

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

Public Meeting held June 9, 2011

Commissioners Present:

Robert F. Powelson, Chairman  
John F. Coleman, Jr., Vice Chairman  
Tyrone J. Christy  
Wayne E. Gardner  
James H. Cawley

Energy Efficiency and Conservation Program

Docket No. M-2008-2069887

**FINAL ORDER**

**BY THE COMMISSION:**

This Commission previously established the process by which electric distribution companies (EDCs) seek Commission approval of changes to their Act 129 Energy Efficiency and Conservation Plans (EE&C Plans).<sup>1</sup> Recent experience has revealed that this process can take more than four months to complete, regardless of the magnitude of the changes requested. The Commission recognizes 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. As such, the Commission, through this Order, is establishing an expedited review process to approve minor EE&C Plan changes.

**BACKGROUND**

Act 129 required the Commission to direct an EDC to modify or terminate any part of an approved plan, after an adequate period for implementation, if the Commission determined that a plan measure will not achieve the mandated targets in a cost-effective manner. *See* 66 Pa.C.S. § 2806.1(b)(2). When the Commission makes such a determination, an EDC must submit a revised plan that offers substitute measures or increases the availability of existing measures to achieve the mandated targets. *See* 66 Pa.C.S. § 2806.1(b)(3).

To address these requirements, the Commission permitted EDCs and other interested stakeholders to propose plan changes in conjunction with the EDCs' annual report filings required by Act 129. *See* 66 Pa.C.S. § 2806.1(i)(1). The annual reports are to be served on the statutory advocates and are to be posted on the Commission's website. The Commission and parties can make recommendations for plan improvements or object to an EDC's proposed plan revision within 30 days of the annual report filing. EDCs have 20 days to file replies to these recommendations or objections, after which, the Commission will determine whether to rule on the changes or refer the matter to an ALJ for hearings and a recommended decision. *See Implementation Order* at 24.

The EDCs' first annual report filings were submitted on September 15, 2010, at which point, four EDCs filed plan revisions. Following the process described above, to include referral to an ALJ, most revised EDC EE&C Plans received final Commission approval at the end of January 2011, more than four months after the revised plans were filed.

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<sup>1</sup> *See Energy Efficiency and Conservation Program Implementation Order (Implementation Order)*, Docket No. M-2008-2069887 (entered January 16, 2009), at 24.

To address potential inefficiencies and missed opportunities that may arise due to the time and expense of a fully litigated EE&C Plan proceeding, the Commission, on March 31, 2011, adopted a Tentative Order<sup>2</sup> that issued for comment a proposed expedited process for approval of minor EE&C Plan changes. Comments were to be filed within 20 days of the entry date of the Tentative Order, with Reply Comments due ten days thereafter. The Duquesne Light Company (Duquesne); Energy Association of Pennsylvania (EAPA); Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively FirstEnergy); the Industrial Energy Consumers of Pennsylvania<sup>3</sup> (IECPA); PECO Energy Company (PECO) and PPL Electric Utilities Corporation (PPL) all filed Comments. The EAPA, FirstEnergy, IECPA, The Office of Small Business Advocate (OSBA), PECO and PPL all filed Reply Comments.

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<sup>2</sup> See *Energy Efficiency and Conservation Program* Tentative Order at Docket No. M-2008-2069887 (entered on April 1, 2011) (*Tentative Order*).

<sup>3</sup> The Comments and Reply Comments of the IECPA were also sponsored by the 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.

## DISCUSSION

Currently, all proposed changes to an EDC's EE&C Plan must be presented to and approved by the Commission through the processes described above. This requirement was set forth by the Commission in the Orders ruling on each EDC's initial EE&C Plans.<sup>4</sup> This requirement was recently reiterated in the Commission's Order addressing PPL Electric Utilities Corporation's (PPL's) modified EE&C Plan filing.<sup>5</sup> In that Order, this Commission stated that "because the EDC's Act 129 Plans are approved by Commission Order, procedures for rescission and amendment of Commission orders must be followed to amend that Order and to assure due process for all affected Parties." *See January 28, 2011 PPL Order* at 18. This Commission went on to state that "if the EDC believes that it is necessary to modify its Act 129 Plan, the EDC must file a petition requesting that the Commission rescind and amend its prior Order approving the plan," noting that the Commission's prior approval was not limited to certain aspects of a plan. *Id.*

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<sup>4</sup> *See Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation and Demand Response Plan, Approval of its Recovery its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan*, Opinion and Order, Docket No. M-2009-2093217 (entered October 27, 2009) at 73 and 74; *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans*, Opinion and Order, Docket Nos. M-2009-209222, M-2009-2112952 and M-2009-2112956 (entered October 28, 2009) at 123 and 124; *Petition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program*, Opinion and Order, Docket No. M-2009-2093215 (entered October 28, 2009) at 42 and 43; *Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan*, Opinion and Order, Docket No. M-2009-2093216 (entered October 26, 2009) at 92 and 93; and *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan*, Opinion and Order, Docket No. M-2009-2093218 (entered October 23, 2009) at 98 and 99.

We note that any issue that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

#### **A. Expedited Review Process**

In its *Tentative Order*, the Commission recognized that a more expedited approval process for some EDC EE&C Plan changes could reduce administrative costs, the time it takes to end underperforming programs, implement or expand more effective programs, and increase the ability of EDCs' EE&C Plans to meet the mandated goals in a cost-effective manner. To realize these stated benefits, the Commission proposed the following alternative process for Commission review of minor changes to an EDC's EE&C Plan.

- The delegation of authority to approve minor EE&C Plan changes, as defined below, to staff of the Bureau of Conservation, Economics and Energy Planning (CEEP), with assistance from staff of the Bureau of Fixed Utility Services (FUS) and the Law Bureau.
- A requirement for EDCs to serve a copy of proposed plan revisions on the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Office of Trial Staff (OTS) and all parties of record at least 10 days prior to making its filing with the Commission. This requirement would give interested parties more time to review the changes and facilitate

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<sup>5</sup> See *Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan Order* at Docket No. M-2009-2093216 (entered January 28, 2011) (*January 28, 2011*

discussions to refine or revise any objectionable changes before submission for Commission approval.

- A requirement for EDCs to file with the Commission and serve on the OCA, the OSBA, the OTS and all parties of record the proposed revised plan identifying the minor changes. This filing is to indicate the date the parties were given advanced notice of the proposed changes.
- A requirement that all interested parties file comments on the proposed minor plan changes within ten days of the EDC's filing. The proposal permitted parties to file comments even if they previously indicated that they concurred with or supported the proposed minor plan changes. A requirement that all parties file reply comments within five days following the comment filing date.
- A requirement that Commission staff issue a Secretarial Letter approving or disapproving some or all of the proposed changes along with an explanation for its rulings within ten days after the close of the reply comment period.<sup>6</sup> Commission staff would also have the authority to refer some or all of the proposed revisions to the Office of Administrative Law Judge (OALJ) for hearings and a recommended decision, if necessary.
- Parties would then be given ten days to appeal the staff action in accordance with 52 Pa. Code § 5.44.<sup>7</sup>

## **1. Expedited Review Process Timeline**

EAPA<sup>8</sup> and PPL oppose the requirement for advanced service ten days prior to filing any proposed minor plan changes. EAPA Comments at 3 and PPL

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*PPL Order*).

<sup>6</sup> Staff would also have the discretion to extend its consideration period by an additional ten days if warranted.

<sup>7</sup> This appeal period was shortened from 20 to ten days to further expedite a final resolution of a plan filing.

<sup>8</sup> The EAPA Comments were supported by Duquesne and FirstEnergy.

Comments at 8 and 9. EAPA proposes a revised process that provides for an initial ten day period in which parties can file objections, followed by a five day period for the filing of comments and a second five day period for filing of reply comments. Under this proposal, if no parties object to the proposed plan changes, the Commission would approve the changes within five days without further administrative review or proceedings. If an objection were filed, this proposal would provide Commission staff with ten days to issue a Secretarial Letter approving or disapproving some or all of the proposed plan modifications or recommending referral to OALJ for hearings if necessary. EAPA posits that its proposed process would provide interested parties with an opportunity to comment, while facilitating a rapid resolution of the parties' requests and objections. Such a rapid resolution, EAPA asserts, would provide EDCs the flexibility they need to implement timely changes to improve delivery of EE&C measures to consumers and enhance the EDC's opportunity to meet the statutory mandates. EAPA Comments at 3 and 4.

PECO suggests that a proposed minor EE&C Plan change become effective within ten days of it being filed with the Commission, unless an objection is filed during this ten day period. Under PECO's proposal, if an objection is filed an expedited comment process is initiated, where parties have five days to file comments following the end of the initial ten day period, with reply comments due five days thereafter. Under PECO's expedited process, Commission staff would have seven days from the close of the reply comment period to issue a Secretarial Letter approving or disapproving some or all of the proposed changes. PECO further suggests that Commission staff be given the discretion to extend its consideration period by an additional seven days, if necessary. PECO posits that this expedited process provides parties with a meaningful opportunity to advocate their positions and, at the same time, substantially reduce the time, costs and administrative burdens associated with the existing EE&C Plan revision process. PECO notes that it would continue its practice of sharing possible EE&C Plan changes with

stakeholders before making a formal filing with the Commission, thus, giving interested parties an opportunity to review and discuss the changes prior to a formal filing. PECO Comments at 3-5.

PPL asserts that the ten day comment period is adequate as the changes will be minor. PPL would support a 15 day comment period, should the Commission determine that the proposed ten day comment period was inadequate. If the Commission chooses to keep the ten day advance notification requirement, PPL proposes that parties be given ten days to file an objection. If no party objects to the EE&C Plan changes, the Commission would approve the changes within five days without a formal comment and reply comment period or additional commission review. PPL Comments at 8 and 9.

PPL supports the shortening of the staff appeal period to ten days as it will expedite a final resolution of EE&C Plan modification filings. PPL, however, suggests that the Commission set a procedural deadline for resolving any such appeal, such as a requirement that the Commission address an appeal at the first public meeting or within 30 days of the filing of an appeal, whichever is longer. PPL asserts that an expedited review of an appeal is warranted to ensure that proposed changes to an EE&C Plan are not delayed. PPL Comments at 10.

In reply, the OSBA states that it did not file Comments because the Tentative Order struck a reasonable balance between the interests of ratepayers and the interests of EDCs. The OSBA, however, felt compelled to file Reply Comments in response to the EAPA and individual EDC proposals, as those proposals would seriously compromise interested parties' opportunity to question proposed plan changes. OSBA Reply Comments at 4 and 5. The OSBA notes that eliminating the ten day pre-filing notice would only allow an opportunity for a very cursory review of changes. The OSBA suggests that the Commission retain the ten day pre-filing notification unless it lengthens

the post-filing comment period to 20 days. OSBA Reply Comments at 5 and 6. IECPA asserts that the more streamlined proposals suggested by EAPA and some EDCs would deprive interested parties of due process. IECPA Reply Comments at 8 and 9.

As noted by the OSBA, the Commission's proposed expedited review process timeline attempted to balance the interests of EDCs, ratepayers, and other interested parties. It is clear, however, from the comments, that requiring a ten day pre-filing notice to all interested parties adds administrative costs in time and money without providing a commensurate benefit to interested parties. This is especially true if the EDCs revise their proposed minor changes based on comments by interested parties, as other parties would only have the ten day post filing period to review the changes and submit comments. Therefore, we have eliminated the requirement for EDCs to serve a copy of a proposed plan revision on all parties ten days prior to filing the proposed change with the Commission for approval. We, however, continue to strongly encourage the EDCs to inform and consult with stakeholders regarding improvements to EE&C Plans.

As we are eliminating the ten day pre-filing service requirement, we have extended the comment period to 15 days and the reply comment period to 10 days. The extension of both the comment and reply comment periods will give interested parties with an opportunity to provide meaningful and specific comments and replies to more fully inform the staff decision. At this point, the Commission does not believe that the significantly shorter review period timeline proposed by the EAPA and some EDCs will provide adequate and meaningful due process for all interested parties. If experience reveals that this timeline can be reduced based on the fact that the changes being filed under this expedited review process are unopposed or some other indicator that the parties due process interests can be adequately address through a shorter timeline, then we can revise this process at a later date.

## **2. Staff Referral to OALJ**

EAPA and PPL request that the Commission provide guidance to staff on when a proposed minor EE&C Plan change is to be referred to OALJ for hearings. EAPA proposes that a referral to OALJ may be appropriate if a parties objection(s) raise issues of fact or staff concludes that the proposed modifications do not fit the definition of minor changes. EAPA posits that such guidance would prevent a situation where a single party can pose a vague, general objection to force an administrative hearing, without specifying the nature of the objection(s) or identify how the proposed plan changes violate Act 129 or other law. EAPA argues that vague, general objections should not be permitted to unnecessarily delay minor plan changes that could jeopardize the EDC's opportunity for increased energy efficiency or demand reductions needed to meet the legislative mandates. EAPA Comments at 4. PPL suggests that the complexity of the proposed changes, the significance of parties' objections or a Commission staff determination that the proposed changes do not fit within the definition of a minor change are examples of such standards. PPL asserts that establishing such standards will ensure that referrals to OALJ only occur when absolutely necessary and will not interfere with the expedited review process. PPL Comments at 9 and 10.

PECO suggests that the Commission require Commission staff to render a final decision on all proposed minor EE&C Plan changes, without referral to the OALJ for hearings and a recommended decision. PECO asserts that such a referral defeats the purpose of establishing an expedited process. PECO posits that removing the authority of Commission staff to refer such matters to the OALJ would not prevent meaningful participation by interested parties, as they would still have the ability to file comments and reply comments, as well as appeal the staff action. PECO Comments at 5 and 6.

IECPA suggests that a proposed change be removed for consideration if a party requests additional information to analyze that specific change. IECPA posits that removing such issues from the expedited review process could avoid the need to refer the matter to the OALJ. IECPA Comments at 8.

We decline, at this time, to provide any additional guidance to staff on referral of matters to OALJ for hearings, other than those already contained in the Commission's internal operating procedures. We also decline to remove this option for staff as suggested by PECO and IECPA. Under the expedited review process being established with this Order, Staff can refer all, some or none of the proposed changes to the OALJ for hearings as necessary and we expect them to provide a reason for such a referral. We note that parties have the opportunity to request permission to withdraw their objection or the proposed change without prejudice after such a referral, if they choose.

### **3. Filing Requirements**

FirstEnergy suggests that rather than filing an entire revised plan when seeking a minor plan change, EDCs be permitted to file documentation sufficient to support the change. FirstEnergy states that such documentation would include the affected pages of the plan, and an explanation of how the proposed minor changes affect the previously approved plan. FirstEnergy asserts that as the proposed changes will be minor, its suggestion will eliminate unnecessary paperwork, reduce compliance costs and improve efficiencies. FirstEnergy Comments at 2. IECPA stated that it could agree to FirstEnergy's proposal provided that EDCs serve redlined (or black-lined) revisions to every page of an EE&C Plan that would change and concurrently make available an updated, redlined (or black-lined) complete version of its EE&C Plan for public

inspection on the EDC's website. IECPA Reply Comments at 11.

We agree with FirstEnergy's and IECPA's proposal regarding the documentation to be filed with the Commission. As such we will only require EDCs to file sufficient documentation to support the proposed minor EE&C Plan change, to include the affected pages of the plan, a redlined version of the affected pages and an explanation of how the proposed minor changes affect the previously approved plan. In addition, we will require the EDC to post a complete redlined version of its proposed plan on its website for public inspection upon filing.

#### **4. Delegated Authority**

FirstEnergy suggests that any delegation to staff should include a reference to successor division(s) as determined by the Commission. FirstEnergy posits that such language will eliminate confusion in the future should the named Bureaus be changed or eliminated under a Commission reorganization. FirstEnergy Comments at 2.

The IECPA does not object to the concept of an expedited review process for minor EE&C Plan changes. IECPA asserts, however, that the proposed review process unreasonably delegates authority to Commission Staff to unilaterally amend previous Commission Orders. IECPA argues that Staff approval of an EE&C Plan change would amend a Commission Order, noting that the Commission has previously stated that because EE&C Plans are approved by Commission Order, an EDC must file a petition to rescind and amend that prior Commission Order in accordance with Section 703(g) of the Public Utility Code.<sup>9</sup> IECPA further asserts that the proposal to delegate authority to approve the elimination of a measure that is underperforming or had exhausted its budget

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<sup>9</sup> 66 Pa.C.S. § 703(g).

amount is contrary to the plain language of Section 2806.1(b)(2)<sup>10</sup> of the Public Utility Code, which, according to IECPA requires the Commission to make such a determination. IECPA suggests that the Commission should issue an Order adopting, modifying or rejecting the staff's conclusions, or at a minimum, formalize a procedure to request review of staff's final decision even if no appeals are filed, similar to the procedures set forth in 52 Pa. Code § 5.536(a). IECPA Comments at 5-7.

EAPA and PECO assert that the Commission has the authority to delegate to staff an initial determination of whether a proposed revision to an EE&C Plan should be approved when interested parties have an opportunity to comment and appeal a staff determination. EAPA also asserts that the Commission has the authority to revise procedures established in the Implementation Order, especially when that procedure proves to be administratively burdensome. EAPA Reply Comments at 2-4 and PECO Reply Comments at 2 and 3.

PPL asserts that Section 305(c) of the Public Utility Code authorizes the Commission to delegate its authority to staff, including its authority to approve EE&C Plan changes. PPL also points out that the Commission has already delegated to staff authority related to the approval of contracts with conservation service providers. PPL Reply Comments at 4 and 5.

As PPL correctly points out, Section 305(c) of the Public Utility Code authorizes this Commission to delegate its authority to staff. 66 Pa.C.S. § 305(c). Indeed, the Commission has previously delegated a number of matters that are deemed to be routine, ministerial or non-policy making in nature. The review and approval of minor EE&C plan changes by staff is both authorized by Section 305(c) and consistent with such prior delegations of authority. Nevertheless, as with any delegation to staff, under the

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<sup>10</sup> 66 Pa.C.S. § 2806.1(b)(2).

procedures adopted in this order, a party retains the right under 52 Pa. Code § 5.44 to seek full Commission review of a staff determination under this delegated authority to review minor EE&C plan changes. But, in the absence of any further challenge to the staff determination, made after notice and opportunity to be heard, no further action by the Commission is either warranted or required by law. Accordingly, we find IECPA's arguments unpersuasive as they are not supported by statutory or case law.

## **B. Scope of Plan Changes to be Reviewed through Expedited Process**

The Commission recognizes that parties may have significant interests at issue in changes to an EE&C Plan. Therefore, we propose to limit the approval authority delegated to staff to the following minor EE&C Plan changes.

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

All proposed changes that do not fit within these three categories will be handled through the previous approval process established in the *Implementation Order* at 24. Specifically, an EDC must file a petition requesting that the Commission rescind and amend its prior order approving the plan in accordance with 52 Pa. Code §§ 5.41 (relating to petitions generally) and 5.572 (relating to petitions for relief). This petition should explain the specific reasons supporting the requested modifications, evidence supporting the modifications to the plan and cost recovery mechanism. This petition

shall be served on all parties, who will have 30 days to file comments, an answer or both. All parties will then have 20 days to file replies, after which the Commission will determine whether to rule on the changes or refer the matter to an Administrative Law Judge for hearings and a recommended decision.

Duquesne and the OSBA request that the language in the proposal include a reference to programs. Specifically, Duquesne requests that the process allow for the “transfer of funds from one measure or program to another measure or program within the same customer class.” Duquesne Comments at 1 and OSBA Reply Comments at 7.

EAPA suggests that the Commission should define major changes and allow all changes that do not qualify as a major change to be addressed in the expedited review process. EAPA posits that major changes to an EE&C Plan include shifting of program funds between customer classes; increasing the projected cost of a program for a customer class apart from shifting funds; and adding or deleting a program. In addition, EAPA and PPL suggest a more expansive definition of minor changes as follows:

1. Elimination of a measure that is underperforming, no longer viable for reasons of cost-effectiveness, savings or market penetration or has met its 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;
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; and
4. Modify program delivery and management functions such as evaluation, measurement and verification, quality assurance, marketing, program management, tracking systems program administration, program schedules and total resource cost test inputs so long as the changes do not increase the cost to a customer class.

EAPA Comments at 6 and 7 and PPL Comments at 12.

PECO suggests that the addition of a new measure that is included in the TRM be added to the definition of a minor plan change. Specifically, PECO suggests changing the third condition as follows:

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, **or the addition of a new measure that is included in the TRM.**

PECO asserts that it is appropriate to approve new measures in the TRM on an expedited basis because the TRM itself is approved by the Commission for use in determining kilowatt-hour savings for EE&C measures and is updated by the Commission on an annual basis. PECO Comments at 2 and 3.

PPL proposes that the expedited process should be available to all changes that are not major changes. PPL suggests that major changes should be defined as follows:

- 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.

PPL posits that limiting non-expedited review to an explicit list of major changes would ensure that the EDCs and interested parties were on notice as to which EE&C Plan changes will receive the full non-expedited review. PPL Comments at 10 and 11.

The OSBA opposes the application of the expedited review process to changes that “[m]odify program delivery and management functions such as evaluation, measurement and verification, quality assurance, marketing, program management, tracking systems program management, program schedules and Total Resource Cost Test inputs so long as the changes do not increase the cost to a customer class.” OSBA Reply Comments at 6. The OSBA asserts that this category involves the process for determining how well a plan is working, rather than changes to make existing EE&C

programs more effective or for approving cost-neutral substitutions of new programs for those that are underperforming. The OSBA opposes PPL's proposal as it would guarantee accelerated review for unspecified changes that could have a significant negative impact on ratepayers. OSBA Reply Comments at 6 and 7.

IECPA is concerned that defining minor EE&C Plan changes too broadly could have detrimental impacts on customers. IECPA opposes the elimination of a measure that is underperforming or has exhausted its budget amount as a minor change, especially when other customer classes will be expected to absorb extra costs or peak load reductions as a result. IECPA proposes that the elimination of a measure, regardless of the reason, should be subject to the current review process. In addition, IECPA proposes that any increase in a measure's cost should be considered a major change, even if the original budgeted amount is not exceeded. IECPA Comments at 7 and 8. EAPA and PPL reply that the shifting of funds within a customer class does not change the rates of those customers. EAPA Reply Comments at 3 and PPL Reply Comments at 10 and 11.

The Commission declines to adopt the proposals submitted by EAPA and PPL to define major plan changes and allow all changes not within that definition to be reviewed under the expedited review process. Under this new process, the Commission is delegating to Staff the authority to approve plan changes and must identify the extent of such authority. Furthermore, this expedited review process is designed and intended to review changes that have little or no impact on the substantive rights of interested parties, to include the EDCs, ratepayers, and other stakeholders. It is not designed nor intended to replace or circumvent the Commission's full plan review process we established in the Implementation Order adopted on January 15, 2009.

Regarding the alternate minor plan change definition proposed by EAPA and PPL, we have adopted all but the changes related to program delivery and management

functions such as evaluation, measurement and verification, quality assurance, marketing, program management, tracking systems program administration, program schedules and total resource cost test inputs. The Commission agrees with the OSBA that these categories relate to processes for determining how well a plan is working, rather than making existing EE&C programs more effective or for approving cost-neutral substitutions for underperforming programs.

In addition, we decline to adopt PECO's proposal to include the addition of a new measure that is included in the TRM. We believe that this language makes the definition of minor EE&C plan change too broad as the inclusion of the measure in the TRM is just one factor to be considered in approving a measure.

Finally, the Commission declines to further limit the minor changes to be reviewed under this expedited process as proposed by IECPA. IECPA advocated for removing the elimination of measures that are underperforming or that have exhausted its budget amount from the minor change definition. IECPA's assertion that other customer classes will be absorbing extra costs or peak load reductions as a result of these measure eliminations is unpersuasive. Indeed, the definition of minor EE&C Plan changes being adopted with this Order specifically restricts changes that shift costs from one customer class to another or increase the overall costs to a particular customer class.

### **C. Process for Approving Minor Changes to an EDC EE&C Plan**

The Commission, with this Order, is adopting the following expedited review process for approving proposed minor changes to an EDC's Act 129 EE&C Plan.

- The Commission is delegating its authority to review and approve minor EE&C Plan changes, as defined below, 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.

- EDCs are directed to file with the Secretary and serve on the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff and all parties of record any proposed minor EE&C Plan changes. The filing must clearly state that it is to be reviewed under the expedited review process for approving proposed minor changes to an EDC's Act 129 EE&C Plan. EDCs are directed to file sufficient documentation to support the proposed minor EE&C Plan change, to include, but not limited to, the affected pages of the plan, a redlined version of the affected pages and an explanation of how the proposed minor changes affect the previously approved plan. In addition, we direct the EDCs to post a complete redlined version of its proposed plan on its website for public inspection upon filing.
- All interested parties are directed to file comments on the proposed minor EE&C Plan changes within 15 days after the proposed minor EE&C Plan changes have been filed with the Secretary.
- All interested parties are directed to file reply comments within 25 days after the proposed minor EE&C Plan changes have been filed with the Secretary.
- Commission Staff are 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 35 days after the proposed minor EE&C Plan changes have been filed with the Secretary. Commission Staff have the discretion to extend this consideration period by an additional ten days.
- Parties are directed to file within ten (10) days after service of the Secretarial Letter petitions for appeal from actions of the staff in

accordance with 52 Pa. Code § 5.44.

- Minor EE&C Plan changes to be reviewed under this expedited review process shall be defined 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.
- Staff is directed to deny, without prejudice, any proposed changes that do not fall within this definition of minor EE&C Plan change.

#### **D. Process for Approving All Other Changes to an EDC EE&C Plan**

EDCs seeking approval of changes that do not fit within the Minor EE&C Plan change criteria listed above must file a petition requesting that the Commission rescind and amend its prior order approving the plan in accordance with 52 Pa. Code §§ 5.41 (relating to petitions generally) and 5.572 (relating to petitions for relief). This petition should explain the specific reasons supporting the requested modifications, evidence supporting the modifications to the plan and cost recovery mechanism. This petition shall be served on all parties, who will have 30 days to file comments, an answer or both. All parties will then have 20 days to file replies, after which the Commission will determine whether to rule on the changes or refer the matter to an Administrative Law

Judge for hearings and a recommended decision.

This procedural schedule shall apply to all petitions for approval of an EE&C Plan change, other than petitions seeking review under the expedited review process for approving proposed minor EE&C plan changes, to include Petitions filed at times other than those proposed during the annual review process. This procedural schedule supersedes the procedural schedule set forth in 52 Pa. Code §§ 5.41, 5.61 and 5.572, as well as our Opinion and Order in *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans* at Docket Nos. M-2009-209222, M-2009-2112952 and M-2009-2112956 (entered March 18, 2011) at 3. We are taking this step to reduce confusion and limit the number of procedural schedules applicable to petitions seeking review of changes to EE&C Plans.

## CONCLUSION

This Order establishes an alternative expedited approval process for minor Act 129 EE&C Plan changes. The Commission believes that this process will 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 increase the ability of the program to meet the goals of Act 129 in a cost-effective manner. The Commission extends its thanks to those who provided comments regarding this alternative review process; **THEREFORE,**

**IT IS ORDERED:**

1. That the alternative expedited approval process for minor Act 129 energy efficiency and conservation plan changes and the categories of changes that qualify for this alternative approval process, is adopted as outlined in this Order.

2. That the authority to review and approve minor EE&C Plan changes, as defined in this Order, is delegated 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.

3. That the procedural schedule established in the *Energy Efficiency and Conservation Program Implementation Order*, Docket No. M-2008-2069887 (entered January 16, 2009), at 24 shall apply to all petitions for approval of an EE&C Plan change, other than petitions seeking review under the alternative expedited approval process being adopted with this Order, to include Petitions filed at times other than those proposed during the annual review process.

4. That a copy of this Order shall be served upon all electric distribution companies operating in Pennsylvania, the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, all parties that previously filed comments and reply comments at this Docket and all parties of record at Dockets M-2009-2093217, M-2009-2092222, M-209-2112952, M-2009-2112956, M-2009-2093215, M-2009-2093216 and M-2009-2093218.

**BY THE COMMISSION**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: June 9, 2011

ORDER ENTERED: June 10, 2011