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 THE PENNSYLVANIA
ASSOCIATION OF COMMUNITY ORGANIZATIONS
FOR REFORM NOW ("ACORN")

Counsel for ACORN:

Harry S. Geller, Esq.
Executive Director
Pa. Atty. # 22415
E-mail: hgellerpulp@palegalaid.net

John C. Gerhard, Esq.
Staff Attorney
Pa. Atty. # 94809
E-mail: jgerhardpulp@palegalaid.net

Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088

Dated: August 28, 2009

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

I. INTRODUCTION

On October 15, 2008, when Governor Edward Rendell signed House Bill 2200 into law as Act 129 of 2008 ("Act 129" or "the Act"), Pennsylvania leaped to the forefront of energy conservation and demand reduction activities in the country. The Act mandates significant reductions in retail electricity consumption through the installation and use of energy efficiency and demand reduction measures by ratepayers with the assistance of electric distribution companies ("EDCs") and at the direction of the Pennsylvania Public Utility Commission ("Commission" or "PUC"). The resulting reductions in energy usage should yield monetary and environmental benefits for Pennsylvania's citizens.

Act 129 recognizes that low income households, those households with income at or below 150% of the Federal poverty income guidelines ("FPIG"), can and must be part of this effort even though these households can not afford to purchase these measures. Act 129 includes specific, concrete language defining the meaning of "low income household;" requiring low income households receive energy efficiency services proportionate to low income households' energy usage in the service territory; requiring low income programs coordinate with federal, state, and Commission programs; and requiring funding for these services be in addition to and separate from existing funding of Commission mandated Low Income Usage Reduction Programs ("LIURP").

PECO Energy Company's ("PECO") Energy Efficiency and Conservation Plan ("EE&C Plan") filed on July 1, 2009 sufficiently addresses the specific low income requirements of Act 129 through its Low Income Energy Efficiency program. PECO's EE&C Plan focuses on low income families as defined by the Act. PECO's EE&C Plan provides sufficient program resources to low income households so it reasonably can be expected the required energy savings targets will be hit. PECO's EE&C Plan provides sufficient assurances that its Act 129 activities will coordinate with federal, state, and Commission programs assisting low income households. PECO's EE&C Plan provides assurances that its LIURP and Act 129 funding will remain distinct from one another. Given these assurances, the Commission should approve the Low Income Energy Efficiency program segment of PECO's Plan.

II. PROCEDURAL HISTORY

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, imposed new requirements on electric distribution companies, 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 January 15, 2009, the Commission issued an implementation order that established the standards each plan must meet and provided guidance on the procedures for submittal, review, and approval of all aspects of EDC plans. *Energy Efficiency and Conservation Program, Implementation Order*, Docket No. M-2008-2069887, (Order entered January 16, 2009) ("Implementation Order"). Subsequent to the entry of the Implementation Order, the Commission issued a series of orders detailing specific aspects of the EE&C Plan formulation process, including: an order establishing a registry of conservation service providers and specifying the minimum qualifications for entry onto the registry, *Implementation of Act 129 of 2008, Phase 2 – Registry of Conservation Service Providers, Final Order*, Docket No. M-2008-2074154, (Order Entered February 5, 2009); an order establishing the Technical Reference

Manual ("TRM") with standards to be used to measure and verify applicable demand side management and energy efficiency measures used by EDCs to meet the Act 129 consumption and peak demand reduction targets, *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources – Technical Reference Manual Update, Final Order and TRM*, Docket No. M-00051865, (Order Entered June 1, 2009); an order establishing a Total Resource Cost ("TRC") test with which EDCs are to measure the costs and benefits associated with their EE&C Plans, *Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test, Order*, Docket No. M-2009-2108601, (Order Entered June 23, 2009); and an order outlining the technical and procedural requirements for EDCs' Smart Meter procurement and installation activities required under Act 129, *Smart Meter Procurement and Installation, Implementation Order*, Docket No. M-2009-2092655, (Order Entered June 24, 2009).

As required by the Commission's Implementation Order, PECO initiated a stakeholder process in which interested parties in the service territory could participate in the EE&C Plan formulation process. The stakeholder process included seven meetings wherein PECO worked with parties to brainstorm ideas, review company proposals, and seek critical feedback. The Pennsylvania Utility Law Project participated in the stakeholder meetings, representing the interests of low income customers, and provided PECO with feedback regarding the Act's requirements as they relate to low income households. PECO engaged the services of Global Energy Partners as a consultant to help plan for and design the EE&C Plan. On July 1, 2009, as required by and in compliance with Act 129 and the Implementation Order, PECO filed its EE&C Plan. *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, (Filed on July 1, 2009) ("*Petition*").

III. DESCRIPTION OF PECO'S PLAN

This Brief is concerned exclusively with the EE&C Plan's impact on low income households so it will focus only on those parts of the Plan dealing with low income households.

PECO's EE&C Plan contains a program called the Low-Income Energy Efficiency Program ("low income program") that provides energy efficiency services to low income households receiving electric service from PECO and in which a household member is financially responsible for payment of the electric bill. *Petition* at Volume II, pp. 35-45. The low income program has three components. Component 1 is modeled on PECO's current Low Income Usage Reduction Program ("LIURP") and will provide enhanced LIURP-like services to households primarily with income at or below 150% FPIG. *Id* at p. 35. Component 2 will target LIURP recipients and offer them enhanced weatherization and energy efficiency services above and beyond what they would have received from the normal LIURP program. *Id* at pp. 35 and 37. Component 3 will incorporate PECO resources (in the form of six CFL light bulbs) into the weatherization efforts that are targeted to PECO electric customers by other entities, such as the Philadelphia Gas Works. *Id* at p. 37.

PECO's low income program has a budget of $27,410,156, 79,660 MWh of projected energy efficiency savings, and 5,306 KW of projected demand response savings. *Id* at Vol. III, Appendix D, Tables 2 and 5. The low income program's cost-benefit ratio of .59 and TRC of 1.71 make it one of the more cost effective programs in PECO's Plan. *Id* at Table 1. PECO's low income program promises much for low income households.

IV. SUMMARY OF ARGUMENT

Act 129 requires PECO to file an EE&C Plan that: ensures low income households achieve energy savings at least proportionate to their share of the energy burden in the service territory; defines low income household to include only those households with income at or below 150% of the FPIG; requires Act 129 low income programs to coordinate with other federal, state, and Commission programs; and ensures expenditures for Act 129 low income programs are in addition to and separate from expenditures made for the company's LIURP program. 66 Pa.C.S. § 2806.1(b)(1)(I)(G).

PECO's Plan substantially meets these provisions because it provides specific language detailing how each of the provisions will be met. First, although PECO's Plan does intend to target for enrollment into its low income programs families with income up to 200% FPIG, the Plan also states that PECO will first focus on households with income at or below 150% FPIG. When conducting its measurement and evaluation of program performance, the Commission can review whether PECO meets this good faith commitment to first focus on serving households with income at or below 150% FPIG. Second, PECO's Plan provides sufficient financial resources to the low income program so the Commission reasonably can be sure PECO will meet its low income energy savings targets. Third, PECO's Plan states it will use its Universal Services Advisory Committee and its Stakeholder Group to ensure Act 129 low income activities are coordinated with other federal, state, and Commission programs. Fourth, PECO's Plan ensures that expenditures for Act 129 low income programs are in addition to and separate from expenditures made for the company's LIURP program. Given these explicit assurances that the

Plan meets Act 129's low income provisions, the Commission should approve PECO's Low Income Energy Efficiency program.

V. ARGUMENT

A. Act 129 Conservation and Demand Reduction Requirements

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*

Act 129 requires the Commission to establish standards to ensure energy efficiency and conservation measures are provided equitably to all customer classes. 66 Pa.C.S. § 2806.1(a)(5). However, the equitable distribution standard does not apply to low income households because Act 129 has unique requirements for accruing energy savings to low income customers and to units of federal, state, and local government, including municipalities, school districts, institutions of higher learning, and nonprofit entities.[1] 66 Pa.C.S. §§ 2806.1(b)(1)(I)(B); 2806.1(b)(1)(I)(G). These special provisions supersede the more general equitable distribution standard applied to other parties:

[1] For the sake of convenience, the entities referred to in Section 2806.1(b)(1)(I)(B) - federal, state, and local government, including municipalities, school districts, institutions of higher learning, and nonprofit entities – will be referred to collectively as "governmental entities" for the balance of this Brief.

> Whenever a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted later and it shall be the manifest intention of the General Assembly that such general provision shall prevail.

1 Pa.C.S.A. § 1933.

The Commission's Implementation Order provides an interpretation that supports this view; the Order discusses the standards to ensure a variety of measures are applied equitably to all customer classes:

> There are clear requirements in the Act regarding proportionate measures for low-income customers (within a residential customer class) as well as for governments, schools, etc. (within a commercial customer class). *Beyond those requirements*, we believe that EDCs should develop plans to achieve the most energy savings per expenditure. The driving principle should be the most cost effective use of resources so that benefits can accrue to all customers, even if only by virtue of more reasonable energy market prices. (*emphasis added*)

Implementation Order at 22. In these statements, the Commission holds that Act 129 has "clear requirements" for low income households and governmental entities. That is, the Commission recognizes Act 129 provides special provisions for low income and governmental groups. Only after making this determination about low income and governmental customers, does the Commission look "beyond those requirements" to note that "each customer class be offered at least one energy efficiency and demand response program." Id at 23. The plain words of the statute are soundly interpreted by the Commission to assure that low income customers and governmental entities must receive special targeted savings. Only after these special provisions are addressed should EDCs consider the equitable apportionment of programs among the classes of customers.

PECO's Plan substantially meets Act 129's special provisions for low income savings by targeting sufficient energy savings to low income households. PECO projects 79,660 MWh of energy efficiency savings will accrue to low income households by the end of program year 2012. *Petition* at Vol. III, Appendix D, Table 2. The 79,660 MWh comprises 13.6 percent of the total 582,493 MWh saved from all residential programs (including low income) and 6% of total program savings of 1,295,565 MWh. *Id*. These savings substantially meet Act 129's special requirements for low income savings.

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

N/A.

5. Low Income Program Requirements

Act 129 at Section 2806.1(b)(1)(I)(G) requires PECO to file an EE&C Plan that: ensures low income households achieve energy savings at least proportionate to their share of the energy burden in the service territory; defines low income households to include only those households with income at or below 150% of the FPIG; coordinates its low income program with other federal, state, and Commission programs; and ensures expenditures for Act 129 low income programs are in addition to and separate from expenditures made for the company's LIURP program. Because PECO's EE&C Plan substantially meets these burdens, the Commission should approve PECO's Act 129 low income program.

a. PECO's EE&C Plan targets to low income households energy savings at least proportionate to their share of the energy burden in the service territory.

Act 129 reads in part, "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). An EE&C Plan, in order to be legally sufficient, must provide explicit information detailing how a proportionate share of energy savings will accrue to low income households. PECO's EE&C Plan substantially complies with this requirement.

The sentence from Section 2806.1(b)(1)(I)(G), "The number of measures shall be proportionate to those households' share of the total energy usage in the service territory," is ambiguous on its face. The sentence employs two mathematical concepts: number, as in "number of measures," and proportion, as in "proportionate" to share of total energy usage. It is difficult, if not impossible, to conceive how the General Assembly expected EDCs to design programs where a number of measures (expressed as a whole number) would be proportionate to a share of energy usage (expressed as a percentage). To attempt this exercise would be nearly impossible and leads to absurd results.

"The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly." 1 Pa.C.S.A. § 1921(a). "When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." Id at § 1921(b). It is presumed, "the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable." Id at § 1922(1). In this instance, where the words of the statute are not clear and free from all ambiguity, then the intent of the General Assembly must be ascertained using a number of criteria other than the plain meaning of the text. Id at § 1921(c).

To ascertain the General Assembly's intent, one may look to "[t]he occasion and necessity for the statute." Id at § 1921(c)(1). The occasion and necessity for Act 129 is the persistent increasing cost of electric energy, a cost that may skyrocket over the next several years as the remaining generation rate caps expire and customers receive significant increases in their electric bills. Rate increases will pressure everyone's financial situation but particularly those of low income households. Increasing electric bills will affect these families in unique and dire ways unlike the effect on more affluent households. Low income households have fixed incomes, little or no savings, family expenses that routinely outstrip family income, and little ability to change their situation. Quite simply, low income households will not be able to afford increased electric costs so will either go without electric or go without some other necessity, such as food, clothing, medical care, or prescription medicine. Moreover, even though low income households use less energy than their more affluent counterparts in the residential class, the cost of the energy they do use consumes a disproportionately larger portion of their household budget. Given this occasion and these necessities, the General Assembly intended to direct specific, targeted savings to households that will be under such dire pressure from rate increases and that do not possess the financial resources with which to mitigate the impact of these rate increases.

To ascertain the General Assembly's intent, one also may look to "[t]he mischief to be remedied." 1 Pa.C.S.A. § 1921(c)(3). A clear way to mitigate the impact of increasing electric costs associated with rate cap expiration is to decrease electric consumption. Given electricity's essential nature in today's world, reducing usage is not easy. A principal way to achieve reductions is through the purchase and installation of energy efficiency and demand reduction measures. Unfortunately, low income families do not have the spare cash to buy energy efficiency and demand response measures that could reduce their electric consumption and mitigate the increase in electric costs. Thus, low income families are likely to face a unique challenge and will in all likelihood have to go without electric energy, placing family members at significant risk of negative health and welfare repercussions. Given this "mischief," it is reasonable that the General Assembly intended to direct specific, targeted savings to households that will be under such dire pressure from rate increases and that do not possess the financial resources with which to mitigate the impact of these rate increases

To ascertain the General Assembly's intent, one also may look to "[t]he object to be attained." 1 Pa.C.S.A. § 1921(c)(4). The object to be attained in this instance is consumption reductions that result in lower electric bills for low income households. As was mentioned, low income families will not be able to afford to purchase energy efficiency and demand response measures. It is reasonable that the General Assembly directed specific energy savings to low income families to compensate for their inability to purchase energy savings measures on their own.

To ascertain the General Assembly's intent, one may look to "[t]he consequences of a particular interpretation." Id at § 1921(c)(6). The consequence of interpreting the statute on its face is that an absurdity will result. On its face, the sentence, "The number of measures shall be proportionate to those households' share of the total energy usage in the service territory," seems to imply that the sheer number of measures must be proportionate to low income households' share of total energy consumption. This would mean EDCs must first determine the low income share of energy usage (a percentage). Then, the EDC would have to somehow figure out how that percentage should be converted to a raw number of measures. Not only does using the number of measures result in difficult conversions, but it is inconsistent with the rest of the way Act 129 operates. Act 129 works with energy savings targets, not raw numbers of measures. The overall goals of Act 129 include targets of 1 percent and 3 percent energy savings reductions and 4.5 percent demand reductions. 66 Pa.C.S. §§ 2806.1(c) and (d). Governmental entities must receive 10 percent of overall savings. Id at § 2806.1(b)(1)(I)(B). It is reasonable that the General Assembly intended savings targeted for low income customers would work in a similar way. The Direct Testimony of Mr. Ian Phillips presents an interpretation in line with the Commission interpretation, with the goals of the statute, and with the specific goal of providing a discrete amount of energy savings to low income households. ACORN Statement No.1 at p. 17, lines 3-12.

Finally, to ascertain the General Assembly's intent, one may look to "[l]egislative and administrative interpretations of such statute." 1 Pa.C.S.A. § 1921(c)(8). The Commission has issued an Act 129 Implementation Order providing an interpretation of Section 2806.1(b)(1)(I)(G):

> There are clear requirements in the Act regarding proportionate measures for low-income customers (within a residential customer class) as well as for governments, schools, etc. (within a commercial customer class). Beyond those requirements, we believe that EDCs should develop plans to achieve the most energy savings per expenditure. The driving principle should be the most cost effective use of resources so that benefits can accrue to all customers, even if only by virtue of more reasonable energy market prices.

Implementation Order at p. 22. The Commission states clearly and explicitly that Act 129 has specific requirements for low income households and government entities, and the requirements are proportionate. Note, that the Commission does not refer to number of measures but, rather, to proportionate measures.

The Commission groups these low income measures with those of governmental entities. Act 129 has a clear statement about governmental savings:

> 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). The express words of the statute and the Implementation Order agree that governmental energy savings must be a percentage of the entire Plan savings. That is,

governmental entities' energy savings must comprise 10% of all the savings under the Plan. Since the Commission is treating low income and governmental savings similarly, it makes sense to calculate those savings in a similar manner. Rather than trying to count individual measures and then compare them to a proportion of energy usage, the Commission's grouping of governmental and low income savings suggests that it is more appropriate to treat the required low income energy savings as a percentage of savings.

PECO's Plan contains program activities projected to generate significant energy efficiency savings for low income households. These projected savings substantially comply with Act 129's special provisions requiring targeted low income savings. PECO projects 79,660 MWh of energy efficiency savings will accrue to low income households by the end of program year 2012. *Petition* at Vol. III, Appendix D, Table 2. This 79,660 MWh comprises 13.6 percent of the total 582,493 MWh saved from all residential programs (including low income) and 6% of total program savings of 1,295,565 MWh. *Id* . Because PECO's Plan targets such significant energy savings to low income households, the low income program substantially meets Act 129's special low income energy savings provisions.

b. PECO's EE&C Plan defines low income household primarily to include households with income at or below 150% FPIG.

Act 129 reads in part, "The plan shall include specific energy efficiency measures for households at or below 150% of the federal poverty income guidelines." 66 Pa.C.S. § 2806.1(b)(1)(I)(G). To be legally sufficient an EE&C Plan must provide explicit information detailing how energy efficiency measures will be directed to low income households, specifically defined as those with income at or below 150% FPIG, and how these savings will be evaluated and measured for purposes of determining whether sufficient savings have accrued to low income households. PECO's Plan provides assurances that its Plan will target households with income at or below 150% FPIG. Since PECO will be submitting annual Act 129 progress reports, the Commission will have ample opportunity to ensure program services are being directed to households with income at or below 150% FPIG and that only savings from these households are used to assess progress toward low income savings targets.

"When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S.A. § 1921(b). The words of Act 129 are clear and free from ambiguity: low income households are defined as those with income at or below 150% FPIG. Households with income above 150% FPIG are not low income for purposes of Act 129, no matter how these households may be treated or considered otherwise.[2]

PECO's EE&C Plan includes a single low income program with three components, some of which will serve customers with incomes up to 200% FPIG. *Petition* at Vol. II, p. 35. This practice appears on its face to violate Act 129's explicit requirements. However, the Plan offers sufficient assurance that this apparent facial violation will be corrected in practice. The Plan states that the low income program will emphasize the targeting of high usage customers, focusing on customers at or below 150% FPIG. *Id* at p. 36. The Plan proposes an aggressive ramp up of activities that will target households with income up to 200% FPIG, but it also states the "primary focus" of the ramp up will be on households with income at or below 150% FPIG. *Id* at p. 37. PECO's Plan also commits the company to working with its own Universal Service Advisory Committee to develop a referral process which will enable

---

[2] The Commission operates other "low income" programs in which households with income up to 200% FPIG may participate. See 52 Pa. Code Ch. 58 (relating to residential low income usage reduction programs). Also, the federal Weatherization Assistance Program, a program for low income households, serves households with income above 150% FPIG. The federal LIHEAP program also allows for families with higher income levels to receive services. However, Act 129 is explicit in defining "low income" to mean a household with income at or below 150% FPIG.

members of the Universal Service Advisory Committee to help PECO maintain a focus on households with income at or below 150% FPIG. *Petition* at Vol. II, p. 36.

PECO's Plan, despite a seeming facial violation of Act 129, provides sufficient practical assurances that households with income at or below 150% FPIG will be appropriately targeted for energy savings pursuant to Act 129's requirements.

c. PECO's Plan appropriately coordinates Act 129's low income program with other federal, state, and Commission programs.

Act 129 reads in part, "The electric distribution company shall coordinate measures under this clause with other programs administered by the commission or another federal or state agency." 66 Pa.C.S. § 2806.1(b)(1)(I)(G). In order to be legally sufficient, an Act 129 EE&C Plan must provide explicit information detailing how coordination among programs will occur. PECO's EE&C Plan provides this information.

"When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S.A. § 1921(b). The words of Act 129 are clear and free from ambiguity: "the electric distribution company shall coordinate measures under this clause with other programs administered by the commission or another federal or state agency." 66 Pa.C.S. § 2806.1(b)(1)(I)(G). The only possible ambiguity in this mandate is the meaning of the word "coordinate." Webster's Online Dictionary defines "coordinate" as follows:

> *transitive verb*
> **1 :** to put in the same order or rank
> **2 :** to bring into a common action, movement, or condition **:** harmonize
> <we need to *coordinate* our schedules>
> **3 :** to attach so as to form a coordination complex

> *intransitive verb*
> **1 :** to be or become coordinate especially so as to act together in a smooth concerted way
> **2 :** to combine by means of a coordinate bond

Retrieved from http://www.merriam-webster.com/dictionary/coordinate on August 23, 2009. Accordingly, Act 129's coordination requirement demands PECO's low income program come into common action with other programs, harmonize with other programs, and act together in a smooth concerted way with other programs. A mere referral of low income customers to other programs alone, with no other active effort by the EDC, certainly falls short of the statutory requirement to coordinate with other programs. Had the General Assembly intended for EDCs only to make referrals, the term "referral" would have been used. However, the word that was chosen, "coordinate," contemplates more active involvement by the EDC.

PECO's EE&C Plan provides a sufficient description of how it will coordinate its low income programs with other federal, state, and Commission programs because PECO's Plan clearly illustrates an intention to do more than just refer customers to other programs. PECO's Plan states,

> If the auditor identifies structural issues, the auditor will refer the customer to the Department of Community and Economic Development (DCED) for information and qualification to the DCED's weatherization programs.

Petition at Vol. II, p. 36. However, the Plan does not stop here. It goes beyond mere referral to assert,

> In addition, the auditor will provide a list of potential resources for the customer. PECO will work with its Universal Services Department and with the Universal Services Advisory Committee to help develop a referral process.

Id at p. 36. This additional effort by PECO to work with its internal staff and an Advisory Committee to establish fruitful processes that will lead to real collaboration illustrates that PECO is prepared to actively collaborate in a real and constructive manner. Furthermore, the Plan states that PECO will help customers access assistance, such as the Keystone HELP Energy Efficiency Loan and Rebate Program and funding assistance through the American Recovery and Reinvestment Act of 2009. *Petition* at Vol. II, p. 38. Finally, "PECO plans to continue to meet with stakeholders and other Pennsylvania EDCs to share learning's [*sic*] and draw on the program experience across the state to improve the programs in its portfolio." *Id* at p. 191. The Plan's commitment is supported by the testimony of Frank Jiruska, PECO's Director of Marketing, who also mentions PECO's intention to continue working with the Stakeholder Group. *Id* at Vol. I, PECO Statement No. 1, p. 12. These ongoing stakeholder meetings act as an assurance that real coordination will occur between the low income program and other federal, state, and Commission programs.

d. PECO's Plan provides assurance that expenditures for Act 129 low income programs will be in addition to and separate from expenditures made for the company's LIURP program.

Act 129 reads in part, "The expenditures of an electric distribution company under this clause shall be in addition to expenditures made under 52 Pa. Code Ch. 58 (relating to residential low income usage reduction programs)." 66 Pa.C.S. § 2806.1(b)(1)(I)(G). In order to be legally sufficient an EE&C Plan must provide an affirmative statement that funding for Act 129 programs will be in addition to expenditures made under LIURP programs. PECO's Plan provides this assurance.

"When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S.A. § 1921(b). The words of Act 129 are clear and free from ambiguity: "The expenditures of an electric distribution company under this clause shall be in addition to expenditures made under 52 Pa. Code Ch. 58 (relating to residential low income usage reduction programs)." 66 Pa.C.S. § 2806.1(b)(1)(I)(G). These clear words require no interpretation.

PECO's Plan provides an explicit statement that Act 129 funding will be in addition to LIURP. Under the Plan's Section N, Estimated Program Budget, the following assertion is made:

> The program cost areas are the same as LIURP. The program will fund additional activities administered within the LIURP structure plus the cost of the bulbs to be installed by the weatherization program providers.

Petition at Vol. II, p. 44. These statements make clear that while the Act 129 low income program is mirroring the LIURP program model and activities, "the program will fund *additional activities*" (*emphasis added). Id*.

Because PECO's Plan assures its Act 129 funding is in addition to its LIURP program funding, the Plan meets Act 129's special provisions regarding funding the low income program.

In summary, Act 129 at Section 2806.1(b)(1)(I)(G) requires EDCs to file EE&C Plans that: ensure low income households achieve energy savings at least proportionate to their share of the energy burden in the service territory; define low income household to include only those households with income at or below 150% of the FPIG; require Act 129 programs for low income households to coordinate with other federal, state, and Commission programs; and ensure expenditures for Act 129 low income programs are in addition to and separate from expenditures made for the company's LIURP program. PECO's Plan satisfactorily meets each of these statutory requirements. As such, the Commission should approve the Plan's low income program component.

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**

N/A.

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. CSP Issues

N/A.

D. Implementation and Evaluation Issues

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, Act 129 at Section 2806.1(b)(1)(I)(G) requires EDCs to file EE&C Plans that: ensure low income households achieve energy savings at least proportionate to their share of the energy burden in the service territory; define low income household to include only those households with income at or below 150% of the FPIG; require Act 129 programs for low income households to coordinate with other federal, state, and Commission programs; and ensure expenditures for Act 129 low income programs are in addition to and separate from expenditures made for the company's LIURP program. Given that PECO's EE&C Plan substantially meets each of these legal requirements, the Commission should approve PECO's Low Income Energy Efficiency program.

VII. PROPOSED ORDERING PARAGRAPHS

THEREFORE, IT IS ORDERED:

1. The Low Income Energy Efficiency program contained in PECO's Energy Efficiency and Conservation Plan, filed pursuant to Act 129, is hereby approved.

2. Only energy savings from households with income at or below 150% FPIG will be measured and used to determine whether PECO hits its low income energy savings targets.

3. PECO shall actively coordinate its Act 129 Low Income Energy Efficiency program with other federal, state, and Commission programs, making a good faith effort to incorporate recommendations from its Stakeholders and from its Universal Service Advisory Committee.

4. Funding for PECO's Act 129 Low Income Energy Efficiency program will be above and beyond existing funding for PECO's LIURP program.

Respectfully submitted,

/s/ John C. Gerhard

Harry S. Geller, Esq.
John C. Gerhard, Esq.
Counsel for ACORN

Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088

Dated: August 28, 2009