September 8, 2009

VIA ELECTRONIC FILING (E-FILING)

James J. McNulty
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 Fluorescent Lamp Program

Docket No. M-2009-2093215

Dear Secretary McNulty:

Enclosed for filing in the above-captioned proceeding, please find the Reply Brief on behalf of the Pennsylvania Association of Community Organizations for Reform Now ("ACORN"). Parties of record have been served as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me directly.

Very truly yours,

/s/ John C. Gerhard

John C. Gerhard, Esq.
Counsel for ACORN

Enclosure
cc: Honorable Marlane R. Chestnut
Cert. of Service

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**

CERTIFICATE OF SERVICE

I hereby certify that I have today served a true copy of the Reply Brief on behalf of the Pennsylvania Association of Community Organizations for Reform Now ("ACORN") upon the parties of record in this proceeding listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Dated: September 8, 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 Approval Of Its Compact Fluorescent Lamp Program	: : : : :	**Docket No. M-2009-2093215**

REPLY BRIEF
ON BEHALF OF THE PENNSYLVANIA ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW ("ACORN")

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Dated: September 8, 2009

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I. INTRODUCTION

In this proceeding, PECO Energy Company ("PECO" or "the company"), pursuant to Act 129 of 2008, has filed an Energy Efficiency and Conservation Plan ("EE&C Plan") proposing to meet the legal requirements of Act 129. The Pennsylvania Association of Community Organizations for Reform Now ("ACORN") respectfully asserts several parts of PECO's EE&C Plan pertaining to low income programs require revision prior to approval by the Pennsylvania Public Utility Commission ("Commission").

ACORN respectfully requests the Commission affirm several of ACORN's positions put forward in our Main Brief, including: adopting ACORN's positive recommendations for improvements to PECO's low income program, holding only the energy savings of households with income at or below 150% FPIG should be used when evaluating whether PECO has achieved Act 129's mandatory energy savings for low income households, requiring PECO to reach out to nonprofit organizations that provide multi family housing to low income customers, and affirming that the specific requirement to provide proportionate energy savings to low income households supersedes and precedes the more general requirement that EDCs provide a variety of programs equitably distributed.

II. ARGUMENTS IN REPLY TO PECO'S MAIN BRIEF

A. The Commission should adopt ACORN's positive recommendations for improvements to PECO's low income program.

ACORN has made a number of positive recommendations intended to improve PECO's low income programs, including, inter alia, a recommendation that PECO target for energy efficiency services multi family housing for low income customers, particularly where the landlord is a nonprofit organization. ACORN St. No. 1 at pp. 18-19. The Commission should reject PECO's assertion that ACORN's recommendations lack merit because they are not "a comprehensive alternative to PECO's proposed programs for low income customers" and that ACORN does not "quantify the costs of their proposals or indicated [*sic*] what other parts of PECO's Plan might have to be adjusted to fit within the overall 2% spending cap." PECO Main Brief at p. 34.

The Commission has made it clear that all covered electric distribution companies ("EDCs") are to remain open to collaboration with and input from Act 129 stakeholders. In fact, the Commission directed all covered EDCs to engage in informal discussions with the statutory advocates and interested stakeholders during the pre-filing development of the plans. *Energy Efficiency and Conservation Program, Implementation Order*, Docket No. M-2008-2069887, (Order entered January 16, 2009) at p. 10 ("Implementation Order"). It is unreasonable, as PECO implies, that in order for a stakeholder position to be considered valid it must be accompanied by a complete economic analysis. Although many stakeholders, including ACORN, simply do not have the resources with which to perform those kinds of detailed economic analyses, they bring to the process valuable perspective and insight into a variety of non-economic areas. For instance, ACORN brings unique experience with and insight into the situations and needs of low and lower income households. The Commission clearly recognized the value of this non-economic knowledge when requiring EDCs to include stakeholders in the Plan development process. A party's lack of exhaustive financial and economic analysis of an idea does not mean that the idea lacks merit per se.

ACORN respectfully requests the Commission give full consideration to ACORN's recommendations for improvements to PECO's low income programs, even where those recommendations are not necessarily comprehensive alternatives.

B. Only the energy savings of households with income at or below 150% FPIG should be used when evaluating whether PECO has achieved Act 129's mandatory energy savings for low income households.

ACORN maintains the position put forward in its Direct Testimony and in its Main Brief: because Act 129 specifically defines low income households as those households with income at or below 150% FPIG, only the energy savings of households with income at or below 150% FPIG should be used to evaluate whether PECO has achieved Act 129's mandatory energy savings for low income households. ACORN St. No. 1 at pp. 12-14; ACORN Main Brief at pp. 13-15. ACORN's position makes sense and is in compliance with Act 129. Low income households are defined by Act 129 explicitly to be those households with income at or below 150% FPIG. 66 Pa.C.S. § 2806.1(b)(1)(I)(G). Act 129 also clearly requires specific energy savings for these low income households and requires EDCs to implement programs to generate those energy savings. Id. Savings from households with income from 151 to 200 % FPIG should not be credited toward low income energy saving totals because they are not low income as defined by the Act. ACORN's position put forth in its Direct Testimony and Main Brief is completely consistent with Act 129's requirements.

PECO asks the Commission to reject ACORN's interpretation of Act 129, but PECO misunderstands ACORN's interpretation. PECO states, "ACORN contends that any savings from those customers [customers with income from 151% to 200% of FPIG] should not be counted for Act 129 compliance purposes." PECO Main Brief at p. 33. This mischaracterizes ACORN's position because ACORN does not advocate energy savings from households with income from 151% to 200% FPIG should not count toward Act 129 compliance. Rather, ACORN advocates the energy savings from households with income from 151% to 200% FPIG should not be counted toward ***the low income energy savings targets***. The savings of households with income from 151% to 200% FPIG certainly should be counted toward PECO's general Act 129 energy savings compliance, but they should not be counted toward the requirements for low income program energy savings.

Furthermore, ACORN supports and encourages PECO to coordinate its low income programs with federal, state, and Commission programs that serve low income customers. 66 Pa.C.S. § 2806.1(b)(1)(I)(G); ACORN Main Brief at pp. 15-17. However, this coordination does not relieve PECO of the burden of ensuring its low income programs accrue sufficient energy savings to low income households as defined by the Act (with income at or below 150% FPIG). PECO is free to serve households at any income level with whatever program PECO chooses, but PECO is restricted to counting only the savings from households with income at or below 150% FPIG toward the achievement of its low income program savings targets.

Because ACORN's position is clearly supported by Act 129, the Commission should adopt ACORN's position and only allow the energy savings from households with income at or below 150% FPIG to be used when evaluating whether PECO has met Act 129's energy savings requirements for low income households.

C. The Commission should require PECO to reach out to nonprofit organizations that provide multi family housing to low income customers.

Act 129 clearly intends to help low income customers take advantage of energy efficiency and conservation services even where those households may not be able to afford to do so without external financial assistance. This is why Act 129 requires EDCs to make available low income programs. See 66 Pa.C.S. § 2806.1(b)(1)(I)(G); ACORN Main Brief at pp. 6-8. Unfortunately, some low income families may not be able to access Act 129's low income programs because of how they take utility service. For example, low income households living in multi family dwellings, where the service is master metered and the landlord is the customer of record, may be deemed ineligible to participate in Act 129's low income programs because these households are not the customers of record.

Because this part of Act 129 is difficult to understand and apply, it seems quite likely that nonprofit organizations and low income customers living in multi family housing will have difficulty understanding how to access Act 129 programs. ACORN's position is that this complexity, wherein there may be multiple ways customers can engage the system but none of them particularly clear or easy to understand, may prevent PECO from gaining access to the energy savings that could be accrued through these housing complexes, particularly low income multi family housing operated by nonprofit organizations. ACORN supports PECO's decision to market its programs so as to encourage participation in Act 129 programs and reiterates our request that PECO design a special outreach effort to nonprofit organizations that operate multi family housing for low income households.

ACORN respectfully asks the Commission to recognize the complexity of this particular situation and require PECO to develop clear plans for helping landlords, particularly nonprofit landlords, and tenants in multi family dwellings to participate in Act 129 activities.

D. The Commission should affirm that the specific requirement to provide proportionate energy savings to low income households supersedes and precedes the more general requirement that EDCs provide a variety of programs equitably distributed.

ACORN maintains its position presented in Direct Testimony and Main Brief that the specific requirement to provide proportionate energy savings to low income households supersedes and precedes the more general requirement that EDCs provide a variety of programs equitably distributed.

ACT 129 has specific energy savings requirements for governmental entities and for low income households. ACORN St. No. 1 at pp. 10-19; ACORN Main Brief at p. 6. These specific energy savings requirements supersede the more general equitable distribution requirements in the Act. ACORN Main Brief at p. 6. Contrary to PECO's claim in its Main Brief, the Commission's Implementation Order recognizes the special treatment of energy savings for governmental entities and low income households; only after explicitly noting these special requirements does the Commission go on to allow EDCs to satisfy the equitable distribution standard by making available to each class at least one energy efficiency program and one demand reduction program. ACORN Main Brief at p.7; Implementation Order at p. 22.

ACORN respectfully requests the Commission affirm that the specific requirement to provide proportionate energy savings to low income households supersedes and precedes the more general requirement that EDCs provide a variety of programs equitably distributed.

III. CONCLUSION

In conclusion, ACORN respectfully requests the Commission affirm several of ACORN's positions put forward in our Main Brief, including: adopting ACORN's positive recommendations for improvements to PECO's low income program, holding only the energy savings of households with income at or below 150% FPIG should be used when evaluating whether PECO has achieved Act 129's mandatory energy savings for low income households, requiring PECO to reach out to nonprofit organizations that provide multi family housing to low income customers, and affirming that the specific requirement to provide proportionate energy savings to low income households supersedes and precedes the more general requirement that EDCs provide a variety of programs equitably distributed.

Respectfully submitted,

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