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File #: 2507/140069

April 21, 2011

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: Comment of PPL Electric Utilities Corporation - Docket No. M-2008-2069887

Dear Secretary Chiavetta:

Enclosed, for filing, is an original and fifteen copies the Comments of PPL Electric Utilities Corporation in the above-referenced proceeding.

As requested in the Tentative Order issued on April 1, 2011 at Docket No. M-2008-2069887, a copy of the appended comments shall be electronically mailed to Kriss Brown at kribrown@state.pa.us.

Respectfully Submitted,

Andrew S. Tubbs

Enclosures

cc: Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF
PPL ELECTRIC UTILITIES CORPORATION

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. INTRODUCTION

On April 1, 2011, the Pennsylvania Public Utility Commission ("PUC" or the "Commission") entered a Tentative Order in the above-captioned proceeding. In that Tentative Order, the Commission issued, for public comment, a proposed expedited process for approval of minor changes to electric distribution companies' ("EDC") Act 129 Energy Efficiency and Conservation Plans ("EE&C Plans"). *Energy Efficiency and Conservation Program*, Tentative Order at Docket No. M-2008-2069887 (Entered April 1, 2011).

In its Tentative Order, the Commission states that because EE&C Plans are approved by Commission Order, procedures for rescission and amendment of Commission Orders must be followed to amend the EE&C Plans and to assure due process for all affected parties. Tentative Order at p. 3. Therefore, if an EDC believes it is necessary to modify its EE&C Plan, the EDC must file a petition requesting that the Commission rescind and amend the prior Commission Order approving the plan. *Id.* In the Tentative Order, the Commission noted that recent experience has revealed that this process can take more than four months to complete, regardless of the magnitude of the changes requested. Tentative Order at p. 1. Furthermore, the Commission recognized 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 energy efficiency measures. *Id.*

In recognition of the fact that a more expedited approval process for some plan changes could reduce administrative costs, reduce the time it takes to end underperforming programs, implement or expand more effective programs, and increase the ability of the EDCs to meet the mandated goals of Act 129 in a more cost effective manner, the Commission proposed the following alternative process for approving proposed minor changes to an Act 129 EE&C Plan:

1. Authority to approve minor EE&C Plan changes will be delegated to the Bureau of Conservation, Economics and Energy Planning, the Bureau of Fixed Utility Services and the Law Bureau.

2. EDCs shall serve a copy of any proposed plan revisions that it intends to file on the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Office of Trial Staff ("OTS") and all parties of record at least 10 days prior to making its filing with the Commission.

3. EDCs shall file with the Commission and serve on the OCA, the OSBA, the OTS and all parties of record the proposed revised plan identifying the minor changes. The filing shall indicate the date the parties were given advanced notice of the proposed changes.

4. All interested parties will have 10 days to file comments on the proposed plan changes. All parties will then have 5 days to file reply comments.

5. Commission staff will have 10 days from the close of the reply comment period to issue a Secretarial Letter approving or disapproving some or all of the proposed changes along with an explanation for its rulings.[1]

6. Parties would then be given 10 days to appeal the staff action in accordance with 52 Pa. Code § 5.44.

[1] Commission staff also could refer some or all of the proposed revisions to the Office of Administrative Law Judge for hearings and a recommended decision, if necessary.

The Commission proposes to limit the approval authority delegated to staff to the following "minor" EE&C Plan changes:

- Elimination of a measure that is underperforming or has exhausted its budgeted amount.
- The transfer of funds from one measure to another measure within the same customer class.
- A change in the conditions of a measure, such as the addition of new qualifying equipment or a change in the rebate amount that does not increase the overall costs to that customer class.

The Commission also explains in the Tentative Order that all proposed changes that do not fit within these three categories noted above would be handled through the current full approval process.

II. COMMENTS OF PPL ELECTRIC UTILITIES CORPORATION

PPL Electric applauds the Commission for reexamining this issue and for proposing an expedited process for approval of changes to the EE&C Plans. PPL Electric supports any effort to approve and implement changes more efficiently and expeditiously than the current process, which takes approximately six (6) months from the date a proposed change is included in an EDC's petition to modify an EE&C Plan to the date the change is approved.[2] However, PPL Electric requests that the Commission incorporate the following changes to the expedited review process.

First and foremost, PPL Electric requests that the Commission reevaluate its position that all proposed changes to an EDC's EE&C Plan must be presented to and approved by the Commission. As PPL Electric recently argued in *Petition of PPL Electric Utilities Corporation for Approval of Changes to its Act 129 Energy Efficiency and Conservation Plan,* Docket No. M-

[2] As an example, PPL Electric submitted a petition to modify its Act 129 EE&C Plan on September 15, 2010 and, as of April 19, 2011, there is no final Commission Order on that petition.

2009-2093216, the Public Utility Code does not require that all proposed changes be approved by the Commission. PPL Electric does not wish to re-litigate the proceeding at Docket No. M-2009-2093216, but requests that the Commission reconsider the position it articulated in the Tentative Order. EDCs must be nimble and flexible in implementing their EE&C Plan if they are to have any chance of meeting the targets mandated by Act 129. This sentiment is embodied by the Commission's commitment that it would not micromanage the EE&C Plans. Moreover, it recognizes the fact that EDCs may be subject to penalties if the mandates are not met, and if an EDC fails to achieve the required reductions in consumption required by 66 Pa.C.S. § 2806.1, the responsibility to achieve the reductions in consumption is transferred to the Commission. 66 Pa.C.S. § 2806.1(f). Therefore, some level of flexibility is appropriate and prudent.

However, if the Commission does not accept PPL Electric's recommendation regarding the need to review all changes to EE&C Plans, the Company proposes the following changes to the specific proposal stated in the Tentative Order. EDCs should not be required to serve the proposed changes in advance of official filing because such a step is unnecessary. PPL Electric also requests that the Commission establish a specific standard for when minor changes filed pursuant to the expedited process are referred to the Office of Administrative Law Judge. The establishment of such a standard would ensure that referrals to the Office of Administrative Law Judge only occur when such processes are clearly necessary. Furthermore, the Commission should address any appeal of a staff action on an expedited basis to ensure that approval of minor proposed changes do not take several months. PPL Electric also requests that the full current review process be required for only "major" changes, as that term is defined below, and that the expedited approval process be available to all other changes, *i.e.*, minor changes or non-major changes.

A. All Changes to an EE&C Plan Do Not Require Commission Approval

It is PPL Electric's position that requiring EDCs to petition the Commission for approval of any and all modifications to an approved EE&C Plan is not required under the Public Utility Code and results in substantial administrative and regulatory burdens. Furthermore, since EDCs bear the risk of penalties in the event of noncompliance with the mandates of Act 129, some level of flexibility in implementing the EE&C Plans is appropriate.[3]

In the Tentative Order, the Commission concludes that because the EDC's EE&C Plans are approved by Commission Order, procedures for rescission and amendment of Commission orders must be followed to amend that Order and to assure due process for all affected parties. Tentative Order, p. 3, *citing Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan Order* at Docket No. M-2009-2093216 (entered January 28, 2011) at p. 18. Furthermore, the Commission references 66 Pa.C.S. §§ 2806.1(b)(2), 2806.1(b)(2) to support the premise that changes to EE&C Plans must be filed for Commission approval.

EE&C Plans are complex, and have hundreds if not thousands of component parts, all of which were developed based upon estimates of potential savings to be achieved through voluntary customer participation in these previously untested programs. The sum of all these parts is required to reduce the EDC's customers' electric consumption by at least one percent (1%) by May 31, 2011, and by at least three percent (3%) by May 31, 2013. In addition, customers' peak demand is to be reduced by a minimum of four and one-half percent (4.5%) by May 31, 2013. 66 Pa.C.S. § 2806.1(b). If an EDC's EE&C Plan does not achieve these mandated targets over the course of the four year program, the EDC may be subject to a civil

penalty of not less than $1,000,000 and not exceed $20,000,000. 66 Pa.C.S. § 2806.1(f)(2). Given the very prescriptive nature of Act 129, *i.e.*, specific and mandatory conservation requirements, specific and mandatory compliance dates, and a hard cap on spending, it is imperative that EDCs be provided sufficient flexibility in implementing their EE&C Plans so that each may react in a timely manner to make necessary modifications based upon the experiences gained in implementing the EE&C Plans.[4] Therefore, EDCs should have sufficient flexibility to make certain modifications to EE&C Plans. This sentiment is embodied by the Commission's commitment that it would not micromanage the EE&C Plan. *Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan,* Docket No. M-2009-2093216 (Order Entered October 6, 2009) at p. 88.

The Commission's reliance on Sections 2806.1(b)(2) and 2806.1(b)(3) of the Public Utility Code for the proposition that all changes require approval is not persuasive. These provisions do not mandate that all changes must be approved by the Commission. Section 2806.1(b)(2) provides that the Commission:

> shall direct an electric distribution company to modify or terminate any part of a plan approved under this section if, after an adequate period for implementation, the commission determines that an energy efficiency or conservation measure included in the plan will not achieve the required reductions in consumption in a cost-effective manner under subsections (c) and (d).

66 Pa.C.S. § 2806.1(b)(2) (emphasis added).

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[3] *See Integrated Resource Planning for Electric Utilities*, 1995 Pa. PUC 132 at *6 (1995) (the Commission explained that utilities must retain some flexibility concerning the implementation of a capacity resource plan, because the utility has an obligation to serve, which warrants discretion and flexibility).

[4] The Courts have determined that the Commission is not a "super board of directors" and "[s]hould have an inquisitorial and corrective authority to regulate and control the utility in the field specifically brought within the commission's jurisdiction." *Peoples Cab Co. v. Pennsylvania Public Utility Comm'n*, 137 A.2d 873 (Pa. Super. 1958). In fulfilling its statutory responsibilities the Commission undertakes an after-the-fact review of the determinations of a public utility and its management. As the Commission "[m]ay regulate with a view to enforcing reasonable rates and charges, it is not clothed with the general power of management incident to ownership." *Id.* at 879 *citing Southwestern Bell Tel. Co. v. Pub. Serv. Com.*, 262 U.S. 276, 289, (1923).

Subsections (c) and (d) stipulate the broad categories of consumption and peak demand reductions that each EDC is required to meet by 2011 or 2013, as applicable. Therefore, the plain meaning of Section 2806.1(b)(2) requires that the Commission first make a determination that a measure in an EDC's EE&C Plan will not achieve the required reductions in consumption, prior to directing an EDC to modify or terminate any part of its approved EE&C Plan. Further, Section 2806.1(b)(3) provides that:

> If part of a plan is modified or terminated under paragraph (2), the electric distribution company shall submit a revised plan describing actions to be taken to offer substitute measures or to increase the availability of existing measures in the plan to achieve the required reductions in consumption under subsections (c) and (d).

66 Pa.C.S. § 2806.1(b)(3) (emphasis added). Again, absent a Commission determination that an EDC will not meet the requirements of 66 Pa.C.S. § 2806.1(c) and (d), the obligations of an EDC pursuant to Section 2806.1(b)(3) are not implicated. In short, Section 2806.1(b) only applies after the Commission determines that an EE&C Plan will not achieve the required reductions in consumption in a cost-effective manner pursuant to 66 Pa.C.S. § 2806.1(c) and (d), presumably because the EDC has not effectively implemented its EE&C Plan and would fail to meet the compliance targets absent Commission intervention. Section 2806.1(b) is not intended to apply to changes proactively recommended by the EDC, especially minor changes such as "fine tuning" of measure descriptions or rebates, true-ups between planning estimates and actual conditions, adding or deleting a measure within a program or customer class, modifying program delivery details, or other types of changes that have no impact on customer class, program, or portfolio costs or savings. Nothing in Section 2806.1(b) of the Public Utility Code mandates the standard that the Commission has laid out in the Tentative Order, *i.e.*, that all proposed changes to an EDC's EE&C Plan must be presented to and approved by the Commission. Therefore, to

the extent that the Commission relies on Section 2806.1(b) to support this standard, such reliance is misplaced.

Moreover, the fact that the Commission is proposing an expedited process indicates that the Commission's current standard is unworkable. The EE&C Plans contain hundreds if not thousands of estimates and projections. Every single one of these estimates will likely turn out to be "wrong" in the sense that actual results will differ from the original estimate. Under the Commission's standard, every time actual experience turned out to be different from the original estimate, an EDC would have to seek Commission approval to reflect this reality. The adoption by the Commission of the current standard has resulted in the Commission managing every detail of an EDC's EE&C Plan. Such review and approval results in an unnecessary administrative and regulatory process, and cannot have been what the Commission or the General Assembly intended.

B. EDCs Should Not be Required to Serve the Proposed Changes 10 Days in Advance of Filing

Under the expedited process proposed by the Commission in the Tentative Order, EDCs intending to file a minor plan revision would be required to serve a copy of the proposed plan revisions on the OCA, the OSBA, the OTS and all parties of record at least 10 days prior to making the official filing with the Commission. Tentative Order at p. 4. The Company opposes this advance notification of a yet-to-be filed pleading, as this adds an unnecessary step to the process and increases the total time required to complete the review. If the changes really are "minor," the 10 day comment period for all interested parties proposed by the Commission in the Tentative Order (at p. 4) is sufficient for parties to complete their review. Furthermore, if a party does not view the proposed modifications as "minor," a party could file a pleading and evidence supporting its position within the comment period. In such an instance, the filing EDC could

respond to the challenge to the "minor" status of the proposed changes and, if staff decided that more analysis were required, the matter could be sent to the Commission's Office of Administrative Law Judge. To the extent that the Commission does not believe that a 10-day post filing comment period is sufficient, then the Company would support extending the post filing review and comment period to 15 days.

The Company is concerned, procedurally, about the advance notification of proposed minor changes to the EE&C Plan and believes that the comment period for any filing should begin once the petition to change an EE&C Plan is filed with the Commission. The initiation of the comment period on the date a petition is filed with the Commission is consistent with current Commission practice. Moreover, the minor nature of the changes that will be reviewed under the expedited process renders the advance service unnecessary. Therefore, the Company does not support the advance service proposal presented in the Tentative Order. If the Commission decides to keep the advanced 10-day notification period, then PPL Electric suggests the following. If no party objects to the changes during the advanced 10-day notification period, the changes, once filed with the Commission, should be approved by the Commission within 5 days without the need for a formal comment period, reply comment period, and further Commission review.

C. The Commission Should Establish a Standard for When Proposed Changes Can Be Referred to the Office of Administrative Law Judge

On pages 5-6 of the Tentative Order, the Commission explains that, in addition to approving or disapproving some or all of the proposed changes, it could also refer some or all of the proposed revisions to the Office of Administrative Law Judge for hearings and a recommended decision, if necessary. PPL Electric recognizes that there may be instances where referral to the Office of Administrative Law Judge is warranted; however, the Commission

should establish a specific standard for such referrals. For example, petitions filed under the expedited review process could be referred to the Office of Administrative Law Judge due to the complexity of the revisions proposed, if the changes are significantly contested or if staff believes that the modifications do not fit the definition of a "minor" change. Establishing some metrics for determining when matters are referred to the Office of Administrative Law Judge would ensure that referrals only occur when absolutely necessary and do not interfere with the compressed schedule for expedited review.

D. The Commission Should Address Any Petitions for Appeal of a Staff Action on an Expedited Basis

The Commission, in the Tentative Order, proposes to give parties 10 days to appeal the staff's approval or disapproval of some or all of the proposed changes. Tentative Order at pp. 4-5. PPL Electric supports this shortened appeal period because it will expedite final resolution of any pending EE&C Plan modifications. The Company further suggests that the Commission add an additional procedural deadline to ensure an expedited final resolution – that the Commission address any petitions for appeal from the actions of the staff at its first public meeting following the submission of any appeals, or within 30 days from the filing of any petitions for appeal, whichever is longer. Expedited review of an appeal of a staff action is warranted to ensure that proposals to change an EE&C Plan are not delayed awaiting final deposition by the Commission.

E. The Company Proposes that the Commission Employ A "Major" Changes *Standard to Determine When the Expedited Process can be used for* Changes to a EE&C Plan

In the Tentative Order, the Commission proposes the use of an alternative process for approving proposed "minor" changes to an EE&C Plan. Tentative Order at pp. 4-5. As cited above, the Commission proposes to define minor EE&C Plan changes as: the elimination of a measure that is underperforming or has exhausted its budgeted amount; the transfer of funds

from one measure to another measure within the same customer class; and a change in the conditions of a measure. Tentative Order at pp. 4-5.

PPL Electric proposes that instead of using minor changes to an EE&C Plan as the trigger for the expedited approval process, the expedited process should be available to all changes that are not "major" changes to an EE&C Plan. The Company proposes that the Commission define the following modifications as "major" changes:

- Shifting program funds or shifting energy savings between customer classes or increasing the projected cost at completion for a customer class (without shifting to another class).
- Adding an EE&C Plan program.
- Deleting an EE&C Plan program.

All changes not considered "major" changes, as defined above, would be "minor" changes, which could be approved on an expedited basis. PPL Electric proposes this approach because the term "minor" changes, as defined by the Commission, is very restrictive and would greatly limit those changes that could be approved through an expedited process. Limiting non-expedited review to an explicit list of "major" changes would ensure that all of the EDCs and the interested parties are on notice as to which EE&C Plan changes will receive the full non-expedited review. Furthermore, EDCs bear the risk of penalties in the event of noncompliance with the mandates of Act 129. 66 Pa.C.S. § 2806.1(f). To permit only limited "minor" changes to be reviewed on an expedited basis would hinder an ECD's ability to manage all of the various Act 129 programs effectively. PPL Electric believes that EDCs should be permitted to implement changes to its EE&C Plan programs and individual measures in an expedited manner. Permitting all non-major changes the opportunity for a more expedited approval process would

reduce administrative costs, reduce the time it takes to modify programs, and increase the ability of the program to meet the mandated goals of Act 129.

F. To the Extent that the Commission Prefers to Limit Expedited Approval for "Minor" Changes, the Company Proposes an Alternative Definition

As discussed above, PPL Electric urges the Commission to use the concept of "major" changes to determine if an expedited process is available; however, if the Commission prefers to use the concept of a "minor" change, as contemplated by the Tentative Order (at p. 5), the Company suggests an alternative definition of a "minor" change. Specifically, PPL Electric proposes that the Commission define minor EE&C Plan changes as:

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

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

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

- The modification of program delivery functions, such as evaluation, measurement, verification, quality assurance, marketing, program management, tracking systems, program administration, program schedule, Conservation Service Provider roles/responsibilities, distribution of savings or cost forecasts by program year, and Total Resource Cost Test inputs, as long as the changes do not increase the cost to a customer class.

The above proposed definition is less restrictive then the narrow three categories originally proposed by the Commission in the Tentative Order. The "minor" changes defined above do not impact the projected cost of a program; do not impact the projected cost of the EE&C Plan; do not impact the projected savings of a program; and do not impact the cost allocation between customer sectors. Therefore, these implementation changes do not shift program funds within a

customer class, shift EE&C Plan program funds between customer classes nor include the creation or discontinuance of a program. Due to the fact that these changes have limited cost impact, expedited review is warranted.

III. CONCLUSION

For all of the foregoing reasons, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission modify, consistent with these comments, its proposed expedited process for approval of changes to an EDC's EE&C Plans.

Respectfully submitted,

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Attorneys for PPL Electric Utilities Corporation

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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Date: April 21, 2011

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