**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held January 27, 2011

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| Commissioners Present:  James H. Cawley, Chairman  Tyrone J. Christy, Vice Chairman  John F. Coleman, Jr.  Wayne E. Gardner  Robert F. Powelson | |
| |  |  | | --- | --- | | Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans | Docket Nos. M-2009-2092222  M-2009-2112952  M-2009-2112956 | |  |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) are the comments filed by the UGI Distribution Companies (UGI) and the Pennsylvania Communities Organizing for Change (PCOC) on October 15, 2010, and October 18, 2010, respectively to the Program Year 1 Annual Reports of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company (FirstEnergy or the Companies), filed on September 15, 2010, for the year ending May 1, 2010. On November 4, 2010, the Companies filed Replies to Comments. Also on November 4, 2010, the Met-Ed Industrial Users Group (MEIUG), Penelec Industrial Users Alliance (PICA) and the Penn Power Users Group (PPUG), jointly filed a Letter stating that they will not be filing Replies to either UGI’s or PCOC’s comments. In addition, before the Commission is a petition to intervene filed by PCOC on October 18, 2010, and a petition to withdraw filed by the Association of Community Organizations for Reform Now (ACORN), which was also filed on October 18, 2010.

# I. Background[[1]](#footnote-1)

## A. Act 129

Governor Edward G. Rendell signed Act 129 of 2008 (Act or Act 129) into law on October 15, 2008. The Act took effect thirty days thereafter on November 14, 2008. Act 129 has several goals including reducing energy consumption and demand. Among other things, the Act 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:

* A procedure for approving energy efficiency and conservation plans submitted by electric distribution companies (EDCs).
* A process to evaluate and verify the results of each plan and the program as a whole.
* A process through which recommendations can be made for the employment of additional consumption reduction measures.
* 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).

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 EE&C plans. The *Implementation Order* stated at page 24:

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. The Commission notes that, in addition to the above-described process, the Commission retains its statutory authority to conduct investigations and initiate statutory and regulatory compliance proceedings against jurisdictional utilities.

The Companies filed the Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans (Joint Petition) on July 1, 2009, requesting Commission approval of their EE&C Plans (Plans) as well as authorization to implement the proposed cost recovery mechanism. The matter was assigned to Administrative Law Judge (ALJ) David A. Salapa. FirstEnergy revised the Plans during the proceedings (as revised, July 2009 Plans). On September 22, 2009, ALJ Salapa certified the record to the Commission for consideration and disposition. By Opinion and Order entered October 28, 2009 (*October 2009 Order*), *inter alia*, weapproved in part and rejected in part the July 2009 Plans, and directed FirstEnergy to submit revised plans within sixty days.

On November 12, 2009, the OSBA filed a Petition for Reconsideration (Petition)*.* The Commission denied the Petition by Order entered on December 17, 2009 (*December 2009 Order)*.

The Companies submitted Revised Plans (January 2010 Plans), which were approved in part and rejected in part by Opinion and Order entered January 28, 2010 (*January 2010 Order)*. The Companies were ordered to submit further Revised Plans within sixty days. These Plans were filed on February 5, 2010 (February 2010 Plans) and were approved by Opinion and Order entered February 26, 2010 (*February 2010 Order*).

By Secretarial Letter issued June 24, 2010, the Commission provided updated guidance to EDCs regarding the 2010 Act 129 annual reporting requirement. Specifically, for the EE&C plan year ending May 31, 2010, the Commission required EDCs to submit their annual report and any proposed EE&C plan revisions by September 15, 2010. The Commission would accept recommendations for plan improvements, or objections to proposed changes in the plans, for thirty days. Interested parties could submit replies to plan recommendations or objections to proposed changes during the next twenty days. At that time, the Secretarial Letter stated that the Commission would decide whether to refer the proceeding to the Office of Administrative Law Judge (OALJ) for hearing.

By Secretarial Letter issued September 1, 2010, the Commission provided guidance to EDCs regarding the format of revised EE&C plans, including a requirement that all changes to text and tables be reflected in a black-lined version of the EE&C Plan.

**II. Procedural History**

As stated previously, our *Implementation Order* stated that EDCs could propose plan changes in conjunction with their annual reports. On September 15, 2010, the Companies filed their Annual Reports for Program Year 1. They did not, however, propose any changes in their EE&C Plans as approved by this Commission.

On September 30, 2010, the Companies filed replacement pages to the Year 1 Report to reflect errors found in the calculations used to determine the verified energy and demand impacts for certain lighting measures. The Companies stated that these errors had minimal affects on the Program Year 1 Annual Reports. The September 30, 2010 update includes the following three corrections:

1. The incorrect application of the Technical Reference Manual regarding hours of use and coincident factors for lighting.

2. To re-categorize the energy savings for the WARM low-income programs as “unverified ex-post savings” because the WARM programs are evaluated with an interim protocol that has not yet been approved by the Statewide Evaluator (SWE).

3. To re-categorize program finances for the Residential Home Energy Audit Program to the Residential Low-Income Program where the costs were initially classified in the Administration category of EDC Implementation Costs instead of the more appropriate category of EDC Incentives to Participants.

As noted, UGI and PCOC filed comments proposing changes in the Plans. The Companies filed Replies to Comments objecting to the proposed changes.

As noted, on October 18, 2010, ACORN filed a Petition to Withdraw from the instant proceeding. Also, on October 18, 2010, PCOC filed a Petition to Intervene in the instant proceeding pursuant to 52 Pa. Code 5.71 – 5.74.

As stated previously, on November 4, 2010, MEIUG, PICA and PPUG, jointly filed a Letter stating that they will not be filing Replies to either UGI’s or PCOC’s comments. Also on November 4, 2010, FirstEnergy filed its Answer opposing PCOC’s Petition to Intervene. On November 15, 2010, the Office of Consumer Advocate (OCA) responded to FirstEnergy’s Answer in Opposition to PCOC’s Petition to Intervene.

# III. 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 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);](file:///C:\Documents%20and%20Settings\research\buttonTFLink) see also, generally, [University of Pennsyl­vania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file:///C:\Documents%20and%20Settings\research\buttonTFLink)

## A. Procedural Issues

On October 18, 2010, ACORN filed a Petition to Withdraw because it has dissolved as a corporate entity and has ceased to exist as an organization. No Party objected to this Petition. Pursuant to 52 Pa. Code § 5.94, a petition to withdraw a pleading in a contested proceeding may be granted based on the petition, any objections thereto, and the public interest. Based on the petition and the public interest, we will grant ACORN’s Petition to Withdraw.

Also on October 18, 2010, PCOC filed a Petition to Intervene. PCOC stated that it is a not-for-profit advocacy and membership organization whose mission is to advocate on behalf of low income consumers on numerous issues, including utility issues. PCOC alleged that many of its constituents reside within FirstEnergy’s service territory, are FirstEnergy customers, rely on FirstEnergy’s electric service and will be affected by the issues in this proceeding. PCOC therefore concludes that its constituents have a direct, immediate, substantial and direct interest in this proceeding. PCOC seeks to intervene to protect the interests of itself and its constituents. PCOC avers that these interests are not adequately represented, considering the withdrawal of ACORN from this proceeding. PCOC’s Petition to Intervene at ¶¶ 7-8.

On November 4, 2010, FirstEnergy filed an Answer challenging PCOC’s Petition to Intervene. FirstEnergy argued that PCOC failed to demonstrate that it has an adequate interest in the proceeding. FirstEnergy also alleged that the interests of low-income customers are sufficiently represented by the OCA. Additionally, FirstEnergy noted that the verification attached to PCOC’s Petition to Intervene was not signed by a representative of PCOC. FirstEnergy’s Answer at ¶¶ 6-7.

On November 15, 2010, the OCA filed a response to FirstEnergy’s Answer. The OCA supported PCOC’s intervention and argued that the interventions of PCOC and the OCA are not duplicative as their interests are not identical. OCA’s Response at ¶¶ 5‑17.

We note that, on the date this proceeding was filed, four other EDCs filed proposed changes to their EE&C Plans. PCOC petitioned to intervene in each of these proceedings. In three cases, PCOC’s intervention was unopposed and was granted. *Petition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program,* Docket No. M‑2009-2093215; *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of Costs Through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan,* Docket No. M-2009-2093218, and *Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation and Demand Response Plan*, Docket No. M-2009-2093217. In the remaining proceeding, PCOC’s intervention was granted over the opposition of the EDC. *PPL Electric Utilities Corporation Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093216.

We believe that PCOC has demonstrated that it has an adequate interest in this proceeding that is not represented by the OCA. PCOC acts as an advocate on behalf of low-income households. Our regulations at 52 Pa. Code §5.72(a)(3) permit the intervention of a petitioner whose interest is of such nature that participation in the matter may be in the public interest. PCOC is acting in the public interest by focusing on the energy needs of low-income households. Further, PCOC solely represents the interest of low-income customers while the OCA represents the interests of all residential customers. While there may be some overlap between their interests, PCOC and the OCA may have different positions in terms of how FirstEnergy’s EE&C Plan comports with Act 129.

Accordingly, as discussed above, we will grant ACORN’s Petition to Withdraw and, additionally, we will grant PCOC’s Petition to Intervene.

## B. Companies’ Compliance with Monitoring and Reporting Requirements

The Commission’s EE&C Program is to include an evaluation process, which involves a process to monitor and verify data collection, quality assurance and the results of each EDC’s EE&C Plan as well as the Commission’s EE&C 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. § 2806.1(b)(1)(i)(C). 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).

#### 1. Prior Commission Orders and EE&C Plans

As required by our *October 2009 Order*, the Companies’ January 2010 Plans provided the Commission with an update on the development of their reporting and tracking systems. *October 2009 Order* at 119-120. Considering that the reporting and tracking systems were not yet in place, the Companies were directed to provide the Commission with a further update on these systems in their February 2010 Plans. We concluded that we would address this topic further based on the information in the February 2010 Plans. *January 2010 Order* at 50.

In their February 2010 Plans, the Companies stated that they had evaluated nine proposals for a reporting and tracking system. Five conservation service providers (CSPs) were selected for interviews and demonstrations. In our *February 2010 Order,* we approved the reporting and tracking system in the February 2010 Plans, subject to approval of the Companies’ contract with a CSP, consistent with the *Implementation Order. February 2010 Order* at 15-16.

#### 2. Disposition

By Secretarial Letter issued on April 19, 2010, we approved the CSP agreement filed on March 9, 2010, in connection with providing tracking and reporting solutions for approved EE&C programs of the Companies. We, therefore, find that the Companies have satisfied the condition set forth in our *February 2010 Order* and their reporting and tracking systems are approved.

## C. Proposals to Change the Companies’ EE&C Plans

As stated above, the Companies have not proposed any changes in their EE&C Plans. However, in their comments, UGI and PCOC have proposed changes in those Plans. We will consider each Party’s proposal in turn.

**1. UGI’s Proposal**

**a. Positions of the Parties**

In its comments, UGI asserts that the Companies’ EE&C plans are deficient in that they do not include a requirement to track Program participants who convert from gas appliances to electric appliances. UGI Comments at 4. In support of its contention, UGI relies upon our *October 2009 Order*, which directed the Companies to:

… track appropriate data regarding fuel switching, in coordination with the Statewide Evaluator, including at least the following: (1) type of appliance or equipment being replaced; (2) the availability of natural gas at the customer’s location or immediate area; and, (3) whether electric appliances or equipment were installed in areas where natural gas is available.

#### October 2009 Order at 44; see also Ordering Paragraphs 10, 19 and, 27.

UGI requests that the Commission direct the Companies to (1) comply with the *October 2009 Order* and (2) amend their EE&C plans to (a) report the information required by the *October 2009 Order;* (b) explain how the information is tracked and verified; and (c) explain how this compliance information will be made publicly available. UGI Comments at 4-5.

In reply, the Companies state that the Commission’s *October 2009 Order* did not require the Companies to adopt UGI’s proposed fuel substitution programs, deeming the proposals as being premature, and referred the issue of fuel substitution to a working group. The Companies assert that the *October 2009 Order* required the Companies, in coordination with the SWE, to track appropriate data regarding gas to electric conversion. Reply at 5. Further, the Companies contend that they did track this information and continue to do so. They argue, however, that the Commission did not require this data to be included within the Annual Report. Reply at 5. The Companies assert that the Commission’s requirement was to track this data, in accordance with the guidance and format provided by the Commission and SWE. Reply at 5. Accordingly, the Companies state that they are able to extract relevant data, in sufficient time, to respond to a request for such data from either the Commission or the SWE. Reply at 5, 6. Thus, the Companies believe that UGI’s recommendations are adequately addressed and that further action by the Commission is not warranted at this time. Reply at 6.

**b. Disposition**

We disagree with UGI’s averment that the Companies’ EE&C Plans are deficient because they do not include a requirement to track Program participants who convert from gas appliances to electric appliances. Our review of the Companies’ February 2010 Plans confirms that the language prescribed by our *October 2009 Order* has been included within the Plans.[[2]](#footnote-2)

Additionally, we stated in our *October 2009 Order* that:

Moreover, in regard to the NGDCs and the DEP’s concerns related to the potential to unintentionally promote fuel switching from a combustion appliance or equipment to an electric appliance or equipment, we find their arguments to be speculative and unconvincing. As these plans develop over time, we will review their progress. Nevertheless, we find merit in the NGDCs’ suggestion that relevant data be collected. We therefore direct that FirstEnergy track appropriate data, in coordination with the Statewide Evaluator, including at least the following: (1) type of appliance or equipment being replaced; (2) the availability of natural gas at the customer’s location or immediate area; and (3) whether electric appliances or equipment were installed in areas where natural gas is available. This information, as well as other data obtained through the Statewide Evaluator, will be helpful to the fuel switching working group as it studies market potential and the potential impacts of EE&C Plans.

*October 2009 Order* at 44. We concur with the Companies and find that they have complied with our prior directive to track the appropriate data and make it available to the Commission or the SWE as required.

As stated above, we believe the Companies are in compliance with our *October 2009 Order,* however, upon further review, clarification of our *October 2009 Order* is appropriate at this time. The intent of our finding in the *October 2009 Order,* as quoted above was not to maintain as proprietary the level of fuel switching from a combustion appliance or equipment to an electric appliance or equipment within each EDC’s service territory. Accordingly, we shall clarify our *October 2009 Order* by requiring each EDC to include within its Act 129 Annual Report to the Commission, commencing with the 2011 Report, the same data provided to the SWE regarding fuel switching from a combustion appliance or equipment to an electric appliance or equipment within each Program Year and on a cumulative basis.

**2. PCOC’s Proposal**

#### a. Positions of the Parties

#### In its Comments, PCOC strongly encourages the Companies to implement the specific measures in their EE&Cs that are targeted to multi-family properties. According to PCOC, the Companies missed out on the substantial benefits of this program by failing to achieve a Program Year 1 implementation. PCOC Comments at 1. PCOC asserts that the Companies should implement Commission-approved multi-family projects in coordination with other available Federal weatherization funding. PCOC Comments at 2. PCOC also states that the Pennsylvania Housing Finance Agency (PHFA) has been working with three collaborative groups of property owners to compile a list of properties for treatment. As a result, the Companies have an immediate source of properties that may qualify for both their EE&C Plans along with available federal funding. PCOC Comments at 2, 3.

The Companies recognize that they did not implement specific measures targeted to multi-family properties in Program Year 1. Reply at 3. The Companies agree that multi-family housing provides opportunities for energy savings. The Companies contend that those programs, launched in June 2010, are currently being implemented pursuant to their EE&C Plans. Reply at 3. In coordination with the PHFA, the Companies have identified a total of fourteen multi-family housing units and have contacted each of the property managers informing them of the benefits offered by the EE&C Plan. Reply at 4. The Companies state that they are committed to implementing the multi-family program and believe that, with the start-up of the program in Year 2, the concerns of PCOC are being addressed. As a result, they conclude that no further action is required by the Commission at this time. Reply at 4.

**b. Disposition**

We recognize that the Companies were not able to implement specific measures for this program during Year 1 due to start-up logistics and the Companies’ desire to prioritize larger, more easily implemented programs. We are encouraged that in coordination with the PHFA, the Companies have identified a total of fourteen multi-family housing units and have contacted each of the property managers informing them of the benefits offered by the EE&C Plan. Accordingly, we find that PCOC’s concerns are being adequately addressed by the Companies and that no change to the Companies’ EE&C Plans is necessary at this time.

**V. Conclusion**

Based on the above discussion, we shall grant the Petition of ACORN to withdraw from this proceeding and grant the Petition of PCOC to intervene in this proceeding. Additionally, we shall clarify our *October 2009 Order* as discussed above, and reject the changes proposed by UGI and PCOC in their comments to the Companies’ approved EE&C Plans; **THEREFORE**,

**IT IS ORDERED:**

1. That the Petition to Withdraw, filed by the Association of Community Organizations for Reform Now, is granted.

2. That the Petition to Intervene, filed by Pennsylvania Communities Organizing for Change, is granted.

3. That the proposals of UGI Distribution Companies, for changes in the Energy Efficiency and Conservation Plans of Metropolitan Edison Company, Pennsylvania Power Company, and Pennsylvania Electric Company, are denied.

4. That the proposals of Pennsylvania Communities Organizing for Change, for changes in the Energy Efficiency and Conservation Plans of Metropolitan Edison Company, Pennsylvania Power Company, and Pennsylvania Electric Company, are denied.

5. That Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company are directed to include within their Act 129 Annual Report to the Commission, commencing with the 2011 Report, the same data provided to the Statewide Evaluator regarding fuel switching from a combustion appliance or equipment to an electric appliance or equipment within each Program Year and on a cumulative basis.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: January 27, 2011

ORDER ENTERED: January 27, 2011

1. A description of : (1) Act 129; (2) the Commission’s various Act 129 proceedings; (3) FirstEnergy’s previous EE&C Plans; and (4) the Commission’s review and approval of FirstEnergy’s EE&C Plans was set forth in our Opinions and Orders at this Docket entered on October 28, 2009, January 28, 2010, and February 26, 2010. [↑](#footnote-ref-1)
2. *See* the Final Plans of Met Ed at 103; Penelec at 106; and Penn Power at  100. [↑](#footnote-ref-2)