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January 4, 2016

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

VIA ELECTRONIC FILING

RE: Petition of PECO Energy Company For Approval of its Act 129 Phase III Energy Efficiency and Conservation Plan; Docket No. M-2015-2515691

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission the Comments of the Philadelphia Area Industrial Energy Users Group ("PAIEUG") in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served with a copy of this document. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', is written over a horizontal line.

Adeolu A. Bakare

Counsel to the Philadelphia Area Industrial Energy Users Group

/leh

Enclosures

c: Administrative Law Judge Angela T. Jones (via e-mail and First Class Mail)
Administrative Law Judge Darlene Davis Heep (via e-mail and First Class Mail)
Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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Dated this 4th day of January, 2016, at Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company :
For Approval of its Act 129 Phase III : Docket No. M-2015-2515691
Energy Efficiency and Conservation Plan :

**COMMENTS OF
THE PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP**

I. INTRODUCTION

Through Act 129 of 2008 ("Act 129"), the Pennsylvania General Assembly tasked the Pennsylvania Public Utility Commission ("PUC" or "Commission") with establishing an Energy Efficiency and Conservation ("EE&C") Program. Pursuant to Act 129, the Commission ordered each Electric Distribution Company ("EDC") with at least 100,000 customers to develop and implement a tailored EE&C Plan to reduce energy demand and consumption within its service territory. Thus far, the Commission has worked with EDCs across the Commonwealth to administer two phases of EE&C Program implementation.

On June 19, 2015, the Commission decided that a third phase of EE&C programming was necessary and issued an Implementation Order directing EDCs to develop a third EE&C Plan.¹ Pursuant to the Commission's Order, the PECO Energy Company ("PECO" or "Company") filed its Phase III EE&C Plan ("Phase III Plan" or "Plan") for the period June 1, 2016 through May 31, 2021 on November 30, 2015. PECO's Plan proposes various EE&C Programs designed to meet the Commission's energy consumption reduction target of 1,962,659 MWh/yr and demand reduction target of 161 MW/yr.

¹ *Energy Efficiency and Conservation Program*, Docket No. M-2014-2424864 (Implementation Order Entered June 19, 2015) ("Phase III Implementation Order").

The Philadelphia Area Industrial Energy Users Group ("PAIEUG") hereby submits these Comments in response to PECO's Phase III Plan. PAIEUG is an *ad hoc* association of energy-intensive Large Commercial & Industrial ("C&I") customers receiving electric service from PECO under Rates HT. PAIEUG members consume substantial amounts of electricity in their manufacturing and operational processes, and these electric costs are a significant element of their respective costs of operation. Any modification to PECO's electric rates may impact PAIEUG members' cost of operations. Because the cost of electricity (including government-imposed costs such as EE&C surcharges) is a substantial component of PAIEUG members' operating budgets, PAIEUG is concerned about certain elements of the Company's Phase III Plan.²

As the Commission is aware, many businesses independently fund and implement EE&C initiatives in order to reduce their electricity costs. When Large C&I customers in Pennsylvania purchase power from Electric Generation Suppliers ("EGSs"), they receive signals from the retail supply market regarding the value of energy efficiency efforts. Large C&I customers assess those price signals and decide whether implementing energy efficiency measures would benefit their businesses. Forward-looking and cost-sensitive consumers make decisions on a daily basis to install energy-efficient lighting, replace motors, install more efficient heating, ventilating, and air conditioning systems, and explore complex industrial process enhancements to remain competitive and efficient. Large C&I enterprises have been studying the benefits of energy efficiency and incorporating energy efficiency projects into their business models for many years prior to the implementation of Act 129 in 2008.

² The positions set forth herein reflect the collective views of PAIEUG and do not necessarily reflect the views of each individual member.

Pursuant to Act 129, the Commission approves cost recovery mechanisms determining the extent to which ratepayers must support an EDC-administered EE&C Program. PECO's customers, including Large C&I customers, have financially supported PECO's EE&C Program since initial inception, including grants provided to members of the Large C&I class, administrative expenses, research and development ("R&D"), marketing and advertising, Conservation Service Provider ("CSP") compensation, Statewide Evaluator compensation, and other miscellaneous expenditures. Consequently, the Commission must determine whether PECO's programs for each customer class are cost-effective and in the public interest, because every dollar paid into PECO's EE&C Plan is a dollar taken from a customer's own energy efficiency initiatives or other business needs.

PAIEUG respectfully submits its comments on five elements of the Company's proposed Phase III Plan. First, PAIEUG stresses that if a ruling by the U.S. Supreme Court were to result in the elimination of all PJM Interconnection, L.L.C. ("PJM") Demand Response ("DR") Programs, then the Commission must hold an expeditious and comprehensive stakeholder process to ensure that the Commonwealth can effectively and efficiently replace PJM's programs. Second, if Senate Bill 805 ("S.B. 805") passes in the Pennsylvania General Assembly, then PECO must be able to adjust its Phase III Plan to permit Large C&I customers to opt-out of the Company's Plan. Third, the Company must structure its Phase III Plan to recognize and comply with PJM market rules. Specifically, as Phase III of Act 129 now requires all EDCs to rebid all CSP contracts, the Company must comply with the PJM Open Access Transmission Tariff ("Tariff") requirement that a customer location have only one PJM Curtailment Service Provider per PJM DR program. The operation of PECO's Act 129 DR Program must be transparent so the Commission and the stakeholders can evaluate PECO's

implementation of the "50% rule for dual participants" and determine the portion of the measure costs that are going to compensate customers for load reductions and the portion that is being devoted to administrative expenses. Fourth, the Company must ensure that its annual ratemaking process is transparent, prompt and uniform in order to guarantee that costs are allocated fairly among customers with little uncertainty as to what the customer charges will be. Finally, PECO must clarify its methodology for assigning rebates for custom measures.

II. COMMENTS

A. If a Ruling by The U.S. Supreme Court Were to Result in the Elimination of PJM DR Programming and States Assume Primary Responsibility for Managing DR Initiatives, the Commission Must Hold An Expedious and Comprehensive Stakeholder Process Outside of the EE&C Plan Process To Ensure Reliability and Develop Functional Replacements for the PJM DR Programs.

As the Commission recognized in its Phase III Implementation Order, there is uncertainty due to the pendency of *EPSA* regarding the PJM DR programs. *See* Phase III Implementation Order, p. 22. Should the U.S. Supreme Court decide to invalidate FERC Order 745 in such a manner that affects all of PJM's DR programs substantially, each state must decide whether to develop replacements for the PJM DR programs, which currently provide dual benefits by enhancing reliability during periods when the PJM grid is under stress and by impacting wholesale prices for energy and capacity (by permitting customer load to participate in the PJM markets through PJM Curtailment Service Providers).³ In the absence of PJM's programs, the

³ *EPSA v. FERC*, 753 F.3d 216 (D.C. Cir. 2014), *pet. for cert. filed*, *FERC v. EPSA*, (U.S. Jan. 15, 2015) (No. 14-840), *EnerNOC, Inc., et al., v. EPSA*, (U.S. Jan. 15, 2015) (No. 14-841). FERC Order 745 only pertains to the energy market and not the capacity market. However, the Court's reasoning behind its decision on FERC Order 745 could be equally true with regard to the capacity market. Thus, while invalidation of FERC Order 745 would not cancel all PJM DR programs, a subsequent FERC action based on the Court's decision on FERC Order 745 could affect PJM's capacity market DR Program. If the U.S. Supreme Court invalidates FERC Order 745, there could be a future FERC decision invalidating PJM's capacity market DR Program, which would then affect capacity-based DR Programs under Act 129. *See First Energy Service Co. v. PJM Interconnection, L.L.C.*, Docket No. EL14-55-000 (filed May 23, 2014).

Commission must assume the primary role for creating and managing DR programs. From PAIEUG's perspective, the Act 129 DR options are insufficient substitutes for PJM's current DR offerings.

PJM's role as the wholesale market operator enables it, subject to *EPSA*, to offer effective DR programs. Specifically, PJM's DR offerings enable demand resources to participate in a manner directly impacting energy and capacity prices. Act 129 does not provide the Commission with the necessary financing, market presence and cost efficiencies that are critical to forming an expanded DR Program capable of operating as efficiently as PJM's and with the same reliability benefits.

If the Commonwealth must replace PJM's DR programs with a state DR Program, the Program's design and operation must be thoroughly reviewed via an expeditious and comprehensive stakeholder process. The Act 129 DR Program, as currently constituted, will not be able to manage load as capably as PJM's program, endangering reliability and risking price increases. In addition, because large customers often participate in the PJM DR programs as part of their overall energy cost management strategy, for Pennsylvania businesses to remain financially viable and competitive, any state substitute for the PJM programs should aim to provide equivalent compensation to the customers who endure the impacts of the curtailments or other load management activities. While EDCs and CSPs undoubtedly have views on how substitute programs could be structured, PAIEUG urges the Commission to view its members and other end users who are intimately familiar with the PJM DR programs as key stakeholders in any replacement process.

B. Should S.B. 805 Pass the General Assembly, The Company Must Adjust Its Phase III Plan To Permit Large C&I Customers To Opt-Out of Participation in Its Phase III Plan.

S.B. 805 is currently on the legislative calendar at the Pennsylvania General Assembly. Should S.B. 805 be enacted, Section 2806.1(b)(ii) of the Public Utility Code will be amended to permit Large C&I customers to opt-out of participation in an EDC's Phase III EE&C Plan. If the Pennsylvania General Assembly enacts S.B. 805, the Commonwealth would join 14 other states (out of 24 states that have EE&C Programs) who have either exempted Large C&I customers from participating in such programs or permitted Large C&I customers to voluntarily opt-out.

Large C&I customers in Pennsylvania have already paid millions of dollars for EE&C Programs during Phases I and II of Act 129. More importantly, proactive Large C&I customers have responded to competitive pressures in their own industries to energy prices in the retail supply market for decades and designed internal EE&C initiatives to reduce energy costs, maximize free cash flows, minimize debt, and increase industry competitiveness. Requiring Large C&I enterprises to pay into a third Phase of EE&C funding redirects key resources that could be dedicated towards other business objectives or voluntary energy efficiency programs tailored to the customer's individual business model.

Because Act 129 caps reimbursement for EE&C projects and imposes strict criteria on their development, many of the more complex projects currently targeted by Large C&I customers are not compatible with the incentive and programming restrictions set forth in PECO's Phase III Plan. Many Large C&I customers responded to market forces and implemented cost-effective EE&C measures throughout periods when rate caps were expiring. Even without the Act 129 mandates, Large C&I customers will continue to pursue appropriate efficiency and energy management strategies to remain competitive in the national and global

markets. PAIEUG does not see any reason to continue paying an "EE&C tax" under the Company's Phase III Plan in order to subsidize energy efficiency projects for late-movers in the Large C&I class, particularly where, to a far greater degree than for Residential or Small C&I customers, market forces sufficiently incentivize Large C&I customers to invest in energy efficiency.

In sum, PECO's Phase III Plan does little to motivate large customers to implement energy efficiency measures. PAIEUG views a third Phase of Act 129 programming as duplicative, and if S.B. 805 passes, many of PAIEUG's members will opt out of any Act 129 initiatives. Therefore, PECO must be prepared to adjust its Phase III Plan accordingly.

C. The Company Must Recognize PJM's "One Curtailment Service Provider" Rule and Be Transparent in Its Operation of the Phase III DR Program.

PECO's Phase III DR Program will span a four-year period beginning on June 1, 2017, and concluding on May 31, 2021. The Phase III DR Program will allow for dual-participation in Act 129 and PJM's Emergency Load Response Program ("ELRP"), as long as PECO incorporates appropriate precautions. The Implementation Order also includes a 50% discount on dual-enrolled Act 129 and ELRP customer accounts. Furthermore, the Implementation Order directs EDCs to initiate a competitive solicitation process to procure a CSP that can carry out Large C&I customer curtailment.

PAIEUG supports selection of CSPs for Phase III DR through a competitive solicitation process; however, PAIEUG stresses that PECO must work with customers using other PJM Curtailment Service Providers for the PJM DR programs, including those who are PJM members and operate as their own Curtailment Service Provider.⁴ PJM's Tariff allows a customer to use multiple Curtailment Service Providers in emergency DR situations but only allows one

⁴ The PJM Curtailment Service Provider designation is distinct from the Act 129 "CSP" designation. Many PJM Curtailment Service Providers are not Act 129 CSPs.

Curtailment Service Provider to manage economic DR incidents on behalf of the customer.⁵ If a CSP succeeds in the EDC's bidding process and secures a contract for managing economic DR on behalf of the EDC, and that CSP is different from the Curtailment Service Provider that a "dual enrolled" customer uses to participate in the PJM DR programs, then PJM market rules may be violated if the Act 129 CSP uses the customer's load reduction for a PJM DR program. PECO has not yet determined whether the Act 129 CSP will be required to bid the Act 129 demand reductions into the PJM DR programs.⁶ Thus, the Company must take care throughout its RFP process to remain compliant with PJM's regulations.

Second, PAIEUG requests that PECO disclose CSP costs for each EE&C measure in its annual report. For the Act 129 DR measures, the Company must differentiate CSP costs from any compensation that is provided to the customers of the CSP service. In other words, the Act 129 DR measures costs should be segregated into "CSP administration" and "participant payments." The selected CSP should have an obligation to report on portions of its contract amount used to compensate customers, including segregating that amount to confirm compliance with the "50% rule" for dual-enrolled customers. Particularly in light of the CSP's discretion to determine DR rebates, the operation of the measure should be transparent and accessible by the customers in the classes that are paying for the program.⁷ Publicly disclosing financial data promotes transparency and responsible use of ratepayer dollars.

Finally, PAIEUG requests that the CSP contract review process be public and transparent. PECO's Phase III Plan states that it will assume responsibility for analyzing CSPs'

⁵ See PJM Open Access Transmission Tariff, Section 1.5A.3.02; see also Manual 11: Energy & Ancillary Services Market Operations, Section 10.2.1.

⁶ Although the ultimate decision remains uncertain, PECO has confirmed that if Act 129 DR demand reductions are used to participate in the PJM DR programs, all revenues from the PJM bids will flow back to customers. See Phase III Plan, p. 90. The Commission should further direct PECO to confirm that revenues from any PJM bids would be returned to the customer class responsible for the demand reductions.

⁷ PECO's Phase III Plan allows the CSP to set DR rebates between \$8,393.78/kW and \$50,362.69/kW or, for dual enrolled customers, between \$4,196.89/kW and \$25,181.34/kW.

approaches, performance metrics and other elements of their EE Programs.⁸ PAIEUG seeks reassurance that the Company will follow through with this plan through an explicit Commission directive.

D. The Company's Rate Setting and Reconciliation Process Must Be Public, Prompt and Uniform To Reduce Uncertainty and Ensure Fair Cost Allocation Among Customers.

In its Implementation Order, the Commission proposed a standardized rate reconciliation process for all EDCs. PAIEUG respectfully requests that this process be accompanied by public distribution of information and public hearings (with adequate prior notice to stakeholders). Specifically, the Company should disclose all EE&C Program data including: (1) actual program costs versus budgeted costs; and (2) the number of Large C&I custom energy efficiency measures developed and proposed by customers versus those proposed to customers by Company personnel or CSPs.

Publicly disclosing actual and budgeted EE&C Program development costs motivates EDCs to adhere to their projected expenses and ensures that customers only pay for EE&C initiatives that have been efficiently designed and proven successful. Ratepayers do not want to be surprised by actual EE&C costs exceeding PECO's EE&C cost projections. Thus, many Large C&I customers do not support EDC-developed EE&C programs because customers believe that they would have diverted the extra money paid for EDC EE&C initiatives towards their own independently-funded EE&C initiatives or other corporate priorities to remain competitive. To the extent Large C&I customers remain subject to PECO's Phase III Plan, the Company should be required to provide as much transparency as possible, including providing updated disclosures of budgeted and actual costs in its Quarterly Reports.

⁸ See Phase III Plan, p. 95.

Many Large C&I customers believe they have more efficient and effective EE&C Program development processes because in-house personnel (or consultants engaged directly by the customer) are more intimately aware of the unique characteristics of their businesses. Accordingly, PAIEUG also requests that PECO disclose the number and energy savings of customer-developed custom EE&C measures, as well as the number and energy savings of projects that are developed based on an Act 129 CSP audit or suggestion. At this stage of EE&C Plan development, it is prudent to determine the value of the "consulting" function of the Act 129-funded CSPs within the program structure. Administrative costs could be reduced by eliminating this function, and limiting the CSPs' role to evaluating the projects that are submitted by customers, rather than spending time advising Large C&I customers regarding projects that they could be pursuing. Therefore, disclosure of the customer-developed and EDC or CSP-developed custom measures would allow the Commission and all stakeholders to more accurately assess the actual costs of EDC-developed EE&C Programs and expose areas for improvement in the Company's EE&C Program R&D process.

A transparent and standardized ratemaking process will benefit both EDCs and ratepayers by affording all parties equal opportunity to assess and debate cost recovery of Program expenses for all EDCs on the same footing. Such a process ensures that customers can better predict their rates and plan projects accordingly. It is critical for an EDC to maintain a public ratemaking and rate reconciliation process on an annual basis to ensure that costs are fairly allocated among ratepayers.

E. The Company Must Clarify its Methodology for Assigning Rebates to Custom and Combined Heat and Power Projects.

PECO's proposed Phase III Plan proposes a significantly more flexible incentive structure for the custom and Combined Heat and Power ("CHP") projects as compared to the Company's

Phase III Program. Particularly, PECO seeks approval for a broad range of per-kWh incentive rebates and, for CHP projects, per-kW rebates. On one hand, PAIEUG recognizes that the proposals would allow the Company to modify its incentive structure as dictated by the market. However, to ensure a market-reflective outcome, PECO must clarify its intended administration of the increasingly flexible incentive rebates and caps.

Although PECO has previously utilized a range of incentives as opposed to fixed incentive levels, the Phase III Plan greatly expands the incentive rebate range and implements a range for the per-site cap as well. The Company's Phase II Plan allowed for "maximum" custom measure rebates between \$0.08/kWh and \$0.10/kWh, custom lighting rebates between \$0.06/kWh and \$0.08/kWh, and CHP rebates between \$75.00/kW and \$350.00/kW. The Phase III Plan proposes "maximum" custom measure rebates between \$0.02/kWh and \$0.20/kWh, custom lighting rebates between \$0.01/kWh and \$0.12/kWh, CHP rebates between \$40.00/kW and \$1,000.00/kW.

As illustrated above, PECO has significantly broadened the available range of incentive rebates. To the extent PECO intends to offer market-based rebates to customers, PAIEUG agrees with the Company that EE&C rebates should be priced to reflect the market rather than overpaying for energy efficiency measures and providing windfall revenues to certain customers. However, as the filing itself omits a detailed account of PECO's process for assigning incentive rebates or caps to individual projects, PECO must confirm details such as the anticipated frequency of rebate adjustments, whether adjusted rebates would then be fixed for any set period of time, and how PECO intends to notify customers of pending adjustments. Further, PECO should clarify whether the "maximum" modifier would allow for rebates below the set range.

III. CONCLUSION

Act 129 operates primarily to reduce the cost of energy for customers through EE&C measures.⁹ Large C&I customers have already invested millions of dollars in EE&C initiatives during Phases I and II of Act 129 *on top of* EE&C investments Large C&I customers voluntarily designed and adopted. While PAIEUG understands the importance of EE&C investments, key facets of Phase III warrant further study. Initially, the Commission should remain aware that the U.S. Supreme Court's anticipated decision in EPSA will need to be thoroughly and expeditiously evaluated to determine whether Pennsylvania must establish independent DR programs.

In addition, EDCs should remain cognizant of PJM's "One Curtailment Service Provider" rule when soliciting bids for CSPs to manage economic load response episodes. While customers can contract with multiple Curtailment Service Providers to manage emergency load response incidents, economic DR events must be carried out by one Curtailment Service Provider per customer location.

Further, should the General Assembly adopt S.B. 805, the Commission and EDCs must be prepared to adjust their Phase III Plans to account for Large C&I customer withdrawals from Phase III Programs. Many Large C&I customers already have their own EE&C Programs in place that are tailored to their business models and promote not only energy efficiency but also industry competitiveness. Given the chance, many PAIEUG members would withdraw from a third phase of EE&C programming that they view as duplicative.

Also, PECO must ensure that its rate setting and reconciliation processes are fully public and just and reasonable to ensure that costs are fairly allocated among consumers. Such transparency in the ratemaking process ensures that customers can predict rates and plan projects

⁹ 66 Pa.C.S. § 2806.1(a)-(m).

accordingly. An open ratemaking process also holds EDCs accountable and ensures ratepayers are not subsidizing inefficient program research and development at the EDC level.

Finally, PECO must confirm its processes for assigning incentive rebates within the ranges set forth in the Phase III Plan. As with the rate-setting process, transparent rebate policies would facilitate project development for customers, hold EDCs accountable, and assure equal access to preferred incentive rebate levels.

WHEREFORE, the Philadelphia Area Industrial Energy Users Group respectfully requests that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Comments.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By



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Dated: January 4, 2016