

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held April 25, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Petition of PPL Electric Utilities Corporation for
Approval of Changes to its Act 129 Phase IV Energy
Efficiency and Conservation Plan

M-2020-3020824

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition of PPL Electric Utilities Corporation (PPL or the Company) for Approval of Changes to its Act 129 Phase IV Energy Efficiency and Conservation (EE&C) Plan (Petition), filed on February 8, 2024, in the above-captioned proceeding. The Sustainable Energy Fund of Central Eastern Pennsylvania (SEF) filed Comments to the Petition on February 13, 2024. The Office of Small Business Advocate (OSBA) filed a Letter in Support of the Petition (OSBA Letter) on March 11, 2024. No Reply Comments were filed.

For the reasons set forth herein, we shall grant the Petition, consistent with the discussion in this Opinion and Order.

I. Background and Procedural History

On October 15, 2008, Act 129 of 2008 (Act 129 or Act) was signed into law with an effective date of November 14, 2008. Among other requirements, Act 129 directed the Commission to adopt an EE&C Program, under which each of the Commonwealth's largest electric distribution companies (EDCs) was required to implement a cost-effective EE&C plan to reduce energy consumption and demand. Specifically, Act 129 required each EDC with at least 100,000 customers to adopt an EE&C plan to reduce energy demand and consumption within its service territory. Initially, Act 129 required each affected EDC to adopt an EE&C plan to reduce electric consumption by at least one percent of its expected consumption for June 1, 2009 through May 31, 2010, by May 31, 2011. The Act also required the Commission to develop and adopt an EE&C Program by January 15, 2009, and to set out specific issues the EE&C Program must address. 66 Pa. C.S. § 2806.1(a).

On January 15, 2009, the Commission adopted an Implementation Order at Docket No. M-2008-2069887 (*Phase I Implementation Order*), which established the standards each plan was to meet, and which provided guidance on the procedures to be followed for submittal, review, and approval of all aspects of the EE&C plans. The Commission subsequently approved an EE&C plan (and, in some cases, modifications to the plan) for each affected EDC.

Another requirement of Act 129 directed the Commission to evaluate the costs and benefits of the Commission's EE&C Program and of the EDCs' approved EE&C plans by November 30, 2013, and every five years thereafter. The Act provided

that the Commission must adopt additional incremental reductions in consumption and peak demand if it determines that the benefits of the EE&C Program exceed its costs.

Consistent with the above, on August 3, 2012, the Commission issued an Implementation Order at Docket Nos. M-2012-2289411 and M-2008-2069887 (*Phase II Implementation Order*), which established required standards for Phase II EDC EE&C plans (including the additional incremental reductions in consumption that each EDC must meet) and provided guidance on the procedures to be followed for submittal, review, and approval of all aspects of the EDCs' Phase II EE&C plans. Within the *Phase II Implementation Order*, the Commission tentatively adopted EDC-specific consumption reduction targets to be met by May 31, 2016. The Commission subsequently approved a Phase II EE&C Plan (and, in some cases, modifications to the plan) for each affected EDC.

The Commission also subsequently issued an Implementation Order on June 19, 2015, at Docket No. M-2014-2424864 (*Phase III Implementation Order*) for Phase III of the EE&C Program. The Commission determined in its *Phase III Implementation Order* that additional reductions in consumption and peak demand were cost-effective and, therefore, prescribed reductions in consumption and peak demand targets to be met by May 31, 2021. The Commission subsequently approved a Phase III EE&C Plan (and, in some cases, modifications to the plan) for each affected EDC.

On June 18, 2020, the Commission adopted its *Phase IV Implementation Order*,¹ establishing the required incremental reductions in consumption and peak demand, and standards that each Phase IV plan must meet, and providing guidance on the procedures to be followed for submittal, review, and approval of all aspects of EE&C

¹ See, *Energy Efficiency and Conservation Program Implementation Order*, at Docket No. M-2020-3015228 (Order entered June 18, 2020) (*Phase IV Implementation Order*).

plans for the period from June 1, 2021, through May 31, 2026. The *Phase IV Implementation Order* directed electric distribution companies (EDCs) to file Phase IV EE&C plans by November 30, 2020.

On November 30, 2020, PPL timely filed a Petition requesting approval of its Act 129 Phase IV EE&C Plan (Phase IV Plan) at the above-captioned docket. PPL's Phase IV Plan included a broad portfolio of energy efficiency and energy education programs and initiatives designed to meet the goals established by Act 129 of 2008, 66 Pa. C.S. §§ 2806.1 and 2806.2, and the Commission's *Phase IV Implementation Order*, as well as other important policy goals and objectives.

On February 26, 2021, PPL, the Office of Consumer Advocate (OCA), the OSBA, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the Commission for Economic Opportunity (CEO), the Natural Resources Defense Council (NRDC), the PPL Industrial Customer Alliance (PPLICA) and the SEF (collectively, the Parties) submitted a Joint Petition for Approval of Partial Settlement (2021 Partial Settlement).²

By Order Certifying the Record in this proceeding, dated March 2, 2021, Administrative Law Judges (ALJs) Mark A. Hoyer and Emily I. DeVoe provided a history of the investigation into PPL's Phase IV Plan; delineated the transcripts, statements, exhibits, and briefs admitted into the record; and certified the record to the Commission for consideration and disposition, in accordance with the *Phase IV Implementation Order*.

² The 2021 Partial Settlement resolved all issues, except for PPLICA's proposal to reduce PPL's peak demand reduction compliance target, which was subsequently briefed by the Parties and resolved by the Commission's *March 2021 Order*.

On March 25, 2021, the Commission entered an Opinion and Order in this proceeding, which: (1) granted the Joint Petition for Partial Settlement, thereby approving the Partial Settlement, without modification; and (2) granted PPL's Petition, thereby approving the Phase IV Plan, as modified by the terms of the Partial Settlement. *See Petition of PPL Electric Utilities Corporation for Approval of its Act 129 Phase IV Energy Efficiency and Conservation Plan*, Docket No. M-2020-3020824 (Order entered March 25, 2021) (*March 2021 Order*).

On May 24, 2021, PPL filed its Revised Phase IV Plan in compliance with the *March 2021 Order*.

On December 30, 2022, PPL filed a petition (2023 Petition) requesting permission to modify its Phase IV Plan. Specifically, in the 2023 Petition, the Company requested approval of eleven modifications, consisting of both "minor" and "major" changes as defined in the Commission's expedited review process, as set forth in *Energy Efficiency and Conservation Program*, Docket No. M-2008-2069887 (Order entered June 10, 2011) (*Minor Plan Change Order*). PPL requested that the Commission review and approve all of the proposed modifications set forth in its 2023 Petition pursuant to the "major" change process, which provides parties with thirty days to file comments, an answer, or both, and twenty days to file replies.

The OSBA and CAUSE-PA both filed an Answer to the 2023 Petition on January 19, 2023³ and January 30, 2023, respectively. On January 30, 2023, CAUSE-PA filed Comments to the 2023 Petition. Also on January 30, 2023, PPLICA filed a Letter in Lieu of Comments with the Commission requesting that "the Commission take all reasonable steps to review the proposed budget reallocation within the requisite

³ The OSBA filed an Amended Answer and Verification to the 2023 Petition on January 26, 2023.

timeframe to ensure that PPL reflects the adjusted sector budgets in the public filing of its June 1, 2023, ACR [Act 129 Compliance Rider] rate adjustment.”

On January 30, 2023, the OCA filed a letter with the Commission to advise that it would not be filing Comments to PPL’s 2023 Petition.

PPL filed Reply Comments on February 21, 2023, setting forth the Company’s support for the proposed modifications outlined in its 2023 Petition.

On April 27, 2023, the Commission entered an Opinion and Order (*April 2023 Order*) granting, in part, and denying, in part, the Company’s 2023 Petition. Specifically, the Commission approved all of PPL’s proposed modifications, except for the Company’s proposed shift of approximately \$18 million from the Large Commercial and Industrial (C&I) sector budget in the Non-Residential Program to the Small C&I sector budget in the Non-Residential Program (i.e., Change No. 5) and the related changes to the savings and estimated peak demand reductions for the Large C&I and Small C&I sectors due to that proposed budget shift (i.e., Change Nos. 7 and 8). The Commission referred Change Nos. 5, 7, and 8 to the Office of Administrative Law Judge (OALJ) for proceedings as may be necessary and the issuance of a Recommended Decision within ninety (90) days of April 27, 2023.

On June 30, 2023, a Joint Petition for Settlement of All Issues (2023 Settlement) was filed. The Joint Petition was executed by PPL, the OSBA, PPLICA, and CAUSE-PA (2023 Joint Petitioners).⁴ The 2023 Settlement included Statements in Support filed by each 2023 Joint Petitioner, which were attached as appendices.

⁴ The OCA, CEO, and the SEF did not oppose the 2023 Settlement. The NRDC, which was a party to the initial Phase IV EE&C Plan litigation, had not been participating since that time, despite having been served with all orders and notices issued by the ALJs.

On July 25, 2023, the Commission issued the Recommended Decision (2023 Recommended Decision) of ALJs Hoyer and DeVoe, wherein the ALJs recommended approval of the 2023 Settlement. However, the ALJs also recommended certain modifications to the reporting requirements contained in numbered paragraphs 26 and 27 of the 2023 Settlement. No Party filed Exceptions to the 2023 Recommended Decision.

By Final Order entered August 24, 2023, the Commission adopted the 2023 Recommended Decision. *See, Petition of PPL Electric Utilities Corporation for Approval of its Act 129 Phase IV Energy Efficiency and Conservation Plan*, Docket No. M-2020-3020824, (Final Order entered August 24, 2023). (*August 2023 Order*).

On February 8, 2024, PPL filed the instant Petition requesting permission to further modify its Phase IV Plan (Proposed Plan Modification). Specifically, the Company requests approval of one “major” change to its Phase IV Plan. PPL requested that the Commission review and approve its Proposed Plan Modification pursuant to the “major” change process set forth in the *Minor Plan Change Order, supra*.⁵

As previously noted, the SEF filed Comments to the Petition on February 13, 2024. The OSBA filed a Letter in Support of the Petition on March 11, 2024.

As previously noted, no Reply Comments were filed.

⁵ As noted above, the “major” change process provides parties with thirty days to file comments, an answer, or both, and twenty days to file replies. The actual end of the thirty-day period to file comments was on March 9, 2024, which was a Saturday. Therefore, comments were due the next business day, or on Monday, March 11, 2024. Similarly, the actual end of the twenty-day period to file reply comments was on March 31, 2024, which was a Sunday. Therefore, reply comments were due the next business day, or on Monday, April 1, 2024.

II. Legal Standards

We have previously held that a petition to amend a Commission-approved Act 129 EE&C Plan is a petition to amend a Commission Order, pursuant to our Regulations at 52 Pa. Code §§ 5.41 and 5.572. *Minor Plan Change Order* at 14. While such a petition may raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, at the same time “[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.” *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (Order entered December 17, 1982) (*Duick*) (quoting *Pennsylvania Railroad Co. v. Pa. Public Service Commission*, 179 A. 850, 854 (Pa. Super. 1935)). Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

III. Discussion

In this case, there is no question that PPL has satisfied the *Duick* standards. PPL’s Proposed Plan Modification does not require the Commission to reconsider the same questions that were previously decided in this proceeding. Rather, PPL has proposed changes in its Phase IV Plan based on experience with its Phase IV Plan, as well as changes in circumstances since the Commission approved PPL’s Phase IV Plan and its subsequent 2023 Petition, as modified by the 2023 Settlement. Thus, the question for resolution is whether the Proposed Plan Modification should be approved.

We note that any issue that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that the Commission is 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, 744 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

A. PPL's Proposed Plan Modification

In its Petition, PPL proposes to shift approximately \$6 million from the Large C&I Sector's reserve incentive budget in the Non-Residential Program to the Small C&I Sector's reserve incentive budget in the Non-Residential Program.⁶ PPL explains that under its Phase IV Plan, there are incentive funding reserves allocated to each customer sector that are not associated with existing Plan participation, energy savings, or peak demand reductions. Rather, PPL continues, the contingency funding exists to permit the Company to, *inter alia*, implement pilot programs, respond to unforeseen market changes, incorporate emerging technologies, or ensure program continuity during times of unexpected customer participation trends. Proposed Plan Modification at 7.

More specifically, PPL states that the entire contingency funding of \$7 Million for the Small Commercial and Industrial Sector has been allocated to customer incentives because of continued higher than expected sector participation, leaving no incentive funding reserves, if needed, for Program Years 16 and 17 of Phase IV.⁷ Conversely, PPL explains that the Large C&I Sector's reserve incentive budget under the EE&C Plan is \$9 million, and that the Large C&I Sector's participation has been lower than anticipated. As a result, the contingency funding for the Large C&I Sector is approximately \$6 million more than required. Thus, PPL asserts that its Proposed Plan

⁶ PPL adds that its proposed shift would result in a concomitant shift of approximately \$929,910 of common costs from the Small C&I Sector to the Large C&I Sector, as the shift in reserve incentive budgets affects the percentages of total direct program costs upon which common costs are allocated. Petition at 7, n.10.

⁷ Program Year 16 is June 1, 2024 to May 31, 2025, and Program Year 17 is June 1, 2025 to May 31, 2026. *See, March 2021 Order* at 62.

Modification will help to ensure that adequate contingency funds exist for both sectors. Proposed Plan Modification at 7-8.

PPL also explains that it identified the Proposed Plan Modification through: (1) its experience in Phase IV of Act 129; (2) input from stakeholders, trade allies, conservation service providers (CSPs), and program participants; (3) the evaluation results of Program Years 13 and 14;⁸ and (4) the Company's ongoing coordination activities with other Pennsylvania EDCs. Proposed Plan Modification at 5.

According to PPL, if it does not adjust the above contingency budgets, at present, it is likely that the Company will not have sufficient time to receive approval for a modification to its Phase IV Plan later in Phase IV when the shift in funds is needed. As such, PPL argues that approval of its Proposed Plan Modification represents an important "safety net" for the Small C&I Sector. PPL further explains that there are no changes to the projected participation, energy savings, or peak demand reductions associated with its Proposed Plan Modification and that its proposal focuses solely on a shift in contingency funding. Accordingly, PPL requests that the Commission approve its Petition. Petition at 8.

PPL attached, as Appendix A, a black-lined amended version of its Phase IV Plan indicating the above-referenced amendments. PPL also indicates that it will post the black-line version of its Phase IV Plan on its Act 129 website. Petition at 9.

B. Comments

In its Letter, the OSBA represents that it has reviewed the Petition and has discussed the details of the Petition with the Company. The OSBA states that it supports

⁸ Program Year 13 was June 1, 2021 to May 31, 2022, and Program Year 14 was June 1, 2022 to May 31, 2023. *See, Id.*

the Proposed Plan Modification. According to the OSBA, the Proposed Plan Modification is just, reasonable, and should be approved. OSBA Letter at 1.

The SEF, likewise, supports approval of the Proposed Plan Modification. According to the SEF, the Proposed Plan Modification is reasonable and reflects actual participation levels in the Phase IV programs without changing the total cost of the Company's Phase IV Plan. SEF Comments at 2.

C. Disposition

On review, we shall grant PPL's Petition. At the outset, we note that pursuant to the *Minor Plan Change Order*, PPL served its Petition on the OCA, the OSBA, the Bureau of Investigation and Enforcement, and all other Parties that were parties of record in its Phase IV Plan Proceeding. *See*, Petition at 9. As discussed above, the OSBA filed a Letter, and the SEF filed Comments, in support of the Petition. However, no Party opposed the Petition.

Next, we highlight the following representations that PPL has made in its Petition:

1. If the Proposed Plan Modification is implemented, PPL continues to project that it will meet all of the Phase IV Plan compliance targets, within the 2% cost cap,⁹ with a distribution of programs, costs, and

⁹ The Act allows an EDC to recover all prudent and reasonable costs relating to the provision or management of its EE&C Plan but limits such costs to an amount not to exceed 2% of the EDC's total annual revenue as of December 31, 2006, excluding Low-Income Usage Reduction Programs established under Chapter 58 of our Regulations, 52 Pa. Code § 58. 66 Pa. C.S. § 2806.1(g). PPL's total annual revenues for calendar year 2006 were approximately \$3.08 billion. Accordingly, the 2% cost cap established by Act 129 for prior phases as well as for Phase IV was approximately \$61,501,376. *March 2021 Order* at 84.

savings to the three customer sectors that is reasonable and equitable.¹⁰

2. The overall Total Resource Cost (TRC) benefit-cost ratio of the revised EE&C Plan will remain at 1.15, which meets the Act 129 cost-effectiveness compliance requirement set forth in 66 Pa. C.S. § 2806.1(b)(1)(i)(I).¹¹
3. The Phase IV Plan, as revised by the Proposed Plan Modification will continue to meet the standard required in 66 Pa. C.S. § 2806.1(a)(5) and the *Phase IV Implementation Order*. Namely, the Phase IV Plan, will continue to offer each customer class at least one energy efficiency measure and contains a reasonable mix of energy efficiency programs for all customers.

Petition at 6. Finally, we note the Company's assertion that approval of the Proposed Plan Modification, at present, will provide a critical "safety net" for the Small C&I Sector when the shift in funding is needed. *See, Id.* at 7.

Based on the above, we find that PPL's Proposed Plan Modification is reasonable and in the public interest, and that no further investigation into the Proposed Plan Modification is necessary at this time. Accordingly, we shall grant the Petition and approve the Proposed Plan Modification.

¹⁰ The Commission's EE&C Program must include "[s]tandards 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). The Commission previously concluded that the Phase IV Plan includes a variety of energy efficiency and conservation programs that are equitably distributed among all classes of customers. *See, March 2021 Order* at 67.

¹¹ The overall portfolio of programs is deemed to be cost-effective if its TRC Benefits exceed its TRC costs or the benefit/cost ratio is at least 1.0. *See, Phase IV Plan* at 174.

IV. Conclusion

For the reasons discussed herein, we will grant PPL's Petition; and approve PPL's Proposed Plan Modifications; **THEREFORE,**

IT IS ORDERED:

1. That the Petition of PPL Electric Utilities Corporation for Approval of Changes to its Phase IV Act 129 Energy Efficiency and Conservation Plan, filed at Docket No. M-2020-3020824, and filed on February 8, 2024, is granted, consistent with this Opinion and Order.

2. That PPL Electric Utilities Corporation is permitted to implement its Revised Act 129 Phase IV Energy Efficiency and Conservation Plan consistent with this Opinion and Order.

3. That a copy of this Opinion and Order be served on all of the parties of record.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: April 25, 2024

ORDER ENTERED: April 25, 2024