

**OFFICE OF CHIEF COUNSEL  
Rachel Carson State Office Building  
P. O. Box 8464  
Harrisburg, PA 17105-8464**

August 28, 2009

**Bureau of Regulatory Counsel**

Telephone 717-787-7060  
Telecopier 717-783-7911

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor (Filing Room)  
P. O. Box 3265  
Harrisburg, PA 17105-3265

RE: 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  
PUC Docket No. M-2009-2093215

Dear Secretary McNulty:

Please find enclosed for electronic filing main brief of the Commonwealth of Pennsylvania, Department of Environmental Protection in the above referenced matter. Copies have been served on all parties listed on the enclosed Certificate of Service.

Sincerely,

*/s/ Scott Perry*

Scott Perry  
Assistant Counsel

Enclosures

cc: Service List

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Petition of PECO Energy Company</b>	<b>:</b>	
<b>for Approval of its Act 129 Energy</b>	<b>:</b>	
<b>Efficiency and Conservation Plan</b>	<b>:</b>	<b>Docket No. M-2009-2093215</b>
<b>and Expedited Approval of its</b>	<b>:</b>	
<b>Compact Fluorescent Lamp Program</b>	<b>:</b>	

**MAIN BRIEF OF THE COMMONWEALTH OF PENNSYLVANIA,**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**I. Introduction**

Pursuant to the July 30, 2009 Prehearing Order of Administrative Law Judge Marlane R. Chestnut, the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) files this main brief in the above captioned matter.

Act 129 of 2008 became effective November 14, 2008 and requires electric distribution companies (“EDCs”) with more than 100,000 customers to develop and implement energy efficiency, conservation and peak demand reduction plans in accordance with an Energy Efficiency and Conservation Program developed by the Pennsylvania Public Utility Commission (“Commission”). 66 Pa. C.S. §§ 2806.1 (a),(b) and (l). These plans are to reduce electricity consumption by 1% by May 31, 2011 and 3% by May 31, 2013. 66 Pa. C.S. § 2806.1 (c). Additionally, the plans are to reduce peak demand by 4.5% by May 31, 2013. 66 Pa. C.S. § 2806.1 (d).

Through its Energy Efficiency and Conservation Program Implementation Order at Docket No. M-2008-2069887, the Commission established the process by which the

required Act 129 plans would be reviewed and approved and further clarified the requirements of Act 129. The Implementation Order correctly resolved several foundational issues that provide the basis for successful energy efficiency and conservation plans. These critical issues include how the energy conservation and peak demand requirements will be met (the savings vs. reduction issues), the equitable distribution of measures across customer classes, and how much funding is available on an annual basis for plan implementation. While the Commission's Order laid the necessary foundation for achieving Act 129's important goals, several issues remain unaddressed. The Department respectfully submits this main brief, in addition to its testimony and comments, to address those unresolved issues.

## **II. Procedural History**

On July 1, 2009, PECO Energy Company ("PECO") filed its Petition for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program ("EEC Plan") with the Commission.<sup>1</sup>

On July 18, 2009 the Commission published a notice of PECO's petition in the *Pennsylvania Bulletin* which required Petitions to Intervene to be filed by July 27, 2009 and answers, comments and recommendations to the EEC Plan to be filed by August 7, 2009. The Department's petition to intervene, filed July 16, 2009, was granted July 30, 2009.

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<sup>1</sup> PECO requested expedited approval of its compact fluorescent lamp ("CFL") program. On July 31, 2009, PECO, OCA, OTS, TRF, PennFuture et al., FDI, ACORN and the City of Philadelphia filed a Joint Petition for Partial Settlement (Joint Petition) asking that the Commission approve on an expedited basis the company's proposed CFL program. The Department does not oppose the Joint Petition.

On August 7, 2009, the Department filed comments and recommendations to PECO's EEC Plan with the Commission and also served the testimony of Maureen Guttman, the Executive Director of the Governor's Green Government Counsel, on all parties to the proceeding. Evidentiary hearings were held on August 18, 2009 and DEP Statement 1, the testimony of Maureen Guttman, was admitted into the record.

### **III. Description of EDC Plan**

PECO's EEC Plan includes ten energy efficiency programs and eight demand reduction programs to meet Act 129's energy conservation and peak demand reduction requirements. Petition at 2. The proposed energy conservation programs are: (1) compact fluorescent lamps ("CFLs"), (2) low-income energy efficiency, (3) whole house performance, (4) home energy incentives, (5) residential new construction, (6) appliance pickup, (7) commercial and industrial equipment incentives, (8) commercial and industrial new construction (9) government, public, non-profit facility energy savings, and (10) residential and commercial renewable resources. Petition at 7-9.

Programs for peak demand reduction include: (1) commercial, industrial and residential direct load control, (2) commercial, industrial and residential super peak time of use rates, (3) demand reduction aggregator contracts, (4) distributed energy resources (5) load shifting and (6) voltage reduction. Petition at 9 -12.

The total budget for these programs is \$341, 580,634 – of which the residential budget is \$153 million, the small commercial and industrial budget is \$80 million, the large commercial industrial budget is \$101 million and municipal lighting is \$8 million.

#### **IV. Summary of Argument**

The Department's main brief addresses six legal issues: 1) whether PECO can claim 100% credit for energy savings achieved by projects jointly funded by Act 129 and the Alternative Energy Investment Act of 2008 ("Act 1") or the American Reinvestment and Recovery Act ("ARRA"); 2) whether a statewide whole house residential energy conservation program is superior to an EDC by EDC residential conservation program, and therefore in the public interest; 3) whether programs that promote whole building conservation measures in the government/schools/non-profit sector are superior to prescriptive rebate programs that undercut those entities' ability to participate in guaranteed energy savings contracts, and are therefore in the public interest; 4) whether fuel switching of any kind, including the use of emergency generators to reduce peak demand, is permissible under Act 129; 5) the extent to which Commission review and approval of changes to EEC Plans is required and; 6) whether the 2% cost cap is an annual cap or a cap on the total costs over the life of the Plans as argued by the various industrial interveners.

The Department maintains that 1) projects funded through Act 1 or ARRA cannot be used to demonstrate compliance with Act 129, unless there is proportionate attribution of the efficiency savings resulting from those funds in relation to the EDC's contributions, because this will result in inefficient use of ratepayer and taxpayer funds and could jeopardize the Commonwealth's ability to obtain future funding under ARRA; 2) a statewide whole house residential energy conservation program is preferable to individual EDC programs and is in the public interest because it reduces more energy consumption by redistributing duplicative administrative and marketing costs to

installation of conservation measures; 3) promoting whole building conservation measures in the government/schools/non-profit sector through guaranteed energy savings contracts is preferable to prescriptive rebate programs and is in the public interest because this program ultimately provides more significant energy savings than prescriptive rebate programs for lighting or HVAC replacement; 4) Fuel switching is not an “energy efficiency and conservation measure” as defined by Act 129 and the use of emergency generation sources to meet Act 129 peak demand requirements should be prohibited; 5) the Commission must establish a uniform rule for reviewing and approving changes to EEC Plans and; 6) contrary to assertions made by various industrial interveners, the Commission’s Implementation Order properly established the EEC Plan cost cap and should not be challenged.

## **V. Argument**

Act 129, along with Act 1 of 2008 and the Alternative Energy Portfolio Standards Act, represent the Commonwealth’s strong commitment to transforming the way Pennsylvania generates and uses electricity. The goals of these laudable pieces of legislation cannot be realized, however, unless there is a firm commitment to proper implementation. The Department recognizes that Act 129 established aggressive goals. Therefore, where more cost effective and environmentally beneficial alternatives exist, they must be pursued in order to meet the minimum standards established by Act 129. To that end, the following issues must be addressed if PECO’s plan is to achieve the goals and purpose of Act 129.

### **A. Act 129 Conservation and Demand Reduction Requirements**

#### **1. Overall Conservation Requirements**

N/A

**2. Overall Demand Reduction Requirements**

N/A

**3. Requirements for a Variety of Programs Equitably Distributed**

N/A

**4. 10% Government/Non-Profit Requirement**

Section § 2806.1(b)(1)(i)(B) of Act 129 requires that “[a] minimum of 10% of the required reductions in consumption . . . be obtained from units of Federal, State and local government, including municipalities, school districts, institutions of higher education and nonprofit entities.” PECO’s EEC Plan anticipates exceeding this requirement by reducing electricity consumption in the government/non-profit sector by 16%. See, EEC Plan at 224.

The Department supports most of PECO’s proposal – in particular the emphasis on building audits performed by auditors certified by the Building Performance Institute (BPI) and Residential Energy Services Network (RESNET), promoting the program through Energy Service Performance Contracting, and street and traffic lighting upgrades. See EEC Plan beginning at page 125. However, reliance solely on the other prescriptive rebate measures identified at pages 132-133 of the plan to achieve Act 129’s goals is not in the public interest because these measures fail to provide significant long lasting reductions in energy consumption and impair a government’s ability to participate in guaranteed energy savings contracts.

As stated by the Department’s witness, Maureen Guttman:

“[b]ecause lighting consumes up to 35% of all electricity in a commercial building, lighting efficiency and control upgrades are usually the most cost

effective measure to improve energy consumption. The generally quick payback period makes lighting upgrades an integral component of overall building retrofits by offsetting investments in more costly technology that provides longer payback periods. However, lighting upgrades are by nature a short term fix. Deeper and longer lasting energy savings are achieved through the additional measures required in a whole building approach.” DEP Statement 1 at 14.

Ms. Guttman also observed “If one focuses solely on the HVAC system because of an available rebate, an oversized system could be purchased where the building is not evaluated for proper insulation, air sealing and ventilation. This results in not only the consumer spending more on HVAC equipment than necessary because the equipment is larger than needed for a well insulated building but also results in a lost opportunity for the most cost effective energy demand savings.” DEP Statement 1 at 13-14.

The focus on lighting-only projects and prescriptive rebate programs in government buildings is of particular concern because these programs fundamentally impair a government’s ability to obtain significant long term energy consumption reductions through guaranteed energy savings contracts provided by energy service companies. These contracts are often the only way governments can finance these important energy conservation measures. See, DEP Statement 1 at 15. By eliminating the ability of governments to take advantage of these contracts, the EEC Plan actually contravenes the very purpose of Act 129. *Id.* As such, rebate programs should only be implemented if they are part of a larger whole building conservation program.

## **5. Low Income Program Requirements**

N/A

## **6. Issues Relating to Individual Conservation and Demand Reduction Programs**

**a. Residential**

**Rebate Programs that can Result in Fuel Switching Should be Prohibited.**

PECO's EEC Plan promotes fuel switching in two ways. First, some of the rebates included in PECO's Home Energy Incentives program (in particular the heat pump and water heater rebates at page 65 of the EEC Plan) could unintentionally promote fuel switching from a combustion appliance to an electric appliance. Such a result completely controverts the very purpose of Act 129 and must be prohibited. Fortunately, resolving this issue is a simple matter. Customers should be required to apply for these rebates and identify the type of fuel source currently being used and only customers who currently use electric appliances should qualify.

The second way PECO's EEC Plan promotes fuel switching is by directly subsidizing natural gas water heaters and furnaces. EEC Plan at 65.<sup>2</sup> Simply stated, fuel switching is not a conservation measure. Section 2806.1(m) defines "energy efficiency and conservation measures" to include, in relevant part "solar or solar photovoltaic panels, energy efficient windows and doors, energy efficient lighting, including exit sign retrofit, high bay fluorescent retrofit and pedestrian and traffic signal conversion, geothermal heating, insulation, air sealing, reflective roof coatings, energy efficient heating and cooling equipment or systems and energy efficient appliances and other technologies, practices or measures approved by the commission." Although broadly defined, the only "fuel source" clearly contemplated within the definition is electricity and the only alternative source mentioned is "solar or solar photovoltaic panels".

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<sup>2</sup> To be clear however, the Department *does not* object to PECO's proposal to repair or replace broken gas heaters in order to remove electric space heaters as part of its low income program. This program does not promote fuel switching but instead restores the primary source of heat.

Given the fact that the legislature only included solar or solar photovoltaic panels within this definition, it would be unreasonable to assume that any other fuel source that could replace an electric appliance qualifies under Act 129. If this were true, then small wind systems, wood or coal stoves, oil furnaces and other alternatives would also be eligible. Clearly, neither the listed alternatives nor switching from electric to natural gas was intended by Act 129 – particularly if an EDC can then claim a 100% reduction in “energy” consumption. The Commission should reject PECO’s proposed fuel switching program outright or in the alternative address the matter through the TRM workgroup.

**b. Commercial and Industrial**

**Use of Emergency or Back-up Generators to Reduce Peak Demand Should be Prohibited.**

PECO’s DR Aggregator Contracts Program, described on page 171 of its EEC Plan and its Distributed Energy Resources program, described on page 175, directly and indirectly attempt to address peak demand through the increased use of distributed generation.

First, using distributed generation to reduce peak demand is not permitted under Act 129. The definitions of both “energy efficiency and conservation measures” and “peak demand” indicate that the only acceptable strategies to reduce peak demand is to reduce overall consumption or shift consumption to non-peak hours. “Energy efficiency and conservation measures” is defined in relevant part as “the technology, practice or other measure [that] *reduces consumption of energy* or peak load by the retail customer.” 66 Pa. C.S. § 2806.1(m) (emphasis added). “Peak demand” is defined as “[t]he highest *electrical requirement* during a specified period.” *Id.* (emphasis added). Taken together,

it is clear that reducing consumption of electricity during the highest specified period simply cannot occur by generating electricity with a behind the meter source other than solar energy (as discussed above).

Second, grid demand reduction that is merely replaced by higher emitting distributed generation has negative air impacts, and is an unacceptable strategy for Pennsylvania.<sup>3</sup> The Department's regulations were written at a time when emergency generators were only used as back up sources of power – not as distributed generation resources. As such, many of these generators fall outside the Department's regulatory control and are not required to have permits or emission controls. Those that are regulated by the Department may demonstrate regulatory compliance without the need for emission controls. For instance, generators that were constructed prior to July 1, 1972, and that have not undergone modification, are considered existing sources and do not require a plan approval (pre-construction permit) or emission controls. See 25 Pa. Code Section 121.1 (relating to definitions). See also 25 Pa. Code Section 127.1 (relating to purpose). Even if the generator is constructed or modified after July 1, 1972, if it qualifies for an exemption under the Department's Air Quality Permit Exemptions List, technical guidance document number 275-2101-003, no plan approval or emission controls are required.

Generators constructed after July 1, 1972, and not on the "exemption list" do require a plan approval from the Department. However, if the generator limits its hours of operation to less than 500 hours per year under its permit, no emission controls are required, since such controls are not considered cost effective. Diesel generators rated

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<sup>3</sup> Although the Department's witness was not able to answer certain questions concerning the extent to which the Department regulates emergency generators, this issue is a matter of law and is appropriately addressed here.

greater than or equal to 3,000 horsepower and located throughout Pennsylvania are subject to the emission control requirements under 25 Pa. Code Chapter 145 Subchapter B. However, compliance can be demonstrated through the purchase of allowances without the need to install emission control equipment. Generators rated at greater than 1,000 horsepower and located in the five county Philadelphia area of Philadelphia, Bucks, Chester, Delaware and Montgomery counties are subject to the emission control requirements of 25 Pa. Code Section 129.203 - 204. However, compliance can be demonstrated through the purchase of allowances without the need to install emission control equipment.

As this discussion illustrates, increased use of emergency generators will negatively impact Pennsylvania's air quality. Because those resources will be deployed when ozone levels are the highest, the detrimental impact to human health could be quite significant and should be avoided.

### **Proposals for Improvement of EDC Plan**

#### **c. Residential**

##### **Financial Assistance for a Statewide Whole Home Performance Program is Necessary.**

Despite the strong urging of Chairman Cawley and Commissioner Gardner, no EDC proposed a statewide program similar to Keystone HELP. However, PECO's Whole Home Performance program is a model proposal that could serve as the basis for a statewide program. PECO describes the objectives of its program thusly: "The purpose of the Whole Home Performance program is to help PECO's residential customers view the energy performance of their homes as more than the sum of independent decisions about individual components. It reflects the view that reducing residential energy use is

more than a series of actions; it is an attitude and plan borne of knowledge. This is a “big picture” approach. The services are designed to bring customers to a more holistic view of home energy performance.” EEC Plan at 46. The Department completely agrees with this objective.

The foundation of the program – a Home Performance with ENERGY STAR (HPwES) Audit - coupled with the delivery of effective air sealing, insulation and other important energy conservation measures by certified installers - will achieve significant, long lasting, and verifiable reductions in energy consumption. Indeed, the Department’s main issue with PECO’s Whole Home Performance program is that additional funding and measures are not directly allocated to the program and that it is not available statewide.

Failure to implement a whole home performance program such as PECO’s on a statewide basis is not in the public interest. Absent a uniform statewide approach, a significant amount of ratepayer funds will be wasted on duplicative efforts in the design, administration and marketing of the programs. At the very least, a statewide whole home program will move these overhead expenses into actual program measures as Act 129 intended. At most, the statewide whole home program will deliver the most cost effective, longest lasting and verifiable energy conservation measures available.

**d. Commercial**

N/A

**e. Industrial**

N/A

**Cost Issues**

N/A

**CSP Issues**

N/A

**Implementation and Evaluation Issues**

**Implementation Issues**

**QA Issues**

Active participation by stakeholders and oversight by the Commission will be necessary to ensure high quality performance of the EEC Plan. The Commission and stakeholders must be able to analyze the results of the EEC Plan programs in sufficient detail, and in a timely enough manner, so that if necessary, an EDC can reshape its program. To accomplish this goal, PECO's EEC Plan should contain a clearly defined stakeholder involvement process. The Department also believes that all EDCs must use the same measurement and verification protocols, ideally those associated with proven, nationally accepted standards such as the data collection protocols of Energy Star Portfolio Manager and Home Performance with Energy Star which PECO has proposed.

**Monitoring and Reporting Issues**

N/A

**4. Evaluation Issues**

The process by which EDC Plans may be modified outside the annual review period was not specified in the Commission's Implementation Order. As a result, the EEC Plans contain a variety of proposals under which a plan can be modified without

Commission approval. The Department recommends that the Commission establish criteria for when plan changes require Commission approval. The Department offers the following recommendation:

- 1) No program can be eliminated without PUC approval
- 2) Up to 10% of the annual budget for a customer class can be shifted within the same customer class without PUC approval.
- 3) Any shifting of money from one customer class to another requires PUC approval.

#### **Other Issues**

#### **Projects Funded Through Act 1 or the American Recovery and Reinvestment Act (“ARRA”) Cannot be Used to Demonstrate Compliance with Act 129.**

The shared purpose of Act 129, Act 1 and ARRA is to promote new or expanded energy conservation programs. If funds from Act 129 and Act 1 or ARRA are used without proper coordination, customers will be over subsidized and the conservation funds will be used in an inefficient manner. This is not to say that energy conservation projects cannot be jointly funded by the Commonwealth and Act 129 Plans. Instead, PECO and the Commonwealth should coordinate their efforts to provide appropriate incentives to induce consumer behavior and then apportion the energy efficiency “credit” for the resulting savings appropriately.

Equally troubling, the EEC Plan, as proposed, jeopardizes the Commonwealth’s ability to obtain future funding under ARRA. The Department of Energy (“DOE”) requires States to make a written commitment that certain ARRA funds will not be used to supplant or replace existing projects funded by the state, ratepayers, or other funding. Allowing EDCs to “leverage” ARRA funds and then claim full credit for the energy

savings achieved in no way supplements Act 129 – it completely supplants it and threatens to violate the Department’s commitment to DOE. The best solution to achieve the goals of Act 129 and the Department’s responsibility of proper disbursement of ARRA funds is to allow the EDCs to claim an energy efficiency credit that is proportionate to their incentive but that does allow credit for Act 1 or ARRA funds. This result is also in the best interest of the Pennsylvania ratepayers and taxpayers.

The Department is aware that in its Total Resource Cost Test Order, the Commission determined that “[f]or the purposes of TRC testing, if the end-use customer is a recipient of an incentive/rebate from an Act 129 program, even if the customer is also a recipient of an Act 1 incentive or rebate for the same equipment or service, we conclude that the entire savings of that equipment or service can also be claimed by the EDC for TRC testing purposes.” The plain language of the Order limits the determination to whether a measure is cost effective – not whether projects installed with government funds can be used to determine compliance with Act 129. The Commission must not allow PECO to use Commonwealth funded projects as a means of complying with Act 129 and to claim full credit for them. The Department’s position is consistent with the Commission’s Order and is in the best interest of Pennsylvania’s ratepayers and taxpayers.

**The Commission Correctly Established to Cap on EEC Plan Costs**

Section 2806.1(g) provides in part: “The total cost of any plan required under this section shall not exceed 2% of the electric distribution company’s total annual revenue as of December 31, 2006.” The Department believes that the correct interpretation of this

section is to limit the EDC's Act 129 expenditures to 2% of the EDC's 2006 revenues in any year.

The alternative interpretation re-argued by the various industrial interveners would calculate the total program funding over all years at 2% of the reference year revenues. The industrial interveners' interpretation is not correct for three reasons. First, by referencing the EDC's "annual" 2006 revenue, the legislature intended the cap to apply to annual expenditures. Second, the EDC plans are more appropriately considered annual plans. Each year the plans are evaluated by an independent party.

§ 2806.1(b)(1)(i)(j). As a result of that evaluation, the Commission will renew the EDC's use of the plan or require modifications. Annual evaluations would not have been required for plans that would only spend a few million dollars each year – as would be the case under the industrial interveners' interpretation.

Finally – and most importantly – the funding cap advocated by the industrial interveners would make the conservation and demand reductions specified in Act 129 impossible to achieve. Pursuant to section 1992 of the Statutory Construction Act (1 Pa. C.S. § 1922), it is presumed that the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable. The Department submits that capping EDC expenditures from 2009 – 2013 to 2% of 2006 revenues would make execution of the Act impossible and yield an absurd result.

## **VI. Conclusion**

For foregoing reasons, the Department respectfully requests that the Commission modify PECO's EEC Plan as proposed in the ordering paragraphs provided below.

## VII. Proposed Ordering Paragraphs

### **IT IS ORDERED THAT PPL REVISE ITS EEC PLAN IN THE FOLLOWING MANNER AND RESUBMIT IT FOR APPROVAL WITHIN 60 DAYS OF THIS ORDER**

1. Energy savings realized by programs jointly funded through PECO's Act 129 program and Act 1 or ARRA shall be apportioned between the funding sources according to the incentive provided by each program.
2. PECO shall develop a statewide whole home energy conservation program in conjunction with all other EDCs regulated by Act 129, the Department of Environmental Protection and other interested stakeholders. At a minimum, this program shall include a statewide conservation service provider selected by competitive bid that administers and markets the program, Home Performance with ENERGY STAR ("HpWES") audits, Energy Star Portfolio Manager and HPwES measurement and verification protocols, and installation of air sealing, weatherization and other cost effective and appropriate energy conservation measures.
3. PECO shall provide prescriptive rebates for government, schools and non-profit entities only in conjunction with a whole building energy conservation program or through an guaranteed energy savings contract.
4. Rebate programs shall affirmatively prevent fuel switching from combustion appliances to electric appliances or from electric appliances to combustion appliances.
5. Use of backup or emergency generation sources to reduce peak demand is prohibited.
6. PECO shall develop a stakeholder process for quarterly review of the progress of program implementation and proposed changes to the EEC Plan.
7. No program can be eliminated without approval by the Commission, up to 10% of the annual budget for a customer class can be shifted within the same customer class without Commission approval and any shifting of money from one customer class to another requires Commission approval.

Respectfully submitted,

*/S/ Scott Perry*

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George Jugovic (Pa. No. 39586)

Assistant Counsel  
[gjugovic@state.pa.us](mailto:gjugovic@state.pa.us)  
Commonwealth of Pennsylvania  
Department of Environmental Protection  
400 Waterfront Drive  
Pittsburgh, PA 1522-4745  
412.442.4262  
412.442-4274 (Fax)

Scott Perry (Pa. No. 86327)  
Assistant Counsel  
[scperry@state.pa.us](mailto:scperry@state.pa.us)  
Aspassia V. Staevska (Pa. No. 94739)  
Assistant Counsel  
[astaevska@state.pa.us](mailto:astaevska@state.pa.us)  
Commonwealth of Pennsylvania  
Department of Environmental Protection  
RCSOB, 9th Floor  
400 Market Street  
Harrisburg, PA 17101-2301  
717-787-7060  
717-783-7911 (Fax)

Dated: August 28, 2009

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PECO Energy Company** :  
**for Approval of its Act 129 Energy** :  
**Efficiency and Conservation Plan** : **Docket No. M-2009-2093215**  
**and Expedited Approval of its** :  
**Compact Fluorescent Lamp Program** :

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document, the main brief of the Commonwealth of Pennsylvania, Department of Environmental Protection, 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).

**SERVICE BY E-MAIL AND FIRST CLASS MAIL**

Marlane R. Chestnut  
Administrative Law Judge  
Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
801 Market Street, Suite 4063  
Philadelphia, PA 19107

Barry A. Naum, Esquire  
Charis Minicavage, Esquire  
Shelby A. Linton-Keddie, Esquire  
McNees, Wallace & Nurick, LLC  
100 Pine Street  
P O Box 1166  
Harrisburg, PA 17108-1166

Tanya J. McCloskey, Esquire  
Jennedy Johnson, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101

Harry Geller, Esquire  
John Gerhard, Esquire  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101

Daniel G. Amus, Esquire  
Sharon E. Webb, Esquire  
Office of Small Business Advocate  
Commerce Building, Suite 1102  
300 North 2nd Street  
Harrisburg, PA 17101

Charles McPhedran, Esquire  
John Baillie, Esquire  
PENNFUTURE  
1518 Walnut Street, Suite 1100  
Philadelphia, PA 19102

Richard A. Kanaski, Esquire  
Carrie Wright, Esquire  
Office of Trial Staff  
Pennsylvania Public Utility Commission  
P O Box 3265  
Harrisburg, PA 17105-3265

Roger Clark  
The Reinvestment Fund  
Sustainable Development Fund  
718 Arch Street, Suite 300 North  
Philadelphia, PA 19106

Daniel Ocko, Esquire  
Office of Representative Mark B. Cohen  
128 Main Capitol  
P O Box 202074  
Harrisburg, PA 17120

Daniel Clearfield, Esquire  
Kevin J. Moody, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101-2132

Susan E. Bruce, Esquire  
Pamela C. Polacek, Esquire  
Vasiliki Karandrikas, Esquire  
Energy, Communications & Utility Law Group  
McNees Wallace & Nurick LLC  
100 Pine Street, P O Box 1166  
Harrisburg, PA 17108-1166

Carolyn Pengidore  
President/CEO  
ClearChoice Energy  
180 Fort Couch Road, Suite 265  
Pittsburgh, PA 15241

Jonathan Stein, Esquire  
Philip Bertocci, Esquire  
Thu B. Tran, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19103

J. Barry Davis, Esquire  
Scott Schwarz, Esquire  
City of Philadelphia Law Department  
1515 Arch Street, 16th Floor  
Philadelphia, PA 19102

Christopher A. Lewis, Esquire  
Christopher R. Sharp, Esquire  
Melanie J. Tambolas, Esquire  
Blank and Rome LLP  
One Logan Square  
130 North 18th Street  
Philadelphia, PA 19103-6998

Romulo L. Diaz, Jr., Esquire  
Anthony E. Gay, Esquire  
Exelon Business Services Company  
2301 Market Street S23-1  
P O Box 8699  
Philadelphia, PA 19101-8699

Thomas P. Gadsden, Esquire  
Kenneth M. Kulak, Esquire  
Anthony C. DeCusatis, Esquire  
Morgan Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

Cheryl Walker Davis  
Jonathan Nase  
Kathryn Sophy  
Director's Office  
Office of Special Assistants  
Pennsylvania Utility Commission  
P O Box 3265  
Harrisburg, PA 17105-3265

Alicia R. Petersen, Esquire  
Scott H. DeBroff, Esquire  
Rhoads & Sinon  
One South Market Square, 12th Floor  
P O Box 1146  
Harrisburg, PA 17108-1146

Respectfully submitted,

*/s/ Scott Perry*

---

Scott Perry (Pa. No. 86327)  
Assistant Counsel  
[scperry@state.pa.us](mailto:scperry@state.pa.us)

Commonwealth of Pennsylvania  
Department of Environmental Protection  
RCSOB, 9th Floor  
400 Market Street  
Harrisburg, PA 17101-2301  
717-787-7060  
717-783-7911 (Fax)

Dated: August 28, 2009