

September 8, 2009

Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Docket No. M-2009-2093215 – 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

Dear Mr. McNulty:

Enclosed herewith please find an original copy of the “**Reply Brief on Behalf of EnerNOC, Inc.**” in the above captioned proceeding. The Reply Brief has been electronically filed through the PUC’s efiling system. A copy of the Brief will also be served to the parties on the service list.

Should you have any questions, please do not hesitate to contact me at (717) 233-5731.

Sincerely,

RHOADS & SINON LLP

By: 
Scott H. DeBroff, Esq.

Enclosures

cc: Service List for Docket M-2009-2093215

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

DOCKET NO. M-2009-2093215

REPLY BRIEF ON BEHALF OF ENERNOC, INC.

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TABLE OF CONTENTS

- I. INTRODUCTION.....1
- II. PROCEDURAL HISTORY.....2
- III. DESCRIPTION OF PECO’S PLAN.....3
- IV. SUMMARY OF ARGUMENT.....3
- V. ARGUMENT.....4
 - A. PECO.....4
 - B. PHILADELPHIA AREA INDUSTRIAL ENERGY
USERS GROUP.....10
 - C. THE REINVESTMENT FUND.....11
 - D. THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.....13
- VI. CONCLUSION.....15
- VII. PROPOSED ORDERING PARAGRAPHS.....16

TABLE OF AUTHORITIES

STATUTES

66 Pa.C.S. § 2806.1(d).....	4
66 Pa.C.S. § 2801.6(c)(3).....	6,8
66 Pa. C.S. § 2806.1(i)(1).....	12
66 Pa. C.S. § 2806.1(a)(6).....	13
66 Pa. C.S. § 2806.1(b)(2)	13
66 Pa. C.S. § 2806.1(b)(3).....	13

I. INTRODUCTION

EnerNOC, Inc. ("EnerNOC"), a leading demand response ("DR") and energy management services provider throughout the United States, appreciates the opportunity to offer comments on PECO Energy Company's ("PECO" or "Company") Energy Efficiency and Conservation Plan ("EE&C Plan"). As discussed in more detail herein, EnerNOC supports several aspects of PECO's Petition, specifically regarding its DR Aggregator Contracts Program, but also offers some recommended enhancements to that program to improve the potential for realizing Act 129's objectives in PECO's service territory.

EnerNOC currently manages over 3,150 MW of demand response resource capability from over 2,400 customers across 5,450 sites nationwide. As an active demand response provider across three Independent System Operators ("ISOs") or Regional Transmission Organizations ("RTOs") (*i.e.*, New York Independent System Operator, Inc., ISO New England, Inc., and PJM) and numerous states with various statutory and regulatory regimes, EnerNOC has a broad base of experience on which to draw and, as a result, has a unique perspective to offer in this proceeding. EnerNOC also has signed contracts with a variety of utilities to provide demand response services, including Allegheny Power, Baltimore Gas and Electric, Delmarva Power and PEPCO, Southern California Edison, Pacific Gas & Electric, San Diego Gas & Electric, the Tennessee Valley Authority, Tampa Electric Company, Public Service Company of New Mexico, Xcel Energy (Colorado), Salt River Project, and Idaho Power.

EnerNOC's demand response activities are implemented via automated, aggregated, and intelligent management of end-user lighting, HVAC, distributed generation, and industrial process equipment. Every one of EnerNOC's thousands of sites is connected to its Network Operations Center (the "NOC" in EnerNOC) and communicates real-time load data over a secure

Internet connection, allowing its operations staff to monitor and verify facility load reductions in real time. This customer visibility allows EnerNOC to ensure that customers are delivering their contracted reductions and where they are not to take efforts to "coach" them, or to dispatch technicians to take corrective action. As a result, EnerNOC dispatched emergency demand response resources in its network over 100 times during 2008 and delivered performance that averaged over 100% during the year, based on nominated versus delivered capacity.

II. PROCEDURAL HISTORY

Governor Rendell signed into law House Bill 2200, or Act 129 of 2008 ("Act 129" or "Act"), on October 15, 2008. Consistent with the Act's requirements, on July 1, 2009, all Pennsylvania EDCs filed with the Commission proposed energy efficiency and conservation plans ("EE&C Plan") that seek to meet the Act's energy efficiency and conservation requirements.

By letter issued July 2, 2009, the PUC also approved EnerNOC's Application to Register as a Conservation Service Provider.¹ On July 27, 2009 the Prehearing Conference was held. On August 3, 2009, EnerNOC filed a Petition to Intervene in this proceeding. On August 7, 2009, EnerNOC filed its initial comments in this proceeding. On August 28, 2009, EnerNOC filed its Main Brief.

Consistent with the procedural schedule for this proceeding, EnerNOC is submitting this Reply Brief in order to address its positions and concerns regarding party positions taken in their Main Briefs.

¹ See generally Docket No. A-2009-2102368.

III. DESCRIPTION OF PECO'S PLAN

To fulfill the requirements of Act 129, PECO's Petition proposes to fulfill the requirements of Act 129 through the implementation of 18 energy efficiency and demand reduction programs for Residential, Small Commercial and Industrial ("C&I"), Large C&I, and Governmental ("Municipal Lighting") customer classes.² Of these, PECO has targeted (or overlapped) ten programs for Residential customers; ten programs for Small C&I customers; ten programs for Large C&I customers; and one program for Municipal Lighting customers.

IV. SUMMARY OF ARGUMENT

While EnerNOC supports many of the key program implementation details for PECO's Demand Reduction Aggregator Contracts Program, including the use of an RFP process for CSP selection and leveraging of existing PJM Demand Response programs and the customers who are enrolled in them, it disagrees with PECO's interpretation of Act 129 in regard to DR program duration and supports PPL's Plan that anticipates DR programs extending past 2013.

EnerNOC disagrees with the Philadelphia Area Industrial Energy Users Group's argument regarding access to multiple CSPs and supports the single CSP structure for PECO's demand response program. EnerNOC also supports the concept that the approved CSP for the PECO program would be the one that all large C&I customers would work through, whether or not they had an existing relationship with a PECO-contracted PJM CSP or were acting as their own CSP.

² See, e.g., Exhibit RAS-2, Exhibit accompanying the Direct Testimony of Richard A. Schlesinger.

EnerNOC disagrees with The Reinvestment Fund's recommendation for additional stakeholder review during the PECO implementation process as it does not support a stakeholder micromanagement of the RFP process. Such a review of RFP and related work plans in CSP contracting is intrusive and nonproductive.

Finally, EnerNOC disagrees with the Department of Environmental Protection's recommendation that distributed generation to reduce peak demand should be prohibited.

V. ARGUMENT

A. PECO

In PECO's Main Brief at pages 25-26, it represents its position on "Overall Demand Reduction Requirements" and states that "Section 2806.1 (d) of Act 129 requires an EDC with at least 100,000 customers to reduce the weather-normalized demand of the EDC's retail customers by a minimum of 4.5% of annual average peak demand in the 100 hours of highest demand by May 31, 2013, as measured against the EDC's peak demands for the period June 1, 2007 through May 31, 2008. This reduction is equal to 355 MW for PECO. See PECO St. No. 2, p. 19.

In PECO's EE&C Plan filing at pages 171-174, specifically addressing its Demand Reduction Aggregator Contracts Program, it states in the "Objectives" section that "The targeted load reduction from this program is set at net system peak demand savings of 150 MW by the summer of PY 2012." In the "Program Schedule" found on page 172, PECO proposes that the program will conclude in May of 2013.

While EnerNOC supports many of the key program implementation details for PECO's Demand Reduction Aggregator Contracts Program, including the use of an RFP process for CSP selection and leveraging of existing PJM Demand Response programs and the customers who are enrolled in them, it disagrees with PECO's interpretation of Act 129 in regard to DR program duration.

Term of the Plan

In support of its argument here, EnerNOC cites to its argument made concurrently in its Reply Brief in the PPL EE&C Plan docket. PPL, in its Plan, argues that its current portfolio design contemplates that it will need to enter into contracts with CSPs that extend beyond the end of this EE&C plan (May 31, 2013).

In the PPL Industrial Customer Alliance's ("PPLICA") Main Brief in PPL's EE&C case, on page 5, they argued that the Commission should require that PPL's EE&C Plan and its cost recovery mechanism end as of May 31, 2013. (pg 5, 24-27). PPLICA cites to 66 Pa.C.S. § 2806.1(c)(3) and interprets Act 129 to only permit one result. That result is that the initial Plans terminate at the end of 42 months unless the PUC affirmatively determines that the actual benefits outweigh the actual costs and that the PUC would establish new DR goals for the utility.

In addition, PPLICA contends in the PPL case, that the cost recovery mechanisms may extend beyond the initial term solely to reconcile any over recovery or under recovery of costs. PPLICA further claims that by extending the curtailment-related contracts may not be "cost justified as the projected increase to compensate the CSPs for the plan without the extension would increase by \$5 million while the increase with the extension would appear to be \$5-\$10 million per year." (pg 26-27).

In the PPL EE&C case, EnerNOC strongly disagreed with PPLICA's recommendation and its interpretation of Act 129. In its Main Brief in the PPL case, EnerNOC explained why 66 Pa.C.S. § 2806.1(c)(3) supports the EDCs entering into long term contracts with a CSP and how it would ultimately be more "prudent and reasonable" for the EDCs to do so. PPLICA's argument, theory at best, completely distorted the legislative intent of requiring utilities to achieve a peak load reduction requirement in 2012/2013.

EnerNOC disagrees with the stance that the Legislature would have intended that PECO, PPL or any EDC for that matter, would be forced into dropping a successful peak load reduction program just as it got underway.

On page 24 of PPLICA's Main Brief in the PPL case, they contend that PPL's EE&C plan should automatically terminate at the end of 42 months, by May 31, 2013, the end of the PPL EE&C program date.

EnerNOC opposes this view and supports PPL's plan design and testimony that supports the continuation of its DR program beyond 2013 as necessary. PPL has argued that its current portfolio design contemplates that the Company will need to enter into contracts with CSPs that extend beyond the end of this EE&C plan (May 31, 2013), although those payments are not included in the current portfolio and would likely be structured in the CSP contract to be contingent on the Commission's extension of peak load reduction targets and funding beyond the life of the current plan. (EE&C Plan, p. 13 [emphasis added].)

Further, in the PPL case, the Company states that if it were limited to contracts that expire on September 12, 2012, which is the compliance date for peak load reductions, they contend that these short-term contracts could be more costly – at approximately \$5 million beyond the current portfolio. Id. at 13-14. PPL is proposing, and EnerNOC is supporting PPL's

position that it be allowed to enter into contracts with CSPs in many cases for five (5) to eight (8) years. See PPL Response to OTS 1-3(b).

As PPL states, “assuming a contract is awarded in late 2009 and demand reduction programs (and associated incentive payments to participants and the CSP) will start gradually in mid-2010, a five (5) to eight (8)-year contract term would extend to 2015-2017.” Id.; see also Tr. at 166. Mr. Cleff, a witness for PPL, confirmed that the total projected costs in each of the extra years will be approximately \$5 million - \$10 million per year. Tr. at 168.

In the PPL case, PPLICA opposes the extension of the cost recovery mechanism beyond May 31, 2013, except for the limited purpose of addressing any over-collection or under-collection of plan costs. EnerNOC disagrees with PPLICA’s perspective and contends that it makes absolutely no financial nor practical sense to end a DR program operating at a lower cost only to have to, in all likelihood, restart the same program at a significantly higher cost. We feel exactly the same way with PECO and the rest of the EDCs as well.

The testimony of PPL in its EE&C case supports the continuation of the DR programming beyond the 2013 time frame, and EnerNOC contends that this is the best decision this Commission could make, in all of the EE&C cases, in order to generate successful demand response opportunities for both ratepayers and the utilities.

EnerNOC disagrees with the PECO interpretation of Act 129 and contends that its argument in support of PPL’s testimony on the differing DR program costs and the ability to conduct a more effective and cost-conscious DR program, in its own EE&C case, is the only interpretation that will provide both program benefits to ratepayers and accomplish the reduction goals of Act 129.

In reviewing, 66 Pa.C.S. § 2806.1(c)(3), our interpretation is that the intent of the Legislature was to have the EDCs maintain the status quo with the DR program, while the potential for further (not “existing”) reductions was being assessed by the Commission. Unlike energy efficiency investments, demand response programs will only work if the EDCs provide continuing support. It would be prudent and most beneficial to the ratepayers if the EDCs maintained the current demand response and peak load reductions during that time of the Commission review. If these programs are not maintained during that interim period, the EDCs will have to incur more costs to meet any new requirements beyond the 4.5% peak demand reduction goal for 2013.

Further, other components of the EE&C plan, such as deployment of Smart Metering, that will tie into the Load Control Program, will certainly continue to be in service and operational long after the May 31, 2013 deadline. Energy Efficiency Programs and Demand Response Programs work together in the same demand side management spectrum, and will need to be available to work in concert with Smart Metering, which contributes the platform for measurement, verification and evaluation of such programming. With this Commonwealth’s commitment to the deployment of advanced metering and the creation of a Smart Grid, there is every reason to infer that the Demand Response and Energy Efficiency programming once started, was meant to endure as well.

Number of Providers

In its EE&C Program filing on page 171, in the section entitled “Program Description” in the DR Aggregator Contracts Program, PECO states that it will establish “performance contracts with **one or more** Curtailment Service Providers who will recruit PECO customers and deliver the demand reduction target set in the program.”

EnerNOC opposes this rationale and supports a single CSP model for the DR Aggregator Contracts Program. As we have stated in our Reply Brief in the PPL docket, DR program success for PPL, as with any utility, is based upon a clearly defined program that can be implemented with a reputable CSP partner who can successfully market that program to the utility's customers. By diluting the load and splitting up the program responsibilities, the utility makes aggregation more difficult and creates more risk of program failure.³

In our PPL Reply Brief, we support a program design that will provide confidence to the utility as well as to the Commission and offers the best chance for success. We opposed PPLICA's argument in the PPL case and argue in this PECO case for the utility to support a single CSP model for the DR Aggregator Contracts Program.

In the PPL case in PPLICA's Main Brief, on page 16, they cite to PPL's Main Brief which indicates that the projected cost of its large C & I Curtailment Program could increase by \$30 million (to oversubscribe participants), \$14 million (to pay adequate incentives to curtail) and potentially even more. See PPL EE&C Plan pp. 13-14.

EnerNOC, in reflecting on the design of that PPL Curtailment Program, believes that oversubscription will not be necessary if RFP terms, security and penalties are appropriate.⁴

³ The essence of what CSPs do is aggregate customers to allow the over-performance of some to offset the under-performance of others. It is only in this way that CSPs can take upon themselves the performance risks that would otherwise be borne by the EDCs. Customers, especially smaller ones, are generally unwilling to accept non-performance risks/penalties themselves and will simply not participate if required to do so. Obviously, the larger the aggregation, the less likely it is that the performance of a few large resources will jeopardize the performance of the entire group. Thus, larger aggregations allow for achieving a given level of performance with less of a "cushion" and therefore lower costs that would otherwise be borne by the EDCs.

⁴ It is difficult to overstate how much more difficult it is to enroll customers in a 50-hour per year program, than a less than 10-hour per year program such as the PJM Emergency program. EnerNOC is a party to several bilateral contracts with such terms and we can attest to the fact that customer recruitment is far more difficult than it first appears to those who have not attempted it. It will be a significant challenge for any CSP to meet the aggressive goals envisioned by PECO. Oversubscription is a luxury that PECO and its customers cannot afford and even if they can, may simply not be possible.

B. The Philadelphia Area Industrial Energy Users Group (PAIEUG)

In the Philadelphia Area Industrial Energy Users Group's ("PAIEUG") Main Brief at page 4, they argue that the PA Public Utility Commission ("Commission") should approve PECO's proposed demand reduction programs but require the Company to accommodate all Large C&I customers who wish to participate in the DR Aggregator Contracts Program, irrespective of whether they have a relationship with a PECO-contracted PJM Curtailment Service Provider ("PJM-CSP"). PAIEUG notes, at pages 9-10, that PJM currently offers a variety of Load Response programs and currently lists approximately 76 PJM CSPs on its websites. In addition, some customers participate directly in PJM's programs and do so without using a PJM CSP. PAIEUG argues that the Commission should force PECO in their program to "harmonize the reality of a customers' current ability to choose from multiple PJM CSPs or act as their own PJM CSP" in the PJM program.

As we stated earlier relating to our position in the PPL case, by diluting the load and splitting up the program responsibilities, the utility creates more risk of program failure. EnerNOC supports a program design that will provide confidence to the utility as well as to the Commission and offers the best chance for success. We oppose PAIEUG's argument and support the concept that other CSPs and customers could participate through the CSP that was selected in the RFP process by PECO.

C. The Reinvestment Fund

In The Reinvestment Fund's ("TRF") Main Brief at page 4, it states that it "urges the Commission to direct PECO to commit to an active and meaningful role for the Stakeholder Group throughout the implementation of its EEC Plan." TRF further elaborates that a "meaningful role" for Stakeholders would include allowing them to review **any RFPs** that were issued and the proposed work plans in the CSP contracts.

On page 17 of its Main Brief, TRF urges the Commission to amend the Plan to explicitly require PECO to maintain active, ongoing involvement of the Stakeholder Group throughout the implementation period. TRF cites to its witness Robert Sanders who provided a list of implementation issues and topics that PECO should solicit suggestions and recommendations to promote from the Stakeholder Group. They include draft Requests for Proposals for selecting CSPs, the draft work plans in the CSP contracts, monthly CSP reports and other program and plan implementation reporting, any proposed changes in work plans or budgets of the CSP contracts, and proposed program promotion materials given to customers.

EnerNOC supports a Stakeholder process which will help to direct the EE&C programming priorities as the PECO plans are implemented, but it does not support stakeholder micromanagement of the RFP process. Such a review of RFP and related work plans in CSP contracting would be intrusive and nonproductive, and would slow down the implementation of the programs, leaving less time for PECO and its CSP to achieve the Act 129 mandated objectives.

Ultimately, the utility has the responsibility for prudently implementing the EE&C plan that is approved by the Commission. It would be inappropriate and unwise for stakeholders to be

so involved themselves in the plan implementation process that the utility could later claim that clearly imprudent actions were nonetheless beyond reproach by virtue of the stakeholders' intimate involvement. Also, input and reasonable consultation should not become a vehicle for individualized program modification with limited value for all ratepayers.

All utility EE&C plans go through a working group process and a full adjudicatory process and potential settlement, before being accepted and approved by the Commission.⁵ When the Commission approves the final plans, there will be opportunities for parties to comment on the program issues at least once per year. These opportunities can be the time and place for TRF to weigh in on program details that interest them. The RFPs, work plans and reporting are the work flow of the CSPs and PECO, and changes to any program should be vetted where all parties can weigh in regarding all issues, which should be at year's end. (Implementation Order at Page 24 citing 66 Pa. C.S. § 2806.1(i)(1)).

The Implementation Order expanded on the Act and stated that the "Commission and any interested party can make a recommendation for Plan improvement or object to an EDC's proposed plan revision within 30 days of the annual report filing." (Implementation Order at page 24). If the stakeholders are raising relevant and important concerns at that time, the Commission may even refer the matter to an ALJ for another round of hearings. (*Id.*)

⁵ Pages 11-15 of PECO's Proposal for its EE&C plan summarize the process of how it developed its portfolio of EE and DR programs. It included National EE/DR program experience, Local and Regional EE/DR program experience, PECO's Energy Efficiency Potential Analysis, and input from a Stakeholder process. The stakeholder process included holding seven meetings in Harrisburg and Philadelphia to discuss recommendations from a broad constituency of interested parties. The stakeholders provided valuable insight into the various programs and measures that could be implemented as part of this Plan. PECO indicates that many of the stakeholder recommendations are represented in their proposed programs. In addition, pages 10-13 of the Implementation Order detail the procedural process in which the plans must undergo before being approved by the Commission.

EnerNOC believes that PECO's EE&C Plan currently has a vigorous "checks and balance" system that has been imposed by Act 129 and the Implementation Order and no further process is required. (Implementation Order at Page 10 citing 66 Pa. C.S. §§ 2806.1(a)(6), 2806.1(b)(2) and 2806.1(b)(3)).

D. Department of Environmental Protection (DEP)

In the Department of Environmental Protection's Main Brief, on pages 9-10, it argues that the use of emergency or backup generators to reduce peak demand should be prohibited. DEP states that using distributed generation to reduce peak demand is not permitted under Act 129 and that the only acceptable strategies to reduce peak demand are to reduce overall consumption or shift consumption to non-peak hours.

DEP continues by stating 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. They state that grid demand reduction that is merely replaced by higher emitting distributed generation has negative air impacts, and is an unacceptable strategy for Pennsylvania.

EnerNOC believes that backup generators can be a type of demand response programming for PECO. Backup generation is a low cost piece of the DR solution set, which PECO has sought to include in its Distributed Energy Resources Program Number 6 and which CSPs should be allowed to use to meet their commitments in the Demand Reduction Aggregator Contracts program, provided that such generation is permitted to allow such participation and that the operation of such units fully comports with their permits.

EnerNOC supports PECO's program strategy in targeting eligible commercial/industrial customers in their service territory who have existing backup generation resources or are interested in having grid-connected generating units installed at their facilities in order to realize energy savings and peak demand reductions.

VI. CONCLUSION

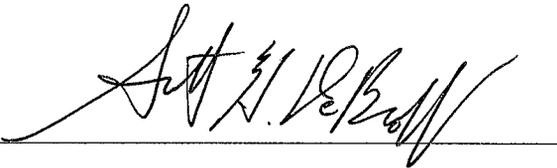
For all of the foregoing reasons as well as the reasons expressed in EnerNOC's earlier filings, EnerNOC respectfully requests that the Commission adopt its proposed recommendations to PECO's EE&C Plan.

VII. PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

1. That PECO's Demand Reduction Aggregator Contracts Program be structured in a way in which it can continue on successfully after the statutory deadline of May 31, 2013.
2. That PECO issue a competitive RFP and select one CSP to implement and run its Demand Reduction Aggregator Contracts Program.

Respectfully submitted,

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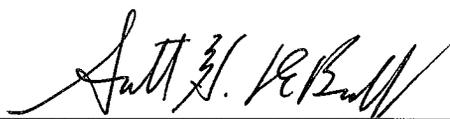
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EFFICIENCY AND CONSERVATION PLAN
AND EXPEDITED APPROVAL OF ITS
COMPACT FLUORESCENT LAMP
PROGRAM

DOCKET NO. M-2009-2093215

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties, listed on the next page, in accordance with the requirements of §1.54 (relating to service by a party).

Dated: **September 8, 2009**

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