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April 17, 2012

VIA OVERNIGHT DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Act 129 Energy Efficiency And Conservation Program Phase Two
Docket No. M-2012-2289411

Dear Secretary Chiavetta:

Pursuant to the March 1, 2012 Secretarial Letter in the above-referenced docket, enclosed please find an original and three (3) copies of the **Comments of PECO Energy Company**.

Kindly return a time-stamped copy of this letter in the self-addressed envelope that is enclosed. Please do not hesitate to contact me should you have any questions regarding this filing.

Very truly yours,

Anthony E. Gay

Anthony E. Gay

Enclosures

Via Electronic Mail
cc: Megan G. Good
Bureau of Technical Utility Services

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Act 129 Energy Efficiency and Conservation Program Phase Two	:	**Docket No. M-2012-2289411**

PECO ENERGY COMPANY'S COMMENTS
ON THE COMMISSION'S MARCH 1, 2012 SECRETARIAL LETTER

On March 1, 2012, the Pennsylvania Public Utility Commission ("Commission") issued a Secretarial Letter (the "Secretarial Letter") identifying issues relating to the design and implementation of a second phase of Energy Efficiency & Conservation ("EE&C") plans under Act 129 of 2008 ("Act 129" or the "Act"). Pursuant to the Commission's request for comments on these issues, PECO Energy Company ("PECO" or the "Company") hereby submits its comments.

I. INTRODUCTION

Section 2806.1 of Act 129 required Pennsylvania's largest electric distribution companies ("EDCs"), including PECO, to adopt EE&C plans that, *inter alia*, would achieve consumption savings of at least 1% for their retail customers by May 31, 2011 and at least 3% by May 31, 2013. In addition, the Act required EDCs to achieve a peak demand savings over the 100 highest hours of demand of a minimum of 4.5% by May 31, 2013.

Act 129 also requires that the Commission evaluate the cost and benefits of the approved EE&C plans by November 30, 2013. If the benefits of the EE&C plans exceed the costs, the Commission is to establish new, additional incremental consumption and peak demand reduction requirements.[1]

In the Secretarial Letter, the Commission seeks input on the transition from initial phase

[1] *See* 66 Pa.C.S. §2806.1(c)(3) and (d)(2).

EE&C plans ("Phase One") to possible second phase EE&C plans ("Phase Two") based on the Commission's evaluation of the Phase One results. Specifically, the Commission seeks comments on the following eight issues relating to possible Phase Two plans:

(1) The planning timeline;

(2) The length of the Phase Two program;

(3) Inclusion of a Demand Response ("DR") curtailment program;

(4) Alignment of EDC funding and reduction targets;

(5) Inclusion of a reduction target carve-out for the Government, Educational and Non-Profit ("GEN-P") sector;

(6) Inclusion of a "Low-Income sector carve-out";

(7) Transition issues; and

8) Adjustments to reconciliation requirements.

PECO is currently administering its initial EE&C plan that the Commission approved on October 28, 2009 (the "Phase One Plan").[2] PECO welcomes the opportunity to file comments on each issue identified by the Commission in the Secretarial Letter in light of the Company's experience with, and the results of, its Phase One Plan.

II. SPECIFIC COMMENTS ON THE TOPICS IDENTIFIED BY THE COMMISSION IN THE SECRETARIAL LETTER

A. Planning Timeline

The Secretarial Letter's proposed timeline for any Phase Two plans the Commission may require after evaluation of the cost-effectiveness of Phase One plans should be revised to provide

[2] *See 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 (Order entered October 28, 2009) ("*PECO Phase One Order*"); *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 (Order approving revised plan entered on February 17, 2010).

additional time between Commission approval and commencement of Phase Two programs. Furthermore, consistent with comments at the Commission's March 16 Phase Two stakeholder meeting, PECO believes that EDCs also should be able to propose a staggered implementation schedule for new Phase Two programs for consideration by the Commission.

Under the Commission's proposed timeline, EDCs would have to implement Phase Two plans within approximately four months of the Commission's ruling approving, modifying, or rejecting a plan. Because all plans may not be approved without some modification, additional time will be required to address modifications that may be directed by the Commission and facilitate a seamless transition from Phase One to Phase Two plans. While the ability to stagger commencement of new programs would facilitate plan transitions, PECO believes that the proposed time frame is too short to put new plan programs in place and begin delivery of programs to customers.

Accordingly, PECO proposes the following revised schedule, which allows for an additional month between Commission approval and the launch of Phase Two programs:

June 11, 2012	• Tentative Implementation Order Comment due date
June 26, 2012	• Tentative Implementation Order Reply Comment due date
July 19, 2012	• Final Implementation Order on Public Meeting agenda
September 19, 2012	• If necessary, EDCs file EE&C Plans
January 17, 2013	• If necessary, Commission rules on EE&C Plans
June 1, 2013	• EE&C Programs begin

In addition to the above revised timeline, the Commission should not require re-approval of Conservation Service Providers ("CSPs") who will be implementing programs that are continuing from a Phase One plan to ensure that any Phase One programs that are carried over to Phase Two are not paused or delayed.

B. Length of Second EE&C Program

The Commission also seeks input on the optimal length of possible Phase Two EE&C plans among the options of a three-, four-, or five year term. PECO agrees with the Commission's observation that, generally, a shorter plan enables the use of more accurate economic and energy forecasts that may affect a consumer's ability to adopt energy efficiency ("EE") measures. However, PECO does not support a three-year plan term because the more frequent plan filings required under a three-year term cycle would incur higher administrative costs and would require more Commission, EDC and stakeholder resources as a result of the efforts needed to prepare and evaluate plan filings on a shorter cycle. Indeed, a three-year term would likely require the Commission, EDCs, and stakeholders to be in a perpetual cycle of plan preparation and evaluation because preparation of a new plan would have to begin soon after a plan is implemented.

PECO also believes that a five-year term is not advisable in light of the evolving energy efficiency marketplace and changes in Federal legislation and regulations that set minimum efficiency standards as noted by the Commission.[3] Since EDCs develop EE&C plans based on currently available measures, a five-year plan could become outdated and delay incorporation of new EE standards (*e.g.*, standards for appliances, building codes and demand side measures) and synergies from new technologies (such as those being developed by the Greater Philadelphia Innovation Center for Energy Efficient Buildings at the Philadelphia Navy Yard). A longer plan term will also increase the risk that an EDC is not able to meet consumption reduction

[3] Secretarial Letter at 2.

requirements if deemed savings associated with particular measures are reduced over time.

Accordingly, PECO believes that a term length of four years for Phase Two plans will be appropriate. A four-year term should provide an optimal balance between administrative costs and the ability to address and incorporate evolving EE standards and new technologies.

C. Inclusion of a DR Curtailment Program

Act 129 requires each EDC with at least 100,000 customers to reduce the annual system peak demand for its retail customers over the 100 highest hours of demand by a minimum of 4.5% by May 31, 2013. Phase One EE&C plans included DR curtailment programs to achieve this reduction, but in practice the 100-hour requirement has created a number of significant challenges for EDCs.

First, achieving a 4.5% load reduction over the 100 highest hours of demand is vastly different from producing energy consumption savings. The latter is an ongoing process during which an EDC must monitor, measure and make course corrections over time. In contrast, because the top 100 hours of demand are difficult to predict, no EDC will know unequivocally which specific hours constitute its top 100 hours until **after** its peak period has occurred. At that point, it will be impossible for an EDC to make course corrections to meet the Act's demand reduction requirements. EDCs have therefore been required to procure significant demand resources to ensure that the 100-hour requirement can be met over time periods greater than 100 hours.

Second, the EDC cannot predict how a summer will evolve relative to temperature and humidity patterns, which are key drivers in energy demand and the need for DR. Based on extensive analysis of weather patterns in the PECO territory dating back to 2000, PECO has learned that unseasonably mild summers make it very difficult to predict system peak loads.

Despite best efforts, there is no certainty that the EDC can accurately predict the top 100 hours and corresponding system peak demand over time. In the event that an EDC experiences a relatively cool summer with associated lower electric demand and wholesale electricity market prices, it will still be required to reduce customer demand (and pay for such reductions at customer expense) to meet Act 129's 4.5% mandated load reduction when the market is not calling for DR.

Third, the use of May 31, 2013 as the date for reduction measurement and the Commission's direction that EDCs limit their peak demand determination to the summer months of June through September[4] has effectively required EDCs to plan for reductions during the summer of **2012**, eight months less than the statutory deadline. Taken together, these challenges have created a costly and inefficient framework in which EDCs are required to enter into contracts for demand resources for a single summer period in which actual peak reductions may be unnecessary, but which will nevertheless have to be undertaken to comply with Act 129's 100-hour requirement.

The Commission has engaged the Statewide Evaluator to conduct a study of the current peak demand program and to provide recommendations on whether the current or another future DR program can be implemented cost-effectively ("DR Study"). The Commission, however, does not anticipate receiving the results of the DR Study until after the issuance of the final implementation order providing guidance to EDCs for design of any Phase Two plans. Pending receipt of the DR Study, the Commission is soliciting input on three options for dealing with the possibility that DR curtailment may be required in Phase Two EE&C plans.

The first option identified by the Commission is to require three-year Phase Two EE&C

[4] *See Energy Efficiency and Conservation Program*, Implementation Order, Docket No. M-2008-2069887 at 21, 29 (order entered January 16, 2009).

programs with only consumption reduction budgets and targets through May 31, 2016, and to await the DR Study results to decide whether to include DR programs in subsequent third phase EE&C plans. A second option is to set a short-term and long-term DR reduction target for the duration of the Phase Two EE&C plans. The third option is to require EDCs to set aside a portion of their Phase Two EE&C program budgets to fund DR programs at a later time in the event that the Commission determines that cost-effective DR programs are possible.

In light of the structural challenges, costs and inefficiencies inherent in the 100-hour requirement, PECO believes that the Commission should not adopt any of the foregoing options and instead recommends that the Commission eliminate peak load DR curtailment from Phase Two EE&C programs in favor of competitive, market-based programs offered by PJM Interconnection LLC ("PJM").

As the Commission is aware, PJM has offered extensive DR programs for many years, including an economic demand response program available in all EDC territories through which DR participants can receive payments from PJM for voluntarily reducing their electric usage in times of peak demand and high electricity prices. In addition, the emergence of demand response as a PJM capacity resource has created substantial additional economic opportunities for those entities who are able to participate in PJM's capacity markets, either directly or through third-party providers.

PECO believes that future peak demand reductions can be achieved in a more cost-effective manner through reliance on the PJM programs. In fact, continuing separate, EDC-specific demand reduction programs is likely to result in overpayments by EDC customers for DR as customers participate in both PJM and EDC programs. As there is a finite pool of DR resources in an EDC's territory, some DR participants were able to receive Act 129 DR financial incentives while at the same time collecting PJM incentives for the same load reductions. Thus, in certain instances, demand reduction was paid for twice because an entity seeking to participate in a DR program could enroll DR resources with PJM and its EDC and earn financial incentives from both for the same load reduction.

Such overpayments with Act 129 funds are unnecessary and inefficient. During times of peak demand, when electricity market prices are high, PJM's demand response energy programs will reduce system peaks without the addition of Act 129 payments. And, as stated previously, elimination of Act 129 payments to achieve unnecessary reductions during unseasonably mild summers when market forces do not call for DR will further reduce the cost to customers for DR that is not economically justified. Accordingly, for these reasons, PECO is recommending that the Commission eliminate peak load DR curtailment from the Phase Two EE&C plans.

PECO recognizes that elimination of a DR requirement will reduce the overall costs of any Phase Two plan. These savings should not be accrued for possible future DR programs, as the Commission suggests in its proposed third option, or deployed towards consumption reductions. Instead, the overall revenue requirement for Act 129 plans should be reduced, with the savings passed directly on to customers.[5]

D. Aligning EDC Reduction Targets and Funding

While Act 129 restricts the total cost of an EDC's EE&C plan to no more than 2% of that EDC's 2006 total annual revenue, it establishes uniform consumption and peak demand percentage reduction targets to be achieved under the revenue cap for each EDC. The differences among EDCs' 2006 revenues create an imbalance in the amount of funding available

[5] PECO notes that its direct load control ("DLC") program, in which customers agree to the installation of controls to permit cycling of their air conditioning equipment during times of system peak demand, have proven very popular and constitute a reliable demand response resource. PECO anticipates that these programs could have a role in the future.

for each EE&C program. In effect, EDCs with lower revenues can face significant difficulty in achieving the same reduction targets as other EDCs with higher revenues.

Of the two options identified by the Commission – varying the reduction targets based on available funding up to the 2% cap or establishing uniform reduction targets based on the lowest amount of funding available to an EDC – PECO believes that the Commission should adopt the second option. Under this option, all EDCs will have a uniform, achievable reduction target, and therefore will be equally treated with respect to the potential for significant penalties imposed by Act 129 for failure to achieve required EE reductions.

PECO does not believe, however, that uniform reduction targets should be linked to a uniform budget amount (i.e., to a specific "dollars per MWh" of reduction). The Commission took a flexible approach in its analysis of EE&C Phase One plan budgets, and PECO believes this flexibility should be commended and applied again in consideration of any Phase Two plans. Accordingly, PECO recommends that the Commission establish uniform reduction targets for Phase Two programs, if a second EE&C phase is required, and retain flexibility to approve appropriate funding levels so that the uniform targets are reasonably achievable.[6]

E. Inclusion of a Reduction Target Carve-Out for the Government, Educational and Non-Profit Sector

The Secretarial Letter also seeks comments on whether the Commission should restructure the 10% savings target for the GEN-P sector. As the Commission has noted, "EDCs have generally met this requirement thus far,"[7] and PECO believes the Commission should avoid crafting or imposing new requirements on EDCs that may not be consistent with Act 129's

[6] PECO notes that in the event the Commission adopts PECO's recommendation to eliminate DR requirements in Phase Two plans, the removal of these requirements will reduce Act 129 expenditures and result in overall savings for customers.

[7] Secretarial Letter at 5.

statutory language or achievable as part of the EDCs' entire program portfolio. Continuing the GEN-P program at the 10% target provides a level of regulatory certainty for both the GEN-P sector and for EDCs, and avoids an improper increase in risks of penalties for EDCs under Act 129.

As to the Commission's question regarding on-bill financing programs or requiring EDC partnerships with lending institutions to provide low-cost financing for governmental sector projects, PECO does not believe either option is appropriate. Act 129 does not provide for such programs, and EDCs are not financial institutions. Instead, PECO has worked extensively to educate financial institutions, community banks and customers regarding the availability of capital for EE upgrades. Consistent with its Phase One plan experience, PECO believes that there are financial institutions and other vehicles in the marketplace (such as energy service companies) which can better compete for and assist customers with financing that may be required to implement EE measures without having to also compete with EDCs.

F. Inclusion of a "Low-Income Sector Carve-Out"

Section 2806.1(B)(1)(I)(g) of Act 129 required an EDC's initial EE&C plan to include a number of EE measures for households at or below 150% of the Federal poverty income guidelines in proportion to that sector's share of the total energy usage in the EDC's service territory. In the Secretarial Letter, the Commission seeks comment as to whether this requirement should be continued, and if so, whether the requirement should be expanded to include more low-income households (at or below 250% of the Federal poverty income guidelines) or modified to be based on a percentage of an EDC's overall plan budget or a percentage of energy savings. PECO believes that a the Act's low-income sector requirement should be maintained, but does not believe that Act 129 permits either an expansion of the sector to higher income levels or a different basis for calculation of what an EE&C plan must include or achieve.[8]

In this case, Act 129 specifically references 150% of the Federal poverty income guidelines, and clearly states that it is the number of measures that is to be considered for this sector, and not a percentage of a plan's budget or, as in the GEN-P sector, an express percentage of total consumption reductions. *See* 66 Pa.C.S. § 2806.1(B)(1)(I)(g); *PECO Phase One Order* at 38-39. Therefore, in the event the Commission determines to require EDCs to develop and implement Phase Two plans, the low-income sector requirement should be maintained without change from Phase One plans.

G. Transition Issues

In the Secretarial Letter, the Commission solicits comments and poses questions relating to three anticipated issues relating to the transition from Phase One plans to any required Phase Two plans. PECO addresses each of these issues in turn.

1. Specifically assuming that the Commission will require a second round of EE&C Plans, should an EDC that achieves more than its 3% reduction in its Phase One EE program receive credit toward achieving its incremental second target in the amount it exceeds it Phase One target? If so, should the EDC's next budget be reduced to account for the portion of the second target that it achieved in Phase One?

The Commission should apply reductions achieved by an EDC in excess of its Phase One Plan targets in the form of a reduction of any Phase Two requirements. In the event that a reduction is applied, however, the EDC's second phase budget should not be automatically reduced; such a punitive approach could create a disincentive for EDCs, who would be at

[8] It is well-settled that a statute's plain language generally offers the best indication of legislative intent. *Martin v. DOT, Bureau of Driver Licensing*, 588 Pa. 429, 438, 905 A.2d 438, 443 (2006). Resorting to other considerations to discern legislative intent is only appropriate when the words of the statute are not explicit. *Id.* (citing 1 Pa.C.S. § 1921(b)).

increased risk of Act 129 penalties if budgets for other programs designed to achieve Phase Two reductions were simply cut. PECO believes that the budget for any Phase Two plan should be maintained at the level of funding necessary to implement the approved Phase Two programs to achieve the plan's established targets after application of any reductions.

2. Should an EDC that has met its Phase One EE target but has not spent all of its Phase One budget continue its Phase One Program implementation until its second EE&C Plan begins or until the Phase One funds are exhausted? Alternatively, should an EDC that has met its Phase One EE target but has not spent all of its Phase One budget be required to immediately reconcile the remainder of its Phase One budget to ratepayers. Why or why not?

PECO recommends that the Commission require an EDC that has met its Phase One EE target but has not spent its entire Phase One budget refund the balance of any remaining funds to customers. These monies are customer funds, and should be returned to customers as soon as reasonably practical.

3. Should Act 129's "additional incremental reductions" requirement for consumption be measured against the same baseline used in calculating energy reductions for Phase One plans?

Yes. New percentage reduction targets, if any, should be added to, and cumulative of, the Phase One percentage reduction targets. As the Commission's example in the Secretarial Letter provides, a target for the end of Phase Two of 5% should be based upon the 3% reduction achieved under an EDC's Phase One plan and a 2% additional reduction under a Phase Two plan.

H. Other Act 129 Design Issues

Pursuant to Section 2806.1(k), EDCs are entitled to recover the costs of their EE&C plans through a Section 1307 rate reconciliation mechanism. As the Commission noted in the

Secretarial Letter, Phase One EE&C plan costs and revenues are reconciled without any interest collected or refunded. With respect to PECO, the Phase One Plan budget is recovered on a levelized basis over the life of the plan. PECO will perform a single "true-up" of the Phase One Plan budget against actual expenditures at the end of the plan on May 31, 2013 and will reconcile any over or under collections, without interest.

PECO believes the Commission should be commended for the existing Act 129 EE&C reconciliation mechanisms. These mechanisms have benefited customers through simplified cost recovery, with symmetrical risk of not charging interest on under-collections and not paying interest on over-collections, and avoided complex over/under collection issues that could have arisen with plan changes. The Commission should retain the same reconciliation mechanism for Phase Two plans.

I. Approval Process for Minor EE&C Plan Changes/Plan Flexibility

As originally designed, proposed changes to an EDC's Phase One Plan were required to be presented to and approved by the Commission. PECO believes that the Commission's decision to delegate authority to approve minor EE&C Plan changes to the Commission Staff on an expedited basis[9] has been beneficial to customers and an important tool in facilitating implementation of Phase One plans. PECO commends the Commission on its implementation of a process that streamlined procedures for adjusting EE&C plans to changing conditions. While the Commission implemented this expedited process mindful of due process concerns, in PECO's experience, the process has worked well and provided an opportunity for all interested parties to be heard on all proposed expedited changes.

Under the expedited approval process, an EDC files proposed minor changes to its EE&C

[9] *See Energy Efficiency and Conservation Program*, Final Order, Docket No. M-2008-2069887, at 18-20 (Order entered on June 9, 2011) ("June 9, 2011 Order").

Plan and interested parties file comments within 15 days of the EDC's filing, with reply comments due ten days later. Within 35 days after the EDC's minor changes filing, Commission Staff must issue a Secretarial Letter approving, denying, or transferring to the Office of Administrative Law Judge for hearings, some or all of the proposed minor changes, along with an explanation of the decision.

Prior to initiating the expedited process, PECO has proactively shared potential modifications with stakeholders and refined modifications through a collaborative dialogue with interested parties. In light of its Phase One plan experience, PECO believes that the expedited process can be improved and further streamlined to provide more flexibility to expeditiously adjust plans to changing conditions while preserving due process.

Currently, the expedited process is available for the following minor EE&C Plan changes:

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; and
3. A change in the conditions of a measure, such as the addition of new qualifying equipment or a change in the rate amount that does not increase the overall costs to that customer class.

For Phase Two plans, PECO would make the following *additional* changes eligible for expedited treatment:

1. A change in the vendor for existing programs that will continue during Phase Two EE&C Plans.
2. Elimination of programs that are not viable due to market conditions.

In addition, in order to minimize delays in implementing minor EE&C Plan changes, PECO believes that all of the above changes should become effective on 15 calendar days' notice unless an objection is filed during the notice period. The notice period would commence with the EDC's filing of the proposed minor changes with the Commission. In the event an objection is filed, the comments procedure and timelines under the existing expedited process would apply.

These revisions will preserve the rights of interested parties to challenge EE&C Plan modifications, while at the same time eliminating the time and expense of a comment period for changes to which no party has any objection. As with the 15-day comment period provided under the expedited approval process, and in combination with PECO's continued involvement and dialogue with stakeholders before plan modification filings, PECO believes that the 15-day notice period will be sufficient for interested parties to determine whether or not a proposed minor change presents any concerns.

III. CONCLUSION

PECO appreciates the opportunity to comment on the important topics identified by the Commission in the Secretarial Letter and requests that the Commission consider all of these comments in developing the Tentative Implementation Order, and any incremental consumption and peak demand reduction targets or guidelines for future EE&C plans, if required.

Respectfully submitted,

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Dated: April 17, 2012

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