

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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December 30, 2015

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

Re: Petition of Pennsylvania Electric Company  
for Approval of its Act 129 Phase III Energy  
Efficiency and Conservation Plan  
Docket No. M-2015-2514768

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Sincerely,

A handwritten signature in cursive script that reads "Christy M. Appleby".

Christy M. Appleby  
Assistant Consumer Advocate  
PA Attorney I.D. # 85824

Enclosures

cc: Honorable Elizabeth H. Barnes, ALJ  
Certificate of Service

214885

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Petition for Consolidation of Proceedings and :  
Approval of Energy Efficiency and :  
Conservation Plans Phase III : Docket No. M-2015-2514768  
Metropolitan Edison Company, Pennsylvania :  
Electric Company, Pennsylvania :  
Power Company and West Penn Power Company :

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PREHEARING MEMORANDUM  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. Section 333, and in response to the December 18, 2015 Prehearing Conference Order issued in the above-captioned matter, the Office of Consumer Advocate (OCA) provides the following information:

**I. Introduction**

On October 15, 2008, Act 129 of 2008 (Act 129 or the Act) was signed into law by Governor Edward G. Rendell. Act 129 made numerous amendments to Chapter 28 of the Public Utility Code and required the seven major electric distribution companies (EDCs) to file energy efficiency and conservation plans (EE&C Plans), which occurred in the summer of 2009. The Phase I Plans expired on May 31, 2013. Phase II of the EE&C Plans began on June 1, 2013 and will continue until May 31, 2016. The Commission has now established the requirements and process for Phase III of the EE&C Plans to operate from June 1, 2016 through May 31, 2021. Energy Efficiency and Conservation Program, Docket No. M-2014-2424864 (June 19, 2015) (Phase III Implementation Order). This proceeding concerns the Phase III Plan filing of the Pennsylvania Electric Company (Penelec), one of the FirstEnergy operating companies. The FirstEnergy operating companies include Penelec, Metropolitan Edison Company (Met-Ed),

Pennsylvania Power Company (Penn Power), and West Penn Power Company (West Penn) (collectively the FirstEnergy Companies).

The Phase III Implementation Order directed that each EDC meet a consumption reduction target and a demand response target.<sup>1</sup> Phase III Implementation Order at 35. The Phase III Implementation Order also established that 5.5% of the consumption reduction target must be met through the low-income customer sector programs and that 3.5% of the consumption reduction target must be met through the Government/Education/Non-Profit (G/E/NP) sector programs. Phase III Implementation Order at 68-70 (low-income customer segment consumption reduction target), 74-76 (G/E/NP customer segment consumption reduction target).

The Total Resource Cost (TRC) test will continue to be used to evaluate each EDC's EE&C Plan. Phase III Implementation Order at 102, citing 66 Pa. C.S. § 2806.1(a)(3). Act 129 caps annual spending on the Plan at 2% of the EDC's total revenues for the calendar year 2006. 66 Pa. C.S. § 2806.1(g). The Act provides for full and current cost recovery of the Plan costs through an automatic adjustment rider, but it prohibits the recovery of lost revenues by the EDC through the automatic adjustment rider. 66 Pa. C.S. § 2806.1(k). The costs incurred are to be allocated to the classes that directly benefit from the program measures implemented, unless a system wide benefit can be shown.

Met-Ed, Penn Power, Penelec, and West Penn are each required to file a Plan under Act 129 and the Phase III Implementation Order. Under the timeline set forth in the Phase III Implementation Order, the FirstEnergy Companies' EE&C Plans must be ruled upon within 120 days of the Companies' filing, or by March 22, 2016.

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<sup>1</sup> The OCA notes that the Phase III Implementation Order specifically did not require Penelec to meet a demand response target. Phase III Implementation Order at 35.

## **II. Procedural History**

On November 23, 2015, Pennsylvania Electric Company (Penelec or Company) filed its Joint Petition, pursuant to Section 2806.1 of the Public Utility Code and pursuant to the Phase III Implementation Order. The Company plans to reduce annual energy consumption by 587,742 MWh by May 31, 2021. Penelec EE&C Plan at App. E, Table 2. Penelec does not have a required demand response target. The five-year cost of the Company's EE&C Phase III Plan is projected to be \$114,873,710. Penelec EE&C Plan at 17. With respect to residential customers, Penelec has proposed the following four residential customer energy efficiency programs: (1) Appliance Turn-In Program; (2) Home Performance Program; (3) Efficient Products Program; and (4) Low-Income Energy Efficiency Program. *Id.* Within its Home Performance Program, Penelec also proposes a residential customer Behavioral Demand Response program. Penelec, jointly with the other FirstEnergy Companies, requested a consolidated review of the EE&C Plans of all four of the FirstEnergy Companies.

The FirstEnergy Companies' filings were assigned to the Office of Administrative Law Judge and further assigned to Administrative Law Judge Elizabeth H. Barnes for investigation. On December 18, 2015, ALJ Barnes issued a Prehearing Conference Order. On January 5, 2016, the Prehearing Conference will be held in Harrisburg.

On December 10, 2015, the OCA filed Notices of Intervention and Public Statements in each of the respective dockets for the FirstEnergy Companies.

On January 4, 2016, the OCA will file Comments in accordance with the Phase III Implementation Order and the directive included in the publication of the filing in the *Pennsylvania Bulletin*.

### **III. Issues and Sub-issues**

Based upon a preliminary analysis of the Penelec filing and participation in the stakeholder meetings, the OCA has compiled a list of issues and sub-issues that it anticipates will be included in its investigation of the filings. It is anticipated that other issues may arise and may be pursued during the course of these proceedings.

The following list sets forth the issues at this time that the OCA anticipates it will examine:

(1) Whether the proposed energy conservation plan and the individual program design meets the requirements of Section 2806.1 of the Code and the Commission's Phase III Implementation Order;

(2) Whether the portfolio of programs proposed is reasonably balanced and whether the programs are equitably distributed across rate classes;

(3) Whether the Plan is reasonable and meets the requirements of Section 2806.1 and the Phase III Implementation Order for low-income and government/educational/non-profit customers;

(4) Whether the proposed multi-family buildings programs are reasonably designed and the proposed cost allocation of those programs is reasonable;

(5) Whether the design of the proposed demand response program measures, including the residential Behavioral Demand Response program, are reasonable and appropriately meet the requirements of the Phase III Implementation Order's identified demand response targets;

(6) Whether the proposed cost recovery mechanisms, including the proposed budgets, are reasonable;

(7) Whether the proposal to extend the cost recovery for its Phase II Plan through the Phase III rider is reasonable;

(8) Whether the proposed program measures, including the cost-effectiveness of the Plan, are reasonable as measured by the Total Resource Cost (TRC) test;

(9) Whether the proposed measurement and verification and evaluation plan is appropriate and reasonable; and

(11) Whether the frequency of the stakeholder meetings is sufficient.

The OCA reserves the right to raise additional issues as may be necessary.

#### **IV. Witnesses**

The OCA intends to present the direct testimony of the following witness in this proceeding. In order to expedite the resolution of this proceeding, the OCA requests that copies of all interrogatories, comments and answers to interrogatories be mailed directly to the expert witness as well as to counsel for the OCA.

##### EE&C Plans and Cost Recovery

Geoffrey Crandall  
MSB Energy Associates  
Suite 162  
6907 University Ave.  
Middleton, WI 53562-3135  
Telephone: (608) 831-1127  
Fax: (608) 836-1290  
E-mail: [Crandall@msbnrg.com](mailto:Crandall@msbnrg.com)

##### Multi-family Aspects of EE&C Plan

Roger Colton  
Fisher, Sheehan and Colton  
34 Warwick Road  
Belmont, MA 02478  
Telephone: 617-484-0597  
E-mail: [roger@fsconline.com](mailto:roger@fsconline.com)

The OCA specifically reserves the right to call additional witnesses, as necessary. As soon as the OCA has determined if an additional witness or witnesses will be necessary for any portion of its case, all parties of record will be notified.

**V. Service on the OCA**

The OCA will be represented in this case by Assistant Consumer Advocate Christy M. Appleby and Senior Assistant Consumer Advocate Darryl A. Lawrence. Two copies of all documents should be served on the OCA as follows:

Christy M. Appleby  
Assistant Consumer Advocate  
Darryl A. Lawrence  
Senior Assistant Consumer Advocate  
Office of Consumer Advocate  
5<sup>th</sup> Floor, Forum Place  
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E-mail: [cappleby@paoca.org](mailto:cappleby@paoca.org)  
[dlawrence@paoca.org](mailto:dlawrence@paoca.org)

**VI. Discovery**

To date, the OCA has issued one set of formal interrogatories and participated in one informal discovery conference call. The OCA will also participate in additional informal discovery conferences, as may be necessary, in order to expeditiously resolve discovery questions.

In order to effectively investigate and adequately develop a record on these issues in the limited timeframe for this proceeding, the OCA requests a modification of the Commission's procedural rules, as set forth below:

(1) Answers to written interrogatories shall be served in-hand within seven (7) calendar days of service.

(2) Objections to interrogatories shall be communicated orally within three (3) calendar days of the service of interrogatories; unresolved objections shall be served to the ALJ in writing within five (5) calendar days of service of the interrogatories.

(3) Motions to dismiss objections and/or answering of interrogatories shall be filed within three (3) calendar days of service of such motions.

(4) Answers to motions to dismiss objections and/or answering of interrogatories shall be filed within three (3) calendar days of service of such motions.

(5) Ruling over such motions shall be issued, if possible, within seven (7) calendar days of the filing of the motion.

(6) Responses to requests for document production, entry for inspection, or other purposes must be served in-hand within seven (7) calendar days.

(7) Requests for admissions will be deemed admitted unless answered within seven (7) calendar days or objected to within five (5) calendar days of service.

(8) Interrogatories served after noon on Friday or after noon on the day before a holiday will be due as if served the following business day.

The OCA reiterates that all time periods established in the foregoing discovery schedule should be calculated using calendar days.

**VII. Schedule**

The parties have agreed to the following procedural schedule:

Settlement Meeting	January 5, 2016
Intervenor Direct testimony	January 12, 2016 (by noon)
Settlement Meeting	January 15, 2016
Rebuttal Testimony	January 22, 2016
Evidentiary Hearing	January 27, 2016



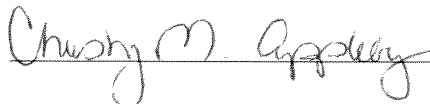
Main Briefs due February 10, 2016

Revised Plan (if necessary) February 11, 2016

Certification of the Record February 12, 2016

The OCA agrees to waive its right to file a Reply Brief only for the purposes of this Phase III Plan proceeding due to the expedited nature of this proceeding and the scheduling difficulties that were presented by this proceeding. The OCA specifically does not waive its right to file a Reply Brief in any future EE&C Plan proceeding.

Respectfully Submitted,



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Senior Assistant Consumer Advocate  
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Counsel for:  
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DATE: December 30, 2015  
215397.docx

CERTIFICATE OF SERVICE

Petition of Pennsylvania Electric Company : Docket No. M-2015-2514768  
For Approval of its Act 129 Phase III Energy :  
Efficiency and Conservation Plan :

I hereby certify that I have this day served a true copy of the foregoing, the Office of Consumer Advocate's Prehearing Memorandum, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 30th day of December 2015.

SERVICE BY E-MAIL and INTEROFFICE MAIL

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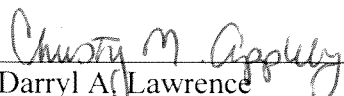
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