**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

 Public Meeting held August 6, 2009

Commissioners Present:

 James H. Cawley, Chairman

 Tyrone J. Christy, Vice Chairman

 Kim Pizzingrilli

 Wayne E. Gardner

 Robert F. Powelson

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| Petition of PECO Energy for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program  | M-2009-2093215  |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before us today is the record related to PECO Energy Company’s (PECO or Company) Energy Efficiency and Conservation Plan (EE&C Plan), certified to us by the August 4, 2009 Order of Administrative Law Judge Marlane Chestnut (ALJ Chestnut). Included in the record is the Joint Petition for Partial Settlement of the portion of PECO’s Plan related to the deployment of compact fluorescent lamps (CFLs), filed on July 30, 2009.

# Relevant Background and History[[1]](#footnote-2)

Governor Edward G. Rendell signed Act 129 of 2008 (Act or Act 129) into law on October 15, 2008. The Act took effect thirty days thereafter on November 14, 2008. The Act, *inter alia*, amended the Public Utility Code (Code), 66 Pa. C.S. §§ 101 *et seq*., to require the Commission to develop and adopt an Energy Efficiency and Conservation Program (EE&C Program) by January 15, 2009.

Act 129 requires that each electric distribution company’s (EDC’s) plan reduce electric consumption by at least one percent of its expected consumption for June 1, 2009, through May 31, 2010, adjusted for weather and extraordinary loads. This one percent reduction is to be accomplished by May 31, 2011. 66 Pa. C.S. § 2806.1(c)(1). By May 31, 2013, the total annual weather-normalized consumption is to be reduced by a minimum of three percent. 66 Pa. C.S. § 2806.1(c)(2). Also, by May 31, 2013, peak demand is to be reduced by a minimum of four and one-half percent of the EDC’s annual system peak demand in the 100 hours of highest demand, measured against the EDC’s peak demand during the period of June 1, 2007, through May 31, 2008. 66 Pa. C.S.
§ 2806.1(d)(1).

Act 129 also establishes the following plan requirements:

(1) The plan shall include specific proposals to implement energy efficiency and conservation measures to achieve or exceed the required reductions in consumption.

(2) A minimum of ten percent of the required reductions in consumption shall be obtained from units of federal, state and local government, including municipalities, school districts, institutions of higher education, and nonprofit entities.

(3) The plan shall explain how quality assurance (QA) and performance will be measured, verified and evaluated.

(4) The plan shall state the manner in which the plan will achieve the requirements of the program and will achieve or exceed the required reductions in consumption.

(5) The plan shall include a contract with one or more conservation service providers selected by competitive bid to implement the plan or a portion of the plan.

(6) The plan shall include estimates of the cost of implementation of the energy efficiency and conservation measures in the plans.

(7) The plan shall include specific energy efficiency measures for households at or below 150 percent 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. The EDC shall coordinate these measures with other programs administered by the Commission or another federal or state agency. The expenditures of an EDC under this clause shall be in addition to those made under the Commission’s Regulations at 52 Pa. Code Chapter 58.

(8) The plan shall include a proposed cost-recovery tariff mechanism to fund the EE&C measures and to ensure full and current recovery of the prudent and reasonable costs of the plan, including administrative costs.

(9) The EDC shall demonstrate that the plan is cost-effective, using a TRC Test approved by the Commission, and provides a diverse cross section of alternatives for customers of all rate classes.

(10) The plan shall require an annual independent evaluation of its cost-effectiveness and a full review of the results of each five-year plan and, to the extent practical, how the plan will be adjusted on a going-forward basis as a result of the evaluation.

(11) The plan shall include an analysis of the EDC’s administrative costs.

On October 21, 2008, the Commission issued a Secretarial Letter seeking comments on each of the individual aspects of the EE&C Program outlined in 66 Pa. C.S. § 2806.1(a)(1)-(11). Pursuant to an October 29, 2008 Secretarial Letter at Docket No. M-00061984, comments were due November 3, 2008. In addition, the Commission held a special *en banc* hearing on alternative energy, energy conservation and efficiency, and demand side response on November 19, 2008. Replies to comments expressed at the *en banc* hearing were due no later than December 1, 2008.

By Opinion and Order entered January 16, 2009, at Docket No. M-2008-2069887 (Implementation Order), the Commission: (1) established the standards that EE&C plans must meet; and (2) provided guidance on the procedures to be followed for submittal, review and approval of all aspects of EDC plans.

On July 1, 2009, PECO filed with the Commission its “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” (Act 129 Petition). Specifically, the Act 129 Petition requested that the Commission: (1) find that the EE&C Plan satisfies the requirements of 66 Pa.C.S. §2806.1(b)(1)(i)(A)-(K), including the requirement to provide programs to achieve or exceed the energy savings and demand reductions mandated by Act 129; (2) approve PECO’s proposed compact fluorescent lamp (CFL) program on an expedited basis; (3) approve tariff provisions to implement the EE&C Plan, including a Section 1307(g) surcharge to recover EE&C Plan costs; and (4) approve the contract between PECO and Global Energy Partners, LLC, a conservation service provider (CSP).

 On July 7, 2009, the Office of Consumer Advocate (OCA) filed a Notice of Intervention and Public Statement. A Notice of Appearance was filed on July 8, 2009, by the Office of Trial Staff (OTS). A Notice of Intervention, Public Statement, and Notice of Appearance was filed on July 21, 2009, by the Office of Small Business Advocate (OSBA).

 Petitions to Intervene were filed by the Commonwealth of Pennsylvania, Department of Environmental Protection (DEP) on July 16, 2009, the Philadelphia Area Industrial Energy Users Group (PAIEUG) on July 20, 2009,[[2]](#footnote-3) The Reinvestment Fund (TRF) on July 22, 2009, Tenant Union Representative Network (TURN) and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al*.) on July 23, 2009, Pennsylvania Association of Community Organizations for Reform Now (ACORN) on July 24, 2009, Citizens for Pennsylvania’s Future (PennFuture), Joy Bergey, Christine Knapp, and Henry Rowan (collectively, PennFuture *et al*.), who also filed a Protest on July 24, 2009, the City of Philadelphia (Philadelphia) on July 24, 2009, Field Diagnostics Services, Inc. (FDSI) on July 27, 2009 and Direct Energy Business, LLC Direct Energy on July 27, 2009.[[3]](#footnote-4)

On July 18, 2009, the Commission published notice of PECO’s Act 129 Petition in the *Pennsylvania Bulletin*. The notice stated that answers along with comments and recommendations are to be filed with the Commission and served on the ALJ and PECO by August 7, 2009.

A prehearing conference was held in Harrisburg on July 27, 2009. Present and participating through counsel were PECO, OTS, OCA, OSBA, PAIEUG, DEP, TRF, Turn *et al*., Philadelphia, ACORN, PennFuture *at al*., and FDSI. In the ALJ’s Prehearing Order #1, dated July 30, 2009, the Petitions to Intervene were granted, the service list was developed, the schedule directed by the Commission was discussed and other procedural matters were addressed. Also on July 30, 2009, the ALJ issued a separate Protective Order governing the use and disclosure of certain proprietary statements and exhibits submitted by PECO.

 The public input hearing was held as scheduled on July 29, 2009, at the Philadelphia Free Library. Seven customers testified. Several statements and exhibits were admitted into the record.

 On July 31, 2009, PECO, OCA, OTS, TRF, PennFuture *et al*., FDI, ACORN and the City of Philadelphia filed a Joint Petition for Partial Settlement (Joint Petition) asking that the Commission approve on an expedited basis the Company’s proposed CFL program. It was represented in the Joint Petition that the remaining parties of record (OSBA, PAIEUG, TURN *et al*., Direct Energy and DEP) do not oppose the Joint Petition. Also on July 31, 2009, PECO filed and served the supplemental testimony and exhibits.

 By her Certification Order dated August 4, 2009, ALJ Chestnut admitted in to the record PECO’s Act 129 filing, including the supplemental testimony and exhibits. The Certification Order also admits the documents and transcripts of the July 27, 2009 prehearing conference; the transcripts, statements and exhibits of the July 29, 2009 public input hearing; and the Joint Petition.

**Discussion**

As discussed *supra*, on July 31, 2009, PECO, OCA, OTS, TRF, PennFuture *et al*., FDI, ACORN and the City of Philadelphia (Joint Petitioners) filed a Joint Petition for Partial Settlement (Joint Petition) asking that the Commission approve on an expedited basis the Company’s proposed CFL program. PECO’s CFL initiative is designed to significantly increase the use of CFLs by PECO’s 1.4 million residential customers. PECO St. 1 at 17. PECO’s CFL program will include, *inter alia*, various promotional and educational initiatives, opportunities for customers to obtain CFLs at reduced prices, and “limited” giveaway events to educate customers about the program and the benefits of CFLs. Joint Petition at 3.

The Joint Petitioners agree that expedited approval of the CFL program is appropriate to facilitate early customer savings and enable PECO’s EE&C Plan to ramp up early following our approval. *Id.* at 4. In addition, early implementation provides PECO with an opportunity to leverage expenditures for its CFL program by linking it with the deployment of the 2009 ENERGY STAR “Change A Light, Change The World” program sponsored by the United States Department of Energy and the United States Environmental Protection Agency. This national program runs through October each year and encourages people to take small steps, such as installing CFLs, to make a difference in the fight against global warming. PECO St. 1 at 19.

As discussed *supra*, Act 129 requires that each EDC’s EE&C plan reduce electric consumption by at least one percent of its expected consumption for June 1, 2009, through May 31, 2010, adjusted for weather and extraordinary loads. This one percent reduction is to be accomplished by May 31, 2011. By May 31, 2013, the total annual weather-normalized consumption is to be reduced by a minimum of three percent. Our review of the record certified through August 4, 2009, indicates that the CFL program will be an indispensible part of PECO’s Plan. During the first year of the EE&C Plan (June 2009 – May 2010), the 73,492 MWh reduction in energy consumption estimated for the CFL program alone represents 60% of the total 123,013 MWh reduction projected for all ten of PECO’s proposed energy efficiency programs. By the fourth year (June 2012- May 2013), the CFL program is estimated to reduce system consumption by 290,297 MWh or 27% of the total 1,090,762 MWh for the ten energy efficiency programs. In the fourth year when the contribution from the other nine programs are projected to have increased, the reduction in energy consumption from the CFL programs is still estimated to be greater than any one of the other nine energy reduction programs. PECO St. 2 at 18.

Act 129 also requires each EDC to demonstrate that its EE&C Plan is cost-effective, using a total resource cost (TRC) test approved by the Commission. 66 Pa. C.S. § 2806.1(b)(I). In our Opinion and Order at Docket No. M-2009-2108601, entered June 23, 2009, we prescribed the methodology the EDCs were to employ to estimate the benefits or avoided costs that will be derived from their EE&C program components. PECO avers that utilizing our avoided cost methodology, the CFL initiative has a projected benefit/cost ratio of 3.40 (3.40:1.00). This indicates that the avoided energy and capacity costs that would be realized from the CFL initiative will be about 3.4 times greater than PECO’s costs to run the program. PECO submits that the CFL program’s benefit/cost ratio is the second highest of the ten energy efficiency programs proposed by PECO and is significantly higher than the 1.91 average benefit/cost ratio for all ten programs. PECO St. No. 2-S at 6.

Because the CFL program proposed by PECO is projected to produce the largest share of the energy consumption reductions from its EE&C program and the CFL program is projected to result in avoided costs that are well over three times the costs to implement the program, we find it to be in the public interest to approve the CFL program at this time.[[4]](#footnote-5) Moreover, the additional energy savings that will be realized from early implementation and the synergy that will be realized from co-implementation with the federal 2009 ENERGY STAR “Change A Light, Change The World” program further support the timely approval of PECO’s CFL program.

The Joint Petition also states that the issues of the cost recovery mechanism and the actual cost recovery from ratepayers are not part of the Joint Petition. These issues, together with any prospective recommendations regarding the CFL program, will be addressed in the full proceeding. Joint Petition at 4. Consequently, our approval of the implementation of the CFL program at this time does not preclude the parties and the Commission from addressing any prospective recommendations through the remainder of this proceeding.

As discussed *supra*, notice of PECO’s Act 129 Petition was published in the *Pennsylvania Bulletin* on July 18, 2009, and any Answers and/or Comments were due to be filed with the Commission by August 7, 2009. At our Public Meeting held August 6, 2009, we acted to approve the Joint Petition conditional upon the type of Answers and/or Comments timely received. If the Answers and/or Comments did not object to the implementation of PECO’s CFL program, we held that the Joint Petition would be approved. If Answers and/or Comments adverse to PECO’s CFL program were filed, we held that the Joint Petition would be rejected and the related issues would be remanded to the Office of Administrative Law Judge. We also held that a follow-up Secretarial Letter would notify the parties of the nature of the Answers and/or Comments and whether the Joint petition has been approved or rejected. Because Answers and/or Comments were due the day after we determined how they would affect our decision, we now are able to issue a final Opinion and Order without the need for a follow-up Secretarial Letter.

Upon our review of the Answers and Comments that were timely filed on PECO’s Act 129 Petition, we found no Answers and/or Comments that were in opposition or would otherwise warrant the delay in the implementation of PECO’s proposed CFL program. Accordingly, the Joint Petition is approved consistent with this Opinion and Order.

**Conclusion**

In consideration of the foregoing, we shall approve the Joint Petition. Consistent with the Joint Petition, the issues of the cost recovery mechanism and the actual cost recovery from ratepayers, as well as any prospective recommendations regarding PECO’s CFL program, will be addressed in the full Act 129 proceeding; **THEREFORE**,

**IT IS ORDERED**:

1. That the Joint Petition for Partial Settlement (Joint Petition) submitted by PECO Energy Company, the Office of Consumer Advocate, the Office of Trial Staff, the Reinvestment Fund, Citizen’s for Pennsylvania’s Future, Joy Bergey, Christine Knapp, Henry Rowan, Field Diagnostic Services, Inc., the Association of Community Organizations for Reform Now, and the City of Philadelphia on July 30, 2009, is approved.
2. That the issues of the cost recovery mechanism and the actual cost recovery from ratepayers, as well as any prospective recommendations regarding PECO Energy Company’s Compact Fluorescent Light program, shall continue to be addressed in this proceeding at Docket No. M-2009-2093215.
3. That the remainder of the Record in this proceeding at Docket No. M-2009-2093215 be remanded to the Office of Administrative Law Judge for further proceedings on PECO Energy Company’s Energy Efficiency and Conservation Plan.



 **BY THE COMMISSION,**



 James J. McNulty

 Secretary

(SEAL)

ORDER ADOPTED: August 6, 2009

ORDER ENTERED: August 18, 2009

1. This section provides a summary of the background and history of this proceeding that is relevant to our review and consideration of the Joint Petition and the record certified by ALJ Chestnut through August 4, 2009. [↑](#footnote-ref-2)
2. For the purpose of this proceeding, the members of PAIEUG, listed on Attachment A to its Petition to Intervene, are Air Liquide Industrial U.S., LP, The Boeing Company, Buckeye Partners, L.P., ConocoPhillips Trainer Refinery, Drexel University, Franklin Mills Associates Limited Partnership, GlaxoSmithKline, Jefferson Health System, Kimberly-Clark Corporation, Merck & Co., Inc., Saint Joseph’s University, Sanofi-Aventis, Temple University and Villanova University. [↑](#footnote-ref-3)
3. On July 13, 2009, a Petition to Intervene was filed by UGI Utilities, Inc. – Gas Division (UGI) and UGI Central Penn Gas, Inc. (CPG) (collectively, UGI distribution companies), which was withdrawn by letter dated July 28, 2009. In addition, other Petitions to Intervene were still pending when the record was certified on August 4, 2009. [↑](#footnote-ref-4)
4. The estimated reduction in energy consumption and the TRC test estimates presented in PECO’s exhibits will be part of the further proceedings on PECO’s EE&C Plan. [↑](#footnote-ref-5)