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April 21, 2011

Rosemary Chiavetta, Esq., Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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PA PUC  
SECRETARY'S BUREAU

**RE: Energy Efficiency and Conservation Program  
Docket No. M-2008-2069887**

Dear Secretary Chiavetta,

Enclosed for filing are an original and 15 copies of the Energy Association of Pennsylvania's Comments in the above-referenced docket.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna M.J. Clark", is written over the typed name.

Donna M.J. Clark  
Vice President and General Counsel

cc: Robert F. Powelson, Chairman  
John F. Coleman, Vice Chairman  
James H. Cawley, Commissioner  
Tyrone J. Christy, Commissioner  
Wayne E. Gardner, Commissioner  
Kriss Brown (via e-mail: [Kribrown@state.pa.us](mailto:Kribrown@state.pa.us))

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APR 21 2011

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Re: Energy Efficiency and Conservation Program : Docket No. M-2008-2069887

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COMMENTS OF THE ENERGY ASSOCIATION OF PENNSYLVANIA  
TO TENTATIVE ORDER PROPOSING EXPEDITED PROCESS FOR APPROVAL OF MINOR  
CHANGES TO EDC ACT 129 EE&C PLANS

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**I. Introduction**

In the implementation of Act 129 of 2008, the Pennsylvania Public Utility Commission ("PUC" or "Commission") adopted a procedure to consider changes to the approved Energy Efficiency and Conservation Plans ("EE&C Plans") of electric distribution companies (EDCs"). *See Energy Efficiency and Conservation Program Implementation Order* ("Implementation Order"), Docket M-2008-2069887 (entered on January 16, 2009) at p. 24. Initially, the Implementation Order stated that "EDCs and other interested stakeholders, as well as the statutory advocates, [could]...propose plan changes in conjunction with the EDC's annual report filing..." *Id.* The process established by the Implementation Order allows the Commission and any interested party to make a recommendation or object to an EDC proposed revision within thirty days of the annual report filing. EDCs then have twenty days to file a response, "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." *Id.*

As noted in the instant Tentative Order, the Commission is considering an expedited process in light of recent experience following the filing of the first set of annual reports under

Act 129 in September 2010 where all requests for modification were referred to an ALJ for hearings. Resolution of EDC proposed changes pursuant to administrative hearings has taken more than four months<sup>1</sup> and the Commission now recognizes that “such delays in obtaining approval of EE&C Plan changes could increase the cost of administering such plans and may cause the EDCs and their customers to miss opportunities for timely and cost-effective implementation of the energy efficiency measures.” *Tentative Order* at p. 1. Further, the delay in implementing proposed changes may hinder compliance efforts in the later stages of an EE&C Plan when EDCs are working to meet mandated reductions in energy usage and demand within the time constraints of the legislation.

The Energy Association of Pennsylvania (“EAP” or “Association”) and its member EDCs subject to Act 129 appreciate the Commission’s consideration of an expedited process to consider EDC proposed minor modifications to EE&C Plans.<sup>2</sup> The Association believes that the process outlined in the Tentative Order can be further streamlined and yet provide opportunities for stakeholder input without first requiring a notice of intent to file. The Association further requests any final order clarify the definition of “minor changes” in order to encourage a swift resolution of requested modifications following notice and an opportunity to respond to interested parties and to avoid an unnecessary referral of the matter to an administrative hearing.

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<sup>1</sup> In particular, a final order resolving the request by PPL to modify its EE&C Plan filed on September 15, 2010 has not been issued by the Commission.

<sup>2</sup> The Association supports the suggestion outlined by PPL in its comments that the Commission re-evaluate its position regarding the need for PUC approval of all proposed changes to an EE&C Plan. Commission approval of any and all modifications to an approved EE&C Plan is not required under the Public Utility Code and, as evidenced by the procedure employed last fall when EDCs sought Plan changes, the process is time-consuming, administratively burdensome, and hinders the EDCs’ ability to effectively incorporate experience gained in the course of implementation. See PPL Comments at Section II, A.

## **II. Comments**

### **A. Initiate the Expedited Process By Filing the Proposed "Minor Changes" and Serving the Statutory Advocates and All Parties of Record.**

Rather than requiring advance service of revisions that an EDC intends to file as set forth in the Tentative Order, the Association recommends that an EDC initiate a request for "minor changes" through a filing that outlines the proposed modifications and seeks an expedited process. Service upon the statutory advocates and all parties of record would be required and would assure that all stakeholders are notified as a matter of course and provided an opportunity to file a response. EAP maintains that the requirement to provide advance service of the proposed "minor changes" is an unnecessary first step that does not promote efficient use of time and resources.

In order to provide interested parties with sufficient time to review the proposed changes and to facilitate discussions, EAP suggests an initial ten (10) day period to file objections followed by a five (5) day period for filing comments and a second (5) day period for reply comments. If no objections are submitted after the initial ten (10) days, EAP recommends Commission approval within five (5) days without further administrative review or proceedings. EAP maintains that for the majority of modifications which an EDC would identify as "minor" such a process would provide an opportunity for interested parties to comment, would facilitate a rapid resolution of the request and any objections, and would accord EDCs the flexibility to implement changes timely so as to improve delivery to consumers and enhance the opportunity to meet statutory mandates.

If an objection or objections were received within the initial ten (10) day period, the additional five (5) days for comment followed by five (5) days for reply comments would provide an adequate opportunity for all interested parties to be heard and would create an

opportunity for refinement of the “minor changes” requested by the EDC. Following the close of the reply comment period, EAP agrees that Commission staff should have ten (10) days to issue a Secretarial Letter approving or disapproving some or all of the proposed modifications, detailing the reasons for its decision and recommending referral to an ALJ for hearings if necessary. See Tentative Order at pp. 4 – 5.

Additionally, in order to forestall an automatic referral to an ALJ proceeding, the Association requests that the Final Order in this matter establish a standard to guide staff when considering such a referral. For example, a referral may be appropriate if the objections raise issues of fact or staff concludes that the proposed modifications do not fit the definition of “minor changes”. EAP believes that it is necessary to provide guidance in this regard to avoid the situation where, when an EDC requests “minor changes”, a single party can pose general objections and force the matter to an administrative hearing without specifying the particular nature of the objection or identifying how the modification violates Act 129.

While parties to the individual EE&C Plan proceedings may offer differing opinions regarding specific plan measures or the manner in which an EDC decides to implement or administer its EE&C Plan, it is ultimately the responsibility of the EDC to comply with the statute. A vague objection should not provide an opportunity to delay “minor changes” and jeopardize opportunities for increased energy efficiency or demand reductions, particularly where the legislation couples mandates with penalties and participation by consumers is voluntary. The prescriptive nature of Act 129 supports providing flexibility to EDCs to react in a timely manner to actual experience gained in implementing EE&C Plans without creating artificial barriers to successful compliance.

In situations where the staff issues a Secretarial Letter, EAP supports the provision of a shortened ten (10) day period to appeal staff action pursuant to 52 Pa. Code § 5.44. EAP

further requests the Commission to consider inclusion of an additional procedural timeframe to expedite final resolution, i.e. that the Commission address any appeal either at the first public meeting following the filing of an appeal or within thirty (30) days of the filing of an appeal whichever is longer. Establishing a timeframe for the Commission resolution of an appeal from a staff action in this circumstance would further ensure that proposals for “minor changes” to an EE&C Plan are decided promptly so as to promote flexibility and avoid cumbersome administrative proceedings that do not adequately reflect actual operational and implementation experiences.

Adoption of the Association suggestions discussed above would modify the process set forth in the Tentative Order at pp. 4 – 5 as follows:

1. Authority to approve “minor changes” to EE&C Plans will be delegated to CEEP, FUS and the Law Bureau;
2. EDCs shall file with the Commission and serve on the statutory advocates (OCA, OSBA and OTS) as well as all parties of record the proposed “minor changes” and request expedited consideration;
3. Any interested party can file an objection within ten (10) days of the EDC filing requesting a “minor change”. If no objections are received, the Commission approves the requested modifications within five (5) days without further administrative review or proceedings;
4. Filing of an objection in the initial ten (10) day period triggers an additional five (5) day period for comments and a second five (5) day period for the filing of reply comments. Upon the closing of the reply comment period, staff would issue a Secretarial Letter within ten (10) days approving or disapproving some or all of the proposed “minor changes” including an explanation for its ruling in the

- Secretarial Letter. Staff would have the option of referring the matter to an ALJ hearing based on Commission parameters set forth in the Tentative Order; and
5. Parties would be provided ten (10) days to appeal the staff action pursuant to 52 Pa. Code § 5.44. The Commission would resolve any appeal either at the first public meeting following the filing of an appeal or within thirty (30) days of the filing of an appeal whichever is longer.

The Association believes that employing the above procedures would assure that parties were accorded notice and an opportunity for input. Additionally, the procedure would further streamline consideration of “minor changes” and provide flexibility to EDCs to amend EE&C Plans to accurately reflect actual conditions and experience gained in the field in a timely and meaningful fashion without unnecessary administrative delay.

B. Clarify the Definition of “Minor Changes” to an EE&C Plan.

EAP initially suggests that the identification of “major changes” would simplify defining “minor changes” and provide a clear distinction for staff to apply when faced with a request for an EE&C Plan modification. “Major changes” to an EE&C Plan include shifting program funds between customer classes; increasing the projected cost of a program for a customer class apart from shifting funds; and adding or deleting a program. The Association maintains that all other changes could be deemed minor so long as they do not result in an overall increase in cost to a customer class.

This approach to plan modification would simplify any consideration process developed and provide precise parameters for staff to apply in making a determination to approve “minor changes”. It cannot be overstated that the statute mandates achievement of energy and demand savings by a utility within a specified time period and with a set amount of funding without requiring customer participation. According flexibility to the utility in the

implementation and administration of EE&C Plans, including the flexibility to make changes based on field observations and experience, is aligned with a statute which places maximum responsibility for success on the regulated entity and limits the manner in which compliance is to be achieved.

In keeping with this approach, the Association would offer a more expansive definition of "minor changes" than that set forth in the Tentative Order to include:

1. Elimination of a measure that is underperforming, no longer viable for reasons of cost-effectiveness, savings or market penetration or has met its 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;
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; and
4. Modifying program delivery and management functions such as evaluation, measurement and verification, quality assurance, marketing, program management, tracking systems program administration, program schedules and Total Resource Cost Test inputs so long as the changes do not increase the cost to a customer class.

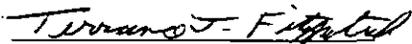
The Association maintains that the identification of "major changes" coupled with a broad definition of "minor changes" enables staff to exercise its delegated authority in a manner

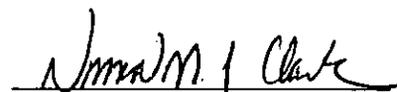
which supports resolution of possible objections to a requested modification by an EDC and forestalls requests for unnecessary and costly administrative hearings by stakeholders.

### III. Conclusion

As detailed above, the Association offers an alternate approval process for "minor changes" to EDCs' Act 129 EE&C Plans through a procedure which affords an opportunity for input from interested parties, delegates limited authority to Commission staff to approve or disapprove requested modifications with the ability to refer the matter to an ALJ hearing based on a specific standard, allows for an appeal of staff action and provides a means to resolve any appeal within a prescribed time period. Finally, the Association suggests that in clarifying the scope of "minor changes", the Commission first identify "major changes" which would necessarily warrant a formal administrative hearing and then broaden the definition of "minor changes" to include a variety of modifications that do not increase the overall costs to a customer class. In this manner, EDCs will gain the flexibility to propose modifications in the implementation of an approved EE&C Plan which is commensurate with the obligations imposed by the legislature under Act 129.

Respectfully Submitted,

  
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