

COMMONWEALTH OF PENNSYLVANIA



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August 7, 2009

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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
Docket No. M-2009-2093215

Dear Secretary McNulty:

Enclosed for filing are the Comments of the Office of Consumer Advocate, in the above-referenced proceeding. On this date, the OCA is also serving the written testimony of its witness Richard Hahn on Administrative Law Judge Marlane R. Chestnut and the parties to the evidentiary portion of this proceeding. Hearings are scheduled for August 17 and 18, 2009 where this testimony will be moved into the record. The OCA requests that these Comments be read and considered in conjunction with the testimony of Mr. Hahn.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Kennedy S. Johnson".

Kennedy S. Johnson
Assistant Consumer Advocate
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Enclosures

cc: Honorable Marlane R. Chestnut
Office of Special Assistants

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CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Comments of the Office of Consumer Advocate, 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), in the manner and upon the persons listed below:

Dated this 7th day August 2009.

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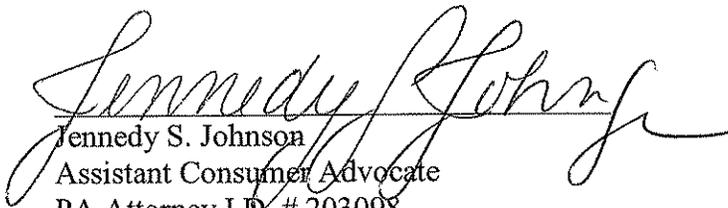
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS
OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: August 7, 2009

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I. INTRODUCTION

The Office of Consumer Advocate (OCA) is filing these Comments in accordance with the Notice in the Pennsylvania Bulletin published July 18, 2009. 39 Pa.B. 4196. These Comments are in response to the Petition of PECO Energy Company (PECO or Company) for Approval of its Energy Efficiency and Conservation (EE&C) Plan. On this date, the OCA is also serving the written testimony of its witness Richard Hahn¹ on Administrative Law Judge Marlane R. Chestnut and the parties to the evidentiary portion of this proceeding. Hearings are scheduled for August 17 and 18, 2009 where this testimony will be moved into the record. The OCA requests that these Comments be read and considered in conjunction with the testimony of Mr. Hahn.

A. Background

On November 14, 2008, Act 129 of 2008 (Act 129) became effective. Act 129 contained a requirement for the Pennsylvania Public Utility Commission (Commission) to implement an Energy Efficiency and Conservation Program for EDCs with more than 100,000 customers. See 66 Pa.C.S. § 2806.1 *et seq.* Act 129 contained provisions amending the duties of Electric Distribution Companies' (EDCs) obligation to serve; providing for Smart Meter Technology and Time of Use Rates; providing additional market power remediation for market misconduct; providing additional alternative energy sources; and providing a Carbon Dioxide Sequestration Network. Id. The Act also makes a number of significant amendments to the

¹ Mr. Hahn is a Principal Consultant for La Capra Associates who has worked in the electric utility business for over thirty years. Mr. Hahn has testified as an expert witness on numerous occasions in several states. Mr. Hahn has held technical and managerial positions in both regulated and unregulated companies covering all aspects of utility planning, operations, regulatory activities and finance. He is currently an elected Commissioner for the Reading Municipal Light Department (RMLD) in Massachusetts and is Chairman of its Rate and Power Subcommittee. The RMLD is one of the largest municipal systems in New England and maintains its own staff to actively manage its power supply portfolio. Mr. Hahn has a BSEE and an MSEE from Northeastern University and an MBA from Boston College.

Pennsylvania Public Utility Code, many of which will have a direct impact on the rates and service of the customers of Pennsylvania's EDCs.

Of particular relevance here, Act 129 requires Electric Distribution Companies with at least 100,000 customers to present an EE&C Plan (Plan) to the Pennsylvania Public Utility Commission (Commission) for approval. Id. The Plan must be designed to reduce energy demand and consumption within each EDC's service territory. 66 Pa.C.S. § 2806.1(a). Specifically, each EDC must reduce electric consumption by at least 1% of its expected load by May 31, 2011, adjusted for weather and extraordinary loads. 66 Pa.C.S. § 2806.1(c)(1). Each EDC must reduce its total energy consumption by 3% by May 31, 2013. 66 Pa.C.S. § 2806.1(c)(2). Further, each EDC must reduce electricity demand by a minimum of 4.5% of its annual system peak demand for the 100 hours of highest demand by May 31, 2013, as measured against the EDC's peak demand during the period from June 1, 2007 through May 31, 2008. See 66 Pa.C.S. § 2806.1(d)(1). The Act also provides for specific fines for an EDC's failure to achieve the standards for reduction contained in the Act.

Act 129 states that the Commission's EE&C program must include the following: (1) procedures for the approval of plans submitted by EDCs pursuant to Act 129; (2) an evaluation process "to monitor and verify data collection, quality assurance and results" of each EDC's EE&C plan; (3) a cost-benefit analysis of each EDC's plan in accordance with a total resource cost test approved by the Commission; (4) analysis of how the Commission's program and each EDC's EE&C plan will achieve or exceed Act 129's consumption reduction requirements; (5) standards to ensure that each EDC's plan includes a variety of EE&C measures that are provided equitably to all customer classes; (6) procedures to make recommendations as to additional measures that will enable EDCs to improve their plans and exceed the Act's

required reductions in consumption; (7) procedures to require EDCs to competitively bid all contracts with Conservation Service Providers (CSPs); (8) procedures to review, and modify if the Commission deems necessary, all proposed contracts with CSPs prior to execution; (9) procedures to ensure compliance with the Act's requirements for reduction in consumption; (10) a requirement for the participation of CSPs in the implementation of all or part of their respective EDC's plan; and (11) cost recovery to ensure that the measures approved are financed by the same customer class that will receive the direct energy and conservation benefits. See 66 Pa.C.S. § 2806.1(a).

In late 2008, the Commission invited comments from EDCs and other interested parties to develop the specific procedures required to implement Act 129. The OCA submitted comments on November 3, 2008 and again on December 8, 2008. The OCA also participated in a stakeholder meeting. After considering the comments it received from EDCs and other interested parties, the Commission adopted an EE&C Program Implementation Order establishing the specific standards that each EE&C Plan must meet and providing guidance on the procedures attendant to those Plans. See, Energy Efficiency and Conservation Program, Docket No. M-2008-2069887 (entered January 16, 2009) (Implementation Order).

In the Implementation Order, the Commission called for the publication of the Plans in the *Pennsylvania Bulletin* and allowed for the filing of Comments on the Plan. The Commission also directed that evidentiary and public input hearings be held for each EE&C plan so that recommendations for improving the plans could be submitted by the statutory advocates and the public. See Implementation Order at 8. Further, the Commission established a specific litigation schedule to meet Act 129's requirement that it rule on each EDC's EE&C plan within 120 days of submission, and provisions were established for the re-submission of rejected EE&C

plans.² Id.; See also 66 Pa.C.S. § 2806.1(e)(2). Also in its Implementation Order, the Commission encouraged each EDC to conduct a collaborative process during the development of the Plan to receive input from the various stakeholders. As discussed below, the OCA actively participated in the PECO stakeholder process. Also pursuant to this Order, each EDC was required to submit its Consumption forecast with the Commission by February 9, 2009; the Commission approved the forecasts submitted by the EDCs in its Order entered March 30, 2009.

Consistent with its January 15, 2009 Implementation Order, on May 7, 2009, the Commission issued a Secretarial Letter that established an EE&C plan template to be used by the EDCs in the preparation and filing of their Plans with the Commission. In the interim, various parties filed for Clarification and Reconsideration of the Order entered January 15, 2009, and the Commission adopted its Reconsideration Order on May 28, 2009. Energy Efficiency and Conservation Program, Docket No. M-2008-2069887 (entered June 2, 2009). On May 28, 2009, the Commission also adopted its Standards for the Participation of Demand Side Management Resources in an updated Technical Reference Manual (TRM). Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources – Technical Reference Manual Update, Docket No. M-00051865.

The Commission also invited comments from EDCs and interested parties in developing a Total Resource Cost (TRC) test. Act 129 specifically requires each EDC to demonstrate, *inter alia*, that its plan is both cost effective using the TRC test and provides a diverse cross section of alternatives for customers of all rate classes. See 66 Pa.C.S. §

² Based on the established consideration period of 120 days, the schedule was broken down as follows: (1) each EE&C plan is assigned to an Administrative Law Judge (ALJ), who will establish discovery, public input hearing schedule and evidentiary hearing schedules that must be completed by September 3, 2009; (2) all briefs are due by September 14, 2009; (3) each EDCs' reply brief and/or revised plan is due by September 24, 2009; and (4) the Commission will issue its decision regarding each EDC plan by October 29, 2009. See Implementation Order at 12. The Commission extended the opportunity to file reply briefs to all parties by an Order entered June 2, 2009 at Docket Number M-2008-2069887.

2806.1(b)(1)(i)(I).³ After receiving Comments from interested parties including the OCA, the Commission adopted a TRC test on June 18, 2009. Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test, Docket No. M-2009-2108601 (entered June 23, 2009).

The OCA provides the following Comments on PECO's Plan in accordance with the Commission's Implementation Order.

B. The Stakeholder Process

As discussed in the testimony of Company witness Wikler, PECO Energy Company (PECO or Company) held seven meetings with interested stakeholders on December 17, 2008, January 22, 2009, February 18, 2009, March 19, 2009, April 22, 2009, May 20, 2009, and June 11, 2009—all of which the OCA attended. PECO St. 2 at 7-8. The OCA wishes to commend PECO on its stakeholder process and on its initiative in beginning this process in December of 2008. The OCA found the PECO stakeholder process to be well attended by a diverse group of stakeholders and collaborative in nature. As Company witness Jiruska notes in his testimony, representatives of many stakeholders—including customer representatives, environmental advocates, state and local governments, regional planning groups, governmental organizations, trade allies, community based organizations, other utilities, market partners and businesses—were in attendance and actively participated in the stakeholder process. PECO St. 1 at 12. In the OCA's view, the stakeholder process conducted by PECO was robust, encouraged a two-way dialogue and allowed for a better informed process for both stakeholders and the Company. PECO's staff, in particular, showed a dedication to achieving a Plan that reflected its

³ A TRC Test is defined as follows:

[A] standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures.

collaboration with the stakeholders. The OCA anticipates that this process will also increase the likelihood of success in the implementation of the Plan. PECO has included copies of its stakeholder presentations—which were very useful in defining issues, updating stakeholders and providing a format for resolution—in its filing. See Petition, Vol. V, Appendix F-9.

PECO has agreed to continue meeting with stakeholders on a regular basis in order to analyze the progress of its Plan. As discussed more fully below, the OCA supports the continuation of the stakeholder process, with regularly scheduled meetings, reports during the Plan implementation and further collaboration. In the OCA's view, the Plan filing is only the first step in achieving the goals of Act 129. There is much work to be done once a Plan is approved, and an active stakeholder process will be a valuable tool to assist in the continued improvement of the Plan.

C. Summary of PECO's Plan

On July 1, 2009, in compliance with the requirements of Act 129, PECO filed its Petition and Energy Efficiency and Conservation Plan (Plan) with the Pennsylvania Public Utility Commission. Petition at 1. PECO requests that the Commission approve its Plan, including cost recovery via a charge rolled into distribution rates, and grant expedited approval of its proposed Compact Fluorescent Lamp (CFL) program. Id. The Company plans to reduce annual energy consumption by nearly 1.3 million MWh by May 31, 2013 by implementing eighteen programs—ten oriented towards energy efficiency savings and eight directed toward demand reduction. Petition at 2, 6. Specifically, the Company has proposed the following eight programs for its residential class: (1) CFL Program, (2) Low-Income Energy Efficiency Program, (3) Whole Home Performance Program, (4) Home Energy Incentives Program, (5)

Residential New Construction Program, (6) Appliance Pickup Program, (7) Residential Direct Load Control Program, and (8) Residential Super Peak Time of Use Program. Id. at 7-8.

PECO's portfolio of programs is designed to provide customer benefits while also meeting the energy saving and peak load reduction goals set forth in the Act within the designated expenditure cap of two percent (2%) of 2006 annual revenues (approximately \$85.5 million) for each of year of the four year plan. The Plan has budgeted expenditures totaling \$341,580,634 which are broken down by class as follows: Residential- \$153 million; Small Commercial and Industrial (SC&I)- \$80 million; Large Commercial and Industrial (LC&I)- \$101 million; and Municipal Lighting- \$8 million. See PECO St. 1 at 10. Specifically, PECO's Plan includes measures and programs to achieve the Company's calculated electricity consumption and peak load reduction targets of: a) 1% energy savings, or 393,850 MWh, by 2011; b) 3% energy savings, or 1,181,550 MWh, by 2013; and c) peak load reduction of 4.5%, or 355 MW, by 2013. PECO St. 2 at 18-19 (Tables 1 and 2).

PECO will recover its costs through an Energy Efficiency and Conservation Program Charge (EEPC) that will be imposed under Section 1307 and will be both reconcilable and non-bypassable. PECO St. 3 at 9. The EEPC will not be a separate line item on the customer's bill, but will, instead, be included in distribution rates. Id. A separate recovery charge will be established for each customer class, corresponding to the costs of the programs that target that class. Petition at 17. Initially, the EEPC rates for each class are projected to be as follows:

Class	Projected Rate*	Revenue Increase
Residential	\$.0035/kWh	2.50%
Commercial	\$.0028/kWh	2.33%
Industrial	\$.8921/KW	2.22%
Streetlight	\$.0156/kWh	8.50%

*Rate Information taken from PECO St. No. 3, Exh. RAS-3

Recovery charges will be levelized during the cost recovery period (41 months) with a true-up of actual Plan costs at the end of the recovery period. Petition at 18. The Company is requesting a waiver of Section 1307(e)(3) as it will not charge interest on any over or under collections. *Id.* at 18. Specific aspects of the Company's plan and cost recovery mechanism will be addressed in Sections II and II below.

D. Summary of the OCA Position

The OCA retained an expert witness, Richard Hahn of LaCapra Associates, to assist in its evaluation of the PECO Plan and the individual PECO programs within the Plan. These Comments are informed by the testimony of the OCA's expert witness which will be submitted in the evidentiary record of the proceeding that is being certified to the Commission. The following is a summary of the OCA's conclusions and recommendations as set forth in these Comments and the testimony of its expert witness:

Overall Plan Assessment and Compliance with the Requirements of the Act:

- The EE&C Plan is reasonably designed to meet or exceed the requirements for energy efficiency and demand reduction set forth in Act 129 in the time period specified for compliance and within the budget limitations specified in the Act.
- The Plan is designed to meet or exceed the requirements in Section 2806.1(b)(1)(i)(B) for savings within the government/non-profit sector.
- The EE&C Plan is designed to meet the requirements in Section 2806.1(b)(1)(i)(G) for providing programs and savings for low income customers.
- The Plan is designed to provide a variety of programs to all customer classes and provides the measures equitably to all customer classes as specified in Section 2806.1(a)(1)(5).
- The EE&C Plan as a whole has a benefit/cost ratio of 1.76 based on the Total Resource Cost Test as set forth by the Commission making the Plan a cost-effective means of achieving the requirements of the Act.

- The Plan proposed by PECO should be generally approved as a sound starting point for meeting the requirements of Act 129, subject to certain modifications recommended in these comments

Program Design:

- The programs in the EE&C Plan, and the initial program design, are generally reasonable, but two programs, the Conservation Voltage Reduction Program and the fuel switching component of the Residential Home Energy Incentives Program should be subject to further review in the on-going stakeholder process.
- With respect to the Conservation Voltage Reduction Program, PECO should be directed to perform specific evaluations of the operational aspects of the program and provide that information to stakeholders and the Commission. If that evaluation reflects problems with that program, the dollars associated with this program should be shifted to other programs that are performing well and in need of expansion.
- The fuel switching incentives in the Residential Home Energy Incentives Program should be further evaluated during the implementation phase to properly identify those situations where incentives for fuel switching would be in both the public and consumer's interest.

On-Going Stakeholder Process and Plan Adjustment Process:

- The Company's commitment for an on-going stakeholder process with at least quarterly meetings should be formalized as part of the Commission Order and should provide for certain specific information to be provided to stakeholders through the process.
- The proposal for mid-course corrections should be clarified to allow for consideration by the Company and the stakeholders of the need for cost recovery adjustments even if the overall impact is less than \$20 million for the Plan period.

Cost Recovery

- The Company's proposal to recover the costs of the EE&C Plan on a levelized basis over 41 months, without interest, should be approved.
- The Company's proposal to bid any qualifying energy efficiency and demand response measures into the PJM RPM auctions and credit customers with any benefits received through the cost recovery mechanism should be approved.

These issues will be further discussed below.

II. COMMENTS ON THE PLAN AND PROGRAMS

A. Introduction

The OCA generally supports the Company's Plan and commends PECO on the extensive collaborative process that it employed in arriving at its Plan. The OCA and its experts have reviewed the filing and submit that many aspects of the Plan—including both the low income and government/ non-profit set asides—equal or exceed the requirements of Act 129. Under the requirements of Act 129, PECO is expected to achieve energy savings of 1,181,550 MWh and peak demand reductions of 355 MW. See Petition at 13. By the end of Plan Year 2012, PECO expects to provide 1,295,565 MWh of energy savings and 505.4 MW in peak demand reductions which equal 110% and 142% of the Act 129 requirements, respectively. Id. The Company's Plan is designed to meet the requirements of the Act and does so in a cost-effective and balanced manner. Further, as noted by Mr. Hahn, the programs and measures being proposed by the Company originated from a study of the technical potential for DSM performed by PECO, and the Company has applied the TRC test as proscribed by the Commission. OCA St. 1 at 6. Additionally, while some of the proposed programs standing alone have benefit/ cost ratios below 1.0, the plan as a whole passes the TRC test with a ratio of 1.76. See Petition, Vol. 3, Appendix D-2.

There are, however, aspects of the Plan which the OCA submits should be further examined—specifically the Conservation Voltage Reduction Program and the fuel switching incentives in the Residential Home Energy Incentives Program. These programs are detailed in the testimony of the OCA's witness and summarized in these comments. The OCA requests that the Commission review the testimony of Mr. Hahn as it provides support for the proposed improvements listed below.

With respect to its Conservation Voltage Reduction Program, the OCA is concerned that this program may raise operational concerns. It is possible that if PJM calls for a voltage reduction under its emergency operating procedures and the conservation reductions are in place, voltages may temporarily fall to very low levels. OCA St. 1 at 19. Additionally, voltage reduction actually makes some of the equipment, particularly the dynamic loads, less efficient. Id. It is for these reasons that the OCA submits that PECO should be directed to perform specific evaluations of the operational aspects of this program and provide that information to stakeholders and the Commission. If that evaluation does, in fact, reflect problems with the Voltage Reduction Program, the dollars associated with this program should be shifted to other programs that are performing well and are in need of expansion.

Another aspect of the Company's filing that concerns the OCA is the fuel switching incentives in the Residential Home Energy Incentives Program. While fuel switching is expected to contribute approximately 63,000 MWh of energy consumption reductions by 2012, those reductions result from removing electric equipment from the home, not from improving the efficiency of the electric equipment or the ability to conserve usage from existing electric equipment. OCA St. 1 at 20. These types of programs raise numerous public policy concerns, including concerns of cross-subsidization. For these reasons, the OCA submits that this program should be further evaluated during the implementation phase to properly identify those situations where incentives for fuel switching would be in both the public and consumer's interest.

B. Special Plan Requirements

1. Low Income Program Requirements

Section 2806.1(b)(1)(i)(G) establishes a requirement for specific energy efficiency measures for low income households. Section 2806.1(b)(1)(i)(G) reads, in pertinent part:

(G) The plan shall include specific energy efficiency measures for households at or below 150% of the Federal poverty income guidelines. The number of measures shall be proportionate to those households' share of the total energy usage in the service territory.

66 Pa.C.S § 2806.1(b)(1)(i)(G). It is the OCA's view that the General Assembly sought to establish a set aside for low income customers through this language to ensure that low income customers received the benefits that energy efficiency can bring to a customer. This becomes even more pressing in light of the Commission's conclusion in its Implementation Order that all customers should be required to pay the costs associated with Act 129, including low income customers. Implementation Order at 37.

The language of the Act uses the terms "measures" within the Section but also refers to "in proportion to usage." The OCA submits that the most effective way to implement this Section is to require each EDC to ensure that a specific percentage of the overall savings to be achieved from the Plan is realized through programs and measures directed to the low income customer segment. This approach would parallel the set aside approach for the government/non-profit sector. See 66 Pa.C.S § 2806.1(b)(1)(i)(B).

PECO's Plan is designed to achieve energy savings from its low income programs of 79,660 MWh by Plan Year (PY) 2012. PECO St. 1 at 21. This represents approximately 6.7% of the total required energy savings of 1,181,550 MWh. As reported by PECO, the low income usage is 1,910,206,000 kWh of the total system energy usage of 39,850,000,000 kWh, or

4.9% of that total. It is the OCA's understanding that PECO based its estimate of the total low income usage on twelve (12) consecutive months of sample data for its customers who asserted that their annual incomes are at or below 150% of the Federal Poverty Level. While Act 129 requires that PECO achieve a minimum of 4.9% energy savings, the Company's Plan is structured to achieve a 6.7% energy savings. Accordingly, the OCA submits that the Company's Plan is reasonable. The OCA fully supports the Company's efforts in this regard.

2. Government/Non-Profit/Schools

Section 2806.1(b)(1)(i)(B) establishes a specific requirement for achieving reductions from the government/non-profit/school sector. The section provides:

(B) A minimum of 10% of the required reductions in consumption under subsections (c) and (d) shall be obtained from units of Federal, State and local government, including municipalities, school districts, institutions of higher education and nonprofit entities.

66 Pa.C.S. § 2806.1(b)(1)(i)(B). PECO estimates that approximately 11,000 such facilities and tens of thousands of street lights and traffic signals fall under this Section of the Act. Petition, Volume II, p. 125. Under this section, the Company is required to produce total energy savings of 118,200 MWh and average peak demand reductions of 35.5MW. PECO St. 1 at 25; Petition, Vol. III, Appendix B. This portion of the Company's Plan is expected to produce cumulative energy savings of 216,792 MWh and an average peak demand reduction of up to 42.9 MW by the end of Plan Year 2012. Id. These energy savings are 83% greater than required under Act 129. Id. From the OCA's review of the filing, it is the OCA's view that the Company's Plan meets the specific requirements of Section 2806.1(b)(1)(i)(B).

3. Equitable Distribution of Measures/ Variety of Programs

The Act also requires that the EE&C Plan include a variety of measures and that those measures be provided equitably to all customer classes. 66 Pa.C.S. § 2806.1(a)(5). The

Company's Plan contains eighteen (18) different programs distributed across all of its customer classes. The Company has provided at least one energy efficiency and one demand response program for each class in accordance with the Commission's Implementation Order and, in fact, offers multiple programs for each customer class. See Petition, Vol. III, Appendix D-6 (Table 6).

While determining reasonableness or equity can be subjective, the OCA reviewed the required Budget and Parity Analysis Summary found in Table 5 of PECO's EE&C Plan, the information shown in the charts below and other information presented by OCA witness Hahn when evaluating whether the portfolio proposed by the Company achieved a reasonable and equitable balance in its portfolio. See Petition, Vol. III, Appendix D-5 (Table 5). The OCA also considered the specific requirements of the Act for low income customers, government/non-profit sector and the need for the Plan to be cost-effective under the Total Resource Cost Test. Some of the information considered by the OCA and its experts included:

CHART 1

Class	Current Revenues	Percent of Current Revs.	Projected Spending (Over Total Plan)	Spending Percent of the Total Budget
Residential	\$1,918,194,391	43.44%	\$152,746,453	44.71%
Commercial	\$1,055,492,966	23.90%	\$79,729,421	23.34%
Industrial	\$1,411,765,065	31.97%	\$100,813,330	29.51%
Streetlight	\$30,325,951	0.687%	\$8,291,430	2.43%

Current and Base Period Revenues taken from PECO's 2008 and 2006 Annual Report, Projected Spending Taken from Exh. RAS-2.

CHART 2

Customer Class	Base Period Forecast (Total)- in GWh	Percent of Sales	Percent of Savings (MWh) from Plan
Residential	10,847	27.5%	44.96%
C & I	8,711	22.1%	55.04%

Forecast filing taken from June 1, 2009 to May 31, 2010 Consumption forecast filed Feb. 9, 2009.⁴ MWh savings from Vol.III, Appendix D-2. Costs from Vol.III, Appendix D-3.

⁴ The Company has given the OCA permission to treat this aspect of its filing as non-proprietary.

CHART 3

Class	Current Revenues (2008)	Est. Sales (kWh)- Over Entire Plan	Projected Rate (\$/kWh)	Rate Increase [(Rate x Est. Sales) / 41] x 12	Revenue Increase for 41 month Recovery (Rate Inc. / Current Rev)
Residential	\$1,918,194,391	46,815,796,201	\$.0035	\$47,957,645	2.50%
Commercial	\$1,055,492,966	29,988,677,833	\$.0028	\$23,990,942	2.27%
Industrial	\$1,411,765,065	120,087,456	\$.8921	\$30,608,777	2.17%
Streetlight	\$30,325,951	564,775,000	\$.0156	\$2,517,283	8.30%

Information from Exhibit RAS-3 and PECO 2008 Annual Report.

When these charts and other information are reviewed—considering the other requirements of the Act for particular customer segments, budgetary constraints and the need for the Plan to pass the TRC—it is the opinion of the OCA that PECO has achieved a portfolio that is balanced and cost-effective.

C. Conclusion

The OCA submits that, with the modifications outlined above, PECO's proposed EE&C Plan is reasonable and should be implemented as the starting point for complying with the requirements of Act 129. As discussed below, the implementation of the Plan and any needed adjustment to it should be considered in an ongoing stakeholder process during the Plan.

III. **COMMENTS ON COST RECOVERY**

A. Introduction

As was stated above, PECO plans to recover its costs through an Energy Efficiency and Conservation Program Charge (EEPC) that will be imposed under Section 1307 and will be both reconcilable and non-bypassable. PECO St. 3 at 9. The EEPC will not be a separate line item on the customer's bill, but will, instead, be included in distribution rates. Id. A separate recovery charge will be established for each customer class, corresponding to the costs of the programs that target that class. Petition at 17. Recovery charges will be levelized during the cost recovery period (41 months) with a true-up of actual Plan costs at the end of the

recovery period. Petition at 18. The Company is requesting a waiver of Section 1307(e)(3) as it will not charge interest on any over or under collections. Id. at 18.

In order to ensure that EE&C measures are paid for by the customer class that receives the energy and conservation benefits of those measures, PECO proposes to directly assign the costs relating to each measure to those classes that will receive the benefits. PECO St. 3 at 11-15. For costs related to EE&C measures that are applicable to more than one customer class, the Company plans to use an allocation factor equal to the percentage of the EE&C costs directly assigned to each customer class and apply such factor to the total EE&C costs directly assigned to all customer classes. Id.

The Company also proposes to separately calculate the applicable EE&C costs for each of the three major customer classes on its distribution system: (1) residential, (2) small commercial and industrial, and (3) large commercial and industrial. Id. These costs will vary in each program year of the Plan. Id. In other words, in some program years, the expenditures may be greater than the annual 2% cost cap, while in other program years, the expenditures may be less than the cap. Over the four program years, the total costs of the Plan for all customer classes will not exceed \$341.9 million. Petition at 13 (Table 1). The Company will perform a true-up of actual Plan costs at the end of the recovery period. Id. at 18.

B. Cost Recovery Recommendations

1. The OCA Supports Levelized Cost Recovery Without Interest on Over- or Under-Collections.

The OCA anticipates that Plan expenditures will vary, perhaps significantly, on a year by year basis. For example, the Company projects that its actual expenditures for the first year of the plan will be \$26 million as compared to the annual average of \$85.5 million over the term of the Plan. PECO St. 3 at 11. In Program Years 2010, 2011, and 2012, program

expenditures are projected to be \$81 million, \$107 million, and \$129 million, respectively. Petition, Vol. III, Appendix D-3 (Table 3). To provide more stability for customer rates, the Company is proposing to recover the same levelized amount each year from customers. This will allow the Company the flexibility to spend each year based on program ramp up needs, program success, and market conditions (within the total spending cap) to maximize Plan implementation without undue volatility in customer rates. The OCA supports this approach to cost recovery, particularly for residential customers, to avoid any undue volatility in rates. See also OCA St. 1 at 13.

The OCA also supports the Company's proposal that no interest be charged on any under- or over-collection that may occur as a result of this levelization. PECO St. 3 at 10-11. The spending constraint contained in the Act does not contemplate any interest charges. In other words, in the OCA's view, PECO's amount is \$85.5 million, not \$85.5 million plus interest. See also OCA St. 1 at 13. The OCA also expects that, with levelization, the interest would likely balance out over time.

2. The Company Proposal to Bid Qualifying Energy Efficiency and Demand Response Resources Into the PJM RPM Auction and Credit Customers for the Value Received in the Cost Recovery Mechanism Should Be Approved

As of May 8, 2009, PJM has modified its Reliability Pricing Model (RPM) auction process to allow for the inclusion of energy efficiency and demand response resources. Qualifying energy efficiency and demand response resources can now be bid into the PJM auctions as a capacity resource and, if cleared, receive capacity payments. PECO has noted that several of its programs will qualify to be bid into the PJM Interconnection as demand response resources and will be credited to the appropriate customer classes to offset the cost impact to these customers. PECO St. No. 1 at 15. Capacity payments can provide a significant value that

should then be credited to customers through the cost recovery mechanism to offset the costs that they must bear under the Act. The OCA supports this treatment and commends PECO for including this program which can return savings benefits to its customers.

3. EE&C Recovery

As was mentioned above, PECO proposes to roll recovery of the EE&C charge into its distribution rates. PECO St. 3 at 9. Therefore, the EEPC will not be a separate line item on the customer's bill. Id. The OCA agrees with this approach.

IV. ONGOING STAKEHOLDER PROCESS

A. Stakeholder Meetings and Involvement

In its filing, PECO commits to, at least, quarterly meetings with stakeholders during Plan implementation. Petition, Vol. II, pg. 193. The OCA commends PECO for its commitment to an ongoing stakeholder process and intends to participate in the on-going stakeholder process as its time and resources permit. The OCA found the initial stakeholder process to be useful in developing a more fully informed Plan and in resolving the numerous issues presented by the requirements of the Act in a beneficial manner. The OCA submits that the Commission should include some additional detail regarding the stakeholder process in PECO's Plan and its Order to ensure that the process continues to provide a reasonable means of addressing Plan implementation and any needed Plan modifications.

The OCA submits that in addition to its commitment to convene regular stakeholder meetings, the Company should provide the stakeholders with necessary information regarding Plan implementation including reports on the progress of selecting Conservation Service Providers (CSPs), the expected costs, the progress toward implementation by the CSPs, penetration rates and savings levels achieved to date, and cost recovery to date. The OCA would

also expect that the Company would work with the stakeholder group to review implementation issues, program issues that arise, educational or promotional materials that are being developed, and the like, so that the stakeholders can provide their input. Other information and exchanges would also be included within the process, such as information regarding the American Recovery and Reinvestment Act funding or any new legislation that impacts the EE&C Plan. The OCA recommends that, as with the initial stakeholder process, the process remain an open exchange of ideas and information.

The OCA again commends PECO in its stakeholder efforts and in its willingness to continue this process. Given the significance of the effort needed to implement the EE&C Plan in a cost-effective manner for all customers, the OCA urges that the commitment to the process be formalized so that all stakeholders can count on continuing to make contributions to the EE&C Plans.

B. Mid-Course Changes to the Plan

PECO correctly recognizes that it is extremely unlikely that its Plan will be implemented exactly as projected by the Company and that adjustments and changes are very likely to be required over time. The stakeholder process is a suitable forum for discussing and reaching consensus on these inevitable changes. To this end, the Company has proposed a mechanism to make mid-course corrections to its Plan. See Petition at 18-19; PECO St. 3 at 15-17.

For Intra-Class changes (e.g. programs applying to only one class) or for Inter-Class changes of less than \$20 million, in total, over the course of the plan, PECO would be permitted to redirect expenditures from underperforming programs to better performing programs, as it determines is appropriate. PECO St. 3 at 16. The Company would discuss any

proposed changes with its stakeholders—at or between regular meetings—but would not seek prior Commission approval to implement the changes. Id. PECO would, however, notify the Commission of such changes through its evaluation and reporting requirements. Id. In the instance of Inter-Class changes affecting cost recovery, the Company proposed to perform a true-up process at the end of the recovery period. Id.

For Inter-Class changes of more than \$20 million, in total, over the course of the plan, PECO and its stakeholders would develop and submit a proposed Plan modification to the Commission for its approval. PECO St. 3 at 17. Upon approval, both the changes to the plan and any modification to the recovery charges would be made. Id.

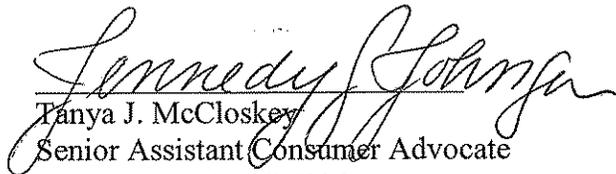
While this process provides a generally reasonable means to address mid-course corrections, the OCA submits that the Company should discuss with stakeholders whether any mid-course cost recovery adjustment would be needed even for charges of less than \$20 million. The OCA agrees that such changes should not automatically necessitate a filing, but stakeholders should be permitted to discuss the possible need for Commission review with the Company in its process.

V. CONCLUSION

The OCA appreciates this opportunity to provide Comments and the testimony of its expert witness (which will be presented in the evidentiary portion of the proceeding) on this important topic. The OCA concludes that PECO's Plan is designed to meet the requirements of the Act and does so in a cost-effective and balanced manner. Additionally, the Plan as a whole passes the TRC test. While the OCA generally supports the Plan, it has, through these Comments and testimony, recommended on-going review of two program components, provided additions to PECO's ongoing stakeholder process, and provided clarifications to the Company's

proposed process for Plan Adjustments. Accordingly, the OCA submits that, with these additions, PECO's Act 129 EE&C Plan should be approved.

Respectfully Submitted,



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