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April 27, 2020

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

**Re: Energy Efficiency and Conservation Program, Docket No. M-2020-3015228**

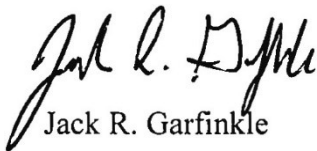
Dear Secretary Chiavetta:

Enclosed for filing in the above-referenced docket, please find **PECO Energy Company's Comments on the Commission's March 12, 2020 Tentative Implementation Order**.

As instructed, a Word-formatted copy of the Comments has been electronically mailed to Joseph Sherrick ([josherrick@pa.gov](mailto:josherrick@pa.gov)) and Adam Young ([adyoung@pa.gov](mailto:adyoung@pa.gov)).

If you have any questions regarding this filing, please do not hesitate to contact me at 856.912.4738.

Very truly yours,



Jack R. Garfinkle

Enclosure

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Energy Efficiency and Conservation Program** : **Docket No. M-2020-3015228**  
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**PECO ENERGY COMPANY’S COMMENTS ON THE  
COMMISSION’S MARCH 12, 2020 TENTATIVE IMPLEMENTATION ORDER**

Pursuant to the March 12, 2020 Tentative Implementation Order (“Tentative Order”) entered by the Pennsylvania Public Utility Commission (the “Commission”) in the above-referenced docket, PECO Energy Company (“PECO” or the “Company”) hereby submits comments on the Commission’s proposals for a fourth phase (“Phase IV”) of Act 129’s energy efficiency and conservation program (“EE&C Program”). The Company appreciates the significant efforts of the Commission and its staff to develop the Phase IV proposal.

PECO agrees with the Commission that Phase IV is an opportunity to continue to advance comprehensive energy savings initiatives. To that end, PECO believes that the Phase IV targets and carve-outs established for electric distribution companies (“EDCs”) must permit a reasonable amount of flexibility in program design. Overly aggressive targets could force EDCs to shift emphasis from deeper, more comprehensive and long-term savings towards low-cost, high volume measures in order to achieve compliance.

As the Commission is well aware, the COVID-19 pandemic has resulted in significant societal restrictions and economic hardship in Pennsylvania. It is unclear how long these circumstances may persist, and the time period for a return to “business as usual” is also unknown. Because the market potential studies<sup>1</sup> (“MPSs”) that provide the basis for the Phase

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<sup>1</sup> An energy efficiency and peak demand reduction potential study and a dispatchable demand response potential study were performed.

IV targets and carve-outs were conducted by the Statewide Evaluator (“SWE”) prior to the COVID-19 pandemic, certain assumptions made in the MPSs may no longer be reasonable. In recognition of the potential impacts of such disruptive events, PECO’s comments include a recommendation that the Commission establish a mechanism by which an EDC may propose revisions to its targets during Phase IV if certain qualifying events will materially impair the ability of an EDC to implement energy efficiency (“EE”) and demand reduction (“DR”) programming.

## I. BACKGROUND

Section 2806.1 of Act 129 of 2008 (“Act 129” or the “Act”) required Pennsylvania’s largest EDCs, including PECO, to adopt EE&C plans that 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 required that the Commission evaluate the costs and benefits of the approved EE&C plans by November 30, 2013. If the benefits of the EE&C plans exceeded the costs, the Commission was to establish new, additional incremental consumption and peak demand reduction requirements.<sup>2</sup> In its August 2, 2012 Implementation Order for a second phase of Act 129, the Commission established additional consumption reduction, but not peak demand, targets for EDCs, to be achieved by May 31, 2016.<sup>3</sup> For the third phase of Act 129, the Commission prescribed both reductions in consumption and peak demand targets to be met by May 31, 2021.<sup>4</sup>

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<sup>2</sup> See 66 Pa.C.S. §§ 2806.1(c) and (d).

<sup>3</sup> See *Energy Efficiency and Conservation Program*, Implementation Order, Docket Nos. M-2012-2289411 and M-2008-2069887 (August 3, 2012) (“Phase II Implementation Order”).

<sup>4</sup> See *Energy Efficiency and Conservation Program*, Implementation Order, Docket No. M-2014-2424864 (June 19, 2015) (“Phase III Implementation Order”).

PECO received approval of its Phase I EE&C plan on October 28, 2009 at Docket No. M-2009-2093215 (the “Phase I Plan”), its Phase II EE&C plan on February 28, 2013 at Docket No. M-2012-2333992 (as amended with Commission approval on May 9, 2013, the “Phase II Plan”), and is currently administering its Phase III EE&C plan, which the Commission approved on May 19, 2016 at Docket No. Docket No. M-2015-2515691 (as amended with Commission approval on January 9, 2020, the “Phase III Plan”).

In this Tentative Order, the Commission put forth several proposed targets and carve-outs for Phase IV based on MPSs performed by the SWE. Those proposed directives include: (1) a 276 MW five-year peak demand reduction target for PECO; (2) a 1,380,837 MWh five-year consumption reduction target for PECO; and (3) a requirement that each EDC obtain 5.8% of its consumption reductions from programs directed solely at low-income customers or from low-income-verified participants in multi-family programs. The Tentative Order also proposes several additional changes in plan design and administration, including a requirement that at least 50% of plan spending be allocated to customer incentives. In the remainder of these comments, PECO provides its recommendations regarding several specific proposals in the Tentative Order for consideration by the Commission.

## **II. COMMENTS ON SPECIFIC TENTATIVE ORDER PROPOSALS**

### **A. Annual Consumption Reduction And Peak Demand Reduction Plan Design Requirements**

The Commission proposes that EDCs design their EE&C plans to achieve at least 15% of both their consumption reduction target<sup>5</sup> and their peak demand reduction requirement<sup>6</sup> each program year. These design requirements fail to recognize the significant ramp-up activities that

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<sup>5</sup> Tentative Order, pp. 14-15.

<sup>6</sup> *Id.*, p. 38.

occur when transitioning from one EE&C phase to another and could hamper an EDC's ability to both incorporate new programs in Phase IV or make significant changes to existing programs during the Phase IV period.

For example, in order to deliver new measures as part of its Phase IV plan, PECO will need to competitively bid for new services with conservation service providers ("CSPs"), negotiate and receive Commission approval of new CSP contracts, and work with those CSPs during the Phase IV term to begin customer education and marketing activities associated with these new measures. Under these circumstances, a requirement to achieve a levelized amount of consumption reductions across all program years is unrealistic. New or complex measures can require significant additional time for ramp-up activities before the projected savings or peak demand reductions are achieved.

PECO therefore recommends that the Commission increase the flexibility afforded to EDCs and require that EE&C plans "approach" a minimum of 15% of both targets in each program year. This change will allow EDCs to better focus on building programs in the early years of Phase IV without eliminating the EDC's obligation to achieve its consumption and peak demand reductions over the course of an approved plan.

#### **B. Low-Income Carve-Outs**

In the Tentative Order, the Commission proposes to require each EDC to provide a proportionate number of measures equivalent to the low-income sector's share of usage and obtain 5.8% of its overall consumption reduction target from the low-income sector.<sup>7</sup> The Company fully supports a continued focus on consumption reduction from the low-income sector

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<sup>7</sup> *Id.*, p. 17.

and commends the Commission for directing the SWE to conduct a low-income MPS for each EDC service territory.

PECO believes, however, that employing a spending requirement for low-income direct install measures would be more effective than a low-income savings carve-out. A focus on spending would allow EDCs to design and implement innovative programs and meaningful opportunities for bill reduction while avoiding a need to rely upon high-volume measures, such as lighting, to manage the compliance risk associated with a savings carve-out. An EDC's minimum spending requirement could be equal to the budget amount used by the SWE to determine that EDC's low-income market potential. EDCs would report on their implementation of direct install measures, providing the Commission and interested parties with information to evaluate costs and benefits. PECO notes that many direct install measures have non-electric benefits, such as water, natural gas or oil savings, that could be tracked to obtain a more holistic assessment of the impact of these measures.

If the Commission determines that a low-income savings carve-out is more appropriate, PECO believes that the 5.8% carve-out would not afford the Company a reasonable amount of flexibility in program design because it would require PECO to reach 100% of the Company's low-income potential, as determined by the SWE.<sup>8</sup> The low-income carve-out should reflect the reality that all low-income targeted programs will not run perfectly over the course of the five-year plan. PECO recommends that its low-income carve-out be no greater than 85% of the low-

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<sup>8</sup> See *id.*, p. 16 (stating that PECO's low-income potential is 5.8%) and p. 17 (proposing a 5.8% carve-out for all EDCs). In addition, as noted previously, the SWE's calculations of potential savings were made prior to the COVID-19 pandemic.

income potential determined by the SWE, which is approximately 68,076 MWh or 4.9% of the Company's total consumption reduction target.<sup>9</sup>

The Commission also invited comments about harmonizing the management and spending of Act 129 low-income funds with Low Income Usage Reduction Program ("LIURP") funds.<sup>10</sup> PECO believes that it has already achieved an appropriate level of coordination between the programs to benefit customers. For example, if the Company is installing LIURP measures in a home and sees an opportunity to install Act 129 measures that are outside the scope of LIURP (e.g., specialty bulbs), the Company will install those additional measures as part of its EE&C plan. Mandating specific coordination requirements for EDCs regarding Act 129 and LIURP programs as part of the Final Implementation Order is unnecessary.

### **C. Government / Nonprofit / Institutional Savings**

The Commission did not propose a specific carve-out for the Government / Nonprofit / Institutional ("GNI") sector because the sector is expected to produce a significant share of Phase IV consumption reductions at a comparable acquisition cost to the broader small and large C&I customer classes without a specific compliance target.<sup>11</sup> PECO strongly supports the Commission's proposal and agrees that a GNI carve-out is not necessary to ensure an appropriate level of GNI savings. PECO has exceeded its GNI carve-out in all prior phases and expects to exceed the Phase III GNI carve-out as well.

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<sup>9</sup> PECO notes that all other EDCs were assigned low-income consumption reduction targets below their projected low-income potential.

<sup>10</sup> Tentative Order, p. 18.

<sup>11</sup> *Id.*, p. 20.

**D. Accumulating Savings In Excess Of Reduction Requirements**

In the Tentative Order, the Commission proposes that EDCs be allowed to carry over savings attained in Phase III in excess of their targets for application towards their Phase IV consumption reduction targets.<sup>12</sup> Because the Commission has recognized that EE measures have both an energy savings and peak load reduction component, PECO believes that excess Phase III energy savings should be eligible for application towards Phase IV peak demand reduction targets. Specifically, the Company proposes that any verified coincident peak demand reduction associated with an EDC's excess Phase III savings be applied to the EDC's Phase IV peak demand reduction target.

**E. Process To Challenge Targets And PECO Recommendation To Establish A Process To Revise Targets**

The Commission proposes to maintain the challenge process from previous phases for both the consumption and peak demand reduction requirements. Specifically, consumption and peak demand reduction requirements in the Phase IV Final Implementation Order will become final for any EDC that does not petition the Commission for an evidentiary hearing within 15 days of the entry of the Final Implementation Order.<sup>13</sup>

While PECO does not oppose the challenge process laid out in the Tentative Order, the Company believes that an additional process should be established whereby, after plan approval, the Commission could revise targets due to a "force majeure" event. A force majeure event would be defined as an event outside the reasonable control of the EDC pursuant to which the EDC's consumption reduction target and/or peak demand reduction target is no longer reasonably achievable, such as government orders restricting travel or commercial activity, or

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<sup>12</sup> *Id.*, p. 23.

<sup>13</sup> *Id.*, pp. 23-24.



other events that lead to unanticipated interruptions in an EDC's ability to implement EE&C programs.

Similar to the force majeure process in the Alternative Energy Portfolio Standards Act ("AEPS Act")<sup>14</sup> and Commission's regulations,<sup>15</sup> the Commission could initiate the process to make a force majeure determination for EE&C targets on its own, or an EDC could file a petition requesting that the Commission make such a determination. As part of the determination process, the Commission would consider evidence of an EDC's good faith efforts to implement its approved plan and meet the existing targets. If the Commission determines that a force majeure exists, it would establish a revised target and require the EDC to file a revised plan reflecting the revised target.

The COVID-19 pandemic has highlighted the need to proactively identify a process to address the impact of disruptive events on an EDC's ability to meet Phase IV targets. As discussed previously, the magnitude and duration of COVID-19 societal and economic impacts remain to be seen. The AEPS Act force majeure process provides a reasonable overall framework which may be adjusted to reflect the different nature of EE&C obligations, such as the fact that EDC targets are for the entire five-year phase (instead of annual). PECO urges the Commission to establish a process in the Final Implementation Order for the revision of Phase IV targets.

#### **F. DR Program Design**

In the Tentative Order, the Commission explained that "all MW impacts are not created equally" and that incremental annual peak demand reductions associated with EE measures will

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<sup>14</sup> 73 P.S. §§ 1648.1, *et seq.*

<sup>15</sup> 52 Pa. Code § 75.66.

continue to provide value beyond the year in which they are claimed as part of an EE&C plan. For that reason, and out of a desire to streamline EE&C plans and limit administrative costs, the Commission has proposed that EDCs have the flexibility to design DR programs with or without a dispatchable demand response (“DDR”) component. An EDC would have the option to meet its peak demand reduction target through EE measures only.<sup>16</sup>

PECO strongly agrees with the Commission that DDR programs should not be mandatory. Providing EDCs with more flexibility regarding how they meet peak demand reduction targets will encourage the achievement of lasting peak demand reductions from EE measures. It will also permit EDCs to continue successful DDR programs if desired. PECO, for example, has implemented a direct load control program for residential and small C&I customers (the AC Saver Program) for every phase of the EE&C program and may propose to continue the program in Phase IV.

#### **G. Peak Demand Reduction Target**

In the Tentative Order, the Commission proposes that each EDC’s peak demand reduction target be equal to the expected reduction in coincident peak demand estimated in the SWE’s MPS.<sup>17</sup> PECO believes that setting DR targets at 100% of the reductions estimated by the SWE is overly aggressive. Each EE measure has its own potential for coincident peak demand reduction and the SWE’s estimates are based on the particular measure mix that was modeled in the MPS. The Commission’s proposal would effectively require EDCs to either replicate the measure mix modeled by the SWE or seek a much higher level of overall

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<sup>16</sup> Tentative Order, pp. 34-35.

<sup>17</sup> *Id.*, p. 36.

consumption reductions in order to make sure that the DR target is met and DR penalties are avoided.

Consistent with the Company's proposal regarding the low-income savings carve-out, PECO believes that the peak demand reduction target should be no greater than 85% of the SWE's estimate. For PECO, this would result in a reduction of its Phase IV DR target from 276 MW to 234 MW.

#### **H. EDC Reports**

The Commission proposes to eliminate the requirement for EDCs to submit a preliminary annual report and to change the submission date for final annual reports from November 15 to August 30 of each year.<sup>18</sup> PECO supports the elimination of a preliminary annual report but opposes the earlier submission date for final annual reports. A submission date of August 30 would not provide enough time for EDCs to complete the verification of gross savings that is required in final annual reports. PECO recommends that the Commission retain November 15 as the submission date for final annual reports.

#### **I. Competitive Bidding And Approval Of CSP Contracts**

Consistent with prior phases, the Tentative Order provides that CSPs covered by competitive bidding and contract approval procedures are those that provide consultation, design, and administration and management or advisory services to the EDC.<sup>19</sup> PECO proposes that the Final Implementation Order further state that entities providing infrastructure or services that support both Act 129 functions and other utility functions, such as information technology ("IT") providers, do not fall under Act 129 competitive bidding and contract approval requirements.

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<sup>18</sup> *Id.*, pp. 49-50.

<sup>19</sup> *Id.*, pp. 57-58.

Such a finding would permit PECO to leverage existing contracts that support other utility functions to support Act 129 programming.

The Commission also proposes adopting the same minimum criteria for the CSP competitive bidding review process in Phase IV as in prior phases. EDCs are encouraged to file their proposed request for proposal (“RFP”) process by August 30, 2020 to expedite Phase IV contractual arrangements.<sup>20</sup> PECO supports the utilization of the same minimum criteria for Phase IV and further recommends that the Final Implementation Order permit EDCs to use their Commission-approved Phase III RFP process, if desired, without any additional filing to the Commission.

**J. Incentive vs. Non-Incentive Plan Design Requirement**

In the Tentative Order, the Commission proposes that EDCs be required to submit an EE&C plan which shows at least 50% of all spending allocated to incentives and less than 50% of all spending allocated to non-incentive cost categories.<sup>21</sup> PECO disagrees with this proposal because it will place significant restrictions on plan design and create a disincentive for education efforts as well as measures without an incentive component, such as behavioral measures. EDCs must already demonstrate that their plans are cost-effective using the Commission’s total resource cost (“TRC”) test, and additional restrictions on the balance of administrative and incentive costs are unnecessary.

If the Commission proceeds with an incentive / non-incentive design requirement, the requirement should apply only to direct program costs and the Commission should clarify that direct installation costs (e.g., material and labor costs paid to contractors for measure installation)

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<sup>20</sup> *Id.*, pp. 58-59.

<sup>21</sup> *Id.*, p. 65.

are incentive costs. Common costs (e.g., measurement and verification costs, education, and marketing) should be excluded from any incentive / non-incentive allocation requirement.

#### **K. PJM Bidding Requirement**

The Commission proposes that EDCs be required to nominate at least a portion of the expected peak demand reductions of their EE&C plan into the PJM forward capacity market (“FCM”). Proceeds from EE resources that clear in the PJM FCM must be used to reduce Act 129 surcharges and collections for the customer classes from which the savings were acquired. Any PJM deficiency charges must be handled symmetrically with FCM proceeds and be borne by the relevant customer class.<sup>22</sup>

PECO does not support the mandatory bidding of Act 129 resources into the PJM FCM because of the risk of deficiency charges that could be imposed by PJM in the event a resource does not provide the required capacity. Instead, consistent with Phase III, EDCs should be permitted to bid resources if they determine that such bidding is appropriate. If the Commission does mandate such bidding, it should explicitly provide that deficiency charges collected from customers do not count towards an EDC’s total Phase IV spending cap, similar to how SWE costs are handled.

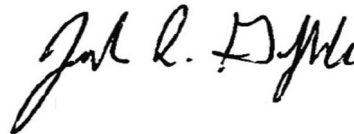
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<sup>22</sup> *Id.*, p. 75.

### III. CONCLUSION

PECO appreciates the opportunity to comment on the Tentative Implementation Order and requests that the Commission consider and adopt the foregoing recommendations in developing the Final Implementation Order. PECO looks forward to continuing to work with the Commission and other stakeholders to move the EE&C Program forward.

Respectfully submitted,



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Dated: April 27, 2020

*For PECO Energy Company*

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