

**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 : **Docket No. M-2009-2093215**
Its Compact Fluorescent Lamp Program :
:

MAIN BRIEF

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

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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 efficiency, demand reduction and energy conservation 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 brief 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. *Petition* at Volume II, pp. 21-96 In addition 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. 146-158

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 provides a form of an energy audit along with 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 this program along with the all the other PECO's EE&C programs, PECO proposes a variety of promotional, 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 In fact, a simple addition of the promotion dollars listed under each of the EE&C programs in

Volume II establishes that PECO's promotional expenditures will exceed \$10,000,000 for their Act 129 plan.

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.

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

The concern about cost is highlighted by State Representative Mark Cohen in two ways, the impending reductions in a variety of rate class discounts, including Rate RH and GS that may cause some PECO customers to have a significant rate increase and the cost of base board electric heat compared to the other forms of electric heat covered by the Rate RH class. This brief argues that the Act 129 programs, while individually acceptable should be specially promoted to those who utility bills may significantly increase because of the reduction of a variety of rate class discounts and these programs should also be targeted at consumers who use residential base board heat.

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. 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*

N/A.

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

N/A.

5. *Low Income Program Requirements*

While this brief supports PECO's proposed Low Income Program and applauds its willingness to work with families up to 200% poverty level, State Rep. Mark Cohen is concerned about an answer that company witness Richard Schlesinger, Principal rate administrator made when asked by Cohen's counsel about transferring money from three different residential programs. Schlesinger answered that it was possible to transfer the all the money from the Whole House Performance program and the residential incentive program. Transcript p.212 However, when he was asked about PECO's ability to transfer all the money from their 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

Act 129 through in its language of 66 Pa.C.S. §§ 2806.1(b)(1)(I)(G) clearly 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. With PECO's witness leaving this issue unclear and no documentation in their submitted providing an answer whether

they reserve the right to transfer all or part of the funds from the low income program, it is important that Commission clarify this point. State Representative Cohen believes the Commission should clearly direct 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**

It is both puzzling and potentially 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, including RH class electric base board heating) 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 electricity use above 600 kWh in the winter even before any cost increases in default PLR service)²

PECO’s firewall approach was amply demonstrated in the questioning of Company Witness Frank Jiruska when he was asked about PECO’s Act 129 plans with the question “..how does PECO propose in its plan and in your thinking since then to try to deal with

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

this select group of customers who have significantly variable electric use during the year and also will potentially have increased electric bills, significantly increased electric bills in the future? Transcript., p. 167

Jiruska's answer to a single question about Act 129 is a vivid demonstration of PECO's firewall, when he responds:

“You've actually asked me a two-part question. One is what is being done in our DSP, an education component. The other is what are we doing within our Act 129 plan.” Transcript., p. 168

When Jiruska describes PECO's Act 129 plans, evidence of this firewall continues. He states, “In terms of our Act 129 programs, these customers have available to them the same set of energy efficiency measures that a non-RH customer or a Rate R customer would have. So if they are able to weatherize their home, add insulation, utilize CFL's, whatever they are capable of doing and we have incentives for, they can participate in.” Transcript., p. 168

Instead of incorporating the upcoming significant increases in some customer bills into their thinking about how to design their \$10 million dollar promotion budget 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.

After State Representative Cohen testified in the July 29, 2009 public input hearing and expressed his concerns about baseboard heating and the potential of significant increases in

electric bill, PECO had an opportunity to check with its consultants and stakeholders to see if they thought this issue was successfully addressed in PECO's plan even it wasn't included in their consultant's report, their filed proposal or their detailed customer research. Unfortunately, Richard Schlesinger, Principal rate Administrator whose attempted to claim in oral rejoinder that no further RH adjustments were necessary for plan approval, said that he was not aware of any discussions with their consultant or any other stakeholders other than State Representative Cohen since they filed their original plan. In fact according to Schlesinger, PECO only did "an internal analysis" to see if anything else was necessary. Transcript., p. 210.

While PECO's "internal analysis" conclude no further changes should be made in their Act 129 to be approved, company witness Schlesinger agreed that in operating an Act 129 plan, it would it make sense for PECO to try to target customers who would be most interested in savings. Transcript., p. 179.

In fact the following line of questioning to and answers from Company Witness Schlesinger demonstrates how feasible the approach that State Representative Cohen proposes:

Cohen Counsel Question: "You've admitted that PECO does not have possession about detailed information about its RH customers, whether they use baseboard, whether they use heat pumps. Can PECO design a plan or can PECO do outreach or develop as part of its 129 plan programs that can operate successfully without specific information or that can obtain more information to develop a better result, better Act 129 efficiency?"

Schlesinger Answer: "We certainly could create some type of survey that could be sent to RH customers to determine what type of heat source they use that would always be evaluated against the increased benefits in terms of these customers participating in a program. At this point, I am not sure that PECO having additional information as to the exact type of heat source they use will enable us to have customers either participate

more or participate less in our programs. That's something that we're going to learn as we roll out.", Transcript., p. 179-180

Unfortunately since PECO has not proposed to seek out this additional information or use it as a part of their Act 129, it is not "something that we're going to learn as we roll out."

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 at the right time, when they are about to face tremendous increases in their electric bills. It is also a unique opportunity also because the 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.

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.

However, while the range of communications channels appears to be robust and the overall promotional budget is significant, PECO does not seem to express an interest in using relevant customer information and customer interaction to drive up the effectiveness of their Act 129 campaign. 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 of regulatory oversight, licensing, or authority as a “conservation service provider” (CSP) or authorizes an Electric Distribution Company to substitute a “trade ally” instead 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.

While PECO does not propose to use helpful customer information like heating source or whether their rate class may seen a significant and disproportionate increase in the

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 RH³ 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. Representative Cohen in his public testimony submitted Cohen Exhibit 1, a spreadsheet from the Department of Energy's website that using national averages of heating costs and a 16 cents per kWh electric rate, demonstrated that electric resistance heat is the most expensive fuel source when examined at generating one million BTU's (British Thermal Units). 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. While PECO asserted that they don't have any information about how many of their approximately 150,000 RH class customers use different forms of heat, the characteristics of this class appear to be different than any other customer class of PECO. Company witness Jiruska agreed that residential heating customers as a class is unique amount your customer classes because some months of the year they may have double the use of some of their lower months in other parts of the year? Tr., p. 168-169. Since RH heat customers may use less efficient and more heavily used heating systems, these customers are a good target for energy efficiency and energy conservation measures.

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. Cost Issues

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, 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 in order to avoid higher 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, 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 cannot 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,

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