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August 18, 2011

M-2009-2093215

Mr. Anthony E. Gay, Esquire

Associate General Counsel

Exelon Business Services Company

2301 Market Street

P.O. Box 8699

Philadelphia, PA 19101-8699

**Re:** **Petition of PECO Energy Company For Approval Of Minor Changes To Its Act 129 EE&C Plan Pursuant To The Commission’s Expedited Review Process Docket No. M-2009-2093215**

Dear Mr. Gay:

On July 15, 2011, PECO Energy Company (“PECO”) filed a *Petition of PECO Energy Company For Approval Of Minor Changes To Its Act 129 EE&C Plan Pursuant To The Commission’s Expedited Review Process* (“Petition”) seeking review under the Commission’s expedited process set forth in the June 10, 2011 Final Order at Docket No. M-2008-2069887 (“Expedited Process Order”). With this Secretarial Letter, Staff approves the minor plan changes as modified by PECO in its Reply Comments.

Comments were filed by The Reinvestment Fund (“TRF”), the Keystone Energy Efficiency Alliance (“KEEA”) and the City of Philadelphia (“City”). Reply comments were filed by PECO. The City subsequently filed a letter withdrawing its opposition to PECO’s proposed changes to its Plan.

In its Expedited Process Order, the Commission delegated its authority to review and approve minor EE&C Plan changes, as defined below, to staff of the Bureau of Conservation, Economics and Energy Planning (“Staff”), with assistance from staff of the Bureau of Fixed Utility Services and the Law Bureau, or their successor(s) as determined by the Commission.[[1]](#footnote-1) Minor changes have been defined as follows:

* 1. The elimination of a measure that is underperforming, no longer viable for reasons of cost-effectiveness, savings or market penetration or has met its approved budgeted funding, participation level or amount of savings;
  2. The transfer of funds from one measure or program to another measure or program within the same customer class; and
  3. Adding a measure or changing the conditions of a measure, such as its eligibility requirements, technical description, rebate structure or amount, projected savings, estimated incremental costs, projected number of participants, or other conditions so long as the change does not increase the overall costs to that customer class.[[2]](#footnote-2)

In its Petition, PECO proposes changes to its portfolio of EE&C programs that are intended to (1) allow PECO to meet its compliance targets; (2) keep a diverse array of measures available to customers through May 31, 2013; and (3) manage spending to remain within PECO’s approved budget. PECO states that it has met with interested stakeholders both individually and collectively to discuss these changes.[[3]](#footnote-3)

**PECO’s Proposed Changes**

1. **Smart Home Rebates (Residential)**

PECO proposes to eliminate several measures within the Smart Home Rebates Program. PECO reports that most of these measures are underperforming and all the measures identified for elimination have met the approved budget funding level. Furthermore, PECO asserts that as its portfolio of measures is expected to exceed the savings targets, these measures are no longer required.[[4]](#footnote-4)

TRF supports PECO’s portfolio adjustment goals. TRF avers, however, that PECO has failed to provide sufficient documentation to support its proposal to eliminate a number of measures in the Smart Home Rebates Program. TRF asserts that it is not suggesting that PECO’s proposed changes are not justified, but that PECO has not provided the Commission with enough documentation to accept said changes.[[5]](#footnote-5) KEEA also opines that there is inadequate documentation to support PECO’s claims about the cost effectiveness of some measures.[[6]](#footnote-6)

PECO addresses TRF’s and KEEA’s documentation concerns in its Reply Comments, asserting that PECO explained in its Petition how the proposed minor changes would affect the existing EE&C plan on a variety of levels. PECO states that the overall objectives were described on a portfolio basis, and the changes themselves were described on a program basis. Additionally, PECO provided an Appendix that identified every change, the reason the change is minor, and the reason for making the change. PECO states that this level of documentation should be considered sufficient, and providing the level of detail suggested by the TRF would essentially defeat the purpose of the expedited review process. PECO points out that, in the fully litigated proceeding concerning its original EE&C Plan, the Commission did not require documentation to fully justify each and every measure.[[7]](#footnote-7)

This is Staff’s initial application of the Commission’s new process for approving minor changes to an EDC’s EE&C Plan under an expedited review process. The Expedited Process Order does not specifically address the level of documentation needed to verify minor changes to an EDC’s EE&C plan. The Order merely requires EDCs to file “sufficient documentation to support the proposed minor EE&C Plan change, to include, but not limited to, the affected pages of the plan, a redlined version of the affected pages and an explanation of how the proposed minor changes affect the previously approved plan.”[[8]](#footnote-8)

Staff recognizes, based on its analysis of PECO’s EE&C Plan and the documentation provided with this filing, that the changes proposed herein do not significantly alter the overall cost effectiveness of PECO’s portfolio of programs or have an impact on the Plan’s budget. Staff, therefore, determines that PECO has met its obligations by providing sufficient documentation to support its proposed changes to its Smart Home Rebate Program. As such, Staff approves the changes PECO proposed for this program.

Notwithstanding the above, PECO is advised that Staff requires a certain level of documentation with which to more decisively determine whether a request for plan modification is justified. Therefore, going forward, future requests for approval of minor EE&C plan changes through the expedited review process shall include a total resource cost test analysis for each measure being revised and for its entire EE&C plan portfolio to ensure that the Act 129 mandates are being fulfilled in a cost effective manner.

1. **Smart Appliance Recycling Program (Residential)**

PECO proposes changes to its Smart Appliance Recycling Program to account for changes made in the 2011 Technical Reference Manual (“TRM”) update. These changes allow PECO to reduce the rebate levels for its Refrigerator Recycling and Freezer Recycling measures to reflect the lower savings associated with removal, and add a new measure for refrigerator and freezer replacement. PECO also proposes to remove the Room Air Conditioner recycling measure, asserting that it is no longer needed to meet compliance targets.[[9]](#footnote-9)

No comments addressed this proposal. The Commission’s Expedited Process Order states that it is permissible to add a measure as long as the change does not increase the overall costs to that particular customer class.[[10]](#footnote-10) Staff finds that PECO’s proposed changes to its Smart Appliance Recycling Program meet the definition of minor EE&C plan changes established in the Expedited Process Order. Staff, therefore, approves PECO’s proposal to reduce the rebate level for the Refrigerator and Freezer Recycling measures, as well as its proposal to add a new refrigerator and freezer replacement measure.

1. **Smart Equipment Incentives Program (Commercial/Industrial, Governmental/Institutional/Non-Profit), and Smart Construction Incentives Program (Commercial/Industrial)**

PECO proposes changes to its Smart Equipment Incentives and Smart Construction Incentives Programs to manage its portfolio energy savings contributions from its commercial and industrial customer classes and to account for recent Statewide Evaluator determinations and changes found in the 2011 TRM update. Specifically, PECO proposes to establish waitlists for applicants under each of these programs. PECO asserts that these waitlists will allow it to meet its portfolio savings targets and also manage customer expectations. PECO submits that the waitlist proposal qualifies as a minor change as it changes measure eligibility requirements and does not increase overall costs to the relevant customer class.[[11]](#footnote-11)

PECO also proposes to change the structure of several rebates in both of these Programs from prescriptive incentives (per unit basis) to custom incentives (per kWh saved basis). PECO is also reducing the rebate amount for the Ground Source Heat Pump measure to better reflect recent energy savings allowances.[[12]](#footnote-12)

Both TRF and KEEA voice concern about PECO’s “waitlist” proposal. TRF believes that applying a waitlist could result in early termination of the Programs. TRF contends that the waitlist could be a reasonable approach if Program demand is exceeding Program budgets.[[13]](#footnote-13) KEEA also views this as a premature end to a successful program, and suggests that the Commission defer action on the Petition until after its investigation into the future of the EE&C program is concluded.[[14]](#footnote-14)

In reply, PECO clarifies that the waitlists will serve as an administrative tool to better manage the energy savings generated by each Program and will provide transparency to customers regarding availability of incentives. PECO also notes that these Programs will remain open and that PECO will continue to process and pay incentives on projects that have already been submitted or are submitted during a 30-day notification period following approval of these minor plan changes. Once this notification period has lapsed, all new projects submitted will be placed on a waitlist.[[15]](#footnote-15)

Staff finds that PECO’s proposal to establish waitlists for its Smart Equipment Incentives and Smart Construction Incentives Programs to be a reasonable administrative tool that will allow PECO to manage energy savings and costs generated by these Programs. Furthermore, Staff finds that the proposed waitlists will allow PECO to better manage customer expectations, not only during the remainder of the current EE&C program time period, but also during the Commission’s investigation into future EE&C targets, if any. Staff finds that such a waitlist will provide PECO with readily available participants should the Commission continue the EE&C program beyond 2013. As such, Staff approves PECO’s proposed changes to its Smart Equipment Incentives and Smart Construction Incentives Programs and Ground Source Heat Pump measure.

1. **Permanent Load Reduction Program (Commercial/Industrial)**

PECO proposes to eliminate the retro-commissioning measure from the Permanent Load Reduction Program and the mention of retro-commissioning as a custom project from the Commercial/Industrial Smart Equipment Incentives Program.[[16]](#footnote-16)

The City opposes PECO’s proposed elimination of the retro-commissioning measure. The City asserts that as long as retro-commissioning is paired with measurement, verification, and monitoring, it will be able to achieve sustainable savings.[[17]](#footnote-17)

In reply, PECO states that it will continue to offer retro-commissioning as a customer measure.[[18]](#footnote-18) In a subsequently submitted letter, the City withdrew its opposition to PECO’s proposed minor changes. As PECO, in essence, withdrew this portion of its proposed minor changes, Staff will not address this issue any further in this Secretarial Letter.

**Program Disruption or Early Elimination**

TRF expresses concern, due to PECO’s early goal achievement success, that programs may be shut down far in advance of the May 2013 deadline. TRF asserts that this could hamper efforts to meet potential future Act 129 goals, as restarting programs could be costly and time-consuming.[[19]](#footnote-19) Likewise, KEEA states that it is risky to cut back programs, as this could signal to PECO’s customers that programs may be ending which could result in confusion.[[20]](#footnote-20)

In reply, PECO states that the TRF need not be concerned that programs will be shut down. Instituting the proposed minor changes would allow PECO to continue to meet its compliance targets while still keeping a diverse array of measures available to its customers through May 31, 2013. Further, PECO asserts that if the EE&C Plan was to continue without adjustment, the risk of disruption or the early ending of programs would be much greater.[[21]](#footnote-21)

The Staff finds no reason to believe that the minor program changes proposed in PECO’s Petition will cause chaos or confusion. Staff agrees with PECO and finds that the proposed minor changes will allow PECO to manage its EE&C Plan in order to meet its Act 129 obligations in a cost-effective manner and within its budgetary limitations.

**Decision Deferment**

KEEA urges the Commission to defer action on PECO’s Petition due to potential regulatory action by the Commission in the fall. Specifically, KEEA contends that the Commission will be undertaking an investigation into the future of the Act 129 EE&C program and any decision made prior to the conclusion of the investigation would be premature.[[22]](#footnote-22)

In reply, PECO asserts that the request for deferral should be rejected as it would prevent PECO (or any EDC) from making any mid-course EE&C plan improvements. PECO further asserts that the possibility of future regulation is not sufficient justification for keeping its plan stagnant. Finally, PECO notes that the minor changes it is proposing are intended to prevent programs from being shut down and to provide stability and consistency in the growing energy efficiency market.[[23]](#footnote-23)

Any future action the Commission may take with regard to the Act 129 EE&C program is unknown at this time. Staff, therefore, believes that speculation regarding the future of the Act 129 EE&C program does not warrant deferring action on PECO’s Petition.

**Conclusion**

In view of the above, the Staff has determined that the *Petition of PECO Energy Company For Approval Of Minor Changes To Its Act 129 EE&C Plan Pursuant To The Commission’s Expedited Review Process*, filed on July 15, 2011, at Docket No. M-2009-2093215, as modified by PECO in its Reply Comments,[[24]](#footnote-24) satisfies the requirements of Act 129 and the prior related Orders of the Commission. Staff finds that the minor changes proposed in the Petition, as modified by PECO, should enable PECO to meet or exceed the energy consumption and demand reduction requirements of Act 129 in a more cost-effective manner. Therefore, Staff finds that the July 15, 2011, minor changes, as modified by PECO, should be approved. PECO is directed to file with the Secretary a revised plan, consistent with this Secretarial Letter, within 30 days of the date of this Letter and post same on its website.

As directed in the Commission’s June 10, 2011 Order, petitions for appeal from this Staff action must be filed within ten (10) days after service of this Secretarial Letter in accordance with 52 Pa. Code § 5.44.[[25]](#footnote-25)

 Sincerely,

Rosemary Chiavetta

Secretary

cc: Chairman Powelson

Vice Chairman Coleman

Commissioner Gardner

Commissioner Cawley

Commissioner Witmer

Parties of Record

Darren Gill, TUS

Paul Diskin, Director, TUS

Kriss Brown, Law Bureau

Cheryl Walker Davis, OSA

Jonathan Nase, OSA

1. Expedited Process Order at 22. Pursuant to the final order in *Implementation of Act 129; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011), CEEP and FUS have been abolished as separate bureaus and their functions are now the responsibility of the new Bureau of Technical Utility Services (TUS). [↑](#footnote-ref-1)
2. Expedited Process Order at 20. [↑](#footnote-ref-2)
3. Petition at 1. [↑](#footnote-ref-3)
4. Petition at 6. [↑](#footnote-ref-4)
5. TRF Comments at 3. [↑](#footnote-ref-5)
6. KEEA Comments at 1. [↑](#footnote-ref-6)
7. PECO Reply Comments at 3. [↑](#footnote-ref-7)
8. Expedited Process Order at 19. [↑](#footnote-ref-8)
9. Petition at 7. [↑](#footnote-ref-9)
10. Expedited Process Order at 20. [↑](#footnote-ref-10)
11. Petition at 8 and 9. [↑](#footnote-ref-11)
12. Petition at 9. [↑](#footnote-ref-12)
13. TRF Comments at 4. [↑](#footnote-ref-13)
14. KEEA Comments at 2. [↑](#footnote-ref-14)
15. PECO Reply Comments at 5. [↑](#footnote-ref-15)
16. Petition at 10. [↑](#footnote-ref-16)
17. City Comments at 3. [↑](#footnote-ref-17)
18. PECO Reply Comments at 8. [↑](#footnote-ref-18)
19. TRF Comments at 4. [↑](#footnote-ref-19)
20. KEEA Comments at 2. [↑](#footnote-ref-20)
21. PECO Reply Comments at 6. [↑](#footnote-ref-21)
22. KEEA Comments at 2. [↑](#footnote-ref-22)
23. PECO Reply Comments at 7. [↑](#footnote-ref-23)
24. PECO Reply Comments at 8. [↑](#footnote-ref-24)
25. Expedited Process Order at 19. [↑](#footnote-ref-25)