will have thirty days to file comments, an answer or both. The Commission further established a twenty-day reply period for parties who desire to file reply comments, after which the Commission will determine whether to rule on the changes or refer the matter to an Administrative Law Judge for hearings and a recommended decision. *Minor Plan Change Order* at 20.

Finally, we note that any issue that we do not specifically delineate shall be deemed to have been duly considered and 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 Corp. v. Pa. PUC*,625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

## **UGI Electric’s Petition**

In the instant Petition, UGI Electric requests that the Commission approve the following changes to its Phase III EE&C Plan: (1) a change to the overall incentive level that UGI Electric must maintain in the Commercial and Industrial (C&I) Custom Incentive Program from $0.10 per kilowatt hour (kWh) to *up to* $0.10 per kWh; and (2) a clarification as to when the Company will file an updated EE&C Plan that uses PPL Electric Utilities Corporation’s (PPL Electric) Phase IV avoided costs for the last two years of UGI Electric’s Phase III EE&C Plan.[[2]](#footnote-2) Petition at 1-2. UGI Electric avers that its proposed changes to the C&I Custom Incentive Program’s overall average incentive level and the filing deadline for the updated Phase III EE&C Plan using PPL Electric’s avoided costs are both major changes. For this reason, UGI Electric requests that the Commission consider both modifications under the procedure outlined in the *Implementation Order*. *Id.* at 6.

**1. C&I Custom Incentive Program Proposed Change**

In its Petition, UGI Electric proposes to change its C&I Custom Incentive Program overall average incentive level. The Company’s Phase III EE&C Plan states that the Company “will maintain an overall incentive level of $0.10 per kWh, on average, over the lifetime of the Plan.” UGI Electric proposes to change this sentence to the Company “will maintain an overall incentive level of *up to* $0.10 kWh, on average, over the lifetime of the Plan.” Petition at 7 (citing Phase III EE&C Plan at 36).

UGI Electric provides that this proposed change will give the Company more flexibility, while helping to ensure that the overall incentive level remains, on average, $0.10 per kWh or below. UGI Electric notes that the OSBA raised concerns about the level of incentive and non-incentive spending under the C&I Custom Incentive Program. Petition at 7 (citing OSBA St. 1 at 16-17).

UGI Electric avers that under the Settlement approved by the Commission, the following cost limits were placed on the program: (1) overall incentive spending is limited to $100 per first year MWh; and (2) overall non-incentive spending shall be limited to $110 per first year MWh. Petition at 7 (citing Joint Petition for Approval of Settlement ¶ 26). UGI Electric contends that this proposed change to the C&I Custom Incentive Program will better allow it to manage the level of incentive spending under the program as required by the Settlement. Petition at 7.

**2. Revised Filing Deadline for the Updated Phase III EE&C Plan and Petition for a Stay**

UGI Electric requests approval for its proposed change to the filing deadline for its updated Phase III EE&C Plan using PPL Electric’s Phase IV avoided costs. Petition at 8. In line with this request, UGI Electric also seeks a stay of the duty to update its Phase III EE&C Plan by the end of March 2020[[3]](#footnote-3) until “three months after the Commission approves PPL Electric’s Phase IV EE&C Plan, including any compliance filing.” Petition at 8; *See* *also,* Petition Attachment A at 40. UGI Electric avers that the stay is necessary in order to include “revised projections for PY 11 and PY 12 using the electric avoided costs established for PPL Electric for Phase IV of Act 129.” Petition at 9.

The Company notes that Section 3 of UGI Electric’s Phase III EE&C Plan states the following regarding a required update of the Plan:

To the extent that the Phase III EE&C Plan is set to continue for the full five-year term, UGI Electric will file an update to this Plan within three months following the Commission’s issuance of its Phase IV TRC Test Order. This update will include revised projections for PY 11 and PY 12 using the electric avoided costs established for PPL Electric for Phase IV of Act 129.

Petition at 8 (citing Phase III EE&C Plan at 40).

UGI Electric explains that this provision was added to the Phase III EE&C Plan pursuant to Paragraph 28 of the Settlement approved by the Commission. According to UGI Electric, the Commission issued its *2021 Total Resource Cost (TRC) Test*, Docket No. M-2019-3006868 (Order entered December 19, 2019) (*2021 TRC Test Order)* for Phase IV of Act 129, which included findings on how the EDCs are to calculate avoided costs. However, the directive did not establish or approve the avoided costs that are to be developed and used by PPL Electric. UGI Electric notes that as of the filing of the instant Petition, PPL Electric’s avoided costs have not been established. Petition at 8.

UGI Electric avers that at present, it cannot update its Phase III EE&C Plan by the end of March 2020 to include “revised projections for PY 11 and PY 12 using the electric avoided costs established for PPL Electric for Phase IV of Act 129” as currently stated in the Settlement and its Phase III EE&C Plan. Petition at 8-9.

In order to enable the Company to calculate the revised projections using the avoided costs, UGI Electric proposes to revise Section 3 of its Phase III EE&C Plan as follows:

To the extent that the Phase III EE&C Plan is set to continue for the full five-year term, UGI Electric will file an update to this Plan three months after the Commission approves PPL Electric’s Phase IV EE&C Plan, including any compliance filing. This update will include revised projections for PY 11 and PY 12 using the electric avoided costs established for PPL Electric for Phase IV of Act 129.

Petition Attachment A at 40.

UGI Electric provides that it would be prudent to delay the filing of the updated Phase III EE&C Plan until three months after the Commission rules on PPL Electric’s Phase IV EE&C Plan in order that the Company’s updated Phase III EE&C Plan could incorporate PPL Electric’s Phase IV avoided costs. According to UGI Electric, PPL Electric’s Phase IV EE&C Plan is estimated to be approved by March or April 2021. The proposed change would result in UGI Electric filing its updated Phase III EE&C Plan well before PY 11 and PY 12 of its EE&C Plan. UGI Electric explains that, provided it files its updated Phase III EE&C Plan by July 2021 (approximately three months after approval of PPL Electric’s Phase IV EE&C Plan), such a filing would be about 11 months before PY 11 of the Phase III EE&C Plan commences on June 1, 2022. Petition at 9.

Furthermore, UGI Electric requests that the Commission approve the stay request as no party will be harmed if the Commission allows the Company to file an updated Phase III EE&C Plan using PPL Electric’s Phase IV avoided costs for PY 11 and PY 12. UGI Electric avers that even if it files its updated Phase III EE&C Plan in July 2021, as requested (*i.e.*, three months after the Commission approves PPL Electric’s Phase IV EE&C Plan in April 2021), the updated plan would still be filed approximately eleven months before PY 11 begins. Petition at 10.

Finally, UGI Electric states in its Petition that it consulted with the Parties, including the OCA, the OSBA and CEO. UGI Electric avers that it is authorized to represent that those Parties do not oppose the requested relief in this Petition. Petition at 3.

1. **Disposition**

Upon our consideration of UGI Electric’s proposal, we will deny UGI Electric’s request for a stay. However, we will provide an extension of time for UGI Electric to file an updated EE&C Plan, consistent with this Opinion and Order. We will approve UGI Electric’s request as follows: (1) the proposed change to the filing deadline for its updated Phase III EE&C Plan using PPL Electric’s Phase IV avoided costs; and (2) the proposed modification regarding the change to the C&I Custom Incentive Program. We note that in its Petition, UGI Electric avers that it consulted with the other Parties in this proceeding prior to filing its Petition and they authorized UGI Electric to represent that they do not oppose the requested changes. We further note that no comments were filed pertaining to the Petition.

Initially, we will address the request for a stay and note that the Commission did not review and resolve the substantive issues in time for UGI Electric to integrate the Commission’s decision in this matter to allow UGI Electric to meet the filing deadline of March 2020. While we note that all of the Parties agreed to UGI Electric’s request, upon consideration, we find that the Company’s request for stay does not meet the criteria enumerated in [*Process Gas.*](https://advance.lexis.com/document/?pdmfid=1000516&crid=c3db975e-34f1-49d4-8209-37af1cd8bcfd&pddocfullpath=%2Fshared%2Fdocument%2Fadministrative-materials%2Furn%3AcontentItem%3A5N7T-J9W0-00T9-928B-00000-00&pdcontentcomponentid=139838&pdteaserkey=sr14&pditab=allpods&ecomp=gxdsk&earg=sr14&prid=e88ce733-6516-460a-9ab8-87e9866eb7d8) Therefore, we will deny the stay request. Although we are denying the stay request, we will grant UGI Electric an extension of time *nunc pro tunc* to update its Phase III EE&C Plan, including any compliance filing within three months after the Commission approves PPL Electric’s Phase IV EE&C Plan.

Consistent with the discussion above, we will deny the stay request and grant an extension of time for UGI Electric to submit the required filing(s). We will now address the proposed changes.

With regard to UGI Electric’s proposed major modification regarding the change to the C&I Custom Incentive Program, we note that UGI Electric provided in its Petition, that the OSBA raised concerns about the level of such spending. OSBA St. 1 at 16-17. These concerns were considered in the Settlement and the following cost limits were placed on the Program under the Settlement: (1) overall incentive spending is limited to $100 per first year MWh; and (2) overall non-incentive spending shall be limited to $110 per first year MWh. Settlement ¶ 26. The change from a prescribed average of $0.10 per kWh to *up to* $0.10 kWh, on average, over the lifetime of the Plan, appears to be reasonable. We agree with the Company that the change will allow UGI Electric more flexibility in balancing the level of incentive and non-incentive spending under the Program. Accordingly, we shall approve UGI Electric’s proposed Major Change regarding the C&I Custom Incentive Program in its Phase III EE&C Plan.

We also find UGI Electric’s proposal to change the filing deadline for its updated Phase III EE&C Plan to be reasonable. UGI Electric proposes to submit its Phase III EE&C Plan within three months after the Commission’s approval of PPL Electric’s Phase IV EE&C Plan, including any compliance filing, such that UGI Electric can include PPL Electric’s avoided costs in its updated Phase III EE&C Plan. At present, UGI Electric cannot comply with the requirement in Paragraph 28 of the Settlement, as PPL Electric’s avoided costs will not be established until the Commission’s approval of PPL Electric’s Phase IV EE&C Plan, including any compliance filing.

While the *2021 TRC Test Order* established how an EDC should calculate its avoided costs as of December 2019, PPL Electric’s Phase IV avoided costs are not yet available for UGI Electric’s use. PPL Electric’s Phase IV EE&C Plan is estimated to be approved by March or April 2021. This would allow UGI Electric to file its revised Phase III EE&C Plan well before PY 11 and PY 12 of the Phase III Plan. UGI Electric estimates that if it submits its Phase III revised Plan by July 2021, it will be 11 months before PY 11 commences on June 1, 2022. This should allow sufficient time for interested parties and stakeholders to have the opportunity to review the updated Phase III Plan that includes PPL Electric’s avoided costs. Petition at 9-10. We agree.

Accordingly, we shall decide UGI Electric’s requests as follows: (1) deny the Company’s Petition for a stay to update its Phase III EE&C Plan; (2) grant UGI Electric an extension of time to file an updated Phase III EE&C Plan; (3) grant the Petition and approve the Company’s proposed major modifications involving the revised deadline for submitting its updated Phase III EE&C Plan and its proposed change to the C&I Custom Incentive Program, consistent with this Opinion and Order.

**III. Conclusion**

Consistent with the foregoing discussion, and in view of the OCA’s, the OSBA’s and CEO’s accord with the proposed changes, we shall: (1) deny UGI Electric’s Petition for a stay of its duty to update its Phase III EE&C Plan; (2) grant an extension of time for UGI Electric to file its updated Phase III EE&C Plan; and (3) grant UGI Electric’s proposed changes to its Phase III EE&C Plan consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition of UGI Utilities, Inc. – Electric Division for Approval of Modifications to its Phase III Energy Efficiency and Conservation Plan filed on March 27, 2020, is granted, in part, and denied, in part, consistent with this Opinion and Order.

1. That the Petition of UGI Utilities, Inc. – Electric Division for a stay of its duty to update its Phase III Energy Efficiency and Conservation Plan by the end of March 2020, is denied.
2. That UGI Utilities, Inc. – Electric Division is granted an extension of time to update its Phase III Energy Efficiency and Conservation Plan.
3. That the following proposed changes within the UGI Utilities, Inc. – Electric Division’s Petition are approved:

a. Proposed Major Change – Change the overall incentive level that UGI Utilities, Inc. - Electric Division must maintain in the C&I Custom Incentive Program from $0.10 per kWh, on average, over the lifetime of the Plan to *up to* $0.10 per kWh, on average, over the lifetime of the Plan.

b. Proposed Major Change – Change the requirement to file an updated EE&C Plan by the end of March 2020 to *within three months after the Commission approves PPL Electric’s Phase IV EE&C Plan, including any compliance filing.*  The updated UGI Utilities, Inc. – Electric Division EE&C Plan will include revised projections for PY 11 and PY 12 using the electric avoided costs established for PPL for Phase IV of Act 29.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: August 27, 2020

ORDER ENTERED: August 27, 2020

1. The Parties to the Settlement include: (1) UGI Electric; (2) the Office of Consumer Advocate (OCA); (3) the Office of Small Business Advocate (OSBA); and (4) Commission on Economic Opportunity (CEO). [↑](#footnote-ref-1)
2. As a procedural matter, we note that UGI Electric also requested a stay of the duty to file its updated Phase III EE&C Plan by March 2020 to “*within three months after the Commission approves PPL Electric’s Phase IV EE&C Plan, including any compliance filing.”* Petition at 10. As discussed, *infra*., we will deny the stay request. [↑](#footnote-ref-2)
3. We note that UGI Electric filed its stay request to the required filing date; however, the Commission could not address the filing prior to that date. Therefore, we will consider the request for stay *nunc pro tunc*. [↑](#footnote-ref-3)