

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held April 20, 2023

Commissioners Present:

Gladys M. Brown Dutrieuille, Chairman  
Stephen M. DeFrank, Vice Chairman  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman, Jr.

PPL Electric Utilities Corporation Universal  
Service and Energy Conservation Plan for  
2023-2027 Submitted in Compliance with 52 Pa.  
Code § 57.74

Docket No. M-2022-3031727

**ORDER ON RECONSIDERATION**

**BY THE COMMISSION**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition on the merits is the February 23, 2023 Petition for Reconsideration (Petition for Reconsideration) filed by the Pennsylvania Coalition of Local Energy Efficiency Contractors, Inc. (PA-CLEEC), regarding the Commission's February 9, 2023 Order (*February 2023 Order*) relative to PPL's Universal Service and Energy Conservation Plan for 2023-2027 (2023 USECP) at Docket No. M-2022-3031727. Reconsideration was granted, pursuant to Rule 1701 of the Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. 1701, (relating to effect of appeal generally) to preserve Commission jurisdiction, in an Order entered on March 2, 2023 (*March 2023 Order*), pending further review on the merits.

## BACKGROUND

On April 1, 2022, PPL filed its Proposed 2023 USECP at Docket No. M-2022-3031727. On May 26, 2022, PA-CLEEC filed its initial comments (PA-CLEEC May 2022 Comments) regarding the Proposed 2023 USECP. On June 14, 2022, PPL filed a response (June 2022 Letter) declining to address PA-CLEEC's May 2022 Comments. June 2022 Letter at 1.

On July 14, 2022, the Commission entered an Order (*July 2022 Order*) requesting additional information and stakeholder comment regarding PPL's proposed 2023 USECP. On August 3, 2023, PPL filed Supplemental Information. PA-CLEEC, the Office of Consumer Advocate (OCA), the Commission on Economic Opportunity (CEO), and the Pennsylvania Weatherization Providers Task Force (PWPTF) separately filed comments on September 22, 2022. PA-CLEEC included the entirety of its May 2022 Comments as an attachment. The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) which had initially filed comments on September 22, 2022, filed revised comments on October 3, 2022.<sup>1</sup> CAUSE-PA filed reply comments on October 6, 2022. CEO and PWPTF filed joint reply comments on October 7, 2022. PA-CLEEC and PPL separately filed reply comments on October 7, 2022.

The Proposed 2023 USECP set out various modifications to PPL's 2017 USECP. PPL proposed changes, *inter alia*, to the description of how PPL contracts with weatherization agencies and local private contractors. This included removing provisions limiting subcontractor work to specialized jobs (*e.g.*, electrical, plumbing, and heating equipment repair) and limiting contracts with WRAP (Winter Relief Assistance

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<sup>1</sup> References herein to "CAUSE-PA Comments" specifically refer to its revised comments filed on October 3, 2022.

Program)<sup>2</sup> agencies to three years. The Proposed 2023 USECP stated that PPL currently contracts with seven WRAP contractors, down from 24 when the 2017 USECP was approved. Only one of the current WRAP contractors is a Community Based Organization (CBO). Proposed 2023 USECP at 30, 45.

In the *July 2022 Order*, the Commission directed PPL to clarify how it will ensure that communities receive the same level of WRAP services for the next five years with fewer WRAP contractors and CBOs. *July 2022 Order* at 49.

In its Supplemental Information, PPL stated that its process for selecting contractors has not changed despite the reduction in contractors. PPL further stated that its current WRAP contractor partners have demonstrated the expertise to perform the work and can handle the jobs assigned across its service territory. PPL Supplemental Information at Section 1-42.

CAUSE-PA expressed concern that PPL's reliance on seven contractors, only one of which is a CBO, will negatively impact delivery of WRAP services. CAUSE-PA stated that it is unclear what criteria PPL used to select its contractors, noting that further investigation into the selection process may be warranted. CAUSE-PA Comments at 57-59.

PA-CLEEC stated that PPL's contractor procurement and request for proposal (RFP) processes have been unclear in its USECPs and questioned whether PPL comports with best practices in the design, structure, and implementation of an RFP process. PA-CLEEC recommended that PPL be required to clearly specify the metrics and factors it uses in its RFP process and how each was weighted in determining its selection of contractors. PA-CLEEC also recommended that PPL give weight and credit to proposals

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<sup>2</sup> WRAP is PPL's Low Income Usage Reduction Program (LIURP) which is a component of PPL's 2023 USECP.

from contractors with a satisfactory work history and relevant work experience in the service territory. PA-CLEEC asserted that the RFP process should be modified to include an opportunity for bidders to submit questions on the results of the bidding and selection process. PA-CLEEC further asserted that the RFP process should include a formal dispute resolution protocol to resolve disputes similar to the process the Commission's Office of Competitive Market Oversight (OCMO) uses for electric distribution company (EDC) and electric generation supplier disagreements. PA-CLEEC May 2022 Comments at 3-4; PA-CLEEC September 2022 Comments at 3, 6, 9-11.

CEO and PWPTF supported PA-CLEEC's comments and recommendations regarding PPL's contractor procurement and RFP process. CEO and PWPTF also recommended that the issues surrounding PPL's contracting process be referred to the Commission's Office of Administrative Law Judge (OALJ). CEO and PWPTJ Joint Reply Comments at 2-3.

PA-CLEEC further advocated for a "fair and transparent" RFP process including a formal dispute resolution process to ensure contract awards are made in a consistent manner that prioritizes the interests of low-income WRAP participants. PA-CLEEC commented that the Commission cannot evaluate whether an RFP process is fair if the RFP process – including its criteria, weighting of factors, evaluations of proposals, and scores – continues to be non-transparent. PA-CLEEC further contended that unreasonable elements of the RFP process cannot be modified or eliminated if the Commission does not mandate a dispute resolution procedure. PA-CLEEC Reply Comments at 4-5.

PPL asserted that PA-CLEEC's proposed amendments to its RFP process are unprecedented and unnecessary. PPL stated that it employs a reasonable and adequate RFP process and that the process is confidential so that bidders know their bids will not result in undue competitive harm. PPL noted that neither Chapter 14 of the Public Utility

Code<sup>3</sup> nor Commission regulations<sup>4</sup> address RFP processes for selecting LIURP contractors nor do they establish a procedure for the Commission to review and evaluate LIURP contractors. PPL contended that it should not be subject to different RFP requirements than other EDCs and states that if the Commission imposes bidding requirements, it should be done through a statewide proceeding. PPL asserted that RFP review, evaluation, and awarding of bids should be left to its discretion. PPL noted that its next RFP for WRAP contractors will be issued in 2024 and encouraged previous bidders to report resolved issues that may have negatively impacted their bids so PPL can weigh these factors in its review and evaluation. PPL Reply Comments at 33-34.

In the *February 2023 Order*, the Commission approved the Proposed 2023 USECP without modifying PPL's contractor selection process. The Commission noted that the LIURP Regulations at Section 58.7(c), 52 Pa. Code § 58.7(c),<sup>5</sup> (relating to integration), require public utilities to use qualified contractors that have demonstrated experience and effectiveness in the administration and provision of LIURP services. The regulations further require a public utility to solicit competitive bids for LIURP services by providers of related services in the absence of qualified contractors. The Commission acknowledged the concerns raised by the parties about the lack of transparency in the RFP selection process but agreed with PPL that proposed changes to the process used by public utilities to evaluate and select LIURP contractors are more appropriately addressed

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<sup>3</sup> 66 Pa.C.S. §§ 1401-1419.

<sup>4</sup> 52 Pa. Code §§ 58.1-58.18 (relating to residential low-income usage reduction programs).

<sup>5</sup> Section 58.7(c) requires that:

Mandatory usage reduction programs be designed, whenever possible, to provide program services through independent agencies which have demonstrated experience and effectiveness in the administration and provision of program services. In the absence of qualified independent agencies, a covered utility electing not to provide program services directly shall solicit competitive bids for the provision of services by providers of related services, such as construction, architectural or engineering services.

in a statewide proceeding, such as the Commission's ongoing proceeding to review and revise the LIURP regulations.<sup>6</sup> *February 2023 Order* at 94, OP#1.

On February 23, 2023, PA-CLEEC filed its Petition for Reconsideration. In the *March 2023 Order*, the Commission granted reconsideration pending further review of, and consideration on, the merits of the Petition. On March 6, 2023, CAUSE-PA filed a letter in lieu of a formal Answer to the Petition for Reconsideration.<sup>7</sup> On March 6, 2023, PPL also filed its Answer (PPL Answer) to the Petition for Reconsideration.

### **STANDARD FOR RECONSIDERATION**

PA-CLEEC timely filed its Petition requesting reconsideration of the *February 2023 Order*. Commission jurisdiction in this matter was preserved by the *March 2023 Order*, pursuant to Pennsylvania Rules of Appellate Procedure, Rule 1701.

Before reaching the substantive issues raised in PA-CLEEC's Petition for Reconsideration, we must address the standard for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas, or the like. Petitions for reconsideration are reviewed pursuant to 66 Pa.C.S. § 703(g) (relating to fixing of

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<sup>6</sup> The Commission is currently reviewing its LIURP regulations at *Initiative to Review and Revise the Existing LIURP Regulations at 52 Pa. Code §§ 58.1–58.18*, Docket No. L-2016-2557886.

<sup>7</sup> OCA also filed a letter on March 6, 2023, indicating it would not file an answer to the Petition for Reconsideration.

hearings)<sup>8</sup> and 52 Pa. Code § 5.572 (relating to petitions for relief).<sup>9</sup>

The Commission in *Duick v. PGW*, 56 Pa. P.U.C. 553 (1982) (*Duick*), elaborated on the application of Section 703(g) and Section 5.572:

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion . . . to rescind or amend a prior order in whole or in part.

*Duick* at 558. A party may not raise the same questions in a petition for reconsideration that were raised in a prior pleading. Such questions raised ought to be those that “appear to have been overlooked or not addressed by the Commission”. If “new and novel” questions are not raised, a party will not succeed in persuading the Commission that the “initial decision on a matter or issue was either unwise or in error”. *Duick* at 558.

## **SUMMARY OF PETITION FOR RECONSIDERATION**

PA-CLEEC requests that the Commission grant reconsideration, clarification, and amendment of the *February 2023 Order* as “necessary” to provide:

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<sup>8</sup> Section 703(g) provides that:

The commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders.

<sup>9</sup> Section 5.572(a) provides that:

Petitions for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas or the like must be in writing and specify, in numbered paragraphs, the findings or orders involved, and the points relied upon by petitioner, with appropriate record references and specific requests for the findings or orders desired.

- “[B]idding feedback [. . . to WRAP service providers . . .] to ensure a continually improving RFP process”; and
- A “proper docket for statewide consideration of LIURP guidelines and regulations . . . .”

Petition for Reconsideration at 7.

PA-CLEEC submits that without Commission direction to PPL at this 2023 USECP docket, there is no opportunity for contractors to “learn from their mistakes”. PA-CLEEC requests that the Commission amend the *February 2023 Order* to require PPL to provide each RFP bidder with a confidential “report card” on the strengths and weaknesses of its bid to help them learn how to improve their chances of being awarded a contract in a future RFP. Petition for Reconsideration at 2-4.

PA-CLEEC further requests that the Commission initiate an “appropriate” rulemaking docket to address statewide LIURP RFP issues. PA-CLEEC notes the LIURP Rulemaking at Docket No. L-2016-2557886 has had no significant activity since July of 2017. PA-CLEEC avers that the LIURP Rulemaking is a dated, dormant proceeding that does not have any near-term potential for providing improvements to the RFP process. Petition for Reconsideration at 4-5.

## **STAKEHOLDER RESPONSE**

CAUSE-PA states that it maintains its previous comments on this matter and takes no further position related to the Petition for Reconsideration. CAUSE-PA Letter at 1. PPL argues that the Commission should deny the Petition for Reconsideration because the Petition fails to meet the *Duick* standard for reconsideration.

PPL avers that the issues presented in the Petition for Reconsideration were previously raised or could have been raised by PA-CLEEC during this proceeding that culminated in the approval of its 2023 USECP. PPL Answer at 5. PPL states that PA-CLEEC already argued for changes to its RFP process and notes that the Commission rejected PA-CLEEC's recommendations. PPL asserts that it is responsible to deliver universal service programs to its customers on "reasonable terms and conditions" consistent with 66 Pa.C.S. § 1402(3) (relating to declaration of policy). PPL asserts that, as the entity administering and implementing the USECP, the RFP process should be left to its discretion. PPL Answer at 5-7.

PPL argues that if it were to provide a confidential "report card" to a losing bidder, that bidder would gain information about the winning bid. PPL provides the example that if a losing bidder's report card showed poor grades on the bid's price, then the bidder would know that one or more bids had better pricing. PPL states that this information is not regularly disclosed to bidders for this very reason. PPL notes that neither Chapter 14 nor Commission regulations set forth specifications on using a RFP process to select WRAP contractors and that neither the statute nor the regulations direct the Commission to review and evaluate WRAP contracts before they are executed. PPL reiterates that subjecting it to different RFP bidding requirements for its USECP than other EDCs is neither reasonable nor prudent. PPL Answer at 8-9.

PPL asserts that nothing prevented PA-CLEEC from arguing as part of this USECP proceeding that the Commission should open a statewide proceeding at a new docket to address the LIURP RFP process for all EDCs. PPL maintains that while PA-CLEEC may disagree with the speed at which the LIURP rulemaking has progressed, it cannot dispute that these issues would fall within the scope of that proceeding. PPL further opines that PA-CLEEC's criticisms of the LIURP RFP are meritless and therefore do not justify opening a separate and distinct rulemaking docket. PPL Answer at 9-11.

## DISCUSSION

We find that PA-CLEEC has not introduced any new information or data on-the-record, nor has it raised any new or novel arguments in support of amending the *February 2023 Order* or requiring revision of PPL's 2023 USECP. We note that PA-CLEEC's recommendation that PPL be required to provide a confidential "report card" to RFP bidders is similar to its previous recommendation that PPL be required to disclose RFP metrics and bidding feedback, which we previously rejected. *February 2023 Order* at 94.

We note that the LIURP rulemaking at Docket No. L-2016-2557886 is currently ongoing. We have made no decisions regarding PA-CLEEC's arguments about PPL's RFP processes that would preclude their consideration in that proceeding. Interested parties are welcome to raise such issues in the LIURP rulemaking when that docket opens for public comments.

## CONCLUSION

The Commission finds that PA-CLEEC's Petition for Reconsideration has not raised new or novel arguments to warrant reconsideration of the *February 2023 Order*. Accordingly, PA-CLEEC's Petition for Reconsideration is denied; **THEREFORE,**

### **IT IS ORDERED:**

1. The Petition for Clarification and Reconsideration of the Commission's February 9, 2023 Order, filed by the Pennsylvania Coalition of Local Energy Efficiency Contractors, Inc., on February 23, 2023, is denied, consistent with this Order.

2. That a copy of this Order be served on parties to Docket No. M-2022-3031727.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: April 20, 2023

ORDER ENTERED: April 20, 2023