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January 11, 2013

Via Electronic Filing

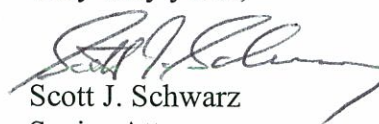
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
Commercial Keystone Building  
Harrisburg, PA 17120

Re: Petition of PECO Energy Company for Approval of its Act 129 Phase II  
Energy Efficiency and Conservation Plan  
Docket No. M-2012-2333992

Dear Secretary Chiavetta:

Enclosed for filing in the above-referenced proceeding is the Brief of The City of Philadelphia and a Certificate of Service showing that copies of the brief have been served upon parties of record.

Very truly yours,

  
Scott J. Schwarz  
Senior Attorney

Enclosures

cc: Honorable Dennis J. Buckley  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company :  
for Approval of its Act 129 Phase II : M-2012-2333992  
Energy Efficiency and Conservation Plan :

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**BRIEF OF  
THE CITY OF PHILADELPHIA**

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Dated: January 11, 2013

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## **I. INTRODUCTION**

The City of Philadelphia (City or Philadelphia) is filing this brief with the Pennsylvania Public Utility Commission (Commission) in accordance with the Second Prehearing Order dated November 30, 2012, which granted the City's Petition to Intervene, and the Commission's Opinion and Order adopted and entered on December 14, 2012, which modified the procedural schedule for this proceeding and requires the filing of briefs on or before January 15, 2013. As discussed in this brief, the City generally supports PECO's Phase II Energy Efficiency and Conservation Plan ("Phase II Plan" or "Plan") but recommends some changes to improve the effectiveness of the portion of the Plan pertaining to combined heat and power projects.

## **II. PROCEDURAL HISTORY**

The relevant case history to this point was summarized in the prehearing orders as follows:

On November 1, 2012, PECO Energy Company (PECO or Company) petitioned the Commission for approval of the Company's Phase II Plan (PECO Exhibit 1). The Phase II Plan is intended to reduce energy consumption in accordance with the requirements of Act 129 of 2008, 66 Pa.C.S. § 2806.1 (Act 129) and the *Energy Efficiency and Conservation Program*, Docket No. M-2012-2289411 (Order entered August 3, 2012) (*Implementation Order*).

In its Petition, PECO requested that the Commission: (1) find that the Phase II Plan satisfies the requirements of 66 Pa.C.S. § 2806.1(b)(1) and the *Implementation Order*, including those provisions mandating the implementation of programs designed to achieve the energy savings target established for PECO and the savings carve-outs for the governmental, institutional and non-profit and low-income sectors; (2) approve tariff

provisions to implement a Section 1307 surcharge to recover Phase II Plan costs; (3) approve Phase II Plan treatment for certain Phase I projects; and (4) approve the conservation service provider contract between PECO and JACO Environmental, Inc.

The Notice of this proceeding was published in the *Pennsylvania Bulletin* on December 1, 2012, with a twenty day comment/intervention period thereafter. Prior to the publication of the Notice, Petitions to Intervene or Notices of Appearance in this proceeding were filed by the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), Citizens for Pennsylvania's Future (PennFuture), the Philadelphia Area Industrial Energy Users Group (PAIEUG), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the City of Philadelphia, and Wal-Mart Stores East, L.P. and Sam's East, Inc. (Walmart). All of these Petitions to Intervene were granted by the Second and Third Prehearing Orders, dated November 30, 2012 and December 4, 2012, respectively. On December 19, 2012, Comverge, Inc. filed a Petition to Intervene. This petition was granted by the Fourth Prehearing Order, dated December 27, 2012.

An evidentiary hearing was conducted on January 9, 2013, during which exhibits were marked for identification and admitted to the record, including the rebuttal testimony of PECO's witness Frank J. Jiruska marked PECO Energy Company Statement No. 1-R (PECO St. No. 1-R) and the direct testimony of the City's witness Paul Kohl marked City of Philadelphia Statement No. 1 (Philadelphia St. No. 1) with attached exhibits consisting of an undated letter from PECO marked PK-1 (Exhibit PK-1), a letter from PECO dated December 17, 2012 marked PK-2 (Exhibit PK-2) and referenced interrogatory responses of PECO marked PK-3 (Exhibit PK-3).

### **III. DESCRIPTION OF PECO'S PHASE II PLAN**

On November 1, 2012, PECO filed a petition for approval of its Phase II Plan. PECO chose thirteen programs to include in its plan and categorized them by two main customer classes – residential programs and commercial/industrial (C&I) programs (PECO St. 1, p. 10). Seven programs (Programs 1-7) target the residential sector, and six programs (Programs 8-11) target the C&I sector (PECO St. 1, pp. 10-17). One residential program (Program 5) focuses exclusively on low-income households (PECO St. 1 at 12). One C&I program (Program 12) focuses exclusively on the Governmental, Institutional and Non-Profit (GIN-P) sector (PECO St. 1, pp. 16-17).

Because of the obligation to demonstrate that its plan is cost-effective using a total resource cost (TRC) test approved by the Commission, PECO applied the TRC test at each level of plan design to break down the strengths and weaknesses in its overall plan portfolio. PECO used a TRC calculation to evaluate each level of planning. PECO applied a TRC calculation to each proposed energy efficiency measure, to each program within its portfolio, and to the portfolio as a whole. Programs with a TRC ratio over 1.0 are considered cost-effective. Those with a ratio of 1.0 or under are not cost effective. PECO's portfolio does include a few programs that are demonstrated not to be cost-effective; however the entire portfolio does have an overall TRC ratio of 1.36, which demonstrates a net benefit (PECO Petition, ¶ 17; PECO PECO St. No. 2, pp. 18-19; PECO Exhibit 1, pp. 196-198).

Within each of PECO's thirteen programs, several plan components achieve the program's objectives. These components come in several forms but generally focus on one of the following, either alone or in some combination:

- Providing incentives to customers to purchase or install energy efficient products or systems,
- Providing a service such as auditing of the customer's energy use and noting areas of improvement, or
- Increasing the customer's awareness about energy efficient products, systems, or the customer's own behavior.

*See generally* PECO Petition, ¶ 16 and PECO Exhibit 1.

The program design of PECO's Phase II Plan differs from that in its Phase I Plan in several ways, including new treatment of Combined Heat and Power (CHP) projects. In Phase I, PECO's Smart Equipment Incentives program provided funds to CHP projects as custom measures based on annual kWh savings using equipment performance, operating hours, load profiles and other key operating factors (Philadelphia St. 1, p. 5; Exhibit PK-1). Although the Smart Equipment Incentives program continues into Phase II, CHP projects have become the sole focus for one of PECO's new programs, the PECO Smart On-Site Program. Under the Smart On-Site Program, CHP projects would earn fixed incentives on a tiered fixed per kWh basis up to a maximum amount based on the project's first year energy savings (PECO St. 1, p. 16).

#### **IV. SUMMARY OF ARGUMENT**

The City supports the objectives of Act 129 and generally supports the energy efficiency programs in PECO's Phase II Plan, including the use of financial incentives through Act 129 programs for CHP projects. However, the City would like the Phase II Plan to clarify that CHP projects for which the applicants had applied to PECO during Phase I, and where the applicants have invested substantial costs in implementation during Phase I, should receive incentives at the levels identified in the Phase I applications. PECO agrees that clarifying its position on this issue would be beneficial.



It proposes that if a substantial portion of the project construction is completed in Phase I (i.e., facilities have been constructed and CHP generating equipment have been received on site), and the anticipated date of commercial operations (completion date) is prior to December 31, 2013, it will pay incentives at Phase I levels with funds proposed for the Phase II PECO Smart On-Site Program (PECO St. 1-R, p. 9). The City supports this proposal.

Additionally, the City contends that PECO's Phase II Plan does not provide adequate incentives for customers to undertake CHP projects. PECO should return to treating these projects as it had done in Phase I. The proposed reimbursement scheme in Phase II, as applied to significant potential CHP projects (4.0 MW capacity units) by the City would appear to cover, at a maximum, 8.5% of project costs (Philadelphia St. 1, p. 8). This reimbursement estimation is a product of the proposed incentive structure and associated incentive caps unique to Phase II. The City believes that the 8.5% reimbursement potential does not provide enough of an incentive to impact decision-making regarding whether to undertake such projects. Therefore, the City proposes that PECO either: (1) re-incorporate CHP projects into the Smart Equipment Incentives program and determine incentives as it had for custom measures in Phase I or (2) keep the Smart On-site program but remove the caps and create an incentive structure that would reimburse customers for CHP project costs at a significantly higher percentage of project costs.

## **V. ARGUMENT**

### **A. Overall Phase II Plan**

The City supports Act 129's objectives of reducing energy consumption by using tariff-generated funds to support energy conservation improvements. The Act can provide the necessary incentives for customers of all classes to make the long-term energy improvements that are necessary to make our local economy more efficient. In addition, Act 129 programs can leverage government and private funding to make these improvements more affordable and more likely to be implemented.

Based on available testimony and documents admitted into evidence in this matter, the City generally supports the energy efficiency programs in PECO's Phase II Plan, including the practice of using Act 129 funds to provide financial incentives for CHP projects. Overall, these programs are consistent with the City's target of reducing Citywide building energy consumption by at least 10% by 2015. The City has taken advantage of the financial incentives available in Phase I for CHP projects, which were then treated as custom measures under the Smart Equipment Incentives Program. Furthermore, although the measures identified by PECO will continue to provide valuable incentives for all its customers, the City requests modifications, discussed below, to PECO's treatment of CHP projects in the Phase II Plan.

### **B. Proposals for Improvement of PECO's Smart On-Site Program**

#### **1. Incentive Structure for Combined Heat and Power Projects**

Although the City generally supports the use of Act 129 funds to provide incentives for the construction of CHP systems, the City contends that PECO's Phase II Plan does not, in its current form, provide adequate incentive for customers to undertake

these projects. The City not only has experience with CHP projects but is investigating potential additional projects and believes that modifications should be made to the Smart On-Site Program, or alternatively, that PECO should return to treating CHP programs as custom measures under the Smart Equipment Incentive programs as it had done in Phase I (Philadelphia St. 1, pp. 9-10).

The City is very interested in the potential efficiency of CHP for large City-owned facilities because of the lower operating cost and lower emissions available with such a system (Philadelphia St. 1, p. 7). For instance, the Philadelphia International Airport is currently evaluating two proposals for two CHP units as part of a Guaranteed Energy Savings proposal (Philadelphia St. 1, p. 8). Both units are proposed at 4.0 MW of capacity and have a design/build cost of roughly \$13.5 million. (Philadelphia St. 1, p. 8).

The proposed reimbursement scheme in Phase II, as applied to such significant potential CHP projects, would appear to significantly reduce the funding available for large C&I projects as compared to the funding available for such projects under Phase I (Philadelphia St. 1, p. 7). For a new 4.0 MW project of the type currently under review in Philadelphia, the maximum proposed Phase II incentive would cover about of 8.5% of project costs (Philadelphia St. 1, p. 8). This reimbursement estimation is a product of both the proposed incentive structure and associated incentive caps unique to Phase II (Philadelphia St. 1, p. 8). The City believes that the 8.5% reimbursement potential does not provide enough of an incentive to impact decision-making regarding whether the City or other customers would undertake such projects (Philadelphia St. 1, p. 8). The City further asserts, based on incentive levels available for other EE&C measures in PECO's

Phase II Plan, that CHP projects could be supported at a higher reimbursement level commensurate with the other program funding (Philadelphia St. 1, p. 9).

Therefore, the City proposes that PECO either: (1) re-incorporate CHP projects into the Smart Equipment Incentives program and determine incentives as it had for custom measures in Phase I or (2) keep the Smart On-site program but remove the caps and create an incentive structure that would provide financial incentives to customers for CHP project costs at a significantly higher percentage of project costs. The low cost, lower emissions and availability of natural gas make gas-fired combined heat and power an important option for addressing City energy needs. Gas-fired CHP projects also are consistent with the Commonwealth's goal of utilizing the increasingly available in-State natural gas resources in efficient energy projects (Philadelphia St. 1, p. 7). Given the availability of low-cost natural gas in Pennsylvania, providing incentives at levels which encourage new gas-powered CHP projects makes sense and is good public policy.

## **2. Transition from Phase I to Phase II**

PECO's Phase II Plan, as designed, differs from Phase I in its treatment of incentives for CHP projects. These changes prompt the City to request clarification by PECO that Phase I incentives reserved for the CHP project undertaken by the Water Department in 2011 will remain unchanged.

The Philadelphia Water Department began substantial steps to creating a CHP facility in 2011 (Philadelphia St. 1, p. 4). On December 7, 2011, PECO's Account Manager sent the Water Department an e-mail confirming receipt of the Water Department's application for financial incentive payments through PECO's Phase I Smart Equipment Incentives program (Philadelphia St. 1, pp. 4-5). The City's project will

utilize both biogas produced at the waste water treatment and natural gas, reduce consumption by over 44 million kWh per year and produced enough electricity to cover 85 percent of the plant's needs (Philadelphia St. 1, p. 3; Exhibit PK-1, p. 3). The program had reserved \$3,958,842.00 of incentive funds for the project (Philadelphia St. 1, p. 5; Exhibit PK-1). The anticipation of these Act 129 funds was prominent in the fiscal viability analysis of this project (Philadelphia St. 1, p. 6).

The Water Department then received a second reservation letter, confirming extension for these incentives for its project under the Phase I program (Philadelphia St. 1, p. 5). The letter stated that the incentive payments will be disbursed upon project completion, satisfaction of program conditions, and submission of all documentation by May 31, 2013 (Philadelphia St. 1, p. 5; Exhibit PK-2). In PECO's response to interrogatories, PECO confirmed that projects such as the Water Department's CHP Project, where a customer applied for incentives and began installation of the CHP project before establishment of the waitlist in Phase I but will not complete the project until Phase II, will be eligible for incentive payments in the amounts currently available under PECO's Phase I plan (Philadelphia St. 1, p. 6; Exhibit PK-3). If the proposed Phase II incentive structure were applied to the Water Department project, the City estimates that it would be eligible for less than \$1.5 million, a net loss of over \$2.3 million from the incentive given under Phase I (Philadelphia St. 1, p. 7).

Because of the disparity between incentive funding for CHP projects between Phase I and Phase II, the City would like PECO to clarify its intentions in its Phase II Plan and receive approval for these intentions from the Commission. The City requests PECO to clarify the Phase II Plan to explain that CHP projects for which the applicants

had applied to PECO during Phase I, and where the applicants have invested substantial costs in implementation during Phase I, should receive incentives at the levels currently available for Phase I applications (Philadelphia St. No. 1, pp. 9-10).

## **VI. CONCLUSION**

While the City generally supports the PECO's thirteen programs in its Phase II EE&C Plan and the use of Act 129 incentive measures to support CHP projects, it recommends that PECO either: (1) alter the incentive structure and remove incentive caps from the Smart On-Site program, or (2) allow CHP projects to be treated as custom measures under the Smart Incentive Programs, with financial incentives restored to the levels available for such project in the Phase I Plan. The City further requests PECO clarify that applicants who achieved substantial implementation of CHP projects during Phase I will receive incentives at levels available for Phase I applications even though those projects are not completed until Phase II.

## **VII. PROPOSED ORDERING PARAGRAPH**

IT IS ORDERED:

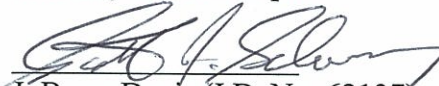
1. That PECO revise its Plan to provide greater programmatic flexibility and financial incentives for Combined Heat and Power (CHP) projects.
2. That PECO revise its Plan to clarify that if a substantial portion of a CHP project construction is completed in Phase I (i.e., facilities have been constructed and CHP generating equipment have been received on site), and the anticipated date of commercial operations (completion date) is prior to December 31, 2013, PECO will pay incentives at Phase I levels with funds proposed for the Phase II PECO Smart On-Site Program.

3. That PECO shall file with this Commission and serve on all parties of record in this proceeding a revised Energy Efficiency and Conservation Plan consistent with the modifications directed in this Opinion and Order, within sixty (60) days of the date of entry of this Opinion and Order. This revised plan is to be served on OCA, the Office of Small Business Advocate (OSBA), the Commission's Bureau of Investigation & Enforcement (I&E) and all other parties. Interested parties will have ten (10) days to file comments on the revised portions of the Energy Efficiency and Conservation Plan, with reply comments due ten (10) days thereafter. The Commission will approve or reject the revised portions of the Energy Efficiency and Conservation Plan at a public meeting within sixty (60) days of the Company's filing of its revisions to the Plan.

4. That PECO is permitted to implement any portion of its Phase II that was approved and not modified by this Opinion and Order.

Respectfully submitted,

The City of Philadelphia



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Dated: January 11, 2013

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company	:	
for Approval of its Act 129 Phase II	:	M-2012-2333992
Energy Efficiency and Conservation Plan	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I am this day serving true and correct copies of the Brief of The City of Philadelphia upon the individuals listed below by first class mail and e-mail, in accordance with the requirements of 52 Pa Code § 1.54 (relating to service by parties).

HONORABLE DENNIS J. BUCKLEY  
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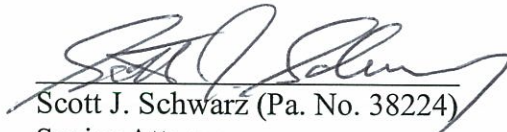
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