



CITY OF PHILADELPHIA

LAW DEPARTMENT
One Parkway
1515 Arch Street
Philadelphia, PA 19102-1595

Shelly R. Smith
City Solicitor

(215) 683-5170 (phone)
(214) 683-5175 (fax)

August 28, 2009

Via Electronic Filing

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

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

Dear Secretary McNulty:

Enclosed for filing in the above-captioned matter please find the Main Brief of the City of Philadelphia, along with an electronic filing confirmation page and a Certificate of Service showing that copies of the enclosed document have been served upon parties of record.

Very truly yours,


Scott J. Schwarz
Senior Attorney

Enclosure

cc: All Parties on the Certificate of Service w/enc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF OF
THE CITY OF PHILADELPHIA**

J. Barry Davis, Chief Deputy City Solicitor
Attorney I.D. No. 62137
Scott J. Schwarz, Senior Attorney
Attorney I.D. No. 38224
Law Department
City of Philadelphia
1515 Arch Street, 16th Floor
Philadelphia, PA 19102
Phone: 215-683-5186 (Davis)
Phone: 215-683-5170 (Schwarz)
Fax: 215-683-5175

Dated: August 28, 2009

TABLE OF CONTENTS

I. INTRODUCTION1

II. PROCEDURAL HISTORY.....2

III. DESCRIPTION OF EDC PLAN6

IV. SUMMARY OF ARGUMENT7

V. ARGUMENT.....8

 A. Act 129 Conservation and Demand Reduction Program8

 1. Overall Conservation Requirements8

 a. 2011.....8

 b. 2013.....8

 2. Overall Demand Reduction Requirements9

 3. Requirement for a Variety of Programs Equitably Distributed10

 4. 10% Government/Non-Profit Requirement11

 5. Low-Income Program Requirement13

 6. Issues Relating to Individual Conservation Programs14

 a. Residential.....14

 b. Commercial.....15

 c. Industrial15

 7. Proposals for Improvement of the EDC Plan16

 a. Residential.....16

 b. Commercial.....16

 c. Industrial16

 B. Cost Issues

 1. Plan Cost Issues17

 2. Cost Effectiveness/Cost Benefit Issues.....17

 3. Cost Allocation Issues.....17

 4. Cost Recovery Issues20

 C. CSP Issues20

 D. Implementation and Evaluation Issues20

 1. Implementation Issues20

 2. QA Issues.....22

 3. Monitoring and Reporting Issues.....22

 4. Evaluation Issues22

 5. Other Issues.....24

VI. CONCLUSION.....24

VII. PROPOSED ORDERING PARAGRAPH24

TABLE OF AUTHORITIES

Statutes

66 Pa. C.S. §§ 2806.1-2806.22

66 Pa. C.S. § 2806.1(a)3

66 Pa. C.S. § 2806.1(a)(6).....21

66 Pa. C.S. § 2806.1(b)(1)(i)(A)23

66 Pa. C.S. § 2806.1(b)(1)(i)(A)-(K)3

66 Pa. C.S. § 2806.1(b)(1)(i)(B)2, 11

66 Pa. C.S. § 2806.1(b)(2)21

66 Pa. C.S. § 2806.1(b)(3)21

66 Pa. C.S. § 2806.1(c)2, 11

66 Pa. C.S. § 2806.1(d)11

66 Pa. C.S. § 2806.1(d)(1)2

66 Pa. C.S. § 2806.1(i)21

66 Pa. C.S. § 2806.1(j)23

66 Pa. C.S. § 2806.1(m)23

Administrative

Energy Efficiency and Conservation Program, PUC Docket No.
M-2008-2069887, 2009 Pa PUC LEXIS 3 (Implementation Order
Entered January 16, 2009).....3, 8, 10, 20, 21

I. INTRODUCTION

The City of Philadelphia (City or Philadelphia) is filing this Main Brief with the Pennsylvania Public Utility Commission (Commission) in accordance with Prehearing Order #1, which granted the City's Petition to Intervene and directed all parties to comply with a briefing format and organization shown on an attached outline. The City has reviewed the petition of PECO Energy Company (PECO or Company) for approval of its Energy Efficiency and Conservation Plan (EE&C Plan or Plan). It has evaluated the Plan as a municipal customer receiving electric service from PECO under various rates and as a political entity responsible for protecting the public interest of all those who live, work or do business in the City. The City's position on the Plan is set forth in the argument sections of this brief.

As discussed in Sections IV.A and IV.B of this brief, the City generally supports the Plan's eighteen programs but has some concerns about certain aspects of Plan implementation, the allocation of the proposed surcharges for municipal lighting, and the reasonableness of classifying municipal lighting as a customer class for purposes of this proceeding. Section IV.D addresses specific implementation issues and recommends actions to improve the effectiveness of the ongoing stakeholder process and the annual reports to the Commission. This section of the brief also discusses leveraging of funds and recommends that the Commission allow PECO to claim full credit for energy savings when ratepayers choose to use measures funded jointly by the Plan and other government or private funds.

II. PROCEDURAL HISTORY

On October 15, 2008, Governor Rendell signed Act 129 of 2008 (Act or Act 129). The Act was later codified in Sections 2806.1 and 2806.2 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 2806.1 - § 2806.2.

Act 129 contains several provisions imposing specific duties on electric distribution companies (EDCs). It requires EDCs with at least 100,000 customers to develop and file energy efficiency and conservation plans that will meet the requirements of the Commission's Energy Efficiency and Conservation Program (EE&C Program). The EE&C Plans must reduce annual electric consumption of the EDC's retail customers by at least one percent (1%) by May 31, 2011, and at least three percent (3%) by May 31, 2013, as adjusted for weather and extraordinary loads and measured against the forecasted load for the period of June 1, 2009 through May 31, 2010. 66 Pa. C.S. § 2806.1(c). In addition, by May 31, 2013, the EE&C Plans must reduce annual weather-normalized peak demand of the EDC's retail customers by at least 4.5% in the 100 hours of highest demand, as 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). The Act further requires that a minimum of ten percent (10%) of all the required consumption reductions are to come from units of Federal, State and local governments, including municipalities, school districts, institutions of higher education and nonprofit entities. 66 Pa. C.S. § 2806.1(b)(1)(i)(B).

The Act required the Commission to adopt an EE&C Program by January 15, 2009, that included the following: (1) procedures for approving plans; (2) a process to evaluate and verify the results of each plan and the program as a whole; (3) a process to

analyze the costs and benefits of each plan in accordance with a total resource cost test; (4) a process to analyze how the program as a whole and each plan will enable the EDCs to meet or exceed the consumption reduction requirements; (5) standards to ensure that each plan uses a variety of measures that are applied equitably to all customer classes; (6) a process through which recommendations can be made for the employment of additional consumption reduction measures; (7) a procedure to require and approve the competitive bidding of all contracts with conservation service providers (CSP); (8) a procedure through which the Commission will review and modify, if necessary, all contracts with CSPs prior to execution; (9) a procedure to ensure compliance with the energy efficiency and demand reduction requirements of the Act; (10) a requirement for the participation of CSPs in the implementation of all or part of a plan; and (11) a cost recovery mechanism to ensure that measures approved are financed by the customer class that directly receives the energy and conservation benefits. 66 Pa. C.S. § 2806.1(a).

On January 15, 2009, the Commission adopted an Opinion and Order (Implementation Order) establishing minimum standards for EDC plans and providing guidance on the procedures for the submittal, review and approval of EDC plans. *See, Energy Efficiency and Conservation Program*, Docket No. M-2008-2069887, 2009 Pa PUC LEXIS 3 (Implementation Order entered January 16, 2009).

On July 1, 2009, PECO filed 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” (Petition). Specifically, the 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 CSP. Notice of PECO's Plan was published in the Bulletin on July 18, 2009. 39 Pa. B. 4196.

The Commission scheduled a prehearing conference for July 27, 2009, and assigned this matter to Administrative Law Judge (ALJ) Marlane R. Chestnut. A Prehearing Order, issued by ALJ Chestnut on July 1, 2009, directed the parties to comply with various procedural requirements, contained a litigation and briefing schedule, and provided that intervention would be limited to those parties or entities granted party status or afforded with a statutory right of intervention.

On July 7, 2009, the Office of Consumer Advocate (OCA) filed a Notice of Intervention and Public Statement. On July 8, 2009, the Office of Trial Staff (OTS) filed a Notice of Appearance. On July 21, 2009, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention, Public Statement, and Notice of Appearance. Numerous parties filed Petitions to Intervene, including 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, 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.) on July 24, 2009, the 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. Following a prehearing conference held in Harrisburg on July 27, 2009, ALJ Chestnut issued Prehearing Order #1 on July 30, 2009, which granted the Petitions to Intervene of the parties identified above, addressed the service list and procedural matters, and adopted the schedule established by the Commission for this proceeding. State Representative Mark B. Cohen, EnerNOC, Inc., and Constellation NewEnergy, Inc. filed Petitions to Intervene after the prehearing conference.¹

A public input hearing was held in Philadelphia on July 29, 2009. Seven customers testified and ALJ Chestnut admitted several statements and exhibits to the record.

On July 31, 2009, PECO, OCA, OTS, TRF, PennFuture et al., FDI, ACORN and the City filed a Joint Petition for Partial Settlement (Joint Petition) asking that the Commission approve on an expedited basis the Company's proposed Compact Fluorescent Light (CFL) program. The remaining parties of record did not oppose the Joint Petition. In a Certification Order dated August 4, 2009, ALJ Chestnut admitted into the record PECO's Act 129 filing, including supplemental testimony and exhibits filed and served by PECO on July 31, 2009; 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. On August 6, 2009, the Commission approved the Joint Petition and remanded the remainder of the record to the Office of Administrative

¹ UGI Utilities, Inc. filed but later withdrew a Petition to Intervene. The Petition to Intervene filed by E Cubed Company was denied by Order dated August 10, 2009.

Law Judge for further proceedings on the Plan. The issues of the cost recovery mechanism and actual cost recovery from ratepayers were not part of the Joint Petition, and the Commission's Order allows the parties and the Commission to address these issues, as well as any prospective recommendations, through the remainder of the proceeding. (Commission Order and Opinion, Aug. 6, 2009.)

On August 7, 2009, various parties submitted, served and/or filed comments, statements in the form of written direct testimony, and/or exhibits.

At an evidentiary hearing on August 18, 2009, PECO presented rejoinder testimony from two witnesses. During the hearing, ALJ Chestnut admitted into the record PECO's rejoinder exhibits marked as PECO Exhibits FJS-2, FJS-3 and RAS-5 (revised tariffs), as well as certain statements and exhibits of the intervening parties, including OCA Statement 1, Exhibits OCA-RSH-1 and OCA-RSH-2, OTS Statements 1 and 2, OSBA Statement 1, Philadelphia Statements 1 and 2, Acorn Statement 1, TRF Statement 1 with Exhibits RGS 1 through 5, FDSI Statement 1, Turn AA Comments, PAIEUG Answer and Comments, OCA Cross-Examination Exhibits 1 and 2, TRF Cross-Examination Exhibit 1, Turn/AA Cross-Examination Exhibit PL-1, and DEP Statement 1. As discussed at the hearing, ALJ Chestnut admitted into the record TURN/AA Comments #1 and Cohen Exhibit 2 by Order dated August 25, 2009.

III. DESCRIPTION OF EDC PLAN

PECO's Plan has eighteen programs, including ten energy efficiency programs and eight demand reduction programs, and describes the target markets for each program. Paragraph 10 and 11 of PECO's Petition in this matter summarizes each of the Plan's programs.

In the Plan, PECO identifies four customer classes: Residential, Small Commercial & Industrial (C&I), Large C&I, and Municipal Lighting. (PECO St. 1 at 20; PECO St. 3 at 3 and 10; Petition Volume II, p. 215.) Of the Plan's eighteen programs, ten programs are available for Residential Customers, ten programs are available for Small C&I customer, ten programs are available for Large C&I customers, and one program is available for municipal lighting customers. (PECO Ex. RAS-2, attached to PECO St. 3.) The portions of the budgeted expenditures projected for each rate class are \$153 million for the residential class, \$80 million for the Small C&I Class, \$101 million for the Large C&I Class, and \$8 million for the Municipal Lighting Class. (PECO St. 3 at 10; Petition, Volume II, p. 215.)

IV. SUMMARY OF ARGUMENT

The City supports the objectives of Act 129 and generally supports the Plan's eighteen programs. The Plan's program for government and nonprofit facilities is capable of meeting the Act's specific requirements for this sector. The City remains concerned, however, that the benefits of the Plan's eighteen programs may not be delivered effectively to all of PECO's customers in the City.

While the City generally supports the Plan's programs, it requests that the Commission scrutinize the proposed municipal lighting surcharges and the reasonableness of classifying municipal lighting as a customer class for purposes of this proceeding. PECO proposes to add the surcharge for Philadelphia street lighting to the fixed distribution service charge, which is a connection fee for each street lighting unit. This type of surcharge provides no financial incentive to encourage energy efficiency for

street lighting or invest in new streetlight technology, and therefore, does not promote the overall goal of Act 129. In addition, the proposed surcharges for municipal lighting represent a disproportionately high increase over current revenues as compared to other customer classes. Furthermore, the Plan does not offer any demand response programs for the municipal lighting customer class, and therefore, it does not conform to the minimum requirement of the Commission's Act 129 Implementation Order, which requires EDC Plans to offer one energy efficiency program and one demand reduction program for each customer class. To address these concerns, the Commission should consider requiring a broader allocation of municipal lighting costs and eliminating municipal lighting as a customer class for purposes of this proceeding.

The City joins with other parties in recommending that the Commission address the ongoing role of interested stakeholders during Plan implementation and require EDCs to include sufficiently detailed information in their annual reports to allow after-the-fact scrutiny and program evaluation. These recommendations are consistent with the Commission's prior Implementation Order and the requirements of Act 129. The City also recommends that the Commission allow PECO to claim full credit for energy savings when ratepayers choose to use measures funded jointly by the Plan and other government or private funds.

V. ARGUMENT

A. Act 129 Conservation and Demand Reduction Requirements

1. Overall Conservation Requirements

- a. 2011 Requirements**
- b. 2013 Requirements**

The City supports Act 129's objective of reducing energy consumption by using tariff generated-funds to support energy conservation improvements and alternative energy sources. The Act can provide the necessary incentives for customers of all classes to make the long-term energy improvements that are necessary to make our local economy more efficient. In addition, Act 129 programs can leverage government and private funding to make these improvements more affordable and more likely to be implemented. (Philadelphia St. 1 at 3.)

Philadelphia's overall energy goal is to reduce its vulnerability to rising energy prices. To reach this goal, the City has developed specific targets for 2015. These include: (1) a thirty percent (30%) reduction in City government energy consumption; (2) a ten percent (10%) reduction in Citywide building energy consumption; (3) retrofitting fifteen percent (15%) of housing stock with insulation, air sealing and cool roofs; and (4) purchasing and generating twenty percent (20%) of electricity used in Philadelphia from alternative energy sources. (Philadelphia St. 1 at 2-3.)

Based on the available testimony and documents admitted into evidence in this matter, the City generally supports PECO's proposed energy efficiency programs. These programs are consistent with the City's target of reducing Citywide building energy consumption by at least 10% by 2015 and Act 2's target of a three percent reduction by 2013. The measures identified by PECO will create additional incentives for all of its customers. (Philadelphia St. 1 at 11.)

2. Overall Demand Reduction Requirements

The City supports the objective of Act 129 to reduce energy demand through tariff-supported energy programs and intends to participate in these programs at its high

electricity use facilities. (Philadelphia St. 1 at 3 and 8.) Based on the available testimony and documents admitted into the record, the City generally supports PECO's proposed demand reduction programs.

3. Requirements for a Variety of Programs Equitably Distributed

Act 129 requires the Plan to include a variety of energy efficiency and conservation measures and to provide the measures equitably to all classes of customers. 66 Pa. C.S. § 2806.1(a)(3). In establishing its EE&C Program, the Commission recognized that the Act includes provisions requiring that energy reductions come from certain groups, such as low-income customers and the governments/non-profit sector. Beyond those requirements, the Commission has stated that EDCs should develop plans to achieve the most energy savings per expenditure. In addition, the Commission has directed EDCs to offer each customer class at least one energy efficiency program and one demand response program. (Implementation Order at 22-23.)

The City supports the requirement that EEC Plans include a variety of programs equitable distributed to all classes of customers. The City remains concerned, however, that benefits of the programs in PECO's Plan may not be delivered effectively to all of PECO's customers in the City or to all of its customers in certain locations of PECO's service territory. (Philadelphia St. 1 at 3 and 11.)

In addition, the City is concerned about the classification of municipal lighting as a distinct customer class. The Plan does not offer any demand allocation programs for municipal lighting customers. (PECO Ex. RAS-2, attached to PECO St. No. 3.) Therefore, if municipal lighting is a separate customer class, the Plan does not meet the

Commission's minimum requirement of offering at least one energy efficiency program and one demand reduction program to each customer class.

4. 10% Government/Non-Profit Requirement

As discussed above, Act 129 requires that at least ten percent (10%) of all the required consumption reductions come from the government and non-profit sector.

Specifically, Section 2806.1(b)(1)(i)(B) provides:

A minimum of 10% of the required reductions in consumption under subsection (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). Subsection (c) requires reductions in consumption and subsection (d) requires reductions in peak demand. 66 Pa. C.S. § 2806.1(c) and (d).

Therefore, the requirement that 10% of the required reductions come from the government and non-profit section applies to both the energy efficiency and demand reduction requirements of the Act.

PECO designed its Government/Public/Non-Profit Facility Energy Savings Program to exceed the minimum requirement for energy efficiency. The Target Market for this program consists of approximately 11,000 public facilities, including government buildings, public schools, hospitals and other non-profit facilities, and tens of thousands of streetlights and traffic signals. (Petition, Volume II, p. 125; PECO St. 1 at 24.) For PECO, a 10% savings from the government and non-profit sector means a total energy efficiency savings of at least 118,200 MWH and average peak demand reductions of at least 35.5 MW. (PECO St. 1 at 25; Petition, Volume III, Appendix B.) PECO estimates that the Plan's program for the government and non-profit sector will result in energy

savings of at least 216,792 MWh and an average peak demand reduction of 42.9 MW by the end of Plan Year 2012. *Id.*

PECO acknowledges that meeting the Act's requirements will be challenging and that the Plan's incentives must be sufficient to change customer behavior in order to generate the required savings. (PECO St. 1 at 8 and 11-12.) This suggests that the ability of an energy-intensive government customer such as the City to use the Plan's incentives may ultimately determine whether the Plan will achieve the required reductions.

Philadelphia currently has over 1,000 metered accounts with PECO for its municipal buildings and facilities, as well as unmetered accounts for municipal lighting. (Philadelphia St. 1 at 4.) It receives electricity under various rates, including Rate GS for general services, HT for high tension, PD for primary distribution, SL-P for street lighting, TL for traffic lighting, and AL for alley lighting. (*Id.*) The City consumes about 740 million kWh of electricity per year, at a cost of approximately \$62 million per year. (Philadelphia St. 1 at 5.) By way of comparison, the Act's requirement for a one percent energy consumption reduction by 2011 will require a total consumption reduction of approximately 394 million kWh by all of PECO's customers in program year 2010. (PECO St. 1 at 9.)

The City does not expect to be able to take advantage of any of the Plan's measures for streetlights over the next four years because it has completed the upgrade of all streetlights in the City to efficient high pressure sodium streetlights. (Philadelphia St. 2 at 4.) However, the City has identified several potentially useful measures in the program for the government and non-profit sector. These include energy management and lighting control systems, upgraded chiller/heating equipment, and upgrading yellow

and green incandescent signals in traffic lights with LED technology. (Philadelphia St. 1 at 7-8; Philadelphia St. 2 at 5.)

The Plan's government facility program also includes custom measure rebates to help governments reduce the cost of installing energy efficiency measures. (PECO St. 1 at 24-25.) Custom measures are capable of supporting improvements at the City's largest energy consuming facilities, provided these measures are meaningful and managed with flexibility. For the City, 40 of its 1,000 accounts consume 60 percent of its electricity. The specific custom measure offered under the Plan must reflect the size of many of the City's facilities and the complexity of the task of achieving the energy efficiency and conservation goals, and PECO must manage the implementation of the Plan with sufficient flexibility to support improvements at the City's largest energy consumption facilities. (Philadelphia St. 1 at 9.)

Based on the City's review of the Plan, it is the City's view that the program designed for the government and nonprofit sector is capable of achieving the Act's requirement for this sector. Additional issues and concerns related to the evaluation process and cost allocation for this program are addressed in subsequent sections of this brief.

5. Low-Income Program Requirements

The purpose of the Plan's Low-Income Energy Efficiency Program is to educate income eligible customers on how to make their homes more energy efficient and thereby reduce their energy bills, and to provide and install energy efficient measures for eligible customers. The program will provide home energy audits and installation of energy efficiency measures, without charge to participants. (PECO St. 1 at 20.)

The City supports the objective of Act 129 with respect to providing a program directed toward energy savings to low-income customers, but it remains concerned that the benefits of the Low-Income Energy Efficiency Program may not be delivered to all customers, regardless of location. In addition to funding specific this program, PECO must effectively deliver the message to customers that they can avoid unnecessary energy consumption, and that lower consumption will lead to more stable costs and a better environment. (Philadelphia St. 1 at 3 and 11.)

6. Issues Relating to Individual Conservation and Demand Programs

a. Residential

The Plan makes the following ten programs available to residential customers: (1) CFL Program, (2) Low-Income Energy Efficiency Programs, (3) Whole Home Performance Program, (4) Home Energy Incentive Program, (5) Residential New Construction Program, (6) Appliance Pickup Program, (7) Renewable Resource Program, (8) Residential Direct Load Program, (9) Residential Super Peak Time of Use Program, and (10) Conservation Voltage Reduction Program. (Petition at 7-10; PECO St. 3 at 10; PECO Ex. RAS-2 attached to PECO St. 3.)

Issues related to the Plan's Low-Income Energy Efficiency Program are discussed above. The City's comments on this program apply generally to all ten programs for residential customers. As noted above, based on the available testimony and documents admitted into evidence in this matter, the City generally supports PECO's proposed energy efficiency programs, including the ten programs available for residential customers.

b. Commercial

The Plan has ten programs available to commercial customers. These programs are: (1) C&I Equipment Incentive Program, (2) C&I New Construction Program, (3) Government/Public/Non-Profit Facility Energy Savings Program, (4) Renewable Resources Program, (5) C&I Direct Load Program, (6) C&I Super Peak Time of Use Program, (7) Demand Aggregator Response Program, (8) Distributed Energy Resources Program, (9) Peak Load Reduction Programs, and (10) Conservation Voltage Reduction Program. (Petition at 7-10; PECO St. 1 at 23-30; PECO St. 3 at 10; PECO Ex. RAS-2 attached to PECO St. 3.) The discussion above addresses the Government/Public/Non-Profit Facility Energy Savings Program, which includes accounts in the Small C&I and Large C&I customer classes. (Petition, Volume II, pp. 9-10.) Based on the available testimony and documents admitted into evidence in this matter, the City generally supports PECO's proposed energy efficiency programs, including the ten programs available for commercial customers.

c. Industrial

Eight of the ten programs in the Plan for commercial customers are also available to industrial customers. The only exceptions are the Government/Public/Non-Profit Facility Energy Savings Program and the Renewable Resources Program. (Petition at 7-10; PECO St. 1 at 23-30; PECO St. 3 at 10; PECO Ex. RAS-2 attached to PECO St. 3.) Because the programs directed to industrial customers are a subset of the programs directed to commercial customers, the discussion above regarding programs for commercial customers generally applies to the programs for industrial customers.

7. Proposals for Improvement of the EDC Plan

a. Residential

This brief does not address proposals for improving residential programs, except as discussed below with respect to Plan implementation and evaluation.

b. Commercial

Philadelphia is implementing target energy budgets under which each City department will be responsible for its overall energy costs and meeting energy reduction targets. (Philadelphia St. 1 at 6.) PECO could assist this effort by providing electricity use data on a timely electronic basis for all accounts. This would support the City's goal of setting energy use and budget targets for its premises so that departmental managers can work to achieve efficiency targets. For its HT accounts, the City could benefit from having near real-time profiles of energy usage. The PECO eValuator should be available at no charge for all HT accounts. This would encourage the City to extend sub-metering to these same accounts for the purpose of electric load management across its departmental operations. (Philadelphia St. 1 at 10.)

c. Industrial

PECO could improve the Plan by enabling alternative energy projects involving industrial customers, as well as residential, commercial and governmental customers. The City has set a target of purchasing and generating twenty percent (20%) of electricity used in Philadelphia from alternative energy sources. (Philadelphia St. 1 at 11.) Philadelphia is a Solar America City and its goal is to have 57.8 MW of solar photovoltaics by 2021. PECO's willingness to develop new policies and procedures for distributed energy resources can support this initiative. (Id.)

B. Cost Issues

1. Plan Cost Issues

The City is not addressing plan cost issues.

2. Cost Effectiveness/Cost-Benefit Issues

The City is not addressing cost effectiveness/cost-benefit issue

3. Cost Allocation Issues

As part of Plan implementation, PECO proposes to revise some of its existing tariffs to include surcharges designed to collect EE&C Plan costs from its customers. (Petition, Volume II, p. 214.) The revised tariffs, as initially filed by PECO with the Petition, are in PECO Exhibit RAS-1 of PECO Statement No. 3. (Petition, Volume I, PECO Exhibit RAS-1, attached to PECO St. 3.) PECO developed its surcharges based on the total expenditures allocated to each rate class for the duration of the Plan. (Petition, Volume II, p. 215.) The recovery period is 3.5 years, beginning with bills sent in January 2010. (Petition, Volume I, PECO St. 3, p. 12.)

In developing its cost recovery mechanisms for municipal lighting programs, PECO allocated program costs to various Rates for streetlights and trafficlighs, including Rates AL, TL, SL-P, SL-S, and SL-E. (Petition, Volume I, p. 9 and Volume II, PECO Exhibit RAS-2, footnote 4, attached to PECO St. 3; Philadelphia St. 1 at 7.) The City's review focused on the proposed increase in the SL-P Rate for Street Lighting in the City, as initially proposed by PECO on page 53 of PECO Exhibit RAS-1. Based on its review, the City objected to the proposed increase in the SL-P Rate as unreasonable and inappropriate given the nature and costs of the Plan's proposed energy efficiency and conservation programs. (Philadelphia St. 2 at 10.)

The revised Rate SL-P, as initially proposed in the Plan for streetlights within the City, contained a fixed distribution charge, also referred to as a connection fee, of \$12.06 per lighting unit per month, which represented a net monthly increase of \$3.28 per lighting unit per month. (Philadelphia St. 2 at 7, Hearing Transcript, p. 199.) Given the number of street lighting units in the City, the revision to the SL-P Rate, if approved, would mean an increase in the City's street lighting bill of about \$3.8 million per year, from \$12 million to \$15.8 million, or an overall increase of more than 30%. (Philadelphia St. 2 at 7.) When applied over the entire 3.5-year recovery period, the surcharge would increase the City's street lighting bill by about \$13 million. (Id. at 8.)

At the hearing, PECO acknowledged that after discussions with the City, it realized that it had made errors in its surcharges as initially proposed for municipal lighting and submitted revised proposed tariff pages with lower surcharges for street lighting in the Philadelphia under the SL-P Rate, traffic lighting under Rate TL, and alley lighting in the Philadelphia under Rate AL. (Hearing Transcript, p. 188-189; PECO Exhibit RAS-5.) The City appreciates PECO's efforts to correct the proposed rate increases after recognizing these errors. According to Company witness Schlesinger, these corrections will mean that the cost impact of the proposed municipal lighting surcharges to the City will be about \$9 million less than the \$13 million increase that would have resulted from the Plan's initially proposed surcharges. (Hearing Transcript, p. 189.) Thus, the revised tariffs pages submitted at the hearing and marked as PECO Exhibit RAS-5 should result in an overall cost increase to the City from the proposed municipal lighting surcharges of about \$4 million.

Even with these corrections, however, the surcharge for municipal lighting represents a projected increase over PECO's current total revenues of 8.05% for the municipal lighting class, compared to project increase ranging from 2.20% to 2.37% for the other customer classes identified in the Plan. (Hearing Transcript, pp. 196-198.; OCA Cross-Examination Exhibit 1, p. 2.) In addition, the rate for street lighting in the City is based primarily on a per-unit distribution charge, or connection fee. The proposed increase in the connection fee provides no incentive to conserve energy for street lighting or to invest in new street lighting technology. (Philadelphia St. 2 at 10.)

Another concern arises from the classification of municipal lighting as a customer class for purposes of this proceeding. PECO states that it developed four separate customer classes to ensure that the rate classes that finance the measures are the class that receives the direct energy and conservation benefits. (Petition, Volume II, pp. 10 and 217.) At the hearing, Company witness Schlesinger testified that PECO classified municipal lighting as separate class because it is unique in that it has separate tariffs. (Hearing Transcript, p. 198-199.) By this reasoning, however, Philadelphia street lighting should be a separate customer class because it has a separate tariff rate from traffic lighting and suburban street lighting. (Hearing Transcript, pp. 188-189; Philadelphia St. 2 at 3 and 9; Petition, Volume II, Exhibit RAS-1, Rates SL-P and SL-E.)

The City requests that the Commission closely scrutinize both the proposed municipal lighting surcharges and the reasonableness of the classifying municipal lighting as a customer class for purposes of this proceeding. As noted above, by classifying municipal lighting as a separate and distinct class without affording this customer class any demand reduction programs, the Plan violates the Commission's

directive that all EE&C Plans offer each customer class at least one energy efficiency and one demand response program. (Implementation Order, p. 23.) Municipal lighting is unique, not because it has separate tariffs, but rather because all customers and customer classes benefit from the public safety aspects afforded by street and traffic lights. (Philadelphia Statement 2 at 7.)

In their statements supporting the Plan, PECO's witnesses emphasized the importance of and need for flexibility with respect to adjusting program spending to achieve the most savings through the most effective measures, as well as in making mid-course corrections to improve the Plan. (PECO St. 1 at 13, PECO St. 3 at 15-17.) Eliminating municipal lighting as a customer class and reassigning these programs to one or more other customer classes would add flexibility to Plan implementation by making it easier to make intra-class plan changes and redirect spending from underperforming programs to better performing programs within customer classes.

For all of the reasons stated above, the Commission should consider requiring a broader allocation of the costs for municipal lighting programs and eliminating municipal lighting as a customer class for purposes of this proceeding.

4. Cost Recovery Issues

Except as discussed above with respect to cost allocation, the City is not addressing cost recovery issues.

C. CSP Issues

The City is not addressing CSP Issues.

D. Implementation and Evaluation Issues

1. Implementation Issues

Act 129 requires PECO to submit an annual report to the Commission relating to the results of its Plan and containing documentation of program expenditures, measures and verification of energy savings under the Plan, an evaluation of the cost-effectiveness of expenditures, and any other information required by the Commission. 66 Pa. C.S. § 2806.1(i). The Commission has determined that EDCs and other interested Stakeholders may propose changes to EDC Plans in conjunction with the EDC's required annual report filings. (Implementation Order, p. 24.) PECO states that it supports a very close review of its annual submissions by the Commission and its stakeholders and has committed to continuing the stakeholder process. (Hearing Transcript, pp. 141 and 147.)

The City joins with witnesses for other parties, such as OCA and TRF, in supporting PECO's proposal for an ongoing stakeholder process and recommending that the Commission address PECO's commitment to continue its EE&C shareholder process in its Order in this matter. (OCA St. 1, p. 7 and 15-16; TRF St. 1, pp. 4-5.) The City also joins DEP's witness in recommending that PECO provide periodic reports to Stakeholders, including (but not limited to) performance assessments, program implementation costs, CSP contract status, and any program modification being considered. (DEP Statement 1, pp. 30-31.) The City further joins with OTS's witness in recommending that PECO's annual reports contain sufficient detail on program expenditures to allow after-the-fact scrutiny. (OTA St. 2, pp 6-7.) These recommendations are consistent with and supported by the Commission's Implementation Order, which noted that EE&C Plans are evolutionary in nature since the Act provides for modification of plans after approval. (Implementation Order, p. 10, citing 66 Pa. C.S. §§ 2806.1(a)(6), 2806.1(b)(2), 2806.1(b)(3).)

The City also recommends that the information provided by PECO to stakeholders include information on the geographic distribution, by municipality or zip code, of program expenditures and energy savings for each of the Plan's eighteen programs. This would not impose an undue burden because PECO already plans to evaluate its programs to ensure that it has adequate coverage across its entire territory and take corrective action if necessary. (Hearing Transcript, 155-156.) The Plan states that PECO will use CSPs to conduct impact and process evaluations and to develop and maintain a Monitoring and Verification (M&V) Tracking System. The M&V Tracking System will provide a variety of standard reports and will receive data from PECO's customer billing and data management system, which contains data on premises city and zip code. (Petition, Volume II, p. 201-204.)

2. QA Issues

The City is not addressing QA Issues

3. Monitoring and Reporting Issues

The City addresses its recommendations for improving reporting in the discussion above on implementation issues.

4. Evaluation Issues

The City addresses Plan evaluation in the discussion above on implementation issues.

In addition, the City supports evaluating EE&C programs in a manner that allows full credit toward Act 129's requirements for measures funded partly by PECO under Act 129 and partly by other government programs and private funds. Nothing in Act 129 precludes PECO from claiming full credit for energy reductions when a ratepayer makes

energy efficiency improvements with both Plan incentives and other government or private funds.

In fact, several provisions in Act 129 show that the General Assembly was aware that ratepayers may implement projects with both Act 129 and other government funds, yet it chose not to include language in the Act precluding EDCs from obtaining full energy savings credit in such situations. The Act requires EE&C Plans to include specific proposals to implement “energy efficiency and conservation measures” to achieve or exceed the required reductions in energy consumption. 66 Pa. C.S. §§ 2806.1(b)(1)(i)(A.) It defines “energy efficiency and conservation measures” as measures used by retail customers that reduce electricity consumption or demand if, among other things, “the cost of the acquisition of installation of measures is directly incurred in whole *or in part* by the electric distribution company.” 66 Pa. C.S. § 2806.1(m)(emphasis added). The Act also includes a specific provision on “existing funding sources,” which requires each EDC, upon request by any person, to “provide a list of eligible Federal and State funding programs available to ratepayers for energy efficiency and conservation.” 66 Pa. C.S. § 2806.1(j).

The concern that funds available under the energy efficiency and conservation program of the American Recovery and Reinvestment Act of 2009 (ARRA) will be used to “supplant or replace” projects eligible for funding under Act 129 lacks support in the record of this matter. (DEP St. 1 at 7.) The claim that ARRA funds might be in jeopardy by joint funding of energy efficiency measures also has no legal basis. Nothing in ARRA prevents PECO’s ratepayers from using ARRA funds to expand and supplement funds available from EDCs under Act 129. Allowing municipalities the option of making

energy efficiency investments funded by both Act 129 incentives and other government and private funding programs will make energy efficiency improvements more affordable, and implementation more likely to occur. (Philadelphia St. 1 at 3.)

5. Other Issues

The City is not addressing other issues.

VI. CONCLUSION

While the City generally supports the Plan's eighteen energy efficiency and demand reduction programs, it recommends that PECO and the Commission closely scrutinize the proposed surcharges for municipal lighting and consider eliminating municipal lighting as a separate customer class for purposes of this proceeding. The City also joins with other parties in making recommendations related to PECO's ongoing stakeholder process and annual reports.

VII. PROPOSED ORDERING PARAGRAPH

IT IS ORDERED:

1. That the tariff provisions of PECO Energy Company's Energy Efficiency Plan and the portions of the plan related to cost allocation and recovery or referring to municipal lighting as a customer class are remanded to the Office of Administrative Law Judge and shall continue to be addressed in this proceeding based on a determination that municipal lighting is not an appropriate customer class for purposes of this proceeding.
2. That the remainder of PECO Energy Company's Energy Efficiency and Conservation Plan, including the eighteen energy efficiency and demand reduction programs proposed in the plan, are approved and adopted without modification.

3. To ensure that the stakeholder process continues to provide a reasonable means of addressing Plan implementation and any needed Plan modifications, PECO Energy Company shall meet with interested stakeholders at least quarterly and provide stakeholders with information during or in advance of the stakeholder meetings. The information provided to interested stakeholders will include information on performance assessments, program implementation costs, CSP contract status, any contemplated program modification, and the geographic distribution, by municipality or zip code, of program expenditures and energy savings for each of the Plan's eighteen programs.

WHEREFORE, for all of the reasons stated above, the City respectfully requests that the proposed surcharges and tariffs and the portions of the Plan related to the cost allocation and cost recovery mechanism or referring to municipal lighting as a customer class be revised based on the elimination of municipal lighting as a customer class for purposes of this proceeding, and that the remainder of the Plan and the City's proposed ordering paragraph be adopted.

Respectfully submitted,

The City of Philadelphia



J. Barry Davis (I.D. No. 62137)

Scott J. Schwarz (I.D. No. 38224)

Law Department, City of Philadelphia

1515 Arch Street, 16th Floor

Philadelphia, PA 19102

Phone: 215-683-5186 (Davis)

Phone: 215-683-5170 (Schwarz)

Fax: 215-683-5175

Dated: August 28, 2009

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I am serving true and correct copies of the Main Brief of the City of Philadelphia, by e-mail (one copy) and first-class mail (two copies), upon the individuals listed below, in accordance with the requirements of 52 Pa Code § 1.54 (relating to service by parties) and the Pre-Hearing Order dated July 30, 2009.

Via Electronic Mail and First Class Mail

The Honorable Marlene R. Chestnut
Administrative Law Judge
Pennsylvania Public Utility Commission
Suite 4063
801 Market Street
Philadelphia, PA 19107
machestnut@state.pa.us
kniesborel@state.pa.us

Romulo Diaz, Esquire
Anthony E. Gay, Esquire
Exelon Business Services Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
Anthony.Gay@exeloncorp.com
Romulo.Diaz@exeloncorp.com

Richard A. Kanaskie, Esquire
Carrie Wright, Esquire
Office of Trial Staff
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
rkanaskie@state.pa.us

carwright@state.pa.us

Daniel G. Asmus, Esquire
Office of Small Business Advocate
Commerce Building, Suite 1102
300 N. Second Street
Harrisburg, PA 17101
dasmus@state.pa.us

Tanya McCloskey, Esquire
Jennedy Johnson, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101
tmccloskey@paoca.org
jjohnson@paoca.org

Charis Mincavage, Esquire
Barry A. Naum, Esquire
Shelby A. Linton-Keddie, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
cmincavage@mwn.com
bnaum@mwn.com
skeddie@mwn.com

Jonathan Stein, Esquire
Philip Bertocci, Esquire
Thu B. Tran, Esquire
Community Legal Services Inc.
1424 Chestnut Street
Philadelphia, PA 19103
jstein@clsphila.org
pbertocci@clsphila.org
ttran@clsphila.org

Roger Clark, Esquire
The Reinvestment Fund
Sustainable Development Fund
718 Arch Street, Suite 300 North
Philadelphia, PA 19106
roger.clark@trfund.com

Harry Geller
John Gerhard
Pennsylvania Utility Project
118 Locust Street
Harrisburg, PA 17101
hgellerpulp@palegalaid.net
igerhardpulp@palegalaid.net

Charles McPhedran
John Baillie
PennFuture
1518 Walnut Street, Suite 1100
Philadelphia, PA 19102
mcphebran@pennfuture.org
baillie@pennfuture.org

Scott Perry, Esquire
Aspassia V. Staevska, Esquire
Department of Environmental Protection
RCSOB, 9th Floor
400 Market Street
Harrisburg, PA 17101-2301
scperry@state.pa.us
astaevska@state.pa.us

Christopher Lewis, Esquire
Christopher Sharp, Esquire
Melanie Tambolas, Esquire
Blank and Rome LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103-6998
lewis@blankrome.com
Sharp@blankrome.com
Tambolas@blankrome.com

Daniel Clearfield, Esquire
Kevin Moody, Esquire
Eckert Seamans
213 Market Street, 8th Floor
Harrisburg, PA 17101-2132
dclearfield@eckertseamans.com
kmoody@eckertseamans.com

Cheryl Walker Davis
Jonathan Nase

Kathryn Sophy
Office of Special Assistants
Commonwealth Keystone Building
3rd Floor, 9 East
Harrisburg, PA 17120
717-787-1827 717-783-6324 (fax)
cwalkerdav@state.pa.us
jnase@state.pa.us
ksophy@state.pa.us

Scott H. DeBroff, Esquire
Rhoads & Sinon, LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
sbruce@mwn.com
vkaranndrikas@mwn.com

Daniel Ocko, Esquire
Office of Representative Mark B. Cohen
128 Main Capitol
P.O. Box 202074
Harrisburg, PA 17120
docko@pahouse.net

Thomas P. Gadsen, Esquire
Kenneth M. Kulak, Esquire
Morgan Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
tgadsen@morganlewis.com
kkulak@morganlewis.com



Scott J. Schwarz
Senior Attorney
City of Philadelphia, Law Department
1515 Arch Street, 16th Floor
Philadelphia, PA 19102

E-mail: scott.schwarz@phila.gov
Attorney I.D. # 38224
Phone: 215-683-5170
Fax: 215-683-5175

Dated: August 28, 2009