BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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**

MAIN BRIEF

ON BEHALF OF STATE REPRESENTATIVE MARK B. COHEN, ESQ.

Counsel for State Representative Mark B. Cohen:

Daniel Ocko, Esq.

Pa. Atty. # 68436

E-mail: docko@pahouse.net

Room 115

Main Capitol

Harrisburg, PA 17120

Tel.: 717-787-4117

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I. INTRODUCTION

Enactment and implementation of Act 129 of 2008 ("Act 129" or "the Act") is a both a historic event since Section 2 of the Act 129 contains the first legislatively enacted measures to have electric distribution companies promote energy conservation and demand reduction among its customers and a unique once in a lifetime opportunity to help some electricity customers become more energy efficient and save money right when their electricity bills are about to skyrocket due to the end of generation rate caps for many electricity customers within the Commonwealth of Pennsylvania. This brief will present several modifications to enable successful implementation of the statute while offering customers who will face the greatest challenges, additional assistance.

II. PROCEDURAL HISTORY

On January 15, 2009, State Representative Camille "Bud" George introduced House Bill 2200, Printers Number 3089 on the floor of the Pennsylvania House of Representatives. After being amended five different times, on October 15, 2008, Governor Edward Rendell signed HB 2200 into law as Act 129 of 2008, with an effective date of November 14, 2008. 66 Pa.C.S. §§ 2806.1 et seq. The Act expanded the Commission's oversight responsibilities, provided for the procurement and established the cost of power for electric distribution companies after the end of generation rate caps, and directed that by July 1, 2009 all electric distribution companies with at least 100,000 customers were to develop and file an EE&C Plan with the Commission for approval. 66 Pa.C.S. § 2806.1(b)(1)(I).

On July 1, 2009, PECO filed its EE&C plan, which included a request for expedited approval of the Company's Compact Fluorescent Lamp Program ("CFL program"). A public input hearing was held on July 29, 2009, in Philadelphia, PA and State Representative Mark Cohen participated and submitted comments and introduced an exhibit (Cohen Exhibit 1)

State Representative Mark Cohen filed a Notice of Intervention and Public Statement on July 30, 2009. The Commission's Office of Trial Staff ("OTS") filed a Notice of Appearance. Interventions were also filed by the Office of Small Business Advocate ("OSBA") Office of Consumer Advocate ("OCA"); Philadelphia Area Industrial Energy Users Group ("PAIEUG"); Direct Energy Business, LLC ("Direct"); Pennsylvania Association of Community Organizations for Reform Now ("ACORN"); City of Philadelphia ("Philadelphia"); Reinvestment Fund ("RF"); Pennsylvania Department of Environmental Protection ("DEP"); Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia ("TURN and AA"); EnerNOC, Inc. ("EnerNOC"); Citizens for Pennsylvania's Future ("PennFuture"); and Field Diagnostic Services, Inc./Constellation NewEnergy, Inc. ("FDS/Constellation").

A Joint Petition for Partial Settlement ("Settlement") of certain CFL program issues was filed with the Commission on July 31, 2009.. By Order entered August 18, 2009, at this docket number, the Commission approved the Settlement. Evidentiary hearings were held on August 18, 2009, in Harrisburg.

State Representative Mark Cohen submits this main brief pursuant to the procedural schedule set forth in the July 30, 2009, Scheduling Order of Administrative Law Judge ("ALJ") Marlane R. Chestnut.

III. DESCRIPTION OF PECO'S PLAN

This Brief focuses on how PECO's EE&C Plan will impact on the hundreds of thousands of residential and commercial customers whose electric bills may significantly increase when their specific tariff based discounts will either immediately disappear or will be phased over a three year period when the generation rate caps expire or with the programs proposed for low income households. Therefore, this will review only on those parts of the Plan dealing with those customers.

For residential customers, PECO's EE&C Plan details a CFL Initiative, a Low Income Energy Efficiency Program, a Whole Home Performance Program, a Residential Home Energy Incentives Program, a Residential New Construction Program, and a Residential Appliance Pickup Program. In additional residential customers will be able to participate in the Renewable Resources Program. For Demand Reduction Programs, PECO is offering two directed at residential customers, the Residential Direct Load Control Program and the Residential Super Peak Time-of-Use ("TOU") program. . *Petition* at Volume II, pp. 21-96

As mentioned above, PECO's EE&C Plan includes a program called the "Whole Home Performance Program ("whole house") that for an estimated cost to the individual of $300 a variety of energy saving materials and services. PECO proposes to subsidize the materials and some of the services. Volume II, pp. 54

To promote these programs, PECO proposes a variety of marketing and consumer education initiatives. Some of these were described during Cohen's Counsel questioning of Company Witness Frank J. Jiruska. Tr., pp. 164-178. Upon questioning, Company Witness Jiruska stated "we intend to have a number---utilize a number of different communication channels to our customers, including bill inserts, newsletters, as well as the energy audit, an online energy audit that will be provided." Tr., p. 173

However, while the range of communications channels appears robust, PECO does not seem to express an interest in using customer information and customer interaction to increase the effectiveness of customers choices. In response to the following question from counsel that asked as a result of sending out information to customers, when people respond back, will you then be collecting—will PECO or the CSP intend to collect information about the customer to try to provide them the best choices or options for Act 129 plans, Company Witness Jiruska stated that "PECO and its CSP for this particular class of customer would probably not be doing that. We would be depending upon our trade allies, the contractors and businesses that actually perform those type of services in the marketplace. We would be educating those trade allies to be able to communicate to that set of customers when they demonstrate an interest in an energy efficiency measure." While this brief does not object to the use of "trade allies", it does note that nothing in Act 129 appears to give "trade allies" the level or regulatory oversight, licensing, or authority as a "conservation service provider" (CSP) or authorizes an Electric Distribution Company to substitute a "trade ally" instead of the use of a CSP.

In addition, the PECO plan does not appear to support a more long term customer relationship enhanced by PECO or a CSP to suggest additional energy savings over time. In a response to the question, "So your CSP or PECO would not provide any type of email list sign-ups or ways to get additional information", company witness Jiruska stated that "Oh, certainly. We would be providing referrals and so forth, but those referrals would be provided to our trade allies." Tr., p. 174. When asked again by counsel When you refer to trade allies, is it also your CSP or--, company witness Jiruska responded "No. Trade allies are individual contractors, auditing firms, so forth that our out every day working with customers." Tr., p. 174-175.

IV. SUMMARY OF ARGUMENT

In implementing energy efficiency and demand side reduction programs under Act 129, it should not be interpreted as a mere coincidence or accident that Act 129 also contains in Section 3 the first modification of the original language of 66 Pa.C.S. § 2807(d) relating to the cost of electricity to consumers after the end of generation rate caps. In fact, in Act 129's three brief legislative findings and declarations incorporated in its beginning, the concern about the price of power is highlighted at least five times in the use of words such as "affordable" (twice), "least cost", "price stability" and "price instability." In PECO's filed Act 129 plan and through the testimony of their witnesses under cross examination it is acknowledged that saving money would be a" key driver" to customers choosing the company's offered energy efficiency and demand reduction options.[1] The importance of cost was confirmed in another answer of the company's witness, Frank J. Jiruska, who explained in cross examination their interpretation of the intent of Act 129 was "to deliver financial incentives to customers so they would adopt these energy efficiency measures." Tr., p. 142 Since both the direct language of the statute and the company's interpretation of Act 129 agree that the money and financial related issues are central to the bill and its implementation, it is reasonable, responsible and prudent to examine if there are any other cost or financial related issues related to the end of the generation price caps that could influence the thoughtful design or impact the actions of PECO's proposed Act 129 plans.

It is both puzzling and alarming that PECO appears to have erected a "firewall" of thought and a "firewall" of action between its Act 129 plan and it's on the record admissions that some select classes of its electric customers (hundreds of thousands of customers) will experience increases in some of their electric bills at the same time when Act 129 will be implemented.(for some, up to a 100% increase in the energy and capacity portion of their bill for

[1] Testimony of Company Witness Frank Jiruska, Transcript p.171

electricity use above 600 kWh in the winter even before any cost increases in default PLR service)[2] Instead of incorporating this highly relevant fact into the thinking about how to design their proposal or using this information as part of their action plan to successfully implement this program, PECO has ignored this information in this proceeding. This omission is evident throughout the hundreds of pages of research effort paid for by PECO, the hundreds of hours of PECO customer surveys and PECO customer focus groups which were summarized and the hundreds of pages of direct testimony, proposals and analysis submitted on July 1, 2009 by PECO.

Unlike any other prior proceeding authorized by a recent Act of the General Assembly, Act 129 offers a unique opportunity to assist a large segment of customers with hundreds of millions of dollars in programs to reduce electricity use just a the right time, when they are about to face tremendous increases in their electric bills. It is also a unique opportunity also because prospect of significantly higher electric bills should be a tremendous motivating force for successful participation in the program As a result the apparently self imposed "firewall" between the ending of the generation rate caps for default service providers (DSP) and the implementation of Act 129 does not serve the consumers, the companies or the Commonwealth's best interests.

[2] The Rate RH discount is explained in Exhibit RAS-1, Twenty Eight Revised Page No. 39 where in the winter months the energy capacity charge reduces to 3.89 cents per kWh for use above 600 kWh from a base cost of 6.85 cents per kWh , an almost 50% discount on marginal power use. Company witness Frank Jiruska explained that "the rate RH that you're referring to is phased out over, I believe, a three-year time period as filed in our DSP case." Transcript., p. 168

Given the evidence on the record from PECO and its consultants, PECO could better meet its statutory goals of Act 129, assist low income and other consumers who would receive otherwise higher bills and reduce electric use all at the same time by taking in account and focusing in on customers who may receive significantly higher electric bills when the generation rate caps end. This suggestion for improvement does not oppose the use or suggest a specific reduction in the spending on any other program already proposed in PECO's Act 129 submission. Rather, this brief suggests giving utility customers more advanced and complete information about future increases in their bills-- at the same time as giving them options to make their energy use more efficient—will be the best policy to ensure the greater energy efficiency and demand reduction mandated by Act 129.

In a related topic, this brief also seeks to ensure that funds initially proposed for Low Income Energy Efficiency program are protected from any of the possible intra-fund or intra-fund transfers that PECO has proposed in their plan. Finally, this brief suggests enhanced monitoring and evaluation to examine the outreach, education and implementation of PECO's program as it relates to customers who will be facing the greatest increases in their electric bills when electric generation rate caps end.

V. ARGUMENT

A. <u>Act 129 Conservation and Demand Reduction Requirements</u>

1. Overall Conservation Requirements

N/A.

a. **2011 Requirements**

N/A.

b. **2013 Requirements**

N/A.

2. *Overall Demand Reduction Requirements*

N/A.

3. *Requirements for a Variety of Programs Equitably Distributed*

N/A.

4. *10% Government/Non-Profit Requirement*

N/A.

5. Low Income Program Requirements

While this brief supports PECO's propose Low Income Program, State Rep. Cohen is concerned that company witness Richard Schlesinger, Principal rate administrator when asked about transferring money from three different resident programs answered it was possible to transfer the money from the Whole House Performance program and the residential incentive program. However, when he was asked about the low income energy efficiency program, he answered, "I believe that---I have to think about that. I am not sure. I believe in theory we would look at all programs and, as I said, depending on the over/under performance, would consider changes. Transcript p.212 State Representative Cohen believes the Commission should clearly state that PECO should not be able to transfer money from the Low Income Program since Act 129 clearly mandates the presence of such a program.

6. *Issues Relating to Individual Conservation and Demand Reduction Programs*

a. **Residential**

N/A.

b. **Commercial**

N/A.

c. **Industrial**

N/A.

7. *Proposals for Improvement of EDC Plan*

a. **Residential**

As stated above, State Representative Cohen believes that the marketing and outreach portions of the residential program should be able identify and target customers whose rate classes will suffer disproportionate rate increases when the generation rate caps expire. In fact, under questioning, the companies witness agreed that there is no technical reason why PECO and/or the CSP cannot collect the information the information whether or not they're on the RH[3] tariff so specifically targeted energy efficiency information on your programs can be sent to them in the future. Transcript p.174. Furthermore, under questioning, the company's witness said that RH class customers will see a higher increase than Rate . Transcript p.170-171.

[3] Transcript contained an error "RF (sic)" instead of RH Counsel informed the reporting company and the Commission of the error.[3]

In addition, State Representative Cohen believes that PECO should target those PECO customers who use baseboard heat under the Rate RH class for additional incentives and outreach. The company's witness agreed under questioning that other forms of heat, such as heat pumps are typically more efficient than baseboard electric heat. Transcript p.176.

As one solution to the problem of RH class customers who use baseboard heat, State Representative Cohen suggests that PECO modifies its Whole Home Performance Program so that a pilot program is established within the existing program over the first eighteen months of its operation in 2010 and 2011 for 250 non-low income customers who own their own residence and who are under the RH rate class and heat with electric baseboard heat where the individual cost of the Whole Home Performance survey is only $100 instead of the estimated $300. As a part of this modification, PECO and its CSP could be authorized to apply to non-profit organizations and government agencies to further reduce the cost of this program to the individual or to pay for reduced individual cost. If these changes were to be made and if PECO or its CSP would be able to secure only $50,000 in grant funds, these changes would be without cost to the company or the program.

b. **Commercial**

N/A.

c. **Industrial**

N/A.

B. <u>Cost Issues</u>

1. *Plan Cost Issues*

N/A.

2. *Cost Effectiveness/Cost-Benefit Issues*

N/A.

3. *Cost Allocation Issues*

N/A.

4. *Cost Recovery Issues*

N/A.

C. <u>CSP Issues</u>

N/A.

D. <u>Implementation and Evaluation Issues</u>

1. *Implementation Issues*

N/A.

2. *QA Issues*

N/A.

3. *Monitoring and Reporting Issues*

N/A.

4. *Evaluation Issues*

N/A.

E. Other Issues

N/A.

VI. CONCLUSION

In conclusion, while PECO has proposed several effective programs as part of its Act 129 plan, additional modification that do not appear to cost very much or change company policy can significantly improve the outcome of its Act 129 plan.

VII. PROPOSED ORDERING PARAGRAPHS

IT IS HEREBY ORDERED THAT:

The Act 129 Energy Efficiency and Conservation Plan of PECO Energy, Inc. filed at Docket No. M-2009-2093215, is approved, with the following additions:

1. PECO is directed to immediately begin a program to help identify the actual heating source for customers under their RH Tariff. PECO shall prepare along with their CSP if necessary targeted Act 129 marketing materials appropriate for the heating source and highlighting both the upcoming increase in their electric bills and the potential incentive programs available to them under Act 129 for their heating source to help avoid bigger monthly electric bills. PECO shall use these targeted materials in instances where the cost of using targeted materials instead of generic information is not significant higher, like printing on a customer's bill or through the use of email or when a customer accesses their own account or bill on PECO's website.

2. PECO is directed to immediately also identify customers who are under rate classes that lose their discounts (other than RH) and therefore will have disproportionate increases in their electric bills when the generation rate caps expire and prepare along with their CSP if necessary targeted Act 129 marketing

material highlighting both the upcoming increase in their electric bills and the potential incentive programs available to them under Act 129. PECO shall use these targeted materials in instances where the cost of using targeted materials instead of generic information is not significant higher, like printing on a customer's bill or through email.

3. PECO is directed that to design their marketing campaigns so when customers contact its company or its CSP in response to its Act 129 marketing, a customer should be asked questions that would help identify them if they are under the rate tariffs that will have a disproportionate increases in their electricity bills and if they are under the RH tariff their actual heating source. . Depending on their answers, PECO shall use along with other materials the marketing materials prepared under orders 1 & 2.

4. PECO is directed to modify the Whole Home Performance Program so that a pilot program is established within the existing program over the first eighteen months of its operation in 2010 and 2011 for 250 non-low income customers who own their own residence and who are under the RH rate class and heat with electric baseboard heat where the individual cost of the Whole Home Performance survey is only $100 instead of the estimated $300. PECO and its CSP shall be authorized to apply to non-profit organizations and government agencies to further reduce the cost of this program to the individual or to pay for reduced individual cost. If the pilot program shows a TRC above 1 along with customer demand for the program, the PECO will consult with its stakeholders continue the program. Data from the pilot program shall be shared with stakeholders on a quarterly basis.

5. PECO is directed that while it has the flexibility to transfer funds among different programs, it can't transfers funds out of the Low Income Home Energy Efficiency program without the consent of the stakeholders or the approval of the Commission.

6. PECO is directed that while it has the flexibility to transfer up to 20 million dollars between classes over the duration of its Act 129 plan, it can not transfer more than $7 million dollar per fiscal year between classes without the consent of the stakeholder or the approval of the Commission.

Respectfully submitted,

Daniel Ocko, Esq.
Counsel for State Representative Mark B. Cohen

State Representative Mark B. Cohen
Room 115-Main Capitol
Harrisburg, PA 17120
Phone: 717-787-4117

Dated: August 28, 2009