Energy Association of Pennsylvania

800 North Third Street, Suite 205 • Harrisburg, Pennsylvania 17102
Telephone (717) 901-0600 • Fax (717) 901-0611 • www.energypa.org

May 2, 2011

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

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

Dear Secretary Chiavetta,

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

Sincerely,

Terrance J. Fitzpatrick

Terrance J. Fitzpatrick
President and CEO

RECEIVED
2011 MAY -2 PM 3:40
PA PUC
SECRETARY'S BUREAU

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

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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

I. Introduction

On April 1, 2011, the Pennsylvania Public Utility Commission ("PUC" or "Commission") entered a Tentative Order for public comment, proposing an expedited process for approval of minor changes to the approved Energy Efficiency and Conservation Plans ("EE&C Plans") of electric distribution companies ("EDCs"). *See Energy Efficiency and Conservation Program*, Tentative Order at Docket M-2008-2069887 (entered on April 1, 2011). The Commission requested interested parties to file comments within 20 days of the entry date for the Tentative Order and reply comments within 30 days of the entry date for the Tentative Order.

The Energy Association of Pennsylvania ("EAP" or "Association") filed comments on April 21 which supported a further streamlining of the alternative approval process set forth in the Tentative Order and sought clarification of the scope of minor changes. In its comments, the Association outlined an alternative expedited procedure which: (1) affords an opportunity for input from interested parties; (2) delegates limited authority to Commission staff to approve or disapprove requested modifications with the ability to refer the matter to an ALJ hearing based on a specific standard; and (3) allows for an appeal of staff action and provides a means to resolve any appeal within a prescribed time period. The Association also suggested a

clarification to the scope of minor changes to include a variety of modifications that do not increase the overall costs to a customer class.

EAP files the instant Reply Comments to address the points raised by IECPA in its comments.

II. Reply Comments

Despite its statement to the contrary, fundamentally, IECPA does not support adoption of an expedited process to consider minor changes to approved EE&C Plans. IECPA first broadly asserts that the Commission does not have the ability to delegate authority to staff to support the expedited process set forth in the Tentative Order despite the opportunity for stakeholder input and the ability to appeal any staff decision reached under the proposed procedure. IECPA then contends that any change proposed by an EDC must be major because it will, if adopted, amend an EE&C Plan approved by the Commission. Such an interpretation is not only tortuous and illogical; it ignores an internal Commission practice whereby Commission Staff has the authority to approve certain EE&C Plan implementation practices, such as the approval of Conservation Service Provider contracts. The Commission Staff then issues a Secretarial letter with its decision, which is reviewed by Commissioners prior to release. Finally, IECPA's assumption that elimination of an underperforming measure or of a measure that has exhausted its budget will necessarily lead to other classes "absorbing" extra costs or peak load reductions is patently incorrect and reveals a basic misunderstanding of Act 129.

Act 129 mandates reductions in energy usage and peak demand by requiring EDCs to implement EE&C Plans which offer various energy efficiency and demand reduction measures and programs to consumers. The General Assembly made a policy determination that energy efficiency and peak demand reductions would benefit the public by reducing wholesale prices and decided that the way to achieve this policy goal was to mandate sales reductions by EDCs.

Failure to reduce usage and peak demand results in penalties for the EDCs, not the consumers. And, while the law provides that costs of programs implemented to entice consumers to participate in the mandated reductions are to be recovered from ratepayers, those costs are capped. Further, allocation of Act 129 costs among rate classes have been approved in EE&C Plans by the PUC and, no party has suggested that a change which re-allocates costs would be considered "minor". Lastly, the shifting of funds within a customer class does not change the amount of funding for the customer class, has no impact on the budget and does not change what the customer pays in rates. Therefore, shifting funds from measure to measure, or changing a measure's structure, is not a major change that should require Commission approval. The positions espoused by IECPA deny any flexibility to the EDCs to manage the implementation of EE&C Plans based on experience gained in the course of daily field operations and would deny the Commission flexibility to alter processes established in the Implementation Order through issuance of a second order such as the one under consideration in the instant Tentative Order.

EAP maintains that the Commission has the authority to delegate to staff the initial determination of whether a proposed revision to an EE&C Plan should be approved particularly where, as here, input is sought from interested parties, a decision is provided through issuance of a Secretarial Letter and an opportunity to appeal the staff resolution is afforded. The Association further contends that the PUC has the authority to revise its procedure as previously established in the Implementation Order when it "recognizes that a more expedited approval process for some plan changes could benefit the program as a whole by reducing administrative costs, reducing the time it takes to end underperforming programs, implement or expand more effective programs and increasing the ability of the program to meet the mandated goals in a cost-effective manner." Tentative Order at p. 4. The Association commends the Commission for recognizing that a procedure established at the outset of Act 129 implementation has

proven administratively burdensome and applauds this effort to offer a solution which protects the interests of stakeholders, considers the need for flexibility in managing EE&C Plans and promotes a practical approach to Act 129 oversight.

The Association strongly supports adoption of an expedited procedure to consider minor changes to EE&C Plans and, as set forth in its comments, would modify the alternate process outlined in the Tentative Order at pp. 4 – 5 as follows:

1. Authority to approve "minor changes" to EE&C Plans will be delegated to CEEP, FUS and the Law Bureau;
2. EDCs shall file with the Commission and serve on the statutory advocates (OCA, OSBA and OTS) as well as all parties of record the proposed "minor changes" and request expedited consideration;
3. Any interested party can file an objection within ten (10) days of the EDC filing requesting a "minor change". If no objections are received, the Commission approves the requested modifications within five (5) days without further administrative review or proceedings;
4. Filing of an objection in the initial ten (10) day period triggers an additional five (5) day period for comments and a second five (5) day period for the filing of reply comments. Upon the closing of the reply comment period, staff would issue a Secretarial Letter within ten (10) days approving or disapproving some or all of the proposed "minor changes" including an explanation for its ruling in the Secretarial Letter. Staff would have the option of referring the matter to an ALJ hearing based on Commission parameters set forth in the Tentative Order; and
5. Parties would be provided ten (10) days to appeal the staff action pursuant to 52 Pa. Code § 5.44. The Commission would resolve any appeal either at the first

public meeting following the filing of an appeal or within thirty (30) days of the filing of an appeal whichever is longer.

The Association believes that employing the above procedures would assure that parties such as IECPA were accorded notice and an opportunity for input while providing flexibility to EDCs to amend EE&C Plans to accurately reflect actual conditions and experience gained in the field in a timely and meaningful fashion without unnecessary administrative delay.

III. Conclusion

The Association contends that the comments of IECPA are misplaced and should not hamper the Commission's efforts to deal with Act 129 implementation in a practical fashion which affords ample opportunity for input from interested parties when considering "minor changes" to EE&C Plans. The alternate process set forth in the Tentative Order as modified by the suggestions of EAP and its EDC members subject to Act 129 protects the interests of all parties and allows much needed flexibility to both EDCs and the Commission to resolve proposed modifications to an approved EE&C Plan in a manner commensurate with the policy goals established by the General Assembly in Act 129.

Respectfully Submitted,

Terrance J. Fitzpatrick
President & CEO
tfitzpatrick@energypa.org

Donna M. J. Clark
Vice President & General Counsel
dclark@energypa.org

Energy Association of Pennsylvania
800 North Third Street, Suite 205
Harrisburg, PA 17102

Date: May 2, 2011