

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY COMMENTS OF PECO ENERGY COMPANY ON THE PROPOSED
EXPEDITED APPROVAL PROCESS FOR MINOR EE&C PLAN CHANGES**

Pursuant to the April 1, 2011 Tentative Order entered by the Pennsylvania Public Utility Commission (the “Commission”) in the above-referenced docket, PECO Energy Company (“PECO” or the “Company”) hereby replies to comments submitted by other parties on the Commission’s proposed expedited process for approval of minor changes to Act 129 Energy Efficiency and Conservation Plans (“EE&C Plans”).

I. INTRODUCTION

In the Tentative Order, the Commission recognized that a “one-size fits all” approach to approving EE&C Plan changes creates unnecessary time and expense hurdles for electric distribution companies (“EDCs”) seeking to implement minor changes. The Commission proposed to address this issue by creating an expedited approval process for minor changes that would facilitate timely and cost-effective EE&C Plan modifications and, at the same time, would preserve the participation rights of interested parties. PECO agrees with the Commission, and the vast majority of other parties who submitted comments, that a streamlined process for minor EE&C Plan changes will “benefit the [EE&C] program as a whole.” *See* Tentative Order, p. 4.

II. SPECIFIC COMMENTS

**A. The Delegation Of Approval Authority To Commission Staff For Minor
EE&C Changes Is Proper And Appropriate**

In the Tentative Order, the Commission proposes to delegate its authority to approve minor EE&C Plan changes to Commission staff and outlines an expedited timeframe for the

submission of comments and reply comments and the issuance of a Secretarial Letter. *See* Tentative Order, p. 4. All parties submitting comments supported the delegation of approval authority to Commission staff except for the Industrial Customer Groups (“ICG”).

ICG asserts that the proposed delegation is “questionable” claiming that: (1) in previous Orders, the Commission has found that all proposed changes to EE&C Plans must be presented to and approved by the Commission because, if approved, the changes would modify or amend an existing order; and (2) Act 129, and in particular 66 Pa. C.S. § 2806.1(b), identifies a role for the “Commission” but not Commission staff with respect to particular Plan changes. ICG Comments, pp. 4-7. Neither of these assertions prevents the Commission from delegating authority to Commission staff as proposed in the Tentative Order. First, the Commission has the discretion to modify the approval process that it previously established, particularly when there are significant concerns with the current approach, such as the fact that some EE&C Plan changes took over four months to receive approval. *See* Tentative Order, p. 1.

Second, Act 129 does not preclude the Commission from delegating approval authority to Commission staff, and, in fact, the Commission has already delegated such authority under the Act. *See Implementation Order*, Docket No. M-2008-2069887 (Order entered January 16, 2009)(“the Commission staff shall have delegated authority to review and approve electric distribution company proposed conservation service provider bidding processes”). ICG focuses on 66 Pa. C.S. § 2806.1(b)(2), which states that, if the Commission determines that a measure will not achieve required reductions in consumption in a cost-effective manner, then it must direct an EDC to modify its EE&C Plan accordingly. This language does not mandate a particular process for considering changes proposed by EDCs themselves or exclude the use of Commission staff as part of the process for considering such changes. In fact, other Act 129

provisions relating to EE&C Plans explicitly defer to the Commission on matters of process. *See, e.g.,* 66 Pa. C.S. § 2806.1(a)(1) (Commission shall adopt procedures for the approval of EE&C Plans); 66 Pa. C.S. § 2806.1(a)(2) (Commission shall adopt procedures to make recommendations as to the additional measures that will enable an EDC to improve its plan). Finally, although the ICG repeatedly refers to the staff's role as "unilateral," the Commission's proposal provides that any party may appeal a staff decision in accordance with 52 Pa. Code § 5.44 and thereby obtain Commission review. For these reasons, the ICG's assertion that the Commission's delegation of approval authority to Commission staff is improper should be rejected.

While all parties (other than ICG) expressed general support for the delegation of approval authority to Commission staff, many proposed changes that would further expedite the approval process administered by Commission staff. *See* PPL Comments, pp. 8-9 (proposing elimination of 10 day advance notice of filing or in the alternative eliminating formal comment period if no objections filed during 10 day notification period); Energy Association of Pennsylvania Comments, pp. 3-4 (proposing elimination of 10 day advance notice of filing and use of a 10 day period for objections and, if objections, a 5 day period for comments and 5 day period for reply comments); Duquesne Comments, p. 1 (supporting the Energy Association comments); and Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company Comments, p. 1 (same).

In its comments, PECO proposed that minor changes become effective on 10 calendar days' notice unless an objection is filed during the notice period. If an objection is filed, comments would be due 5 calendar days after the expiration of the notice period and then a 5-day period for reply comments would follow. Commission staff would then have 7 calendar

days to issue a Secretarial Letter approving or disapproving some or all of the proposed changes. Although PECO continues to believe that its proposal is appropriate, the changes proposed by other EDCs to further expedite the approval process are also reasonable and similarly address the need to remove unnecessary hurdles for minor EE&C Plan changes. The Company would therefore support the adoption of either its proposal or a proposal supported by other EDCs.

B. The Commission's Definition Of Minor Changes Should Be Expanded

The Commission identified the following three categories of EE&C Plan changes as “minor” and therefore eligible for expedited approval:

1. Elimination of a measure that is underperforming or has exhausted its budgeted amount.
2. The transfer of funds from one measure to another measure within the same customer class.
3. 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.

Tentative Order, p. 5. All parties (except for ICG) agreed that the enumerated categories of changes were minor and could be appropriately considered on an expedited basis.

ICG asserted that the Commission's definition of minor changes in the Tentative Order was too broad and could create “detrimental impacts on customers.” ICG Comments, pp. 7-8. In particular, ICG argued that expedited approval is not appropriate when: (1) the elimination of a measure is proposed (regardless of the reason); (2) the transfer of funds from one measure to another in the same customer class is proposed, where the transfer “results in an increase of a measure's cost”; or (3) a party requests additional information to analyze a specific change.

Regarding the first two circumstances, ICG expressed concern that shifting funds away from or towards particular measures will create “extra” costs for either the customer class eligible for those measures or other customer classes that might have to “absorb” the

consequences of the change. ICG appears to misunderstand (and significantly tighten) the program and budget boundaries that are already in place as part of PECO's approved EE&C Plan. The Commission has already approved specific EE&C Plan budgets for each customer class as well as for each program, and proposed changes that stay within those boundaries are "minor" and deserve expedited consideration. The ability to operate flexibly and efficiently within established customer class and program boundaries will allow EDCs to capitalize on savings opportunities, eliminate underperforming measures, and ultimately provide additional benefits to customers. Individual measures do not have individual budgets, and thus proposed measure changes that stay within program and customer class boundaries are neither exceptional nor deserving of special attention as ICG suggests.

Regarding ICG's final point, providing parties with the ability to circumvent the expedited process by simply asking for more information defeats the purpose of establishing the expedited process. The Commission's proposal in the Tentative Order (and revisions proposed by other EDCs) provides interested parties with ample opportunity to review proposed changes, submit comments and reply comments, and appeal the decision of Commission staff, if necessary. The process is expedited because the Commission has rightly determined that certain types of changes, by their very nature, are so minor as to not require the current lengthy procedure. If any change could lose its "minor" status when a party asks for additional information, then the value of the expedited process in reducing administrative costs and maximizing savings opportunities would be significantly diminished. For all these reasons, ICG's proposal to narrow the scope of minor changes should be rejected.

While all parties (other than ICG) expressed general support the Commission's three categories of minor changes, many proposed that the scope minor of changes be increased to

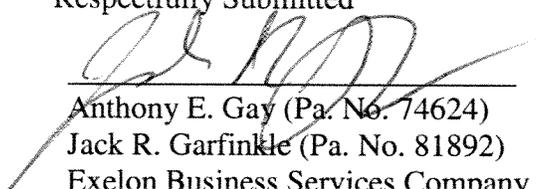
include other types of changes. *See* PPL Comments, pp. 10-13 (proposing that all changes be minor except for the following “major” changes: the addition/deletion of a program, movement of funds or energy savings between customer classes, or increase of the projected costs for a customer class); Energy Association of Pennsylvania Comments, pp. 6-7 (same “major” change proposal as PPL, along with a broader definition of “minor” changes); Duquesne Comments, p. 1 (supporting the Energy Association comments and proposing that “minor” changes include the transfer of funds from one program to another program within the same customer class); and Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company Comments, p. 1 (supporting the Energy Association comments).

PECO has proposed that “minor” changes include the addition of a new measure included in the Technical Reference Manual or Interim Technical Reference Manual because such measures have already been approved by the Commission or are being recommended by the Statewide Evaluator in collaboration with the Technical Working Group and Commission staff. PECO continues to believe that its proposal is appropriate, but acknowledges that other EDC proposals to broaden the scope of “minor” changes would also create a more efficient and flexible process for EDCs to obtain approval of minor EE&C Plan changes. The Company would therefore support the adoption of either its proposal or a proposal supported by other EDCs.

III. CONCLUSION

PECO appreciates the opportunity to participate in this important proceeding and believes that the Company's recommended revisions can further improve the efficiency and effectiveness of the approval process for EE&C Plan changes.

Respectfully Submitted



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For PECO Energy Company