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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

July 9, 2012

VIA FEDERAL EXPRESS

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

Re: Energy Efficiency & Conservation Program, Docket Nos. M-2012-2289411 & M-2008-2069887

Dear Secretary Chiavetta:

Pursuant to the Commission's Tentative Implementation Order entered May 11, 2012 in the above-referenced dockets, enclosed please find an original and three (3) copies of the **Reply Comments of PECO Energy Company**.

As instructed, the comments also have been filed electronically in Word format with Megan Good (megagood@pa.gov) and Kriss Brown (kribrown@pa.gov).

Very truly yours,

Jack R. Garfinkle

Enclosures

c: Per Certificate of Service

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Energy Efficiency and Conservation Program	:	**Docket Nos. M-2012-2289411 M-2008-2069887**

**PECO ENERGY COMPANY'S REPLY COMMENTS
ON THE COMMISSION'S MAY 11, 2012 TENTATIVE IMPLEMENTATION ORDER**

On June 25, 2012, PECO Energy Company ("PECO" or the "Company") filed its Comments to the Pennsylvania Public Utility Commission's ("Commission") May 11, 2012 Tentative Implementation Order ("Tentative Order") at the above-referenced dockets. In its Comments, PECO expressed its support for the continuation of an energy efficiency and conservation program ("EE&C Program" or "Program") with cost-effective, prudent and reasonably achievable energy consumption reduction targets for another three years from June 1, 2013 to May 31, 2016 ("Phase Two"). However, PECO recommended certain revisions to the Tentative Order to implement the spirit, as well as legal requirements, of Act 129 and to ensure that energy savings targets and peak load reduction targets, if required in Phase Two, are, in fact, reasonably achievable.

Comments were filed by thirty-three other interested parties, including environmental groups, consumer representatives, electric distribution companies ("EDCs") and conservation service providers ("CSPs"). At the request of the Energy Association of Pennsylvania ("EAP"), the Commission extended the due date for Reply Comments to July 9, 2012. PECO submits these Reply Comments for the Commission's consideration in issuing its final implementation order regarding Phase Two.

I. OVERVIEW OF PECO'S POSITION

PECO fully supports the Commission's conclusion that a Phase Two EE&C Program is warranted. As a general matter, PECO believes that the Commission's approach to the Phase Two EE&C Program should be to utilize customer funds cost-effectively and prudently. To that end, PECO respectfully submits that the Commission should neither establish additional required energy consumption reduction targets that vary for each EDC nor create carve-outs for special interest customer groups in Phase Two because such actions are not expressly provided for or authorized by Act 129. Moreover, statewide consumption targets should be based on conservative assumptions given that EDCs are at risk for severe penalties for failure to attain those targets. Conservative assumptions will also provide latitude to EDCs to design cost-effective, well-balanced energy efficiency portfolios. In short, the Commission should be mindful of the financial impact of the Program on Pennsylvania's customers who provide the program funding in current tough economic times.

In addition, PECO agrees that the Commission should not establish additional peak demand reduction ("DR") requirements until it completes its evaluation of Phase One DR programs. At the same time, PECO is concerned that the Commission's proposal appears to commit all funds available under the 2% spending cap to energy consumption reductions. Under this approach, peak demand reductions, if subsequently required by the Commission, will be unattainable. For the reasons discussed below and in PECO's Comments, Phase Two funds must be available for both energy efficiency and DR programs.

In sum, PECO respectfully recommends that the Commission focus on establishing cost-effective, prudent and reasonably achievable energy consumption reduction targets for the Phase Two EE&C Program, consistent with the Act and in recognition of the financial impact of the Program on customers. PECO's specific comments on key issues raised by other parties in their initial comments are provided below.

II. REPLY COMMENTS

A. Proposed Additional Incremental Reductions In Consumption

1. The Commission Should Establish a Uniform Consumption Reduction Target for Phase Two and Acquisition Costs Should Not Be a Factor in That Determination

Several parties contend that the acquisition costs used to establish the proposed Phase Two energy savings targets are too high and accordingly that the Statewide Evaluator ("SWE") underestimated energy savings potential for Phase Two.[1] As PECO explained in its Comments (pp. 4-8), the Commission's adoption of EDC-specific consumption reduction targets proposed by the SWE is inconsistent with the uniform energy consumption reduction goals envisioned by Act 129 and is adjudicatory in nature and therefore beyond the appropriate scope of this rulemaking proceeding. Moreover, PECO submits that the SWE's acquisition costs should not be an input in the target "formula", but rather should be a reference point to ensure that each EDC has adequate funding under the 2% spending cap.

The implementation of a statewide percentage consumption reduction target would be consistent with both Act 129 and with the Commission's rulemaking authority. Under this approach, EDCs would be treated equally and face the same exposure to penalties for failure to achieve required consumption and peak demand reductions. PECO does not believe, however, that the uniform reduction targets should be linked to a pre-determined budget amount (i.e., to a specific "dollars per MWh" of reduction). Rather, as it did in Phase One, the Commission

[1] *See* American Council for An Energy-Efficient Economy ("ACEEE") Comments, pp. 3-5; Keystone Energy Efficiency Alliance ("KEEA") Comments, pp.2-3; NorthEast Energy Efficiency Partnership ("NEEP") Comments, p.3; OPower, Inc. Comments, p. 12; PennFuture Comments, pp. 3-4; Sierra Club, Clean Air Council, Penn Environment, Physicians for Social Responsibility and Natural Resources Defense Council (collectively, "Sierra Club") Comments, pp. 4-5; Sustainable Energy Fund of Central Eastern Pennsylvania Comments, p. 5; The Reinvestment Fund Comments, pp. 5-7.

should retain the flexibility to approve appropriate funding levels so that the uniform targets are reasonably achievable. For example, the Commission could set the required target level for all EDCs and vary funding under the 2% revenue cap.[2]

Acquisition cost is a function of measure and program mix, which varies by EDC, and therefore should not be a factor in establishing the statewide energy savings target. Therefore, the Commission does not need to resolve the objections to the acquisition cost values used by the SWE that were raised by numerous parties, including ACEEE, KEEA, and PennFuture. However, PECO believes that acquisition cost may serve as a useful reference point to ensure that each EDC has adequate funding to meet the statewide target. Accordingly, PECO recommends that the Commission adopt a conservative acquisition cost of $270.00 as reference point for Phase Two EE&C plan design to provide flexibility to EDCs to include more comprehensive measures in addition to low-cost lighting measures in their energy efficiency portfolios.

2. The Commission Should Not Adopt Annual Incremental Consumption Reduction Targets

Several parties contend that consumption reduction targets should be established on an annual basis rather than a cumulative plan period basis on the grounds that, among other things, many other states with multi-year EE&C programs have annual energy savings goals and that annual goals will ensure that EDCs invest in programs evenly each year.[3] These parties, however, fail to consider the heavy burden that such a requirement would impose on EDCs.

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[2] *See Act 129 Energy Efficiency and Conservation Program Phase Two*, Docket No. M-2012-2289411, March 1, 2012 Secretarial Letter at 5 ("Another option would be to set uniform percentage reduction targets across EDCs and vary funding under the 2% revenue cap.").

[3] ACEEE Comments pp. 2-3, KEEA Comments, pp. 5-6; NEEP Comments pp. 3-4; OPower Comments, pp. 6-8; PennFuture Comments, p. 8; Sierra Club Comments, p. 7; *see also* Office of Consumer Advocate ("OCA") Comments, p. 15 (recommending that the Commission establish a two- and four-year target under a four-year plan to ensure that programs "stay on track").

Under an annual consumption reduction scenario, EDCs could be exposed to penalties every year, which is inconsistent with the single penalty contemplated by Act 129.[4] PECO urges the Commission to reject such a rigid approach and to instead provide EDCs with sufficient flexibility to make programmatic adjustments in subsequent plan years based on lessons learned during the Phase Two ramp-up period. Without such flexibility, EDCs would be constrained to exclude innovative programs from their energy efficiency portfolios because those programs have longer ramp-up periods and may require mid-course programmatic adjustments due to uncertainty associated with incentive structure and deemed savings values.[5]

B. The Proposed Low-Income Carve-Out Is Inconsistent With Act 129

Several parties supported the Commission's proposal to establish a 4.5% carve-out for low-income customers.[6] However, as discussed in PECO's Comments, the Act 129 statutory framework does authorize any such a requirement. To the contrary, Act 129 clearly states that it is the number of measures proportionate to low-income households' share of the total energy usage in the EDC's service territory that is to be considered by the Commission, not a specific percentage of total consumption reductions, as in the government, educational and non-profit ("GEN-P") sector.

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[4] *See* 66 Pa.C.S. §2806.1(f) ("The electric distribution company shall be subject to *a* civil penalty not less than $1,000,000 and not to exceed $20,000,000 for failure to achieve the required reductions in consumption....") (emphasis added).

[5] PECO believes that annual targets are also not necessary to track EDC investment in energy efficiency from year-to-year. The stakeholder process, coupled with Commission oversight through the annual reporting process, is sufficient to manage annual energy savings progress.

[6] Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") Comments, p. 13; Community Legal Services Comments, p. 1; KEEA Comments, p. 10; OCA Comments, p. 15; PennFuture Comments, p. 10; SEDA-Cog Energy Resource Center Comments, p. 11.

CAUSE-PA contends that the proposed 4.5% target is reasonably achievable in light of the 4.57% average historic portfolio savings from the low-income sector during Phase One.[7] However, this historic experience does not automatically lead to the conclusion that EDCs would be able to achieve the same amount of savings from the low-income sector in future phases of the EE&C Program. Indeed, the SWE's market potential study does not segment the low-income population or project savings ratios for that customer sector. Accordingly, there is no evidence that 4.5% savings from the low-income sector would be reasonably achievable or cost-effective in Phase Two and subsequent EE&C Program phases.

PECO agrees with the parties that oppose expansion of the current income level requirement from 150% of the FPIG to 250% because such expansion of eligibility is contrary to the plain language of Act 129. Act 129 expressly designates households up to 150% of the FPIG as the population to which measures should be directed.[8] In addition, as observed by CAUSE-PA, there are still many low-income households at or below 150% of the FPIG in need of energy efficiency measures to reduce electric bills to sustainable levels.[9] In light of the foregoing, PECO urges the Commission to retain the low-income measures requirement in its current form as stated in the Act.

C. Peak Demand Reductions

1. Funds Should be Reserved to Continue Direct Load Control Programs in Phase Two

PECO notes that a diverse array of parties affirmatively support PECO's view that funding should be allocated from EDCs' Phase Two budgets to prevent programs such as Direct Load Control ("DLC") from "going dark." The OCA, Joint Demand Response Commentators,

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[7] CAUSE-PA Comments, p. 13.

[8] *See* 66 Pa.C.S. §2806.1(b)(1)(i)(G).

[9] CAUSE-PA Comments, p. 7.

and the City of Philadelphia, among others, recognize the potential for customer confusion, stranded capital assets and increased costs resulting from failure to allocate continued funding to retain a DLC market presence, to continue running DLC programs and to maintain CSP and customer confidence in the program. The lack of funding for these programs also could reduce participation and increase program costs for any future Phase Three peak demand reductions.

As noted in the comments of the OCA, "Critically important, the significant benefits of demand response measures *that have already been paid for* by customers should not be lost as we work towards appropriate resolution of these issues."[10] PECO agrees with the OCA. Without any funding, DLC programs cannot be sustained. Therefore, PECO urges the Commission to allocate funding as appropriate to maintain existing mass market DLC programs and to adjust consumption reduction requirements accordingly. As noted in its initial Comments, PECO would likely need to reserve $15 million per year (i.e., $45 million during Phase Two) to retain a DLC market presence, to continue running the DLC program, and to maintain CSP and customer confidence in the program.

2. Funding Should Also Be Made Available in Phase Two Budgets To Prepare for a Potential DR Target to Be Achieved by May 31, 2017

PECO agrees with the Commission that a cost-effectiveness analysis of DR programs should be conducted before any binding determination of future program requirements is made. PECO also notes that the comments filed presented a highly diverse range of views on the appropriateness of a Phase Three DR program.

Given the uncertainty regarding potential Phase Three DR requirements, PECO continues to believe that the prudent approach for the Commission is to reserve a level of funding that

[10] OCA Comments, p. 10.

provides EDCs with reasonable certainty of meeting any future DR requirements. PECO estimates that it would likely need to reserve $35 million of its Phase Two budget for this purpose (i.e., $35 million in addition to the $45 million for DLC programs discussed *supra*), assuming a three-year Phase Three program may be required. The Commission should also adjust consumption reduction targets to account for this allocation of funding to DR programs.

While PECO does not share the views of the Demand Response Commentators on all issues, PECO agrees with the Commentators' contention that, "the statute clearly sets forth two separate priorities: consumption reduction and peak load reduction."[11] This is reinforced by the fact that Act 129 requires separate cost-effectiveness determinations for the two programs and authorizes flexibility in Phase Two's DR program structure that was not provided for Phase Two energy efficiency programs. The explicit language of the Act does not authorize the transfer of funding approved by the Commission for DR programs to energy efficiency programs. As such, a portion of each EDC's Phase Two budget should be specifically set aside for DR programs and if additional peak demand reductions are not required in the future, such earmarked funds should be refunded to customers.

PECO also concurs with the positions of the OCA, the EAP, and the Demand Response Commentators, among others, on the need for DR program reforms. The parties noted above identify many of the programmatic inefficiencies in the DR programs previously discussed by PECO and offer a range of constructive recommendations for improvements to program structure. PECO encourages the Commission to take these comments into consideration as part of its cost-effectiveness review.

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[11] Joint Demand Response Comments, p. 7.

3. The Commission Should Not Establish Peak Demand Reduction Obligations Until the SWE's Analysis of the Cost-Effectiveness of DR Programs is Complete

In its comments, EnerNOC proposes that DR programs for commercial and industrial customers should continue in Phase Two and provides an exhibit displaying calculated Total Resource Cost ("TRC") benefit to cost ratios exceeding 1.0 to support its conclusion that Phase One DR programs were cost-effective. In the absence of a comprehensive review of the assumptions used in EnerNOC's analysis, it would be premature to conclude that DR programs should continue. Accordingly, the Commission should not accept EnerNOC's findings at face value, but instead should defer its decision on future DR requirements until completion of the forthcoming SWE study on the cost-effectiveness of Phase One DR programs. Additionally, the DR programs implemented pursuant to Act 129 must be carefully evaluated because these offerings are in addition to programs already available in the robust PJM market. Much care will need to be taken to ensure that the benefits of the Act 129 programs are accurately identified and not double counted.

Finally, EnerNOC contends that EDCs failed to appropriately consider the benefits associated with avoided transmission and distribution ("T&D") investments for their TRC assessments of DR and energy efficiency program effectiveness. While this may (or may not) be true of other EDCs, PECO has included the treatment of avoided T&D investments not only in its Phase One Act 129 EE&C Plan filing (energy efficiency and DR programs), but also in all of its TRC analyses for the Phase One annual reports to date. Accordingly, PECO is committed to including the avoided T&D costs in the cost-effectiveness analysis of DR programs in its final report of Phase One after the DR performance period (Summer of 2012). Furthermore, PECO has provided the avoided T&D costs to the SWE for the purpose of its potential study that was solely focused on energy efficiency and not DR.

D. Governmental, Educational and Non-Profit Sector Carve-Out

PECO agrees with the Commission's view that there is energy savings potential in multifamily housing. Further, PECO concurs that no specific funding or targets should be proposed for multifamily housing and that EDCs should be encouraged, but not required, to specifically include multifamily housing in their Phase Two EE&C Plans.[12]

In addition, PECO recommends that the Commission clarify that programs targeting multifamily housing should be included in other sectors in addition to the GEN-P sector. Multifamily housing is not limited to low-income units such as those provided by housing authorities or other non-profit entities, but instead also includes units in facilities operated by for-profit corporations. Therefore, including multifamily housing programs exclusively in the GEN-P sector is inappropriate. PECO recommends that EDCs track the costs and energy savings of low-income, non-profit and for-profit multi-family housing units and allocate the energy savings to the appropriate sector (i.e., GEN-P or commercial and industrial).

With respect to on-bill financing, PECO continues to believe that financing programs should be provided by financial institutions, not EDCs, for the reasons set forth in its Comments. PECO also concurs with concerns raised by CAUSE-PA regarding the appropriateness of extending on-bill financing programs to low-income customers – presumably the primary beneficiaries of such programs – as well as CAUSE-PA's discussion of the substantial programmatic complexities of EDCs offering these programs.

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[12] Notably, the language of the Act does not require a specific carve-out of budget or savings from the multifamily housing sector. If the legislature had intended to mandate a specific percentage of savings from an EDC's multifamily housing stock, it could have done so. It did not.

E. The Existing Cost Recovery Tariff Mechanism Should Be Maintained

PECO disagrees with the Commission's proposal to change the existing reconciliation process, a levelized rate over the term of Phase One, to a standardized methodology, pursuant to Section 1307(e) of the Public Utility Code, under which Phase Two Plan rates would be adjusted and reconciled annually to reflect over- or under collection balances, plus interest at the legal rate of six percent. The existing mechanism was supported by stakeholders and has benefited customers through simplified cost recovery. The Commission should continue the existing methodology for cost recovery as it has been effective in the past and does not need to be changed.

PECO also agrees with the OCA that it is unclear as to how the annual reconciliation procedure and the 2% annual spending limit fit together under the Commission's proposal. As explained in PECO's Comments, the Commission's proposal could be problematic if a Phase Two Plan requires spending in excess of the 2% in a particular program year to achieve the savings targets. Similar to Phase One, PECO assumes that the total spending cap is to be applied over the entire length of the Phase Two plan rather than to each plan year.[13]

While PECO strongly encourages the Commission to retain the current Phase One reconciliation process, in the event that the Commission adopts its proposal for annual reconciliation with interest, PECO offers the following recommendations. First, the Commission should clarify the timing for Phase One reconciliation. Under the Commission's proposal, Phase One over/under collections shall be reflected, without interest, in Phase Two rates, effective June 1, 2013 and would be refunded or collected during the one-year period of June 1, 2013 through May 31, 2014. However, under PECO's current approved Phase One

[13] As the OCA observes, it is unclear whether the EDC loses the right to spend the funds in a subsequent year if it "under spends" versus the annual spend limit. PECO believes that EDCs must have the flexibility to spend excess funds in subsequent plan years to ensure that consumption reduction targets are reasonably achievable.

tariff, PECO will refund or collect any over/under balance during the seven months of June 1, 2013 through December 31, 2013. PECO respectfully requests that the Commission provide EDCs with flexibility as to the timing of any over/under collections that are returned to customers. Allowing EDCs to return funds as soon as it is determined that those funds are not required would provide a great benefit to customers, particularly in these difficult economic times.

Second, while PECO does not support the Commission's proposed reconciliation period, PECO agrees with Duquesne Light Company ("Duquesne") that the reconciliation process should be modified to ensure the use of twelve months of actual data. PECO, however, does not believe the annual rate filing and reconciliation has to be moved to the August/September timeframe as Duquesne suggests but can remain in the May/June timeframe. Under the current Commission proposal, the reconciliation statement would reflect eleven months of actual data (i.e., June 1 through April 30) and one month of estimated data (May). PECO recommends establishing a reconciliation period of May through April based on twelve months of actual data. The annual rate adjustment (June 1 through May 31) and reconciliation statement (May 1 through April 30) would still be filed concurrently as proposed on or before May 22.[14]

For all of the foregoing reasons and the reasons cited in PECO's Comments, PECO urges the Commission to retain the existing reconciliation mechanism for Phase Two plans. If the Commission nevertheless adopts its proposed annual reconciliation methodology, PECO requests that the Commission implement the approach outlined above.

[14] PECO agrees with the Commission's proposed deadline for annual reconciliation filings of May 22, ten days prior to the June 1 effective date.

F. Allocation Of Costs To Customer Classes

1. The Commission's Decision Requiring EDCs to Bid Energy Efficiency Resources into the PJM Capacity Market is Premature

In the Tentative Order, the Commission proposes that, when prudent, EDCs bid qualified energy efficiency resources into the PJM capacity market. Comments filed on this issue vary, with some stakeholders expressing support and others opposition. As several parties recognized, such bidding is complex, particularly because the PJM capacity market is a three-year forward market. In light of such complexity, PECO submits that the balancing of risk and reward associated with bidding energy efficiency resources into the PJM capacity market should be subject to further study, perhaps in a working group comprised of interested stakeholders, prior to any Commission determination as to the extent of EDC participation.

2. The Industrial Customer Group's Proposal to Exempt Certain Large Commercial and Industrial Customers from the EE&C Surcharge Should Not Be Adopted

In its comments, the Industrial Customer Group recommends that the Commission allow large commercial and industrial customers to undertake their own energy efficiency projects as an alternative to EE&C plan participation and, in such case, provide an exemption to those customers from the EE&C surcharge.[15] This recommendation should not be adopted because it is inconsistent with Act 129. Act 129 specifically requires that EE&C plans must provide energy efficiency measures to *all* classes of customers and does not provide a process for excluding particular classes from the plan.[16] In addition, under Act 129, the costs of EE&C plans are recoverable through a non-bypassable surcharge.[17] Notwithstanding this position, in the event that the Commission adopts the Industrial Customer Group's recommendation, PECO would

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[15] Industrial Customer Group Comments, pp. 8-10.

[16] 66 Pa.C.S. §2806.1(a)(5).

[17] 66 Pa.C.S. §2806.1(k)(1).

expect that EDC energy consumption reduction targets would be lowered accordingly.

III. CONCLUSION

PECO appreciates the opportunity to provide these Reply Comments and looks forward to continuing to work with the Commission and other stakeholders on these critical issues.

Respectfully submitted,

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Dated: July 9, 2012

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