**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held December 17, 2009

Commissioners Present:

James H. Cawley, Chairman

Tyrone J. Christy, Vice Chairman

Kim Pizzingrilli

Wayne E. Gardner

Robert F. Powelson

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| 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 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

# I. Introduction

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration of the Office of Small Business Advocate (OSBA) of the Commission’s Opinion and Order of October 28, 2009 (*October 28, 2009 Order*), which adopted, in part, and rejected, in part, the Energy Efficiency and Conservation Plan (EE&C Plan, or Plan), filed by PECO Energy Company (PECO) on July 1, 2009.

# II. Background and Procedural History[[1]](#footnote-1)

Governor Edward G. Rendell signed Act 129 of 2008 (Act or Act 129) into law on October 15, 2008. The Act took effect thirty days thereafter on November 14, 2008. Among other things, the Act amended the Public Utility Code (Code), 66 Pa. C.S. §§ 101 *et seq*., to require the Commission to develop and adopt an Energy Efficiency and Conservation (EE&C) Program by January 15, 2009.

By Opinion and Order entered January 16, 2009, at Docket No. M-2008-2069887 (*Implementation Order*), the Commission (1) established the standards that Electric Distribution Utility (EDC) EE&C Plans must meet, and (2) provided guidance on the procedures to be followed for submittal, review and approval of all aspects of EDC EE&C Plans.

PECO filed its EE&C Plan on July 1, 2009. Numerous parties intervened prior to or at the prehearing conference, including the OSBA. The Plan was referred to Administrative Law Judge (ALJ) Marlane R. Chestnut, and on September 14, 2009, the ALJ certified the record to the Commission for consideration and disposition.

By our *October 28, 2009 Order*, the Commission adopted in part, and rejected in part, subject to modifications, PECO’s EE&C Plan.

On November 12, 2009, the OSBA filed a Petition for Reconsideration (Petition) of the Commission’s *October 28, 2009 Order*. No Answers to the Petition were filed.

By Opinion and Order entered November 19, 2009, the Commission granted the Petition pending review of, and consideration on, the merits.

# III. Discussion

The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 *et al.*, 56 Pa. P.U.C. 553, 559, (1982). Under the standards set forth in *Duick*, a Petition for Reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations that appear to have been overlooked or not addressed by the Commission. *Duick* at 559. It has also been held that, because a grant of relief on such petitions may result in the disturbance of final orders, it should be granted judiciously and only under appropriate circumstances. *West Penn Power v. Pennsylvania Public Utility Commission*, 659 A.2d 1055 (Pa. Cmwlth. 1995), *petition for allowance of appeal denied*, No. 576 W.D., Allocatur Docket (April 9, 1996); *City of Pittsburgh v. PennDOT*, 490 Pa. 264, 416 A.2d 461 (1980).

We note that any issue, which we do not specifically address herein, has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); also *see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In its Petition, OSBA requests that PECO be required to file a red-lined version of its revised EE&C Plan that PECO will submit in response to our *October 28, 2009 Order*. OSBA points outs out that PECO’s revised EE&C Plan is due on December 28, 2009. If PECO files its revised Plan on December 28, 2009, the Parties’ Comments will be due on January 7, 2009, and Reply Comments will be due on January 18, 2010. OSBA submits that requiring the Parties to review the revised EE&C Plans in multiple proceedings over the holidays is not conducive to the close scrutiny warranted for such complex cases. OSBA argues that a red-lined version would facilitate meaningful review within a tight time frame. Petition at 4-5.

The OSBA also submits that the Commission regulations governing compliance filing in a rate proceeding at 52 Pa. Code §5.592(a) states that “[a] utility may also be required to provide an electronic, red-lined copy of any filing made to assist the parties in promptly indentifying and analyzing the filing.” OSBA avers while the revised EE&C Plan may not be a compliance filing in a rate proceeding as contemplated in Section 5.592(a), it is at least analogous to one. *Id*. at 5.

Although we agree with the OSBA that issue of requiring a red-lined version of the revised EE&C Plan is relevant to the filing schedule in this proceeding, we question whether this issue is in strict accord with the *Duick* standard. Nonetheless, we will consider the OSBA’s request in this Opinion and Order consistent with our authority under Section 703(g) of the Code, 66 Pa. C.S. § 703(g), relative to rescission and amendment of orders.

**IV. Disposition**

We will grant OSBA’s request and require that PECO file with the Commission and all Parties a red-lined version that reflect all modifications made in its revised EE&C Plan. Upon due consideration of (1) the breadth and complexity of PECO’s EE&C Plan, (2) the number of changes directed by our *October 28, 2009 Order*, (3) the fact that the Commission and many of the Parties may be reviewing multiple EE&C plans concurrently, (4) the ten-day filing deadlines for Comments and Reply Comments established in our *October 28, 2009 Order* and (5) the Commission’s time constraints for EE&C Plan review set forth in 66 Pa. C.S. § 2806.1(e)(2)(ii); we find that the clear identification of all Plan changes is essential to the effective and efficient review of PECO’s revised Plan.

# V. Conclusion

For the reasons set forth above, we will grant the Petition for Reconsideration of the Office of Small Business Advocate; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reconsideration of the Office of Small Business Advocate of the Opinion and Order of October 28, 2009, which approved in part, and denied in part, the Energy Efficiency and Conservation Plan of PECO Energy Company, is granted.

2. That the requirements of the Opinion and Order of October 28, 2009 are amended to require that PECO Energy Company shall submit to the Commission and Parties to this proceeding a red-lined version of its Energy Conservation and Efficiency Plan that reflects all of the modifications to its Plan.

3. That a copy of this Opinion and Order be served on the Parties to this proceeding.



**BY THE COMMISSION,**

James J. McNulty

Secretary

(SEAL)

ORDER ADOPTED: December 17, 2009

ORDER ENTERED: **December 23, 2009**

1. A more complete background and history of this proceeding is presented in our *October 28, 2009 Order* at 1-11. [↑](#footnote-ref-1)