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May 15, 2015

VIA eFILING

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

Re: Energy Efficiency and Conservation Program - Docket No. M-2014-2424864

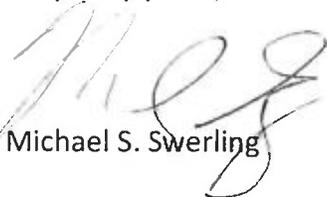
Dear Secretary Chiavetta:

Enclosed please find **PECO Energy Company's Reply Comments on the Commission's March 11, 2015 Tentative Implementation Order**, in the above-referenced docket.

As instructed, the Reply Comments have been mailed electronically, in Word format, to Megan Good (megagood@pa.gov) and Kriss Brown (kribrown@pa.gov).

Please do not hesitate to contact me if you have any questions.

Very truly yours,



Michael S. Swerling

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Energy Efficiency and Conservation : Docket No. M-2014-2424864
Program :

**PECO ENERGY COMPANY’S REPLY COMMENTS ON THE
COMMISSION’S MARCH 11, 2015 TENTATIVE IMPLEMENTATION ORDER**

On April 27, 2015, PECO Energy Company (“PECO” or the “Company”) filed its Comments to the Pennsylvania Public Utility Commission’s (“Commission”) March 11, 2015 Tentative Implementation Order (“Tentative Order”) at the above-referenced docket. In its Comments, PECO expressed its support for the continuation of an energy efficiency and conservation program (“EE&C Program” or “Program”) with cost-effective, prudent and reasonably achievable energy efficiency (“EE”) and demand reduction (“DR”) targets for an additional five years, from June 1, 2016 to May 31, 2021 (“Phase III”). At the same time, PECO recommended certain revisions to the Tentative Order, including the use of more reasonable acquisition costs for both EE and DR, to position the EE&C Program for deeper, more comprehensive savings opportunities.

Comments were filed by twenty-one other interested parties, including environmental groups, consumer representatives, electric distribution companies (“EDCs”) and conservation service providers (“CSPs”). At the request of the Energy Association of Pennsylvania (“EAP”), the Commission extended the due date for Reply Comments to May 15, 2015. PECO submits these Reply Comments for the Commission’s consideration in issuing its Final Implementation Order regarding Phase III.

I. OVERVIEW OF PECO'S POSITION

PECO fully supports the Commission's conclusion that a Phase III EE&C Program is warranted. As a general matter, PECO believes that Phase III provides EDCs the opportunity to implement more diverse and comprehensive programming to meet customer expectations. The Company notes that many commenting parties expressed support for more comprehensive programming.¹ The acquisition costs utilized to establish Phase III targets and carve-outs will determine the extent to which EDCs can deliver deeper savings opportunities. If such costs are set at unreasonably low levels, EDCs will be forced to depend on "low hanging fruit," such as lighting measures that may not be installed, to ensure compliance and avoid potentially significant penalties. PECO respectfully submits that its proposed acquisition costs for EE are reflective of the nature of EE&C programming that the Commission and other stakeholders expect. In particular, the Company is proposing an overall EE acquisition cost of \$268 per first year MWh saved, which includes \$250 per first year MWh saved for the general portfolio and \$1164 per first year MWh saved for low-income, direct install programming.

PECO notes that a wide variety of additional proposals have been provided by the commenting parties in this proceeding. While these proposals are all intended to improve the EE&C Program, the Commission must determine whether such proposals are supported by reliable cost and savings data as well as the EE and DR potential in Pennsylvania and each EDC's service territory. Without such data, the Commission cannot conclude whether those

¹ See, e.g., Office of Consumer Advocate ("OCA") Comments, p. 11; Pennsylvania Department of Environmental Protection ("PA DEP") Comments, p. 2; Keystone Energy Efficiency Alliance ("KEEA") Comments, pp. 11-13; Northeast Energy Efficiency Partnerships ("NEEP") Comments, p. 2; The Coalition For Affordable Utility Services And Energy Efficiency In Pennsylvania ("CAUSE-PA") Comments, p. 4; Citizens for Pennsylvania's Future, et al. ("PennFuture") Comments, pp. 10-11; Citizen Power, Inc. ("Citizen Power") Comments, p. 3; The Sustainable Energy Fund ("SEF") Comments, p. 7.

proposals, when combined with all the other targets and carve-outs applicable to an EDC, are reasonably achievable and cost effective.

II. REPLY COMMENTS

A. Demand Response

1. **PECO Supports The Establishment Of A Reasonably Achievable Peak Demand Reduction Requirement**

As explained in PECO's Comments, the Company supports the establishment of a reasonably achievable peak demand reduction target.² Based on the analysis described in the Company's Comments, PECO believes that, assuming a 10% budget allocation, the Company could expect to achieve demand reductions of 97.5 MW per year, rather than the 166 MW target proposed in the Tentative Order.

2. **PECO Supports The Proposed Dual Participation Prohibition, But Agrees That The Scope Of The Prohibition Deserves Further Consideration In Future Phases Of The EE&C Program**

In the Tentative Order, the Commission recommends that customers participating in PJM's Emergency Load Response Program be ineligible to participate in Act 129 DR Programs.³ Several commenting parties oppose this eligibility restriction,⁴ concluding that it could harm DR in Pennsylvania by, among other things, creating competition between Act 129 DR programs and PJM DR programs. For example, the DR Supporters contend that it is unlikely that PJM events will correspond with Act 129 events, making the blanket prohibition on dual participation

² PECO Comments, pp. 21-27.

³ Tentative Order, p. 38.

⁴ Demand Response Supporters ("DR Supporters"), pp. 10-21; KEEA Comments, p. 10; OCA Comments, p. 7; Duquesne Light Company ("Duquesne") Comments, p. 7.

unnecessarily broad. They further allege that eliminating a dual participation restriction will “create significantly more DR potential.”⁵

PECO continues to support a restriction on dual participation in Act 129 and PJM DR programming. When the same resource is called upon simultaneously under both Act 129 and PJM DR programs, there is no “double” benefit because no additional capacity has been added to the grid and no additional reductions have been achieved. While it may be worthwhile to consider how the prohibition might be narrowed in future phases of the EE&C Program and whether a lesser restriction would create additional DR potential, for purposes of Phase III, the Company believes that the Commission’s condition should be implemented as proposed.

3. PECO Believes The Commission Did Not Intend To Restrict Program Design In the Tentative Order, And The Company Supports Flexible Design Options

Many of the commenting parties expressed concerns regarding the DR program design elements described in the Tentative Order (pp. 37-38), which appear to stem from the belief that such design elements will be binding on Phase III DR programs.⁶

Based on discussions with Commission Staff at the April 8, 2015 stakeholder meeting, PECO understands that the design elements described in the Tentative Order, including the use of 10% of an EDC’s Act 129 budget, were developed for purposes of the Statewide Evaluator’s (“SWE”) potential study only and are not intended to restrict the design or budget of EDC DR programs. That said, the Company believes that several of the key design elements are reasonable, including calling events for the first six days that the peak hour of PJM’s day-ahead

⁵ DR Supporters Comments, pp. 15-16.

⁶ See, e.g., OCA Comments, p. 6 (“the Commission may have been unduly prescriptive in its program design”); Duquesne Comments, p. 3 (“the Commission’s proposed demand reduction program design unnecessarily restricts the programmatic options for EDCs”).

forecast for an EDC is greater than 96% of the EDC's PJM summer peak demand forecast for the months of June through September. PECO also agrees with other commenting parties that the condition that a "curtailment event shall last four hours" is unclear and could be unduly restrictive for EDCs. For that reason, PECO supports PPL's proposed revision such that an event may last "up to four hours,"⁷ and further requests confirmation from the Commission that an EDC will have the flexibility to determine how many and at what intervals customers should be curtailed during the event.

B. The Commission Should Not Establish A Low-Income Direct Installation Carve-Out

Several parties have expressed support for the Commission's proposed 2% savings carve-out for low-income direct installation measures, and a few even recommended increasing the 2% carve-out.⁸ These parties generally believe that such a carve-out will provide greater emphasis on comprehensive and sustainable measures for the low-income sector.

PECO supports the programming outcomes sought by the Commission and these parties, but disagrees that a 2% (or greater) savings requirement is the appropriate means to achieve those outcomes. As explained in PECO's Comments, the 2% carve-out lacks evidentiary support because no savings potential, cost or benefit information specific to direct install measures was used in its development. Further, the Company expects the acquisition costs for such savings to be quite high, which could have significant impacts on the overall program potential modeled by

⁷ PPL Electric Utilities Corporation ("PPL") Comments, p. 29.

⁸ *See, e.g.*, OCA Comments, pp. 13-14 (supporting 2%); Regional Housing Legal Services and the Philadelphia Weatherization and Conservation Collaborative ("RHLS/PWCC"), p. 3 (supporting 2%); CAUSE-PA Comments, pp. 10-12 (proposing 3%); Energy Efficiency For All ("EEFA"), pp. 10-13 (proposing 3%); PA Weatherization Task Force, p. 2 (entire low-income target should be satisfied by direct install measures).

the SWE.⁹ In addition, several other commenting parties expressed legitimate concerns about whether the savings potential to meet the carve-out even exists.¹⁰

If the Commission wishes to specifically address direct installation programming for low-income customers, it should do so through a direct install *spending* requirement (instead of a savings requirement) and it should also collect information during Phase III regarding the costs and benefits of direct-installed, low-income measures. A direct install spending requirement would allow EDCs to place increased emphasis on direct installation programming for low-income customers and avoid a situation where EDCs would be subject to penalties for a saving carve-out with unknown costs and unproven potential.

PECO notes that a few commenting parties recommended that “direct install measure” be defined.¹¹ The Company agrees that any direct install requirement should be accompanied by a definition of “direct install measure” so that the Commission, EDCs and other stakeholders have a consistent understanding as Phase III EE&C plans are developed. PECO proposes the following definition: “A measure that is installed directly in a customer’s premises during a visit from a qualified energy specialist on behalf of an electric distribution company.” Examples of direct install measures would include CFL or LED replacement lighting, low flow showerheads, water saving faucet aerators, thermostats, pipe wrap, smart power strips, air sealing and/or duct sealing, water heater adjustment, refrigerator coil cleaning, filter replacements and chimney balloons.

⁹ PECO Comments, pp. 27-32.

¹⁰ FirstEnergy EDC Comments, pp. 25-31; Duquesne Comments, pp. 11-14; PPL Comments, pp. 51-54.

¹¹ See, e.g., EEFA Comments, p. 13; KEEA Comments, p. 15.

Finally, PECO notes that a few parties have proposed that the Commission's 5.5% overall low-income target be satisfied by savings from low-income programs only, and not by the participation of low-income customers in general residential programming.¹² Although this proposal will likely increase the cost to achieve the 5.5% carve-out, the Company would not oppose its implementation *if* the Commission decides to forgo a low-income, direct installation savings carve-out.

C. Working Groups Should Be Used To Develop Recommendations For EE&C Plans, Not Binding Requirements

In the Tentative Order, the Commission proposes that, to further address multi-family issues, interested stakeholders work with the Commission's Bureau of Consumer Services "to explore possible cost-effective solutions and program designs that could be developed and *presented* to the EDCs as *potential* pilots."¹³ Many commenting parties expressed support for the Commission's proposal and some recommended the use of working groups to consider other issues, such as the coordination of Act 129 low-income programs with other low-income programs and the coordination of EE&C plans with the requirements of the PJM Base Residual Auctions.¹⁴ One commenting party, CAUSE-PA, proposed the use of working groups to develop recommendations that would be *binding* on EDCs. In particular, CAUSE-PA recommends that

¹² OCA Comments, p. 13 (saving should come from programs targeted to low-income sector or programs that have a component specifically targeted to the low-income sector); CAUSE-PA Comments, pp. 12-15 (opposes attribution of residential program savings to overall low-income savings target).

¹³ Tentative Order, p. 67 (emphasis added).

¹⁴ *See, e.g.*, EEFA Comments, pp. 6-10 (supporting proposed multi-family working group); Citizens for Pennsylvania's Future, et al. ("PennFuture") Comments, pp. 12-13 (supporting proposed multi-family working group); Citizen Power Comments, pp. 3-5 (recommending separate working groups to coordinate Act 129 programs with: (1) LIURP, WAP and LIHEAP; and (2) the requirements of the PJM Base Residual Auctions).

multi-family pilot programs developed in the working groups have targets and budget requirements and further proposes that the Commission “direct each EDC” to address multi-family programming “in a manner consistent with work group recommendations.”¹⁵

PECO generally supports the use of working groups for bringing stakeholders together to develop strategies to address complex issues. However, PECO opposes the use of working groups to develop *binding* obligations for Phase III EE&C plans *after* an EDC’s targets are established in the Final Implementation Order. Apart from other considerations,¹⁶ such obligations would be improper because they would very likely add costs not considered by the Commission when establishing an EDC’s targets and carve-outs, and changes in compliance costs could affect the reasonableness of an EDC’s targets. In addition, obligations developed

¹⁵ CAUSE-PA Comments, pp. 17-18.

¹⁶ PECO notes that if working group recommendations were to become legally binding without subsequent formal Commission action, the Commission would be permitting those recommendations to be “deemed into effect,” in contravention of the Pennsylvania Supreme Court’s holding in *Pennsylvania Coal Mining Assoc. v. Insurance Depart. of Pennsylvania*, 471 Pa. 437, 450-451, 370 A.2d 685, 692 (1977). Implementing the recommendations of private parties without formal government action, which necessarily must include notice and a due process hearing, would violate the “strong policy” against “delegating” even minimal levels of regulatory power to private parties, as the Pennsylvania Supreme Court expressly held in *Pennsylvania Coal Mining Assoc., supra*:

When insurance rates are deemed into effect, the rates set are those proposed by the Rating Bureau, a private body. There is a strong policy against delegating power to regulate prices to a private body. *See Olin Mathieson Chemical Corp. v. White Cross Stores*, 414 Pa. 95, 99, 199 A.2d 266, 268 (1964) (“The vesting of a discretionary regulatory power over prices, rates or wages, in private persons violates the essential concept of a democratic society and is constitutionally invalid.”). *See generally Hetherington v. McHale*, 458 Pa. 479, 329 A.2d 250 (1974) (plurality opinion). Where proposals by a private party must be reviewed and approved by a regulatory agency before they become effective, there is no unconstitutional delegation. The possibility of an arbitrary disregard of individual interests when the recommendations of a private body are deemed into effect without the specific approval of a public official, however, demands greater procedural protection than due process might otherwise require.

after the Final Implementation Order may unduly complicate or delay an EDC's EE&C plan design process. PECO will begin to design its EE&C plan this summer based upon its budget and the various targets, carve-outs and other plan design requirements established in the Final Implementation Order. If the Company is required to implement working group proposals, the development of the Company's EE&C plan could be delayed or a plan amendment proceeding could be required, depending on the nature and the timing of the obligation.

PECO has no objection to considering the recommendations of a working group, and notes that such recommendations could be considered as part of the PECO-specific EE&C plan proceeding or the Company's existing, robust EE&C stakeholder process. Whether a recommendation is implemented will depend upon factors such as cost, the Company's existing EE&C plan design, and the need to ensure compliance with mandatory targets and carve-outs.

D. The Commission Should Not Establish A Multi-Family Carve-Out

In its comments, EEFA recommends several savings carve-outs which relate to the multi-family sector, including: (1) a 12% carve-out for savings from residentially-metered and commercially-metered low-income multi-family projects; (2) a 1% carve-out for savings from direct install measures in residentially-metered multi-family properties; and (3) an additional 1% carve-out for savings from commercially-metered multi-family properties.¹⁷

PECO opposes the establishment of any multi-family sector carve-outs as both unsupported by any specific potential or cost analysis and unnecessary. The Company also notes that other key stakeholders, including the OCA, agree that no specific multi-family carve-outs are necessary.¹⁸

¹⁷ EEFA Comments, pp. 4-5.

¹⁸ OCA Comments, pp. 15-16.

In the Tentative Order, the Commission cited the limitations of the SWE's multi-family analysis when concluding that it would not propose a carve-out for the multi-family sector:

The SWE determined, for instance, that multifamily housing represented 11.8% of the base achievable savings within the residential sector, when reviewing the base achievable savings by housing type. The SWE did not provide any further analysis of multifamily housing in its EE Potential Study, so it is not possible to determine an accurate picture of the true potential across all sectors. Therefore, the Commission does not propose the establishment of specific savings or budgetary carve-outs for multifamily housing for Phase III.

PECO agrees with the Commission's conclusion that the SWE's limited state-wide analysis does not provide the information necessary to establish a multi-family target. In particular, the Company notes that there was no determination of EDC-specific program potential, which would require consideration of housing stock and measure costs specific to an EDC's service territory. Without such analysis, the Commission cannot determine whether a particular multi-family target is reasonably achievable in light of the other EE&C Program targets and carve-outs – and, hence, EDCs would be subject to penalties for a savings carve-out with unknown costs and unproven potential.

PECO also believes a savings carve-out is simply unnecessary because the multi-family sector is already receiving appropriate attention from the Commission and EDCs. As the Commission states in the Tentative Order, “all of the EDCs have implemented and are currently running successful multifamily housing programs in Phase II.”¹⁹ The Commission further proposes that EDCs continue those programs, or similar ones, in Phase III.²⁰ The Company agrees that it would be beneficial to customers to keep the momentum of successful Phase II

¹⁹ Tentative Order, p. 66.

²⁰ Tentative Order, pp. 66-67.

multi-family programming going in Phase III and notes that doing so would be consistent with the overwhelming desire of stakeholders to offer comprehensive EE&C programming.

E. The Commission Should Return Any Excess Phase II Funds To Customers

In the Tentative Order, the Commission proposes to allow EDCs to utilize their Phase II budgets past May 31, 2016, solely to account for those program measures installed and commercially operable on or before May 31, 2016, and to finalize the CSP and administrative fees related to Phase II. EDCs would not be allowed to use Phase II funds for Phase III programs, because the Commission believes that it is not “sound policy to continue spending Phase II budgets in Phase III when those monies should be refunded back to the appropriate rate classes.”²¹ This proposal is consistent with how excess budgets were handled during the transition from Phase I to Phase II of the EE&C Program.

Several commenting parties, including the KEEA and Honeywell International et al. (“Honeywell”), oppose returning excess Phase II funds to customers and instead recommend that the Commission require the use of excess Phase II funds on additional Phase III EE&C programming.²²

PECO supports the Commission’s proposal regarding excess Phase II funds, and agrees that any “roll-over” proposal is not sound policy. First, implicit in the “roll-over” proposals is the contention that EDCs must spend their entire Act 129 budget. Section 2806.1(g) of the Public Utility Code, 66 Pa. C.S. § 2806.1 (g), however, establishes a “cap” on EE&C plan costs, not a spending requirement. Second, a “roll-over” would be impractical because EDCs would

²¹ Tentative Order, pp. 109-110.

²² Honeywell Comments, p. 3; KEEA Comments, pp. 6-8; *see also* NEEP Comments, pp. 5-6 (the most “cost-effective” refund to customers would be through continued investment in energy efficiency measures).

not know the amount of any excess Phase II funds until the final Phase II reconciliation, which will occur *after* EDCs begin implementation of their Phase III EE&C plans. Thus, EDCs could not incorporate excess funds into their plan development process and such funding could not be considered as part of the approval process for EE&C plans. PECO expects that the incorporation of any roll-over would complicate the implementation of Phase III plans and would require a separate EE&C plan amendment proceeding for each EDC that is impacted. For all these reasons, the Company continues to support the return of excess funds to customers at the end of each EE&C Program phase.

F. The Commission’s Decision To Base Savings Targets On Cumulative Savings Should Be Clarified And Reflected In EE Acquisition Costs

PECO, along with other commenting parties, sought clarification regarding whether the Commission intended to use cumulative savings or the sum of annual incremental savings when establishing savings targets.²³ Some parties also expressed concerns about the use of cumulative savings, believing that it could complicate or preclude the use of measures which have a shorter useful life than the program phase.²⁴

PECO believes that the Commission intended to use a cumulative savings approach. As a practical matter, this means that if a measure’s useful life expires before the end of the phase, another measure must be implemented in its place during the phase in order for any savings to be recognized for purposes of meeting savings targets. The Company does not believe that a cumulative savings approach will preclude the use of shorter-life measures because such measures are a necessary component of a comprehensive portfolio. However, the costs associated with the need to “replenish” savings from shorter-life measures should be reflected in

²³ PECO Comments, pp. 19-20.

²⁴ OCA Comments, p. 10; Duquesne Comments, p. 11.

the overall EE acquisition costs used to establish EDC savings targets. The Company respectfully submits that its proposed overall EE acquisition cost of \$268 per first year MWh saved appropriately reflects these costs.

III. CONCLUSION

PECO appreciates the opportunity to provide these Reply Comments and looks forward to continuing to work with the Commission and other stakeholders to create more comprehensive programming and opportunities for deeper savings in Phase III of the EE&C Program.

Respectfully submitted,



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