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File #: 2507/140069

May 2, 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: Reply Comments of PPL Electric Utilities Corporation - Docket No. M-2008-2069887

Dear Secretary Chiavetta:

Enclosed, for filing, is an original and fifteen copies the Reply 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

AST/jl
Enclosures
cc: Certificate of Service

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: May 2, 2011

Andrew S. Tubbs /jl
Andrew S. Tubbs

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY COMMENTS OF
PPL ELECTRIC UTILITIES CORPORATION

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

PPL Electric Utilities Corporation ("PPL Electric" or the "Company"), by and through its attorneys, in accordance with the Pennsylvania Public Utility Commission's ("Commission") April 1, 2011 Tentative Order,[1] hereby submits these Reply Comments to the April 21, 2011 comments of the Industrial Energy Consumers of Pennsylvania ("IECPA").[2] PPL Electric recommends that the Commission reject the comments of IECPA in their entirety because IECPA's suggestions are completely unworkable, are not in the best interest of customers, and would likely cause electric distribution companies ("EDC") to exceed the approved program budgets for their Act 129 Energy Efficiency and Conservation Plans ("EE&C Plans"). In support thereof, PPL Electric states as follows:

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1 *Energy Efficiency and Conservation Program*, Tentative Order at Docket No. M-2008-2069887 (Entered April 1, 2011).

2 The following entities also sponsored IECPA's comments filed on April 21, 2011: Duquesne Industrial Intervenors, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors.

I. BACKGROUND

In the Tentative Order, the Commission issued, for public comment, a proposed expedited process for approval of minor changes to EDC's EE&C Plans. In its Tentative Order, the Commission stated that, 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. The Commission noted, in the Tentative Order, 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. The Commission also 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 expedited alternative process for approving proposed minor changes to an Act 129 EE&C Plan.

The Commission requested that interested parties file written comments on the expedited approval process by April 21, 2011. The Commission further requested that parties file reply comments by May 2, 2011. On April 21, 2011, Duquesne Light Company, the Energy Association of Pennsylvania, the First Energy Companies (Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company), IECPA, PECO Energy Company and PPL Electric filed initial comments on the Commission's proposed expedited approval process. PPL Electric supports the comments filed by the Energy Association of Pennsylvania, and either supports or does not oppose the comments

filed by Duquesne Light Company, the First Energy Companies[3] and PECO Energy Company. PPL Electric, however, does not support the comments filed by IECPA and hereby addresses the issues raised in IECPA's comments filed on April 21, 2011 ("IECPA Comments").

II. REPLY OF PPL ELECTRIC

As discussed in detail below, contrary to the assertions of IECPA, the Commission does have authority to delegate to staff the ability to approve EE&C Plan changes and has already implemented such a process with regard to other aspects of Act 129 compliance. Moreover, the Commission should not further limit the changes that are eligible for the proposed expedited review process; nor should it automatically remove changes from the expedited process when a party simply seeks additional information concerning a specific change.

A. The Commission has the Authority to Delegate to Staff the Ability to Approve EE&C Plan Changes.

In its Comments, IECPA states that "it is questionable whether the Commission has the authority to delegate the ability to approve EE&C Plan changes to Staff, since any change to an EE&C Plan would be amending a Commission Order." IECPA Comments at p. 5. As explained in the Company's Comments filed on April 21, 2011, PPL Electric does not share such a limited view of the Commission's authority under Act 129. 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. PPL Electric Comments at p. 5.

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[3] The First Energy Companies propose "that the Commission not require EDCs to supply an entire revised plan for minor changes. Rather, the Companies suggest that the EDCs simply file documentation (which may include various pages from the approved plan) sufficient to support the change, which would also explain how the changes affect the current plan as approved." First Energy Companies Comment at p. 2. PPL Electric agrees with this proposal.

Moreover, under 66 Pa.C.S. § 305(c), the Commission has the authority to delegate to its staff the authority to approve EE&C Plan changes. Specifically, 66 Pa.C.S. § 305(c) provides that the Commission "may appoint, fix the compensation of, authorize and delegate such officers, consultants, experts, engineers, statisticians, accountants, inspectors, clerks and employees as may be appropriate for the proper conduct of the work of the commission." This is consistent with generally accepted administrative law principles, pursuant to which the Commission has broad statutory authority to perform any and all acts and make such rules as are necessary or appropriate to carry out its statutory functions.[4] Furthermore, as a practical matter, if the Commission staff approves something by delegated authority, a party can always ask for Commission review of that action. *See* 52 Pa. Code § 5.44.

Applying this authority, the Commission has already delegated to its staff authority for certain aspects of Act 129 compliance, *i.e.*, those aspects concerning conservation service providers ("CSP"). Act 129 requires the Commission to establish procedures to require EDCs to competitively bid all contracts with CSPs. 66 Pa. C.S. § 2806.1(a)(7). Act 129 further requires the Commission to establish procedures to review all proposed contracts with CSPs prior to execution of a contract. 66 Pa. C.S. § 2806.1(a)(8). Under this statutory construct, the Commission, in Energy Efficiency and Conservation Program, Implementation Order, at Docket No. M-2008-2069887 (Entered January 16, 2009) established an approval process for requests for proposal ("RFPs") and CSP contracts, which essentially delegates all authority to the Commission's staff.

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[4] Courts have held that agencies may delegate these powers to their employees. *See United States v. Touby*, 909 F.2d 759, 770 (3d Cir. N.J. 1990), *citing Fleming v. Mohawk Wrecking & Lumber Co.*, 331 U.S. 111, 121, 67 S. Ct. 1129, 1134 (1947) and *United States v. Giordano*, 416 U.S. 505, 513-14 (1974) (Congress need not expressly authorize subdelegation when a general subdelegation statute exists). Express statutory authority is not necessarily required for delegation within an agency. *Hall v. Marshall*, 476 F. Supp. 262, 272 (E.D. Pa. 1979), *aff'd*, 622 F.2d 578 (3d Cir. 1980).

Pursuant to the Implementation Order, if the Commission staff has not commented upon or disapproved the proposed RFP process within 15 days of it being submitted to the Commission for review, then the EDC is permitted to proceed with the RFP process without modification. Implementation Order at p. 26. Moreover, if the Commission staff has not commented upon or disapproved the proposed contract within 45 days of it being submitted to the Commission for review, then the EDC is permitted to proceed with the contract without modification. Implementation Order at p. 27. Additionally, the Implementation Order also delegated the CSP registry process. In the Implementation Order, the Commission stated that all submitted CSP registry applications will be reviewed by Bureau of Fixed Utility Services ("FUS") to determine if the applicant is financially responsible. The Bureau of Conservation, Economics and Energy Planning ("CEEP") will also review all CSP registry applications to determine if the applicant has the minimum technical experience and qualifications. If the application is approved by both FUS and CEEP, FUS will notify the applicant and place the applicant on the registry. On the other hand, if either FUS or CEEP or both determine that the application should be denied, FUS will notify the applicant and provide a brief explanation for the denial.[5] A denial may be appealed to the Commission pursuant to 52 Pa. Code § 5.44.

The expedited approval process proposed by the Commission in the Tentative Order is similar to the processes that the Commission has already implemented with regard to Act 129 in the Implementation Order. In the Tentative Order, like the Implementation Order, the Commission simply seeks to delegate to staff the authority to approve certain changes to EE&C

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[5] Notably, the Commission has delegated its authority in other contexts. For example, under 52 Pa Code § 75.64, the Commission delegated certain authority to the alternative energy credit program administrator regarding compliance with the Alternative Energy Portfolio Standards Act.

Plans in the same manner that it delegated authority regarding the inclusion of entities on the CSP registry and approval of CSP contracts.

B. The Expedited Process for Approval of Changes to an EE&C Plan is Appropriate for the Elimination of a Measure.

IECPA requests that the Commission reconsider the categories of "minor" changes that would be subject to the proposed expedited approval process. In particular, IECPA recommends "the proposed elimination of a measure, regardless of the reason, should be subject to the current review and approval process." IECPA Comments at p. 8. PPL Electric strongly disagrees with IECPA's proposal. IECPA's suggestion is completely unworkable, is not in the best interest of customers, and would likely cause PPL Electric to exceed approved cost budgets for a program or sector.

As noted above, IECPA argues that the proposed elimination of a measure, regardless of the reason, should be subject to the current full review process for changes to EE&C Plans. IECPA Comments at p. 8. In the Tentative Order, the Commission proposed only three limited categories of changes that could be reviewed on an expedited basis.[6] IECPA's proposal would remove one of the three categories proposed by the Commission. The basis for IECPA's proposal is the assertion that other classes will be expected to absorb extra costs, peak load reductions or energy savings as a result of a program's dissolution. IECPA Comments at p. 8.

The Commission should not further reduce the already limited number of changes listed as minor changes in the Tentative Order, and the elimination of a measure should be reviewed on an expedited basis. The elimination of a measure does not normally mean the elimination of an

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[6] In its comments filed on April 21, 2011, PPL Electric fully discussed its position that the Commission's proposed definition of "minor" changes in the Tentative Order is very restrictive and would greatly limit those changes that could be approved through an expedited process. PPL Electric Comments at pp. 11-13.

entire program, as stated by IECPA, nor does the elimination of a measure necessarily mean that other classes will be expected to absorb extra costs, energy savings, or peak load reductions. To the extent that the elimination of a measure means the elimination of a program, or if the elimination of a measure shifts program funds, energy savings or peak load reductions between customer classes, or increases the projected cost at completion for a customer class (without shifting to another class),[7] the current non-expedited review process may be warranted. However, to the extent that the elimination of a measure does not delete an EE&C Plan program, or shift extra costs to a customer class, as discussed by IECPA, the expedited review process should be available. Moreover, to the extent that an EDC can achieve peak load reductions or energy savings under the approved budgeted amounts, such revisions to the EE&C plans should be reviewed on an expedited basis. This would allow the EDCs to react quickly and receive approval for potentially economical energy saving opportunities. This is consistent with the Commission's desire to ensure that the approval process does not cause the EDCs and their customers to miss opportunities for timely and cost effective implementation of energy efficiency measures. *See* Tentative Order at p. 1.

As noted above, IECPA's suggestion is completely unworkable, is not in the best interest of customers and would likely cause PPL Electric to exceed approved cost budgets for a program or sector. Below are actual examples of the unworkability of IECPA's proposal, with reference to PPL Electric's programs. One of the measures in PPL Electric's Renewable Energy Program is photovoltaic systems ("PV"). PV reached its target (savings and budget) much more quickly than estimated in PPL Electric's EE&C Plan. In fact, it happened shortly after PPL Electric

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[7] *See* PPL Electric Comments at p. 11 (proposing to define major changes as: 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).

launched the program, even though the EE&C Plan projected participation in all four program years. Therefore, PPL Electric needed to discontinue this measure earlier than shown in its EE&C Plan because the measure exhausted its budgeted amount (savings and/or costs). This is one of the examples of a "minor" change proposed by the Commission in the Tentative Order -- the discontinuation of a measure because it exhausted the approved budgeted amount. If the Commission accepts IECPA's proposal, PPL Electric would have to submit a petition to modify the EE&C Plan and go through the current non-expedited review process to discontinue PV because it achieved exactly what it was approved to achieve (*i.e.*, savings within the budgeted amount); however, this was achieved earlier than expected. The non-expedited review process, based on PPL Electric's experience, would take approximately six months from the time a petition was submitted, not including the pre-filing efforts required to revise the EE&C Plan and prepare the petition, *before* the Company could discontinue the PV measure. In the six plus months required for the Commission's review, PPL Electric would have to continue to offer rebates for the PV measure, because it must get Commission approval *before* discontinuing a measure for any reason. This would result in that measure being significantly oversubscribed, thus increasing the cost of the Renewable Energy Program over its approved amount, and likely would require a shifting of funds from another program to compensate. Of course, this shifting would trigger another change, another petition to modify and another 6 plus month review process. This cycle would continue under IECPA's proposal.

Examples like this are common, especially in PPL Electric's Efficient Equipment Program that includes approximately 100 different measures. Under IECPA's recommendation, it would take more than six months to discontinue a measure that has zero or minimal savings. Certainly, it is not in the best interest of customers or PPL Electric to continue to pay rebates on

a measure that provides no savings. Also, the actual number of measures rebated (such as the number of SEER 16 heat pumps rebated) in a particular year or over the whole EE&C Plan period, or the savings per measure, cannot be expected to exactly equal the estimates in the EE&C Plan. Under IECPA's recommendation, PPL Electric would have to revise its EE&C Plan, file a petition to modify and wait more than six months every time PPL Electric changes the projected quantity or projected savings of a measure, or wants to discontinue a measure when it hits its approved budget, even if these changes do not increase/decrease the cost or savings for the program or a customer sector.

The cost to revise an EE&C Plan and submit a full petition to modify adds to the administrative cost of the plan, a cost that is borne by customers and could take valuable funding away from direct program costs (rebates available to customers) to the extent that the approved budgets are not increased. It is in everyone's best interest to limit these administrative costs and to limit the current non-expedited review process to only "major" changes, and not for every little change. *See* PPL Comments at pp. 10-12.

If every change to a measure required more than six months approval time it would add significant administrative costs, significantly hamper PPL Electric's ability to comply with Act 129 reduction targets, reduce responsiveness to customers/trade allies and would reduce customer/trade ally satisfaction. The non-expedited review process would also require "a petition a month," since PPL Electric cannot reasonably wait six months to a year to package a sufficient number of unrelated changes into a single petition for administrative convenience. If every change to a measure is reviewed under the current non-expedited process, it is highly likely that PPL Electric would have multiple petitions to modify the EE&C Plan active at the

same time, establishing an unmanageable process whereby changes in one version of the Plan are contingent on changes in another version of the Plan.

C. EE&C Plan Changes that Transfers Funds Between Measures within the Same Customer Class should be Eligible for the Expedited Approval Process.

In its comments, IECPA maintains that "any proposal to transfer funds, even between measures within the same customer class, should be subject to the current review and approval process." IECPA Comments at p. 8. IECPA is challenging the Commission's proposal that minor EE&C Plan changes include: the transfer of funds from one measure to another measure within the same customer class. Tentative Order at p. 5. IECPA maintains that because EE&C surcharges are reconcilable, changes in the level or the transfer of funds that result in an increase of a measure's cost should be considered "major," even if the originally budgeted amount for that measure is not being exceeded. IECPA Comments at p. 8.

The Company requests that the Commission reject IECPA's proposal because it is completely unworkable. For example, if PPL Electric wants to add a measure, such as ductless heat pumps or LED lighting, to its Efficient Equipment Program because customers want the measure, because the measure provides meaningful and cost-effective savings, or because the measure was added to the Pennsylvania Technical Reference Manual, that process (*i.e.,* the non-expedited review process) would take more than six months and would add significant administrative costs.

EE&C Plan changes which transfer funds between measures within the same customer class should be eligible for the expedited approval process proposed in the Tentative Order. Transfer of funds from one measure to another measure within the same customer class will not increase costs compared to the overall budget approved by the Commission; therefore, these types of changes are not major changes. If the transfer of funds from one measure to another

measure is within the same customer class, that customer class will pay no more than they were required to pay under the original Commission-approved plan. Moreover, EDC's should be permitted to use the fully budgeted amount to achieve the mandated goals of Act 129.

D. A Request of Additional Information Concerning a Specific Change Should Not Exclude that Change from the Expedited Approval Process.

IECPA argues that to the extent parties request additional information to analyze a specific change to an EE&C Plan, that change should be excluded from the expedited revision process and be subject to the current full review and approval process. IECPA Comments at p. 8. PPL Electric opposes IECPA's proposal to use the request for additional information as a trigger which removes a change to the EE&C Plan from the expedited approval process. The removal of any change from the expedited approval process by simply asking for more information would essentially grant parties the unfettered ability to remove any proposed change from the expedited approval process at will. No party should be permitted to delay the process by requesting potential superfluous information, if the requested change meets the definition of a "minor" change, and the EDC has provided reasonable information to confirm that the change is "minor." Otherwise, parties could automatically force *every* proposed change, however minor, to go through the current non-expedited review process merely by requesting "more information."

IECPA's proposal would arbitrarily lead to delays in obtaining approval of EE&C Plan changes, which will increase the cost of administering the EE&C Plan and may cause the EDCs and their customers to miss opportunities for timely and cost-effective implementation of energy efficiency measures. As the Commission stated in the Tentative Order, the current process can take more than four months to complete, and in PPL Electric's experience even longer, regardless of the magnitude of the changes requested. PPL Electric is concerned, as noted above,

that under IECPA's proposal any, and potentially all, proposed minor EE&C Plan changes could be removed from the expedited process without any substantive basis. Then once removed, the minor EE&C Plan changes would have to be reviewed under the current non-expedited process which could take over six or more months.

Moreover, the post-filing 10-day comment period provides sufficient time for parties to analyze the proposed changes and raise any issues they see fit and the EDC has sufficient time (five days) to respond to any parties' claims regarding the minor EE&C plan changes. These procedural timetables grant sufficient time for parties to request additional information and for the EDC to respond without the need to remove the proposed minor changes from the expedited process.

III. CONCLUSION

As fully discussed above, PPL Electric Utilities Corporation requests that the Commission reject the comments filed by IECPA.

Respectfully submitted,

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