**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held February 11, 2010

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 |  M-2009-2093215  |
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**OPINION AND ORDER**

**BY THE COMMISSION:**

# I. Introduction

In *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 (Order entered October 28, 2009) (*October 2009 Order*), the Pennsylvania Public Utility Commission (Commission) approved in part and rejected in part the Energy Efficiency and Conservation Plan (Plan) filed by PECO Energy Company (PECO or Company) pursuant to Act 129 of 2008 (Act 129). The Commission required the Companies to submit a Revised Plan within sixty days. Now before the Commission for consideration and disposition is the modified Energy Efficiency and Conservation Plan (Revised Plan) filed by PECO on December 23, 2009. For the reasons set forth herein, we will approve the Revised Plan.

# II. Procedural History

A detailed history of this proceeding, together with that of our various other Act 129 proceedings, was set forth in the *October 2009 Order* at 6-11. Consequently, this section summarizes the procedural history pertinent to the Revised Plan.

PECO filed itsPetition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program on July 1, 2009 (Petition).

Parties to this Proceeding are: the Office of Consumer Advocate (OCA); Office of Trial Staff (OTS); Office of Small Business Advocate (OSBA); Pennsylvania Department of Environmental Protection (DEP); the Philadelphia Area Industrial Energy Users Group (PAIEUG); The Reinvestment Fund; Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN); Pennsylvania Association of Community Organizations for Reform Now (ACORN); Citizens for Pennsylvania’s Future, Joy Bergey, Christine Knapp, and Henry Rowan (collectively, PennFuture *et al);* the City of Philadelphia; Field Diagnostics Services, Inc.; Direct Energy Business, LLC (Direct Energy); Pennsylvania Representative Mark Cohen; EnerNOC, Inc (EnerNOC); and Constellation NewEnergy, Inc Constellation).

By our *October 2009 Order*, we approved in part, and rejected, in part PECO’s Plan. The *October 2009 Order, inter alia,* directed PECO to file a revised Plan within sixty days.

On November 12, 2009, the OSBAfiled a Petition for Reconsideration (OSBA Petition) of the *October 2009 Order* requesting thatPECObe required to file a red-lined copy of its Revised Plan. No Answers to the OSBA Petition were filed.

By Opinion and Order entered November 19, 2009, the Commission granted reconsideration pending review of, and consideration on, the merits. By Opinion and Order entered on December 23, 2009, we granted the OSBA Petition and amended our *October 2009 Order* to require PECO to file a red-lined version of its Revised Plan.

On December 21, 2009, PECO filed Supplement No. 99 to Tariff Electric- Pa. P.U.C. No. 3 (Supplement 99) to become effective January 1, 2010. In the transmittal letter to Supplement 99, PECO avers that these tariff changes are in compliance with our *October 2009 Order*. On January 6, 2010, the Commission Secretary issued a letter approving Supplement 99.

On December 23, 2009, PECO filed the Revised Plan submitted as Volume 1. Accompanying the Revised Plan was a blacklined version of the Revised Plan submitted as Volume II and supporting data and Supplement 99 submitted as Volume III. The blacklined version purports to show the changes to the initial Plan as filed on July 1, 2009.

On December 24, 2009, the Commission issued a Secretarial Letter directing that the Comments on the Revised Plan would be considered timely if filed on or before January 8, 2010. Reply Comments would be considered timely if filed on or before January 19, 2010.

Comments on the Revised Plan were filed by the OCA on January 8, 2010. PECO filed Reply Comments on January 19, 2010.

# III. Description of the Revised Plan

The Plan was described in detail in the *October 2009 Order*. As a result, the Plan will not be described in detail here.

PECO proposes to make numerous changes in response to the *October 2009 Order* and one set of changes to its municipal street lighting programs not directed by our *October 2009* *Order*. Below is a brief summary of the changes made in the Revised Plan. Each of these changes is addressed more fully in the Discussion Section, *infra*.

* The proposed procedure for mid-course corrections has been deleted and the Plan has been changed to reflect that all Plan modifications require Commission approval.
* The Renewable Resources program has been deleted.
* The costs for the Statewide Evaluator have been removed from the Plan’s budget and are included separately in the Energy Efficiency and Conservation Program Charge (EEPC).
* PECO has reallocated funds from the Renewable Resource Program and Statewide Evaluator to the residential Home Energy Incentives Program, the Commercial/Industrial Equipment Incentive Program and the Government/Public/Non-Profit Facility Energy Savings Program.
* Two contracts with Conservation Service Providers have been removed from the Plan.
* A portion of the costs for the Residential and Commercial and Industrial (C&I) Super Peak Time of Use Rate programs have been removed from the Plan and EEPC. The other portion of the costs and savings of the Super Peak TOU programs have been allocated to the Residential and C& I Direct Load Control programs.
* The Plan was revised to make EEPC a separate line item on C&I customer bills.
* Common costs have been reallocated to the individual programs based on each program’s projected costs, net of common costs.
* The proposed budgets for the municipal lighting and street lighting programs have been reduced by $3.4 million.

# IV. Discussion

In Commission proceedings, the proponent of a rule or order bears the burden of proof. 66 Pa. C.S. § 332(a). To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

We note that any issue that 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 Corporation v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) see also, generally, [University of Pennsyl­vania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

## A. Act 129 Conservation and Demand Reduction Requirements

In our *October 2009 Order*, we found that the projected energy savings and peak demand reductions in PECO’s Plan met the 2011 and 2013 targets set forth in E*nergy Consumption and Peak Demand Reduction Targets,* Docket No. M-2008-2069887 (Order entered March 30, 2009) (*Reduction Target Order*). *October 2009 Order* at 20-27. Nevertheless, as PECO removed and revised some of its Plan measures, the Revised Plan contains updated projected energy savings and peak demand reductions.

### 1. Overall Conservation Requirements

In *Energy Efficiency and Conservation Program*, Docket No. M‑2008‑2069887 (Order entered January 16, 2009) (*Implementation Order)*, at 8, we noted that both the 1% consumption reduction, to be met by May 31, 2011, and the 3% consumption reduction, to be met by May 31, 2013, are to be measured against the electric distribution company’s (EDC’s) expected consumption as forecasted by the Commission for the period June 1, 2009, through May 31, 2010. 66 Pa. C.S. § 2806.1(c)(1). Each EDC that was required to file an EE&C plan was required to file its consumption forecast for the period June 1, 2009, through May 31, 2010, by February 9, 2009.

In the *Reduction Target Order*, the Commission approved PECO’s forecast of 39,386,000 MWh, its proposed 1% reduction of 393,860 MWh as of May 31, 2011, and its proposed 3% reduction of 1,181,580 MWh as of May 31, 2013. *Reduction Target Order* at 3.

The Plan must include specific proposals to achieve or exceed these required reductions in consumption. 66 Pa. C.S. § 2806.1(b)(1)(i)(A) . The Commission is required to analyze how the program and individual plans will enable the EDC to meet or exceed the required reductions in consumption. 66 Pa. C.S. § 2806.1(a)(4). The Commission is also required to develop procedures to ensure compliance with these requirements. 66 Pa. C.S. § 2806.1(a)(9).

#### 2011 Requirements

The Revised Plan proposes a total energy savings of 564,116 MWh by the end of Program Year 2010 (May 31, 2011), which is 148% of the required energy savings. Revised Plan, Volume 1 at 5. No parties commented on the 2011 total energy savings projections presented in the Revised Plan. We find that the recalculated figures contained in the Revised Plan project total energy savings that will meet or exceed the 2011 targets set forth in the *Reduction Target Order.*

#### 2013 Requirements

The Revised Plan proposes a total energy savings of 1,275,350 MWh, by the end of Program Year 2012 (May 31, 2013) which is 108% of the required energy savings. Revised Plan, Volume 1 at 5. No Parties commented on the 2013 total energy savings projections presented in the Revised Plan. We find that the recalculated figures contained in the Revised Plans project total energy savings that will meet or exceed the 2013 targets set forth in the *Reduction Target Order.*

### 2. Overall Demand Reduction Requirements

The *Implementation Order*, at 9, noted that the 4.5% reduction in peak demand, to be met by May 31, 2013, is to be measured against the EDC’s historical peak load for the period June 1, 2007, through May 31, 2008. 66 Pa. C.S. § 2806.1(d). To be in compliance with this directive, each EDC must demonstrate that its Plan produces demand savings during the 100 hours of highest demand for the period June 1, 2012, through September 30, 2012, equal to at least 4.5% of the average of the 100 highest peak hours during the period from June 1, 2007, to September 30, 2007*. Implementation Order* at 29; s*ee also, Energy Efficiency and Conservation Program*, Docket No. M‑2008-2069887 (Order entered June 2, 2009) (*Reconsideration Order)*, at 4-8.

Each EDC that was required to file an EE&C plan was required to file by February 9, 2009, certain peak load data for the period June 1, 2007, through May 31, 2008. In the *Reduction Target Order*, the Commission approved PECO’s calculations of an average historical peak loads for the top 100 hours as 7,899 MW and its proposed 4.5% reductions of 355 MW as of May 31, 2013. *Reduction Target Order* at 5*.*

The plans must include specific proposals to meet or exceed this required reduction in consumption. 66 Pa. C.S. § 2806.1(b)(1)(i)(A) . The Commission is required to analyze how the program and individual plans will enable the EDC to meet or exceed the required reduction in consumption. 66 Pa. C.S. § 2806.1(a)(4). The Commission is also required to develop procedures to ensure compliance with this requirement. 66 Pa. C.S. § 2806.1(a)(9).

The Revised Plan projects a peak demand savings of 498.9 MW by May 31, 2013, which is 141% of the required demand reduction. Revised Plan, Volume 1 at 5. No Parties filed comments on the Companies’ peak demand reduction projections presented in the Revised Plan. We find that the recalculated figures contained in the Revised Plans project a total peak demand reduction that will meet or exceed the 2013 targets set forth in the *Reduction Target Order.*

### 3. Requirements for a Variety of Programs Equally Distributed

The Commission’s EE&C Program must include “standards to ensure that each plan includes a variety of energy efficiency and conservation measures and will provide the measures equitably to all classes of customers.” 66 Pa. C.S. § 2806.1(a)(5). Each EDC is required to demonstrate that its plan “provides a diverse cross section of alternatives for customers of all rate classes.” 66 Pa. C.S. § 2806.1(b)(1)(i)(I).

The Revised Plan proposes eighteen programs to serve the needs of residential, low-income residential, commercial, industrial and government/non-profit customers. The Revised Plan results in the following distribution of program costs through the first four program years:

|  |  |
| --- | --- |
| **Customer Class** | **Percent of Total Budget through PY 2012** |
| Residential | 37% |
| Residential Low Income | 8% |
| Commercial & Industrial | 41% |
| Government/Non-Profit | 13% |
| Common to All Classes | 1% |
| **Total** | **100%** |

Revised Plan, Volume III, Appendix D, Table 5.

In our *October 2009 Order*, we considered the projected revenues, EE&C Plan costs, energy consumption and energy savings for the customer classes as well as the Plan’s budgetary constraints and the need for the Plan to pass the TRC criteria and concluded that PECO has proposed a balanced and reasonable portfolio of programs among the customer classes. *October 2009 Order* at 33. The Revised Plan has not significantly altered the balance of programs among the customer classes. In addition, no comments were made regarding the effect that changes made in the Revised Plan may have on the distribution of costs and benefits among the customer classes. Accordingly, we find that the Revised Plan meets the requirements of 66 Pa. C.S. § 2806.1(a)(5) and 66 Pa. C.S.§ 2806.1(b)(1)(i)(I).

### 4. Ten Percent Government/Non-Profit Requirement

The Act requires that “a minimum of 10% of the required reductions in consumption . . . 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 energy savings projected for the government/non-profit sector under the Revised Plan represent 17.9% of the overall target energy savings for Program Year 2010 (PY2010) and 16.2% of the PY2012 overall target. Similarly, the projected demand reduction for this sector under the Revised Plan for PY2012 is 12.2% of the overall target. Revised Plan, Volume III, Appendix D, Table 2. Therefore, the proposed savings from the Government/Non-Profit programs exceed the 10% requirements of 66 Pa. C.S. § 2806.1(b)(1)(i)(B).

### 5. Low-Income Program Requirements

Act 129 provides:

The plan shall include specific energy efficiency measures for households at or below 150% of the federal poverty income guidelines. The number of measures shall be proportionate to those households’ share of the total energy usage in the service territory. The electric distribution company shall coordinate measures under this clause with other programs administered by the commission or another federal or state agency. The expenditures of an electric distribution company under this clause shall be in addition to expenditures made under Pa. Code Ch. 58 (relating to residential low income usage reduction programs).

66 Pa. C.S. § 2806.1(b)(1)(i)(G).

PECO’s Plan includes a Low-Income Energy Efficiency Program. PECO explains that this program is modeled after PECO’s existing Low-Income Usage Reduction Program and will provide low-income customers with a variety of energy savings measures, including home energy audits and installation of energy efficiency measures at no charge. While PECO’s Low-Income Energy Efficiency Program targets customers with household incomes at or below 150% of the Federal Poverty Income Guidelines (FPIG), PECO will also market the program to customers with incomes up to 200% FPIG so that those customers can also utilize benefits available under the American Recovery Resource Act. PECO St. No. 1 at 21. PECO anticipates spending 8.4% of its Act 129 funds or $27.6 million on the Low-Income Energy Efficiency Program, with resultant savings of 79,660 MWh which is equivalent to 6.2% of the energy savings outlined in the Revised Plan. Revised Plan, Volume 1 at 5. In addition to the Low-Income Energy Efficiency Program, low-income customers are also eligible for additional measures under PECO’s Home Energy Incentives Program. PECO MB at 28‑29.

The information presented in our investigations of PECO’s Plan and the EE&C Plans filed by the other EDCs did not yield sufficient information to determine compliance with 66 Pa. C.S. § 2806.1(b)(1)(i)(G). To ensure that we are using reasonably accurate data and that PECO and the other EDCs will be able to meet the requirement for low-income customers, the Commission convened a working group that is charged with developing implementation standards for deploying proportional energy efficiency and conservation measures to low-income customers. The working group is to be composed of representatives from EDCs, consumer advocates, community-based organizations and other interested parties. Specifically, the working group is charged with identifying the standardized data to be used to determine the proper proportion for low-income households. If necessary, the working group may address other matters that require clarification before the annual reconciliation process. The group is to provide its recommendations to the Commission no later than February 16, 2010. *October 2009 Order* at 37-41 and Ordering Paragraphs Nos. 5 – 7 at 97-98. We note that the first meeting of the Working Group was held on January 6, 2010, and various stakeholders, including representatives of the EDCs, participated in the meeting.

### 6. Issues Related to Individual Conservation and Demand Reduction Programs

#### Deletion of Renewable Resource Program

In its Plan, PECO proposed a renewable resources program to increase the number of homes and commercial buildings using renewable resources to offset some or all of their electric use or gas use for hot water heating. The program would have educated customers about available financial incentives for solar photovoltaic and solar hot water systems and provide rebates for installing such measures. Petition at 9-10. PECO had budgeted a total of $5.1 million for this program over the four years covered in the Plan. Plan Volume 2 at 143.

In our review of the Plan, we noted that PECO’s TRC Test analysis of this program measure yielded a benefit/cost ratio of only 0.20:1. PECO St. 2 at 23. While we want to foster the development of alternate energy sources, we found that the ratio of the benefits to costs for this program indicated that this may not be an effective use of ratepayer funds. Accordingly, we directed PECO to delete this program from its Plan. We also encouraged PECO to develop and resubmit another renewable resources program that yields a higher benefit/cost ratio. *October 2009 Order* at 51.

In response to the *October 2009 Order*, PECO deleted the Renewable Resources program entirely from its Plan. In Attachment A to the December 23, 2009 Letter transmitting the Revised Plan (Attachment A), PECO explains “it was not able at this time to develop a Renewable Resources program with a higher BCR” (benefit/cost ratio). PECO states that it has reallocated the funds initially budgeted for the Renewal Resource Program to the Residential Home Energy Incentives Program, the Commercial/Industrial Equipment Incentives Program, and the Government/Public/Non-Profit Facility Energy Savings Program. PECO avers that this reallocation was made to increase participation in these programs to better meet or exceed the Plan’s savings reduction goals. PECO also notes that these reallocated funds are available to all customer classes. Attachment A at 1.

We will accept PECO’s proposal to delete the Renewable Resource Program and reallocate those funds to the three other programs, subject to our ongoing review of the performance of these programs. We continue to urge PECO to develop another renewable resource program that will result in a higher benefit/cost ratio than the program proposed in the initial Plan.

#### Reduction of Municipal Lighting Programs

In Section 3.2.9 of its Plan, PECO proposed to provide incentives to encourage municipalities to retrofit incandescent and mercury vapor street lights with high pressure sodium, metal halide or emerging energy efficient technologies. In this section, PECO also proposed to provide incentives for retrofitting incandescent traffic signals with LED and a variety of prescriptive measures which include lighting, HVAC, motors and controls.

In its Revised Plan, PECO proposes to reduce the targeted number of street lights from 51,792 to 2,590, reduce the target number of traffic signals from 84,704 to 76,234 and increase the number of prescriptive measures from 91,839 to 99,799. Revised Plan, Volume 1 at 138. PECO explains that these changes will result in a $3.4 million reduction in the proposed spending level for municipal lighting ($2.7 million street lighting and $0.7 million traffic signals). PECO avers that these changes are being proposed “in light of the significantly higher bill increase for street lighting customers under the original Plan in comparison to other classes as recognized by the Commission.” Attachment A at 2. PECO submits that should the demand for these programs require increased incentives, PECO will submit Plan modifications for Commission approval. *Id.*

There were no Comments filed on this proposed Plan amendment.

We note that the change in the municipal lighting programs and other Plan modifications have contributed to a net decrease in the EE&C costs included in municipal lighting rates from $0.0156 per kWh to $0.0093 per kWh. PECO Exh. RAS-3 and Revised Plan, Volume III, Exh. RAS-3. Among the many other factors to consider in determining the prudence of the proposed change in the municipal lighting programs, there has been a slight improvement in the overall four-year cost/benefit ratio for the Government/Public/Nonprofit program measures from 1.66 to 1.67. PECO Revised Plan, Volume 1 at 5. While the total program expenditures allocated to the Government/Non Profit customer class has decreased, it has not had a significant impact on the overall portion of total program funds allocated to this class. The portion of the Plan budget allocated to this class remains at 13%. Revised Plan, Volume III, Appendix D, Table 5. Since PECO states that if the demand for these programs requires increased incentives, it will submit Plan modifications, we will adopt the proposed changes to the Municipal Lighting programs.

## B. Cost Issues

### 1**. Plan Cost Issues**

Each EE&C plan must include an analysis of the EDC’s administrative costs, 66 Pa. C.S. § 2806.1(b)(1)(i)(K), as well as an estimate of the total cost of implementing the measures in the plan. 66 Pa. C.S. § 2806.1(b)(1)(i)(F). The total cost of the plan cannot exceed 2% of the EDC’s total annual revenue as of December 31, 2006. 66 Pa. C.S. § 2806.1(g).

PECO’s 2006 annual retail revenue was $4,273,858,275. Applying the 2% annual limit of that annual revenue is $85,477,166. Revised Plan, Volume 1 at 209. As addressed in the *October 2009 Order*, the total costs of any four-year plan cannot exceed the aggregate of any four annual 2% limit amounts. *October 2009 Order* at 69. Consequently, the budget limit on the four-year Plan is $341,908,662. The four-year budget submitted in the Revised Plan is $328,622,066 which is below the four-year limit. Revised Plan, Volume III, Exh. RAS-3.

#### Removal of Statewide Evaluator Costs

As more fully explained in our *October 2009 Order***,** the Commission retained the services of a statewide evaluator who will monitor and verify EDC data collection, quality assurance processes and performance measures, by customer class as required by Section 2806.1(a)(2) and (3). 66 Pa. C.S. § 2806.1(a)(2) and (3). Section 2806.1(h) of Act 129 states that the Commission shall recover from the EDCs its costs of implementing the overall EE&C Program. 66 Pa. C.S. §2806.1(h). The cost of the statewide evaluator falls into this category. *October 2009 Order* at 70.

PECO initially included $2.5 million for the statewide evaluator in its administrative costs under the 2% cap. Plan Volume II at 196. Plan Volume III, Appendix E-1.

Also as more fully explained in our *October 2009 Order*, we concluded that the expense related to the statewide evaluator is not a cost component of the EDCs’ individual plans. Rather, it is a cost component of the overall Program instituted by the Commission. Accordingly, we found that PECO’s recovery for its respective share of the statewide evaluator cost should not be subject to the 2% spending cap of its Plan. Therefore, we directed PECO to submit a revised cost allocation plan that does not include the statewide evaluator expenses. *October 2009 Order* at 72.

In its Revised Plan, PECO has removed the $2.5 million statewide evaluator costs from the common costs allocated across all programs. Similar to the costs of the Renewable Resource program, discussed *supra*, the funds budgeted for the costs of the statewide evaluator under the 2% cap were reallocated to the Residential Home Energy Incentives Program, the Commercial/Industrial Equipment Incentives Program, and the Government/Public/Non-Profit Facility Energy Savings Program.

We find that the removal of the statewide evaluator expense from the Plan budget to be in compliance with our *October 2009 Order*. Further, the reallocation of those funds to programs serving all three customer classes should enhance the energy consumption and peak load reductions realized by the Revised Plan.

#### Removal of Super Peak Time of Use Program Costs

In its Plan, PECO proposed two Super Peak Time of Use (TOU) programs to provide residential, and small and medium commercial and industrial (C&I) customers with an incentive to reduce peak demand when PECO experiences super peak demand on its system. Customer enrollment will not begin until after PECO’s rate caps expire at the end of 2010. These programs will be considered part of PECO’s Default Service Plan and program participants must be served by PECO. Consequently, customers that receive service under another generation supplier will not be eligible to participate in these rate programs. Plan Volume II at 153-158 and 165-170. PECO estimated that the costs associated with this program would be about $8.8 million for the residential program and $10.1 million for the C&I program. PECO St. 2 at 21.

As part of our discussion of EE&C Plan cost recovery in our *Implementation Order* we stated:

When the EE&C plans to be offered by EDCs will benefit both shopping and non-shopping customers, the cost recovery mechanism shall be non-bypassable, and structured such that it will not affect the EDC’s price‑to‑compare.

*Implementation Order* at 38. We further clarified the cost recovery from non-shopping customers by stating:

However, it may not be appropriate to subsidize or assign costs for various utility‑offered curtailment or pricing programs across all customers if any such subsidies or incentives are not offered to competitive providers of service, or are used exclusively for or to support utility curtailment or generation supply programs. An EDC may not recover costs under its EE&C plan cost recovery mechanism for any costs which it recovers through its default service program.

*Id.*

While we did not question the inclusion of these programs in PECO’s EE&C Plan, we believed it may be inappropriate to include the costs of these programs in PECO’s EE&C Plan budget and EEPC surcharge for all customers when shopping customers (customers of competitive suppliers) will not be able to participate in the program. Unless PECO could provide an explanation of why it should be permitted to deviate from our policy reflected *supra*, we directed PECO to remove the costs associated with the two Super Peak TOU Rate programs from the budgeted Plan costs to be recovered through the EEPC. We reserved our approval of cost allocation issues for future proceedings when the TOU rates, costs and rate designs are finalized. In the interim, we directed PECO to track all costs associated with this rate program. *October 2009 Order* at 73.

In response to the *October 2009 Order*, PECO removed the costs of the Residential and C&I Super Peak TOU rates in the Revised Plan and the EEPC surcharge. PECO states that the costs and savings impacts associated with the Direct Load Control (DLC) components of these TOU rate programs have been reallocated to the Residential and C&I DLC programs. PECO avers that the DLC programs are available to all PECO distribution customers. PECO explains that the costs associated with the participants remaining in the Residential and C&I Super Peak TOU programs will be recovered through the Generation Supply Adjustment. Attachment A at 1.

In its Comments, the OCA avers “that any costs of, or resulting from, the TOU program – no matter if recovered in the EE&C Surcharge or via another mechanism – must fall within the two percent (2%) cap.” The OCA argues that failure to limit these costs would allow the Company to circumvent the specific directives of Act 129. The OCA requests that the Commission specifically include this limitation when disposing of the Revised Plan. OCA Comments at 2.

In its Reply Comments, PECO concurs that its EE&C TOU program costs should fall under the 2% cap. PECO states that it is also required to offer TOU rates in the future under the Act 129 smart meter provisions and it may also introduce “other dynamic pricing programs” as part of its Smart Meter Technology Procurement and Installation Plan. PECO argues that these “different” programs should not be limited by the 2% cost limit of its EE&C Plan. PECO Reply Comments at 2.

We concur with PECO that the costs of implementing smart metering technology and associated rates are not required to be included in the EE&C Plan budget and be subject to the 2% cap. The limitation of costs for EDC EE&C Plans is established under 66 Pa. C.S. §2806.1(g) which states that, “The total costs of any plan required under *this section* shall not exceed 2% of the electric distribution company’s total annual revenue as of December 31, 2006.” (emphasis added). PECO and other EDCs are required to install smart meter technology and implement TOU rates pursuant to 66 Pa. C.S. § 2807(f). The cost limitation set forth in 66 Pa. C.S. §2806.1(g) only applies to EDC EE&C Plans required by 66 Pa. C.S. §2806.1. The smart meter technology and TOU rates required by 66 Pa. C.S. § 2807(f) are being implemented in response to a different section of the Public Utility Code, and therefore, are not subject to the 2% cap. These costs, and the recovery of these costs, are subject to separate Commission investigations. Accordingly we will adopt PECO’s proposal to remove the costs of the Residential and C&I Super Peak TOU rate programs from the Revised Plan budget, as directed by our *October 2009 Order*. We also approve the reallocation of a portion of those costs removed from the TOU rate programs to the DLC programs because they are available to all distribution customers.

### 2. Cost Effectiveness/Cost-Benefit Issues

Each EDC must demonstrate that the plan is cost effective using a Total Resource Cost (TRC) Test approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(I). In addition, the Commission’s EE&C Program must include an analysis of the cost and benefit of each plan, in accordance with a TRC Test approved by the Commission. 66 Pa. C.S. § 2806.1(a)(3). The Act defines a “total resource cost test” as “[a] standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary costs of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures. 66 Pa. C.S. § 2806.1(m).

In our *TRC Test Order*, the Commission addressed the nature of the TRC Test to be used to analyze the cost-effectiveness of EDC EE&C Plans. The *TRC Test Order* alsoclarified that an EDC’s EE&C Plan would pass the TRC Test if all of the programs of a Plan, in total, pass the TRC Test (e.g. have a benefit-cost ratio greater than one). *TRC Test Order* at 8.

As discussed, *supra*, PECO removed and revised some of its Plan measures and the projected energy savings, peak demand reductions and program costs have been modified in the Revised Plan. As a result, the overall benefit-cost ratio for all of the program measures combined has improved from 1.76:1 in the initial Plan to 1.81:1 in the Revised Plan. Revised Plan, Volume 1 at 5. Since the overall projected benefit/cost ratio exceeds one, the Revised Plan meets the cost effective requirement of 66 Pa. C.S. § 2806.1(b)(1)(i)(I).

#### Discrepancy in TRC Analysis

In our *TRC Test Order*, the Commission addressed the nature of the TRC Test to be used to analyze the cost-effectiveness of EDC EE&C Plans. In the Amended Filing and accompanying testimony dated July 31, 2009, PECO addressed the major differences between its methodology for calculating the benefits of its EE&C program and that laid out in the Commission’s *TRC Test Order*. The only remaining discrepancy was that PECO used a slightly altered methodology for calculating avoided costs in the third five-year period. PECO used the Energy Information Agency’s (EIA) Annual Energy Outlook (AEO) natural gas prices and converted this to an electric price rather than using AEO forecasts for PJM prices. PECO St. No. 4-S at 3-6. Since the effects of this difference were *de minimis* and did not compromise the analysis of the Plan’s cost-effectiveness, we accepted PECO’s TRC Test analysis as amended. However, for future TRC submissions to the Commission, PECO was directed to comply with the *TRC Test Order* or subsequent modifications to the *TRC Test Order* adopted by the Commission. *October 2009 Order* at 74-75.

In its Revised Plan, PECO has not amended the description of its methodology for the third five-year period as directed in the *October 2009 Order*. Since PECO has not yet forecasted any benefits that far into the future and since the effects of the change would be *de minimis* at this juncture, we will not require PECO to amend its Revised Plan at this time. However, we direct PECO to make this amendment to its methodology prior to PECO’s next TRC submission that is part of its annual reporting or a Plan amendment filed with the Commission.

### 3. Cost Allocation Issues

With regard to cost allocation, the Commission is required to “ensure that measures approved are financed by the same customer class that will receive the direct energy and conservation benefits.” 66 Pa. C.S. § 2806.1(a)(11).

#### Allocation of Common Costs

With the exception of certain education and on-line audit costs allocated to residential programs, PECO’s initial Plan allocated the remaining $11.1 million of projected “Common Costs” evenly across the eighteen Plan components. Plan Volume III, Appendix D-7, Table 6-B.

PECO’s initial proposed budget revealed that there was a wide variation in the proposed expenditures from $3.1 million for the Residential New Construction Program to $61.7 million for the Commercial/Industrial Equipment Incentives Program. Petition at 13. Considering this wide variation in program costs, we believed that a more equitable distribution of common costs would result if common costs are recovered as a fixed percentage of program costs, net of common costs. Accordingly, we directed PECO to modify its allocation of common costs accordingly. *October 2009 Order* at 75.

In its Revised Plan, PECO has reallocated the $8.5 million of common costs as a fixed percentage of each measure’s proposed costs, net of common costs. Revised Plan Volume III, Appendix D-7, Table 6B. With this reallocation of common costs, PECO has complied with the directive in our *October 2009 Order.*

### 4. Cost Recovery Issues

Act 129 provides that an EDC “shall recover on a full and current basis from customers, through a reconcilable adjustment clause under Section 1307, all reasonable and prudent costs incurred in the provision or management of [an EE&C] plan.” 66 Pa. C.S. § 2806.1(k). The Act also states:

The plan shall include a proposed cost-recovery tariff mechanism, in accordance with Section 1307 (relating to sliding scale or rates; adjustments), to fund the energy efficiency and conservation measures and to ensure full and current recovery of the prudent and reasonable costs of the plan, including administrative costs, as approved by the commission.

66 Pa. C.S. § 2806.1(b)(1)(i)(H).

PECO submitted Supplement 99 to reflect the tariff changes directed by our *October 2009 Order* and to recover the costs associated with the Revised Plan. As discussed *infra*, Supplement 99 was submitted to the Commission as a separate tariff filing on December 21, 2009 and as part of the Revised Plan on December 23, 2009.

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#### EEPC Surcharge as Line Item on Customer Bills

Act 129 provides that an EDC “shall recover on a full and current basis from customers, through a reconcilable adjustment clause under Section 1307, all reasonable and prudent costs incurred in the provision or management of [an EE&C] plan.” 66 Pa. C.S. § 2806.1(k). In the tariffs submitted as part of its initial Plan, PECO proposed four Energy Efficiency and Conservation Program Costs (EEPC) surcharges to be added to the distribution rates of the four tariff groups established for the allocation and recovery of EE&C Plan costs. PECO Exh. RAS-1 (tariff page 34D).

Following our investigation of PECO’s Plan, we concluded that making the EEPC surcharge a separate line item on the bills of Large and Small C&I customers would provide necessary transparency and may foster greater participation by C&I customers. We directed PECO to amend its Plan so that the EEPC surcharge is not included in distribution rates, but presented as a separate line on C&I customers’ bills. *October 2009 Order at 83*.

In its Revised Plan, PECO has amended its tariff so that its tariffs for C&I Rates GS, GS-SP, HT, HT-SP, PD, PD-SP and EP contain an “Energy Efficiency Surcharge” in lieu of inclusion of the EEPC surcharge in distribution rates. Revised Plan, Volume III, Exh. RAS-1. As a result of the modification to its tariff, PECO has complied with the directive in our *October 2009 Order*.

#### **Cost Recovery on a Demand Charge Basis**

In its initial Plan, PECO proposed that the EEPC surcharge be recovered on a per kWh basis for residential and small commercial rate classes and on a billing demand basis for Large C&I customers. PECO Exh. RAS-1 (tariff page 34D); Tr. at 202.

In our review of PECO’s proposal, we determined that utilizing the PJM Peak Load Contribution (PLC) may be a more effective means to recover the costs of the EE&C Plan. An individual customer’s billing demand may not be coincident with either PECO’s or PJM’s system peaks. By utilizing the PJM PLC to recover the costs of PECO’s EE&C Plan, an economic incentive is provided for Large C&I customers to reduce their demand during system peaks, consistent with PECO’s Act 129 demand reduction goals. In addition, as confirmed by PECO at the evidentiary hearing, because PLCs are determined annually, an EEPC based on the PJM PLC will provide a more consistent charge to customers, and constant, reliable cost recovery by PECO. Tr. at 203-204. Accordingly, we directed PECO to amend its Plan and proposed tariff to collect its EEPC for Large C&I customers based on each customer’s PJM PLC. *October 2009 Order* at 85.

In compliance with our *October 2009 Order*, PECO has amended its tariffs for Rates PD, DP-SP, HT, HT-SP, and EP in its tariffs filed with its Revised Plan to recover its EEPC based on each customer’s PJM PLC. PECO Revised Plan, Volume III, Exh. RAS-1.

#### Effect of Other Tariff Supplements Reflected on Supplement 99

In its Comments, the OCA states that in the tariff submitted as part of its Revised Plan (Supplement 99), PECO has included changes that appear to be related to other approved tariff changes rather than just changes related to PECO’s revisions to its EE&C Plan. The OCA avers that PECO should verify that these changes are related to an intervening tariff change and that the final rates submitted as part of the revised Plan properly reflect the EE&C surcharge amount. The OCA argues that the Commission should not approve tariff changes as part of this compliance filing if they are unrelated to PECO’s EE&C Plan. OCA Comments at 2-3.

In response to the OCA’s Comments, PECO confirms that the difference between the tariff submitted as part of the initial Plan (Supplement 94) and Supplement 99 also reflects other tariff changes that also became effective on January 1, 2010. These tariff changes were submitted as Supplements 96 and 97 and are related to PECO’s Universal Service Fund Charge and Competitive Transition Charge. PECO Reply Comments at 3.

PECO also explains that some of the confusion over the tariff changes was caused by an omitted tariff page in Supplement 94 and a black lined page of Supplement 99 that incorrectly reflected the changes to the tariff. PECO states that Tariff Page No. 43 for Rate OP (residential off-peak service) was unintentionally omitted from Supplement 94 so it appears to be an entirely new tariff in Supplement 99. PECO Reply Comments at 4-5. PECO submitted, as attachments to its Reply Comments, revised blackline versions of Rate OP which reflect the changes made as a result of both the initial Plan and the Revised Plan. *Id.*, Exhibits A and B. Similarly, the entire Tariff Page 47 for Rate GS (general service) was blacklined when, in fact, no changes were made to this page in Supplement 99. *Id. at 5.*

Following our review of Supplement 99, we find that that the difference between the tariff submitted as part of the initial Plan (Supplement 94) and Supplement 99 appropriately reflects changes to other tariffs that also became effective on January 1, 2010. However, as discussed, *infra*, Supplement 99 should not have been filed as a separate tariff filing independent of the Revised Plan.

#### Placeholder Rates

In its Comments, the OCA avers that some tariff sheets in Supplement 99 are “incomplete” as they contain placeholder letters such as “xx.xx cents per KWH.” As stated *supra*, the OCA argues that changes unrelated to the EE&C Plan should not be approved as part of this compliance filing. OCA Comments at 3.

PECO explains that these placeholders were discussed in the direct testimony (PECO St. No. 3) that was submitted as part of PECO’s Plan on July 1, 2009. PECO states that the Super Peak TOU rates cannot be developed until the fall of 2010, after PECO has completed the competitive procurement process for its default service generation supply for 2011.

These placeholder rates were included in PECO’s initial EE&C Plan filing and were not raised as an issue in our investigation of the proposed Plan. These rates will not be available to customers until after January 1, 2011 but do provide some insight into how these Super Peak TOU rates may be implemented. Consequently, we will not require PECO to delete the placeholder rates from its tariff. However, our approval of these tariffs with placeholder rates should not be construed as placing any constraints on our review or disposition of those rates in the future.

#### Approval of Supplement 99

On December 21, 2009, PECO filed Supplement 99 to be effective on January 1, 2010. The transmittal letter attached to PECO’s filing states that Supplement 99 contains “the Energy Efficiency and Conservation Program Charge as allowed by the Commission in its Final Order at Docket No. M-2009-209315 entered October 28, 2009.” PECO subsequently filed the Revised Plan, which included Supplement 99, on December 23, 2009.

 The *October 2009 Order* clearly directs PECO to submit a Revised Plan that, *inter alia*, makes adjustments to program expenditures and cost allocations. These adjustments, which were still subject to Commission review and approval as part of the Revised Plan, resulted in changes to the EEPC surcharge implemented by Supplement 99.

PECO’s representation that the *October 2009 Order* “allowed” a tariff filing to implement the EEPC surcharge separate from the Revised Plan is also incorrect. Act 129 requires that “(t)he *plan* shall include a proposed cost-recovery mechanism …” (emphasis provided). 66 Pa. C.S. § 2806.1(b)(1)(i)(H). Similarly, our *Implementation Order* provides that the cost recovery mechanism shall be included as part of an EDC’s plan. *Implementation Order* at 10 and 38. Nowhere in the Commission approval process delineated in 66 Pa. C.S. §2806.1(e), the *Implementation Order* and the *October 2009 Order* is provision made for the review and approval of the tariff implementing the EEPC surcharge separate from the Plan review process. Clearly, our review of the EEPC surcharge is interdependent with our review of the program measures and the cost of those measures contained in the Revised Plan. Supplement 99 should be reviewed and approved by the Commission as part of, and concurrently with, the Revised Plan.

Supplement 99 was inadvertently approved by Secretarial Letter on January 6, 2010, as a routine compliance filing. Since we are approving the Revised Plan containing Supplement 99 by this Opinion and Order, we will avoid the administrative expense and ratepayer confusion that would result if we were to reverse the January 6, 2010 approval of the tariff that became effective on January 1, 2010. Moreover, since the EEPC surcharge is being recovered through a reconcilable adjustment clause mechanism in accordance with 66 Pa. C.S. § 1307, the premature implementation of Supplement 99 will not result in additional revenue being collected from ratepayers over the four-year duration of the Plan.

## C. Conservation Service Provider Issues

The Commission’s EE&C Program must include a requirement for the participation of conservation service providers in the implementation of all or part of a plan. 66 Pa. C.S. § 2806.1(a)(10). The Commission is required to establish procedures requiring EDCs to competitively bid all contracts with conservation service providers. 66 Pa. C.S. § 2806.1(a)(7). The Commission is also required to establish procedures to review all proposed contracts with conservation service providers prior to the execution of the contract. 66 Pa. C.S. § 2806.1(a)(8). The Commission has the authority to order the modification of a contract to ensure that plans meet consumption reduction requirements.

#### Contract with Global Energy Partners, LLC

In its Petition, PECO requested that we approve the contract between PECO and Global Energy Partners, LLC, a conservation service provider (CSP) working with PECO to develop its EE&C Plan. In our *Implementation Order*, we delegated to the Commission staff the authority to review and approve contracts between EDCs and CSPs. *Implementation Order* at 40. To that end, we directed that the contract between PECO and Global Energy Partners, LLC not be addressed as part of the investigation of the Plan. We further directed that following the entry of the *October 2009 Order*, the Commission’s Secretary’s Bureau shall submit a copy of the contract to the Commission’s Law Bureau for review. *October 2009 Order* at 97, Ordering Paragraphs Nos. 2 and 3.

Pursuant to the *October 2009 Order*, the CSP contract with Global Energy Partners, LLC has been submitted to Commission staff for review. In addition, the CSP contracts between Global Energy Partners, LLC and a previously approved contract with Ecos Consulting, Inc. have been removed from Volume 3, Appendix C of the Revised Plan.

## D. Implementation and Evaluation Issues

#### Future Plan Modifications

In its Petition, PECO proposed that, for changes within a rate class and changes of less than $20 million between rate classes, it retain the flexibility to redirect funds from underperforming to better performing programs as needed. PECO proposed to discuss these changes with stakeholders and notify the Commission as part of its annual plan reporting. For inter-class changes of more than $20 million over the period of the Plan, PECO proposed to work with its stakeholders to submit a modification to the Plan for Commission approval. Petition at 18-19.

In our *October 2009 Order*, we determined that an EDC cannot shift program funds within a customer class, or between customer classes without prior Commission approval. We found that doing so would constitute a modification of the EDC’s approved plan. The General Assembly authorized the Commission, not the EDC, to make decisions in regard to modifying an approved Act 129 Plan. *October 2009 Order* at 42.

We explained that Section 2806.1(b)(2) expressly states that the “Commission shall direct” an EDC to modify or terminate any part of its approved plan if, after an adequate period for implementation, “the Commission determines that an energy efficiency or conservation measure will not achieve the required reductions in consumption in a cost-effective manner.” 66 Pa. C.S. § 2806(b)(2). Section 2806.1(b)(3) sets forth the action an EDC is required to take in response to a Commission direction to modify or terminate part of the approved plan. Specifically, the EDC is required to submit a revised plan describing the actions to be taken, to offer substitute measures, or to increase the availability of existing measures in the plan to achieve the reductions in consumption. 66 Pa. C.S. § 2806.1(b)(3). *October 2009 Order* at 42.

We also stated that because the EDC’s Act 129 Plan will be approved by Commission Order, procedures for rescission and amendment of Commission Orders must be followed to amend that Order and to assure due process for all affected Parties. See 66 Pa. C.S.  § 703(g) (relating to fixing of hearing: rescission and amendment of orders). Accordingly, if the EDC believes that it is necessary to modify its Act 129 Plan, the EDC may file a petition requesting that the Commission rescind and amend its prior Order approving the plan. See 52 Pa. Code §§ 5.41 (relating to petitions generally) and 5.572 (relating to petitions for relief). *October 2009 Order* at 43.

Consistent with our findings regarding future plan modifications, we rejected PECO’s proposed procedures for “mid-course” corrections set-forth on page 216 of Volume II of its Plan. We directed that PECO’s Plan be redrafted to reflect that all Plan modifications require Commission review and approval. *October 2009 Order* at 43 and 98, Ordering Paragraph No. 8.

Pursuant to the *October 2009 Order,* PECO has deleted the “Flexibility in Program Spend” portion of Section 7.4 “Tariffs and Section 1307 cost recovery mechanism” of Volume 2 of its Revised Plan. Revised Plan, Volume 2 (Blackline) at 227-228. With this deletion, the provisions that would have enabled PECO to implement modifications without the submission of a plan amendment have been removed.

# VI. Conclusion

For the reasons set forth above, we approve the Revised Energy Efficiency and Conservation Plan and Supplement 99 submitted by PECO Energy Company, consistent with this Opinion and Order. PECO Energy Company is permitted to implement its Revised Plan in its entirety. As directed in the *Implementation Order* at 24, PECO Energy Company, as well as other interested parties, are permitted to propose plan changes in conjunction with its annual report filing required by Act 129 at 66 Pa. C.S. § 2806.1(i)(1). Furthermore, as directed in our *October 2009 Order* at 42-43, if PECO Energy Company believes it is necessary to modify its approved Plan, it may file, at any time, a petition requesting that the Commission rescind and amend its prior order approving the plan, in accordance with 52 Pa. Code §§ 5.41 (relating to petitions generally) and 5.572 (relating to petitions for relief); **THEREFORE;**

**IT IS ORDERED:**

1. That the Revised Energy Efficiency and Conservation Plan filed on December 23, 2009, by PECO Energy Company is approved consistent with this Opinion and Order.

2. That Supplement 99 to Tariff Electric- Pa. P.U.C. No. 3 is approved, effective January 1, 2010.

3. That any directive, requirement, disposition or the like contained in the body of this Opinion and Order that is not the subject of an individual Ordering Paragraph, shall have the full force and effect as if fully contained in this part.

4. That a copy of this Opinion and Order be served on all of the parties of record and on Steven Pincus, Assistant General Counsel for the PJM Interconnection, L.L.C.

5. That PECO Energy Company is permitted to implement its revised Energy Efficiency and Conservation Plan consistent with this Opinion and Order.

** BY THE COMMISSION,**

 James J. McNulty

 Secretary

(SEAL)

ORDER ADOPTED: February 11, 2010

ORDER ENTERED: **February 17, 2010**