BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF PECO ENERGY COMPANY	:	
FOR APPROVAL OF ITS ACT 129 ENERGY	:	
EFFICIENCY AND CONSERVATION PLAN	:	Docket No. M-2009-2093215
AND EXPETITED APPROVAL OF ITS	:	
COMPACT FLUORESCENT LAMP PROGRAM	:	

Reply Brief of
The Reinvestment Fund

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I. Introduction

There is remarkable consensus by the parties in this proceeding on the fundamental issue of whether the Pennsylvania Public Utility Commission ("the Commission") should approve PECO's Energy Efficiency and Conservation Plan ("EE&C Plan"). The main brief of every party supported (or at a minimum acquiesced in) the approval of PECO's 18 energy efficiency, conservation and demand response programs and a finding that PECO's EE&C Plan was in compliance with Act 129.

That said, almost every party made "recommendations … as to how the electric distribution company could improve its plan or exceed the required reductions in consumption…" 66 Pa.C.S.A. §2806.1(e)(1). In reviewing the briefs of the parties, TRF found 34 different recommendations for how PECO's EE&C Plan should be improved. This list is provided in Appendix A of this Reply Brief.

Rather than review the position of The Reinvestment Fund ("TRF") on each of these issues, TRF will focus on the two changes to PECO's EE&C Plan that it considers most important. In its Main Brief, TRF recommended two changes that the Commission should require in its Order in approving PECO's EE&C Plan:

- PECO's EE&C Plan should be amended to specify a continued active role for the Stakeholder Group in the implementation of the Plan; and,
- PECO's EE&C Plan should be amended to provide for a financing program to help PECO's customers come up with the more than $500 million they need to pay for the energy measures called from in PECO Plan.

In this Reply Brief, TRF will address PECO's comments on these two issues as addressed in PECO's Main Brief.

II. PECO's EE&C Plan should be amended to specify a continued active role for the Stakeholder Group in the implementation of the plan.

TRF called for PECO's EE&C Plan to explicitly require PECO to maintain the active, ongoing involvement of the Stakeholder Group throughout the implementation period of the Plan. TRF's Main Brief, pp. 17-18. In lieu of PECO's vague commitment to "communicate" with the stakeholders, TRF presented a specific list of responsibilities that the Stakeholder Group should have. These responsibilities included reviewing and commenting upon draft Requests for Proposals for selecting the Conservation Service Providers ("CSPs") and contractors, the draft workplans for the contracts of the CSPs and other contractors, any proposed changes to the overall Act 129 plan, programs or budgets, any proposed changes in the workplans or budgets of the CSPs or other contractors and the proposed program promotion materials and program materials. *Ibid*.

TRF was not alone in calling for an active Stakeholder Group. Similar calls were made by the Office of Consumer Advocate (Main Brief of the Office of Consumer Advocate, pp. 23-24), the Pennsylvania Department of Environmental Protection (Main Brief of the Department of Environmental Protection, p. 13) and the City of Philadelphia (Main Brief of the City of Philadelphia, p. 21). PAIEUG also called to an expanded role for the Stakeholder Group, stating that PECO should be required to obtain the consent of the Stakeholder Group before making any program budget changes (Main Brief of PAIEUG, p. 17-21).

In its Main Brief, PECO acknowledges the involvement of the Stakeholder Group in the development of its EE&C Plan. PECO begins its comments on this issue with the statement that PECO's "first guiding principle in the development of its Plan was to involve stakeholders from the very beginning of the process." Main Brief of PECO, p. 49. PECO states that it "anticipates continuing to work with stakeholders during Plan implementation, including conducting quarterly meetings and communicating regarding reprogramming of program funds" but it opposes codifying the responsibilities of the Stakeholder Group into the Plan as suggested by TRF. PECO asserts that it, and not the stakeholders, will be penalized if PECO does not meet the energy conservation and demand response goals of Act 129 and that Act 129 does not mandate a role for stakeholders as proposed by TRF. *Ibid*.

TRF finds it peculiar that PECO would "commend our stakeholders for their constructive input into our Plan" (PECO Statement 1, Testimony of Frank Jiruska, p. 12) yet be so opposed to anything more concrete than a vague commitment to conduct quarterly meeting and to "communicate" with the Stakeholder Group during the implementation of that Plan.

TRF certainly recognizes that it will be PECO and not the stakeholders who will be penalized if Act's 129 goals are not met. TRF has explicitly stated that PECO would not be compelled to accept the comments and suggestions of the Stakeholder Group. TRF Statement 1 (Testimony of Robert Sanders), p. 5, and Main Brief of TRF, p. 18. PECO is inventing a role for the Stakeholder Group that is far more than requested by TRF. TRF is simply asking for the opportunity to provide stakeholder input at meaningful decision points in the implementation. The Stakeholder Group would be advisory and PECO would retain the decision-making authority. All TRF is asking for is that the stakeholder process have some substance and some possibility of value, and not simply be a quarterly series of one-way PowerPoint presentations.

While it is true that Act 129 does not mandate a role for stakeholders as proposed by TRF, neither did it mandate a role for stakeholders during the development phase of the EE&C Plan.

As TRF noted in its Main Brief, "[t]he true task of Act 129 will be turning this Plan into real programs" and that work is just beginning. Main Brief of TRF at 2. TRF urges the

Commission to ensure the "constructive input" of the Stakeholder Group will continue in a meaningful way throughout the implementation phase of PECO's EE&C Plan.

III. PECO's EE&C Plan should be amended to provide for a financing program to help PECO's customers come up with the more than $500 million they need to pay for the energy measures called for in PECO's EE&C Plan.

TRF's second important recommendation was the need to amend PECO's EE&C Plan to address the need for EDCs to support customer financing programs, as recognized by Chairman Cawley and Commissioner Gardner in the Joint Statement they issued to accompany the Commission's January 15, 2009 Implementation Order. TRF's Main Brief noted that PECO's EE&C Plan requires participating customers to invest **$544,344,606** of their own money (or borrowed funds) in efficiency, conservation and demand reduction measures over the four program years of the Plan. Main Brief of TRF, pp. 12-13. The need for such a financing mechanism as part of the Act 129 plan was made clear by TRF witness Robert Sanders, who testified that "banks and other lending institutions in the mid-Atlantic are still in a frozen state when it comes to lending." TRF Statement 1 (Testimony of Robert Sanders), p. 8.

In its testimony and its Main Brief, PECO refutes neither TRF's point that its EE&C Plan depends on over $500 million of customer investment nor does it challenge the assessment that in today's financial climate or the assertion that PECO's customers will have a very difficult time borrowing money for their energy measures. Its Main Brief, PECO also totally ignores the Joint Statement of Chairman Cawley and Commissioner Gardner. It simply misstates TRF's position as calling for a non-recoverable grant to TRF of $10 million and states Act 129 does not require EDCs to spend non-recoverable funds. Main Brief of PECO, pp. 49-51.

TRF stated in both the testimony of Robert Sanders and in its Main Brief that it was open to a number of solutions to this problem and was interested in working with the Commission and others to fashion this solution as Chairman Cawley and Commissioner Gardner called for in their Joint Statement. TRF suggested capitalizing a loan fund with $10 million, but that could be done in several ways, including a grant under Act 129 or a corporate investment in TRF which would earn a rate of return. Stating TRF was interested only in a non-recoverable charitable contribution is a misstating of TRF's position.

PECO shut down the discussion of customer financing in the Stakeholder Group meetings and it quickly dismissed the idea in the testimony of Frank Jiruska (PECO Statement No. 1 (Testimony of Frank Jiruska), p. 26) and in its Main Brief (p. 51). However, as Chairman Cawley and Commissioner Gardner recognized, if customers – residential as well as commercial, industrial and public/institutional - are unable or unwilling to invest over $500 million in energy efficiency, conservation and demand response, then PECO will be unable to achieve their goals under Act 129.

TRF believe that this proceeding's failure to address this critical finance issue threatens the success of the entire undertaking. TRF stands ready to work with the Commission, with other Commonwealth agencies and with PECO and the other EDCs to fashion a solution to this very real problem.

IV. Conclusion

TRF recommends that the Commission approves PECO's EEC Plan and its 18 energy efficiency, conservation and demand reduction programs with two important changes. First, TRF recommends that the Commission amend the PECO EEC Plan to require the active involvement of the Stakeholder Group in the implementation of PECO's Plan. Second, TRF recommends that the Commission work with the EDCs, with other Commonwealth agencies and other stakeholders in Pennsylvania to help provide at least some of the $500 million needed by customers to finance their energy measures under PECO's EEC Plan.

Respectfully submitted,

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Appendix A

Listing of Parties' Proposed Changes to PECO's Energy Efficiency and Conservation Plan

Residential Efficiency and Conservation Programs

1. PECO's plan should provide for a statewide whole home performance program [DEP, pp. 11-12] [TRF, p. 15].
2. PECO's plan should provide additional outreach and program measures targeted to Residential Heating customers [Cohen, p. 10-16] [TURN, p. 7].
3. PECO's plan should not support fuel-switching [DEP, pp. 8-9]. PECO should carefully evaluate its fuel switching incentives [OCA, p. 18].
4. PECO's plan should provide incentives for HVAC diagnostic testing [Field Diagnostic Testing, pp. 7-11].
5. PECO's plan should include guidelines for HVAC tune-ups [Field Diagnostic Testing, pp. 11-13].
6. PECO's plan should include incentives for residential HVAC [Field Diagnostic Testing, pp. 13-14].

Low Income Efficiency and Conservation Programs

7. Only energy savings from customers at or below 150% of FPIG should be counted to determine if PECO satisfied its low income goal [ACORN, pp. 13-15] [TRF, pp. 10-11].
8. PECO should not be allowed to transfer funding out of the low income program [Cohen, pp. 9-10].

9. PECO should collect information about commercial customers who operate public and subsidized housing [TURN, p. 10].

Commercial Efficiency and Conservation Programs

No recommendations.

Government / Education / Nonprofit Efficiency and Conservation Programs

10. PECO should provide electricity use data on a timely electronic basis for all customers [City, p. 16]
11. The PECO eValuator should be available at no charge for all HT customers [City, p. 16]
12. PECO's government/education/nonprofit program should provide a whole-building conservation program rather than piecemeal rebates [DEP, pp. 6-7].
13. Government/education/nonprofits should be considered a separate class for rate recovery purposes [OSBA, pp. 13-14].
14. Municipal lighting should not be a distinct and separate rate class [City, pp. 17-20].
15. The costs of the municipal lighting should be in the variable energy charge, not the fixed distribution costs [City, p. 19].

Industrial Efficiency and Conservation Programs

No recommendations.

Demand Response Programs

16. PECO's demand response plan should not promote the use of emergency or back-up generators [DEP, pp. 9-11].
17. PECO should carefully evaluate its conservation voltage reduction program [OCA, pp. 16-18].
18. PECO's plan for load curtailment should continue past May 31, 2013 [EnerNOC, pp.5-6].
19. PECO's DR Aggregator Contracts program should use a 50-hour target for CSP demand reduction contracts rather than 100 hours [EnerNOC, pp. 9-10].

Other Elements

20. PECO's plan should include a financing program per Chairman Cawley's and Commissioner Gardner's Joint Statement [TRF, pp. 11-14].

Implementation Issues

21. PECO's plan should contain a clearly-define stakeholder involvement process [TRF, pp. 16-18] [DEP, p. 13] [OCA, pp. 23-24] [City, p. 21].
22. Energy savings from measures funded by ARRA or Act 1 funding should not count towards PECO's goals under Act 129 [DEP, pp. 13-15].
23. PECO should not be able to eliminate any program in the plan without Commission approval [DEP, p. 14].
24. PECO should not be able to make intra-class budget shifts of more than 10% of that class's total program budget without Commission approval [DEP, p. 14].

25. PECO should not be able to make any inter-class budget shifts without Commission approval [DEP, p. 14].
26. PECO must obtain stakeholder group consent before making any program budget changes [PAIEUG, pp. 17-21].
27. PECO's reporting on program implementation should provide information about the geographical distribution of participating customers [City, p, 22].
28. In its annual reconciliation filings, PECO should justify the magnitude of the program subsidies and the reasonableness of these subsidies should be reviewed in the annual reconciliation proceeding [OSBA, pp. 11-13].

Program Budgets

29. The cost cap for all five program years should be 2% of 2006 annual revenues [PAIEUG, pp. 12-14].

Cost Recovery Issues

30. PECO's proposed levelized cost recovery rate must be amended to provide for interest must be applied on any over/under collections of plan costs and interest costs should be excluded from EE&C plan costs and are not recoverable in any future proceeding [OTS, pp. 10-19].
31. The common costs in the plan should be allocated based on program costs, not on an equal basis [OTS, pp. 9-10].

32. The EE&C surcharge should be a separate line item on the customer's bill [PAIEUG, pp. 14-16] [OSBA, pp. 14-15].
33. For large C&I customers, PECO should use the PJM Peak Load Contribution factor, rather than monthly billing demand, to compute the EE&C surcharge [PAIEUG, p. 16].
34. Capital assets funded with EE&C revenues, as well as depreciation expenses and equity return, should be excluded from a base rate claim [OTS, pp. 21-22].