**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held January 26, 2017

Commissioners Present:

Gladys M. Brown, Chairman, Joint Statement

Andrew G. Place, Vice Chairman

John F. Coleman, Jr.

Robert F. Powelson

David W. Sweet, Joint Statement and Statement

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| Petition of PPL Electric Utilities Corporation for Approval of its Act 129 Phase III Energy Efficiency and Conservation Plan | M-2015-2515642 |

**OPINION AND ORDER**

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**BY THE COMMISSION:**

# I. Matter Before the Commission

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the “Petition for Appeal of Staff Action” (Petition) filed by the PP&L Industrial Customer Alliance (PPLICA) on November 14, 2016, in the above-captioned proceeding. The Petition seeks review of the determination of the Commission’s Bureau of Technical Utility Services (Commission Staff or Staff) as set forth in the Secretarial Letter issued on November 4, 2016 (*November 2016 Secretarial Letter*). An Answer to PPLICA’s Petition was filed by PPL Electric Utilities Corporation (PPL or the Company) on November 28, 2016. For the reasons stated herein, we will deny PPLICA’s Petition.

# II. Procedural History

On November 30, 2015, PPL filed a Petition for approval of its Act 129 Phase III Energy Efficiency and Conservation (EE&C) Plan (Phase III Plan). A number of Parties intervened in the proceeding and written testimony was filed. On January 29, 2016, an evidentiary hearing was held, at which the Parties moved their respective testimonies and exhibits into the record.

On February 16, 2016, a Joint Petition for Approval of Partial Settlement (Partial Settlement) was filed by PPL, the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), PPLICA, the Commission for Economic Opportunity, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Sustainable Energy Fund (SEF), Nest Labs, Inc., and EnerNOC, Inc. (collectively Joint Petitioners). The Partial Settlement addressed all contested issues except for one relating to the determination of Total Resource Cost (TRC) benefit-cost ratios raised by PPLICA, which was deferred for briefing. Main Briefs were filed by PPL and PPLICA on February 16, 2016. No Reply Briefs were filed.

On February 19, 2016, Administrative Law Judge Susan D. Colwell certified the record to the Commission for consideration and disposition.

By Opinion and Order entered March 17, 2016, in the above-captioned proceeding (*March 2016 Order*)*,* the Commission approved PPL’s Phase III Plan as modified by the Partial Settlement, subject to certain directives and modifications, and subject to the condition that no Party to the Partial Settlement exercised the right to withdraw therefrom. *March 2016 Order* at 57-61. None of the Joint Petitioners withdrew from the Settlement.

On April 22, 2016, PPL filed a Revised Phase III Plan, pursuant to the *March 2016 Order*. On May 24, 2016, PPL filed an Errata to the Revised Phase III Plan to correct the measure life assumption for home energy reports in the Revised Phase III Plan’s Home Energy Education Program.[[1]](#footnote-1)

By Tentative Opinion and Order entered June 9, 2016, in the above-captioned proceeding (*June 2016 Tentative Order*)*,* the Commission found that the Revised Phase III Plan appropriately incorporated the modifications and improvements specified in the terms of the Partial Settlement, and otherwise complied with the directives set forth in the *March 2016 Order*. Accordingly, the Commission tentatively approved the Revised Phase III Plan. *June 2016 Tentative Order* at 5-8. However, in order to ensure the right of all Parties to comment on the proposed changes in the Revised Phase III Plan as amended by the May 24, 2016 Errata, the Parties were given the opportunity to file Comments and Reply Comments within a specified time period. The Commission stated that if no opposing Comments or Reply Comments were received by the specified deadlines, the *June 2016 Tentative Order* would become final without further action by the Commission. *Id*. at 7-9.

No Comments or Reply Comments were filed with respect to the *June 2016 Tentative Order*. Therefore, the Commission issued a Secretarial Letter on June 27, 2016, indicating that, by its terms, the *June 2016 Tentative Order* was deemed final as of June 20, 2016.

On September 21, 2016, PPL filed a Petition for Approval of a Minor Change to its Phase III Plan (Minor Change Petition). In its Minor Change Petition, PPL sought approval to modify the eligibility requirements for measures implemented in the Custom Program of the Company’s Phase III Plan. PPL asserted that the requested change would have no effect on any budget, savings, or TRC Test figures in its Phase III Plan. Thus, PPL requested that the Commission review the proposed change pursuant to the expedited review process set forth in *Energy Efficiency and Conservation Program*, Docket No. M‑2008-2069887 (Final Order entered June 10, 2011) (*Minor Plan Change Order*). Minor Change Petition at 1-2. PPL referenced the procedural schedule established in the *Minor Plan Change Order* that requires comments to be filed within fifteen days of the filing of a request for minor changes to an EE&C Plan, and reply comments to be filed ten days thereafter. Minor Change Petition at 2; *see also Minor Plan Change Order* at 19.

Comments to PPL’s Minor Change Petition were timely filed by PPLICA on October 5, 2016, and by the OSBA and SEF on October 6, 2016. The OCA filed a letter on October 6, 2016, indicating that it would not be filing comments to PPL’s Minor Change Petition. On October 17, 2016, PPL timely filed Reply Comments.

On October 26, 2016, the Commission issued a Secretarial Letter stating that, in accordance with the *Minor Plan Change Order*, the period for consideration of PPL’s Minor Change Petition was being extended until November 4, 2016, in order to allow Commission Staff adequate time to review the Minor Change Petition, Comments and Reply Comments.[[2]](#footnote-2)

On November 4, 2016, the Commission issued the *November 2016 Secretarial Letter* through which Commission Staff granted PPL’s Minor Change Petition and approved the minor change proposed therein, as modified by PPL in its October 17, 2016 Reply Comments.[[3]](#footnote-3) PPL was directed to file a revised EE&C Plan with the Commission’s Secretary, consistent with the *November 2016 Secretarial Letter*, within thirty days of the date of the *November 2016 Secretarial Letter*, and to post the revised EE&C Plan on the Company’s website. *November 2016 Secretarial Letter* at 4.

As noted, PPLICA filed its Petition on November 14, 2016,[[4]](#footnote-4) seeking review of the determination of Commission Staff as set forth in the *November 2016 Secretarial Letter*, and requesting that the determination be reversed. On November 28, 2016, PPL filed an Answer to PPLICA’s Petition.

On December 5, 2016, PPL filed a Revised Phase III Plan as directed in the *November 2016 Secretarial Letter*. In its filing, PPL acknowledged that PPLICA’s Petition was pending before the Commission, but stated that it was filing the Revised Phase III Plan in order to comply with the *November 2016 Secretarial Letter*.

# III. Discussion

## A. Legal and Procedural Standards

The expedited process for reviewing electric distribution companies’ (EDCs’) requests for minor changes to their Act 129 EE&C Plans was established in the *Minor Plan Change Order*. Minor EE&C Plan changes to be reviewed under this expedited review process were defined therein 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.

*Minor Plan Change Order* at 19-20.

In its Order implementing Phase II of the EE&C Program, the Commission directed that two additional components be included in the definition of minor EE&C Plan changes. These were: (1) a change in vendors for existing programs that will continue into Phase II; and (2) the elimination of programs which are not viable due to market conditions. *Energy Efficiency and Conservation Program*, Docket Nos. M-2012-2289411 and M-2008-2069887 (Implementation Order entered August 3, 2012) at 91. In its Order implementing Phase III of the EE&C Program, the Commission adopted the minor plan change process used in Phase II. *Energy Efficiency and Conservation Program*, Docket No. M-2014-2424864 (Implementation Order entered June 19, 2015) (*Phase III Implementation Order*) at 115-18.

In the *Minor Plan Change Order*, the Commission delegated its authority to review and approve minor EE&C Plan changes to staff of the Bureau of Conservation, Economics and Energy Planning, with assistance from staff of the Bureau of Fixed Utility Services and the Law Bureau, or their successor(s) as determined by the Commission.[[5]](#footnote-5) Interested parties were directed to file comments on the proposed minor EE&C Plan changes within fifteen days after the proposed changes have been filed with the Secretary, and to file reply comments within twenty-five days after the proposed minor EE&C Plan changes have been filed with the Secretary. Commission Staff was directed to issue a Secretarial Letter approving, denying, or transferring to the Office of Administrative Law Judge for hearings, some or all of the proposed minor EE&C Plan changes, along with an explanation, within thirty-five days after the proposed minor EE&C Plan changes have been filed with the Secretary. However, Commission Staff was provided the discretion to extend this consideration period by an additional ten days. Parties were directed to file, within ten days after service of the Secretarial Letter, petitions for appeal from actions of the Staff in accordance with 52 Pa. Code § 5.44.[[6]](#footnote-6) *Minor Plan Change Order* at 18-19.

Petitions for Reconsideration of Staff Action are governed by Section 5.44(a) of the Commission’s Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.44(a), which provides as follows:

Actions taken by staff, other than a presiding officer, under authority delegated by the Commission, will be deemed to be the final action of the Commission unless reconsideration is sought from the Commission within 20 days after service of notice of the action, unless a different time period is specified in this chapter or in the act.

Courts have held that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). Additionally, Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.

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 the Commission is 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)

## B. PPL’s Minor Change Petition

In its Minor Change Petition, PPL sought to modify the cost-effectiveness eligibility requirement for projects under the Custom Program of its Phase III Plan.[[7]](#footnote-7) Specifically, PPL proposed to change the requirement that all Custom Program projects undergo a pre-screening to determine that these projects meet a minimum TRC benefit-cost ratio threshold. PPL noted that under its current Phase III Plan, CHP projects must have a TRC benefit-cost ratio in excess of 1.25, and all other Custom Program projects must have a TRC benefit-cost ratio in excess of 1.10. PPL proposed to eliminate these minimum TRC thresholds for the Custom Program, but to retain the flexibility to implement a minimum TRC requirement for projects, if necessary to ensure the program TRC or Phase III Plan portfolio TRC remain at a level greater than 1.0. PPL indicated that it would notify customers, trade allies, and stakeholders at least thirty days before the effective date of this minimum TRC requirement or a subsequent change to the TRC requirement. Minor Change Petition at 3.

PPL asserted that its proposed minor change will neither increase the overall cost to any customer class, nor change any budget, savings, or TRC values set forth in its Phase III plan. PPL also opined that the proposed change was reasonable and should be approved for several reasons. Specifically, PPL argued that its proposed change would be more consistent with the other EDCs’ Act 129 Phase III EE&C Plans since no other EDC under Act 129 has a cost-effectiveness screening requirement for custom projects. PPL also averred that because the proposed change would allow it to adjust the cost-effectiveness threshold on a prospective basis, it will be better equipped to respond to fluctuations in customer participation and the types of projects submitted. In addition, PPL asserted that eliminating the stringent 1.25 TRC threshold for CHP projects would allow more such projects to be considered for incentives under the Custom Program, as long as the Custom Program and overall Phase III Plan portfolio remain cost-effective.[[8]](#footnote-8) Minor Change Petition at 4-5.

Finally, PPL requested that this matter be ruled on by Commission Staff and not referred to the Office of Administrative Law Judge for hearings. PPL argued that the proposed minor change can be adequately vetted through the comment process. *Id*. at 5.

## C. Comments and Reply Comments

### 1. OSBA’s Comments

In its Comments, the OSBA objected to PPL’s proposal to remove the minimum TRC benefit-cost ratio criteria for custom projects, and questioned the Company’s proffered rationale for the proposal. The OSBA argued that PPL already has sufficient flexibility to determine what types of custom projects will be eligible for incentives under the Custom Program because the program places very few constraints on the magnitude of the subsidies that can be provided for any particular project. According to the OSBA, PPL’s budgeted costs for the Small Commercial and Industrial (C&I) class under the Custom Program indicates that over half of every dollar spent on the program represents a cross-subsidy to participating customers from other ratepayers. OSBA Comments at 3. The OSBA asserted that “only the TRC benefit-cost ratio provides any restriction on the Company from providing significant subsidies to customers of its own choosing.” *Id*. at 3-4.

The OSBA also contended that PPL provided no evidence that it has experienced any specific problems under the existing cost-effectiveness criteria for non-CHP custom projects, and identified no specific benefits that would result from the proposed change. Moreover, the OSBA opined that if the proposed change will have no significant quantitative impact on PPL’s Phase III Plan as the Company contended, then the change is not necessary. On the other hand, the OSBA argued that custom projects accepted under the proposed change will have lower TRC benefit-cost ratios, which must necessarily impact all of the quantitative aspects of PPL’s Phase III Plan. *Id*. at 5.

With regard to PPL’s argument that other EDCs’ custom programs are not subject to cost-effectiveness criteria, the OSBA asserted that the existing restrictions under PPL’s Custom Program are sensible, and suggested that they could serve as a model for other EDCs’ programs. In addition, the OSBA contended that PPL’s intention to retain the flexibility to reinstate the cost-effectiveness criteria could be discriminatory, because it would create a situation in which some customers’ projects may be accepted without having to meet the criteria, while other customers’ projects would be rejected if the criteria are later reinstated. *Id*. at 6.

### 2. SEF’s Comments

In its Comments, SEF asserted that although it does not object to PPL having some flexibility in setting eligibility requirements for custom projects, the Company should not be permitted to completely eliminate its minimum TRCs in favor of vague language that would allow it to implement unspecified cost-effectiveness criteria, which could result in TRC eligibility minimums being set at prohibitively high levels. SEF argued that such a proposal may result in decreased participation in the Custom Program, and would provide no guidance to potential participants in assessing the eligibility of the custom projects they may seek to implement. SEF Comments at 4.

Based on its concerns, SEF recommended that PPL be required to set a range of acceptable TRC eligibility levels that would allow the Company the flexibility to adjust the threshold eligibility requirement for Small and Large C&I participants in the Custom Program. Specifically, SEF suggested that the minimum TRC criterion be set at 1.0 for all custom projects, and that the maximum TRC criterion not exceed 1.7 for non-CHP projects, and 1.4 for CHP projects. *Id*. at 4-5. In addition, SEF recommended that PPL be required to amend its proposed thirty-day notice to ninety days before making any adjustments to the minimum TRC criteria. SEF argued that a thirty-day notice would act as a disincentive to participate in the Custom Program because customers will not be inclined to invest the time and resources necessary to develop custom projects if there is a potential that the cost-effectiveness threshold for such projects may increase by the time the project is fully developed. *Id*. at 5

### 3. PPLICA’s Comments

In its Comments, PPLICA also opposed PPL’s proposal to completely eliminate its current minimum TRC criteria for custom projects, but stated that it would not object to a reduction of the minimum TRC to 1.0. PPLICA argued that removing the minimum cost-effectiveness threshold would reduce the margin for uncertainties regarding the actual cost-effectiveness of custom projects, and incentivize the submission of projects with negative TRC ratings. PPLICA Comments at 3-4. PPLICA asserted that the Commission should accommodate PPL’s request for greater flexibility by allowing it to reduce the minimum TRC criteria to 1.0 for all custom projects. According to PPLICA, this would allow PPL to incentivize additional projects (particularly CHP projects) without requiring customers to subsidize inefficient projects with negative TRC cost-benefit ratios. *Id*. at 4.

### 4. PPL’s Reply Comments

In its Reply Comments, PPL disagreed with the recommendations that it establish alternative cost-effectiveness criteria rather than eliminating specific criteria altogether. PPL argued that it has the ultimate responsibility to ensure that its Phase III Plan is cost-effective and meets its compliance targets within budget, and therefore, should have reasonable discretion to adjust its Phase III Plan as it sees fit. PPL averred that under its current minimum TRC benefit-cost ratio of 1.25 for CHP projects, a number of proposed CHP projects with projected TRC benefit-cost ratios less than 1.0 will not qualify for incentives, resulting in the inability of the Company to count the significant energy savings that would be achieved by these projects toward its Phase III Plan target. PPL Reply Comments at 4. PPL also contended that removing the current cost-effectiveness criteria will make PPL’s Phase III Plan more similar to other EDCs’ EE&C plans, which will help reduce customer and contractor confusion and ensure more consistent treatment of customers throughout Pennsylvania. *Id*. at 6.

PPL disagreed with the OSBA that customers could be treated inequitably under the proposed minor change due to the possibility that some customers may be subject to different eligibility requirements at different times. PPL argued that the risk of customers being subject to different eligibility requirements or incentive levels already exists in other programs and measures in its Phase III Plan, and that risk would be no different in its Custom Program under the proposed change. *Id*. at 7. However, PPL averred that after reviewing SEF’s concern regarding the thirty-day notice before adjusting the minimum TRC criteria, it believes that SEF’s suggested ninety-day notice would be more appropriate. PPL averred that the additional time would better enable customers to know what minimum TRC threshold, if any, will be in effect when they submit their custom projects to the Company, and will reduce the likelihood that different customers will be subject to different minimum TRC thresholds. Accordingly, PPL modified its proposed minor change to increase the notice period from thirty days to ninety days. *Id*. at 7-8.

With regard to PPLICA’s concern that eliminating the minimum TRC requirements would result in the acceptance of projects that are not cost-effective, PPL contended that the cost-effectiveness requirement of Act 129 applies at the EE&C Plan level, not at the individual program or measure level. PPL Reply Comments at 8 (citing *2016 Total Resource Cost (TRC) Test*, Docket No. M-2015-2468992 (Order entered June 22, 2015) (*2016 TRC Test Order*) at 17; *Petition of PPL Electric Utilities Corporation for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan*, Docket No. M-2012-2334388 (Order entered March 6, 2014) (*PPL Phase II EE&C Plan March 2014 Order*) at 26). PPL asserted that it expects its Phase III Plan to continue to be cost-effective, even if the per-project TRC threshold under the Custom Program is eliminated or reduced to a level below 1.0.[[9]](#footnote-9) Moreover, PPL pointed out that its proposed minor change will provide it with the flexibility to establish a minimum TRC requirement for custom projects if necessary to ensure that that program or portfolio TRC is greater than 1.0. PPL Reply Comments at 8-9.

PPL also disagreed with the OSBA that its proposed change will affect all quantitative aspects of its Phase III Plan. PPL asserted that the proposed change will not change the budget for the Custom Program, will not change costs for any customer sector, and will not shift any costs between customer sectors. Rather, PPL argued that the proposed minor change could potentially produce additional savings under the current program budget by allowing more CHP projects to be eligible under the Custom Program, which could lower the program acquisition cost (*i.e*., program costs divided by annual kWh saved). This, in turn, may result in the Company having more funding for non-CHP projects and could increase the total savings for the Custom Program without increasing the program’s budget, according to PPL. PPL Reply Comments at 10. However, PPL noted that at the time it filed its Minor Change Petition, it proposed no changes to the estimated savings or TRC benefit-cost ratios for the Custom Program. PPL asserted that it will continually monitor the progress of the Custom Program and will propose changes to its estimated savings and TRC benefit-cost ratios if actual results warrant such changes. *Id*. at 10-11.

## D. November 2016 Secretarial Letter

Through the issuance of the *November 2016 Secretarial Letter*, Commission Staff granted PPL’s Minor Change Petition and approved the minor change proposed therein, as modified by PPL in its Reply Comments. Staff dismissed PPLICA’s contention that PPL should not be permitted to incentivize custom projects with TRC values less than 1.0, and that such projects should not be subsidized by other ratepayers. Staff agreed with PPL that the Commission requires only an EDC’s overall EE&C Plan to be cost-effective, and not individual programs or measures in the Plan. *November 2016 Secretarial Letter* at 2 (citing *Phase III Implementation Order* at 102). Staff noted the Commission’s intent, as set forth in the *2016 TRC Test Order*, to continue applying the TRC Test at the plan level for Phase III, but to reserve the right to reject any program with a low TRC test ratio. *November 2016 Secretarial Letter* at 2 (citing *TRC Test Order* at 17). Staff also found it significant that no other program in PPL’s Phase III Plan has a cost‑effectiveness threshold for any of its measures, and noted that no other EDCs include minimum TRC values for custom projects. In addition, Staff was persuaded by PPL’s contention that eliminating the minimum TRC threshold is likely to lower the program acquisition costs per kilowatt‑hours of annual energy savings.[[10]](#footnote-10) *November 2016 Secretarial Letter* at 2-3.

Staff also agreed with PPL that eliminating minimum TRC values for custom projects will provide the Company with greater flexibility with which to reach its established Phase III targets, though Staff stated that eliminating the minimum TRC values will also introduce an elevated level of risk and responsibility that PPL must manage to ensure that it can adequately meet its Act 129 compliance targets. However, Staff found that such risk would not be any greater or different than that experienced by all other EDCs that share similar compliance obligations under Act 129. Staff agreed with PPL that the Company, alone, is responsible for any potential penalties for non-compliance, and thus, should have discretion to adjust its EE&C plan as it deems necessary to meet its Act 129 obligations. *November 2016 Secretarial Letter* at 3.

Staff noted PPL’s assertion that the proposed minor change is only intended to permit consideration of additional custom projects that otherwise would be excluded from eligibility, and will not affect all quantitative aspects of the Company’s Phase III Plan, as the OSBA argued. Additionally, Staff noted that PPL did not proposed to transfer any funds to or from any programs and did not proposed changes to any incentives offered under the Custom Program. *November 2016 Secretarial Letter* at 3-4.

Staff concluded that PPL’s Minor Change Petition, as modified in its Reply Comments to increase the notification period for adjusting the minimum TRC criteria from thirty to ninety days, satisfies the requirements of Act 129 and the prior related Orders of the Commission. Staff opined that the proposed minor change, as modified, should enable PPL to meet or exceed the energy consumption and demand reduction requirements of Act 129 in a cost-effective manner. Accordingly, Staff granted PPL’s Minor Change Petition and approved the proposed minor change to the Company’s Customer Program, as modified by PPL’s Reply Comments. Staff directed PPL to file, with the Secretary of the Commission, a revised Phase III Plan, consistent with its determination as set forth in the *November 2016 Secretarial Letter*, within thirty days of the date of the *November 2016 Secretarial Letter*, and also to post the revised Phase III Plan on the Company’s website. *November 2016 Secretarial Letter* at 4.

## E. PPLICA’s Petition and PPL’s Answer

### 1. PPLICA’s Petition

In its Petition, PPLICA disagrees with Staff’s approval of PPL’s proposal to eliminate minimum cost-effectiveness screening for projects under the Custom Program, as set forth in the *November 2016 Secretarial Letter*. PPLICA contends that Staff failed to address the actual merits of PPL’s proposal, but instead, erroneously relied upon the *Phase III Implementation Order’s* determination that a minimum TRC requirement would only be imposed at the overall EE&C Plan level, and upon the assertion that no other EDCs impose minimum TRC requirements on custom projects. PPLICA Petition at 3-4. PPLICA argues that PPL’s proposal will result in custom projects that are not cost-effective, and therefore, must be rejected in accordance with Section 2806.1(b)(2) of the Code.[[11]](#footnote-11) PPLICA Petition at 3. PPLICA further argues that Section 2806.1(k)(1) of the Code[[12]](#footnote-12) entitles PPL to recover only the reasonable and prudent costs of an EE&C Plan, and that costs to subsidize projects with TRC values below 1.0 are, by definition, neither reasonable nor prudent.[[13]](#footnote-13) PPLICA Petition at 4. PPLICA points out that the *November 2016 Secretarial Letter* confirmed the Commission’s discretion to reject EE&C programs with negative TRC values. Thus, PPLICA argues that the Commission has the authority to impose cost-effectiveness standards on a per-program basis, and should do so to ensure that an EE&C Plan’s costs are reasonable and prudent under Section 2806.1(k)(1). PPLICA Petition at 4-5.

PPLICA also submits that the *November 2016 Secretarial Letter* ascribed undue weight to PPL’s claim that other EDCs do not impose cost-effectiveness criteria on custom projects. PPLICA argues that, “[j]ust as other EDC Plans did not impact the Commission’s decision to initially approve PPL’s cost-effectiveness screening for the Custom Program, the practices of other EDCs should not guide the Commission’s decision as to whether to preserve or eliminate PPL’s Custom Program cost-effectiveness screening.” PPLICA Petition at 5. PPLICA maintains that the Commission should assess PPL’s proposed minor change on its merits. *Id*.

PPLICA further argues that unlike other programs in PPL’s Phase III Plan, the Custom Program provides customers with considerable flexibility to design and propose unique efficiency measures that are not addressed in the Commission’s TRM. According to PPLICA, such flexibility “allows customers to propose projects utilizing new and comparatively untested technologies, thereby increasing the risk that the costs of those programs will outweigh their benefits.” PPLICA Petition at 5. PPLICA opines that imposing a mandatory 1.0 TRC threshold for Large C&I custom programs would reasonably mitigate the risk of failed projects. *Id*. Also, while PPLICA agrees with Staff’s determination that PPL alone bears the risk of any failure of the Company to meet its Phase III compliance targets, it asserts that Large C&I customers must bear a significant portion of the costs of the Custom Program. Thus, PPLICA contends that, “[a]s a matter of policy and fairness, PPL’s Large C&I customers should reasonably expect that costly custom projects submitted for customer-funded Custom Program rebates meet reasonable cost-effectiveness thresholds.” *Id*. at 6.

Finally, PPLICA submits that PPL will not need to rely on non-cost effective projects to meet its energy efficiency goals, as Staff appeared to believe in approving PPL’s proposed minor change. PPLICA asserts that Section 2806.1(b)(2) of Act 129 includes a specific remedy for situations wherein PPL may be at risk for failing to meet its compliance targets, as follows:

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).

PPLICA Petition at 6-7 (quoting 66 Pa. C.S. § 2806.1(b)(2)). PPLICA argues that including projects with TRC values less than 1.0 in PPL’s Phase III Plan demonstrates that the energy efficiency goals for a measure under the Large C&I Custom Program cannot be achieved in a cost-effective manner. Thus, PPLICA asserts that the Commission should direct PPL to terminate the measure or modify the goals assigned to this measure. According to PPLICA, removing the TRC threshold is contrary to the cost-effectiveness requirement of Section 2806.1(b)(2). PPLICA Petition at 7.

### 2. PPL’s Answer to PPLICA’s Petition

In its Answer, PPL maintains that because the Company bears the sole risk of any failure to meet its Act 129 energy savings and peak demand reduction targets, it should have the discretion to design, implement, and adjust its programs to meet its compliance targets and Commission orders. PPL asserts that customers have proposed eight CHP projects that are estimated to produce approximately 136,000 MWh/yr. in savings, or 9.4% of the Company’s total compliance target of 1,443,035 MWh/yr., that will likely fail to meet the current TRC threshold and thus, not be countable toward the compliance target. PPL states that its proposed minor change would address this significant impact on its ability to meet the target. Moreover, PPL contends that PPLICA ignores that its proposed minor plan change would not prevent the Company from implementing a new minimum TRC requirement if PPL deems it necessary. PPL Answer at 4-5.

PPL also avers that its proposed minor change will not negatively affect projected costs or savings for Large C&I customers or any other customer sector. PPL contends that the Custom Program already helps protect against high-cost custom projects by capping incentives for all custom projects at $250,000 to $500,000 per customer site, not to exceed 50% of the total project cost, excluding internal labor. *Id*. at 6 (citing Phase III Plan at 95, 121, 145). Moreover, PPL argues that its proposed minor change may result in additional savings that can be used without the need for additional funding if more CHP projects are able to participate in the Custom Program, given that CHP projects have a much lower acquisition cost than most measures due to their high amount of savings and capped incentives. Thus, PPL submits that available funding for non-CHP projects could increase without any related increase to the Custom Program budget. PPL Answer at 6.

PPL also disagrees with PPLICA that Commission Staff gave undue weight to PPL’s assertion that other EDCs place no minimum TRC requirements on custom projects. PPL contends that PPLICA ignores the fact that approval of its revisions will have a desired outcome that all of the EDCs’ EE&C Plans in Pennsylvania will be consistent and this, in turn, will result in substantial benefits such as reducing customer and contractor confusion and ensuring more consistent treatment of customers throughout the Commonwealth. *Id*. at 7.

In addition, PPL disagrees with PPLICA’s contention that Section 2806.1(b)(2) of the Code requires the rejection of the Company’s proposed minor change. According to PPL, Section 2806.1(b)(2) only requires the Commission to modify or terminate a measure when it will prevent the EDC from achieving its overall savings target in a cost-effective manner. PPL contends that it still projects that its Phase III Plan will achieve the overall savings target in a cost-effective manner, even if the Custom Program’s per-project TRC threshold is eliminated. In addition, PPL notes that Section 2806.1(b)(2) requires modification or termination of a part of an EE&C Plan after an adequate period of implementation. PPL avers that no CHP projects have been implemented yet under the Custom Program, and the five-year long Phase III Plan only began about six months ago. Therefore, PPL asserts that an adequate period of implementation has not yet occurred. For these reasons, PPL concludes that Section 2806.1(b)(2) does not require the Commission to modify or terminate measures implemented under its Custom Program, as PPLICA contends. PPL Answer at 8-9.

PPL also asserts that it is the intent of Act 129 that the TRC Test be applied at the EE&C Plan level for compliance purposes, in accordance with the following definition:

“Total resource cost test.” A standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures.

PPL Answer at 9 (quoting 66 Pa. C.S. § 2806.1(m)). PPL contends that this definition demonstrates that the cost-effectiveness requirement does not apply to individual programs and measures. Moreover, PPL maintains that the Commission has consistently held that individual programs and measures are not required to be cost-effective under Act 129, and that it has previously rejected PPLICA’s arguments to the contrary. PPL Answer at 8-9 (citing *2016 TRC Test Order* at 17; *PPL Phase II EE&C Plan March 2014 Order* at 25-26; *Petition of PPL Electric Utilities Corporation for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan*, Docket No. M-2012-2334388 (Order entered May 19, 2015) (*PPL Phase II EE&C Plan May 2015 Order*) at 27, 35-37).

Finally, PPL disagrees with PPLICA’s assertion that the costs to subsidize custom projects with a TRC value less than 1.0 would not be reasonable and prudent, and must therefore be rejected as contrary to 2806.1(k)(1). PPL reiterates its contention that neither Act 129 nor the Commission require individual programs or measures to be cost-effective, and notes that all Pennsylvania EDCs, including PPL, have EE&C Plans that include programs and measures that are not cost-effective on a TRC Test basis. PPL opines that rejecting such programs or measures based on PPLICA’s logic would prevent customers from experiencing the substantive benefits of those programs and measures. PPL Answer at 11. Moreover, PPL argues that even though some measures may not be cost-effective on a strict TRC Test basis, “they may still confer lasting and substantial benefits to customers, especially because customers likely evaluate the viability of projects using methods other than the TRC Test (such as Return on Investment, Simple Payback Period, etc.).” *Id*. PPL also notes the Commission’s encouragement of CHP projects throughout Pennsylvania. *Id*. at 12 (citing *March 2016 CHP Order*). Thus, PPL concludes that the inability of customers’ projects to meet the TRC Test should not automatically disqualify them from participating in the Custom Program. PPL Answer at 12.

## F. Disposition

After careful consideration of the record, the Parties’ arguments, and applicable law, we will deny PPLICA’s Petition. We agree with PPL, as affirmed by Staff in the *November 2016 Secretarial Letter*, that eliminating minimum TRC values for custom projects will provide the Company with greater flexibility with which to reach its established Phase III targets. Such flexibility will allow PPL to approve custom projects – particularly CHP projects – that may result in significant energy savings, but would not qualify for incentives under PPL’s current, rigid cost-effectiveness criteria.

Furthermore, we disagree with PPLICA that allowing PPL the discretion to determine which custom projects to approve without the need for specific, unchanging cost-effectiveness criteria will necessarily result in a failure of the Company to achieve its Phase III goals in a manner that is cost effective. We find no reason to conclude that the approval of certain custom projects that may exhibit TRC benefit-cost ratios that are lower than PPL’s current criteria, or even lower than 1.0, will automatically render the Custom Program, much less the overall Phase III Plan, cost-ineffective.[[14]](#footnote-14) We trust that PPL will continually monitor the energy savings and cost-effectiveness of the Custom Program throughout the Phase III period and make adjustments when necessary to ensure that the Company can remain on track to meet its energy savings goals in a cost-effective manner. Contrary to PPLICA’s assertions, we believe the Company’s proposed minor change may better allow it to achieve that objective. Thus, we reject PPLICA’s argument that we must disallow the proposed minor change in accordance with Section 2806.1(b)(2) of the Code. Moreover, as PPL points out, the modification or termination of any part of an EE&C plan under Section 2806.1(b)(2) can only be directed after an adequate period for implementation. Because PPL’s five-year Phase III Plan became effective in June of 2016, and its proposed minor change has not yet been implemented, we cannot find that an adequate period for implementation has yet been realized.

Similarly, we disagree with PPLICA that the elimination of stringent cost-effectiveness criteria for PPL’s Custom Program will necessarily result in program costs that are not reasonable or prudent, and thus, unrecoverable under Section 2806.1(k)(1) of the Code. We find no reason to believe that the costs incurred under the Custom Program must automatically be deemed unreasonable or imprudent simply based on PPL’s proposal to relax its cost-effectiveness criteria. As we stated above, we trust that PPL will continually monitor the energy savings and cost-effectiveness of the Custom Program and make whatever adjustments are necessary to ensure continued compliance with the Company’s Phase III goals in a cost-effective manner. If, at any time during the Phase III period, we determine that PPL’s costs to implement the Custom Program – or any other program in its Phase III Plan – are unreasonable or were incurred imprudently, we will act accordingly at that time.

For the above-stated reasons, we shall deny PPLICA’s Petition and uphold Staff’s approval of PPL’s proposal to eliminate minimum cost-effectiveness screening for projects under the Custom Program, as set forth in the *November 2016 Secretarial Letter*.

# IV. Conclusion

Consistent with the foregoing discussion, we shall deny PPLICA’s Petition and affirm the ruling set forth in the *November 2016 Secretarial Letter*; **THEREFORE,**

# V. Order

**IT IS ORDERED:**

That the Petition for Appeal of Staff Action filed by the PP&L Industrial Customer Alliance on November 14, 2016, in the above-captioned proceeding, is denied, consistent with this Opinion and Order.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: January 26, 2017

ORDER ENTERED: January 26, 2017

1. In its May 24, 2016 Errata filing, PPL indicated that it had incorrectly used a five-year, rather than a one-year, measure life assumption for the home energy reports. PPL also indicated that the change in the measure life assumption reduced the benefit-cost ratio of the Home Energy Education Program, but did not impact the implementation cost of the program or the energy savings for compliance. [↑](#footnote-ref-1)
2. The *Minor Plan Change Order* requires Commission Staff to issue a Secretarial Letter approving, denying, or transferring to the Office of Administrative Law Judge for hearings, some or all of the proposed minor EE&C Plan changes, along with an explanation, within thirty-five days after the proposed minor EE&C Plan changes have been filed with the Secretary. However, Commission Staff may extend the period for consideration of the proposed minor plan change by up to ten days. *Minor Plan Change Order* at 19. [↑](#footnote-ref-2)
3. The Parties’ Comments and Reply Comments will be discussed more fully below. [↑](#footnote-ref-3)
4. On November 15, 2016, the Commission’s Secretary issued a letter informing PPLICA that its November 14, 2016 filing was deficient because it was missing a verification form. On November 21, 2016, PPLICA submitted a letter to the Commission stating that it originally had considered its Petition to be a filing lacking averments of fact not appearing in the record of this proceeding, and therefore, not subject to the verification requirement of Section 1.36 of the Commission’s Regulations, 52 Pa. Code § 1.36. Nevertheless, PPLICA provided the verification of its Petition, as requested by the Secretary. In addition, on December 28, 2016, PPLICA refiled its Petition at the request of Commission staff in order to include page six of the Petition, which did not appear in the original November 14, 2016 e-filed copy of the Petition. [↑](#footnote-ref-4)
5. In its Final Procedural Order entered on August 11, 2011, at Docket No. M‑2008-2071852, the Commission transferred the staff and functions of the Bureaus of Fixed Utility Services and Conservation, Economics and Energy Planning to the Bureau of Technical Utility Services. *See Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Final Procedural Order entered August 11, 2011) at 4. [↑](#footnote-ref-5)
6. Section 5.44 was subsequently amended to re-name the filing a petition for reconsideration of staff action, rather than appeals of staff action. 43 *Pa. B.* 5593 (September 21, 2013). [↑](#footnote-ref-6)
7. Under its Custom Program, PPL provides financial incentives to non-residential customers who install measures that are not offered in the Company’s other programs, including measures that are not addressed in the Technical Reference Manual (TRM). These measures may include new or replacement energy efficient equipment, retro-commissioning, repairs, equipment optimization, new construction projects, operational and process improvements, combined heat and power (CHP) projects, and behavioral changes that result in cost-effective energy efficiency savings. *See* Minor Change Petition, Appendix A – Redline EE&C Plan Pages at 92; *see also* *March 2016 Order* at 11. [↑](#footnote-ref-7)
8. PPL cited *Proposed Policy Statement on Combined Heat and Power*, Docket No. M-2016-2530484 (Order entered March 9, 2016) (*March 2016 CHP Order*), in which the Commission noted the benefits and untapped market of CHP. Minor Change Petition at 3. [↑](#footnote-ref-8)
9. PPL noted that its Phase III Plan already offers programs and measures that are not cost-effective. PPL Reply Comments at 9. [↑](#footnote-ref-9)
10. Staff also offered the following assertion regarding the cost-effectiveness of CHP projects:

    Staff also notes that Combined heat and power (CHP) projects are typically very energy efficient but can be capital intensive. In the report *Distributed Generation Potential Study for Pennsylvania*, prepared by the Commission’s Act 129 statewide evaluator in March 2015, it is noted that a significant number of CHP projects would be cost-effective under a TRC calculation if the useful life of the project was taken into account, thereby supporting the consideration of providing incentives to worthy projects even beyond those having TRC values greater than 1.0. See, *Distributed Generation Potential Study for Pennsylvania* at 30 and 4.

    *November 2016 Secretarial Letter* at 2, n.8. [↑](#footnote-ref-10)
11. Section 2806.1(b)(2) of the Code provides as follows:

    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). [↑](#footnote-ref-11)
12. Section 2806.1(k)(1) of the Code provides, in part, as follows:

    An electric distribution company shall recover on a full and current basis from customers, through a reconcilable adjustment clause under section 1307, all reasonable and prudent costs incurred in the provision or management of a plan provided under this section.

    66 Pa. C.S. § 2806.1(k)(1). [↑](#footnote-ref-12)
13. PPLICA asserts that Large C&I customers, in particular, pay significant revenues into PPL’s Custom Program and are, therefore, impacted by the awarding of customer-funded rebates to inefficient projects. PPLICA Petition at 3. [↑](#footnote-ref-13)
14. As Staff and PPL have pointed out, we have repeatedly noted our intent to apply the TRC benefit-cost ratio criterion mainly at the plan level. *See, e.g*., *PPL Phase II EE&C Plan March 2014 Order* at 26; *PPL Phase II EE&C Plan May 2015 Order* at 27, 37. [↑](#footnote-ref-14)