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February 14, 2012

**VIA OVERNIGHT DELIVERY**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17105-3265

**RECEIVED**

FEB 14 2012

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**Re: Petition Of PECO Energy Company For Approval Of Its Act 129 EE&C Plan And Expedited Approval Of Its Compact Fluorescent Lamp Program  
Docket No. M-2009-2093215**

Dear Secretary Chiavetta:

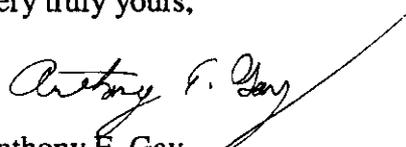
Enclosed for filing are an original and nine (9) copies of the **Petition of PECO Energy Company for Expedited Approval of Demand Response Contracts and Notice of Intent to Seek Amendment of the Contracts**. As noted in the Petition, the Demand Response Contracts are **Confidential** and should be accorded such treatment by the Commission.

As indicated on the attached Certificate of Service, a copy of the Petition has been served upon all parties to this proceeding. In light of the confidential nature of the Demand Response Contracts, the parties have not been provided with copies of the agreements.

Pursuant to 52 Pa. Code §1.11(2), the enclosed Petition shall be deemed filed on the date shown on the express delivery receipt attached to the delivery envelope. Kindly time stamp the extra copy of the Petition we have enclosed and return it to us in the self-addressed envelope that is enclosed.

Please do not hesitate to contact me should you have any questions regarding this filing.

Very truly yours,

  
Anthony E. Gay  
Associate General Counsel

Enclosures

**RECEIVED**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION** FEB 14 2012

**PETITION OF PECO ENERGY COMPANY : PA PUBLIC UTILITY COMMISSION  
FOR APPROVAL OF ITS ACT 129 ENERGY : SECRETARY'S BUREAU  
EFFICIENCY AND CONSERVATION PLAN : DOCKET NO. M-2009-2093215  
AND EXPEDITED APPROVAL OF ITS :  
COMPACT FLUORESCENT LAMP PROGRAM :**

**PETITION OF PECO ENERGY COMPANY  
FOR EXPEDITED APPROVAL OF DEMAND RESPONSE CONTRACTS  
AND NOTICE OF INTENT TO SEEK AMENDMENT OF THE CONTRACTS**

Pursuant to 52 Pa. Code § 5.41, PECO Energy Company (“PECO” or the “Company”) hereby petitions the Pennsylvania Public Utility Commission (the “Commission”) for expedited approval of four demand response contracts (the “DR Contracts”). These contracts are for demand reduction services in connection with the Company’s Energy Efficiency and Conservation Plan (“EE&C Plan”).

While PECO generally seeks contract approval from the Commission’s Staff in accordance with the Implementation Order at Docket No. M-2008-2069887, the Company is requesting expedited consideration from the Commission in this case in order to promptly obtain resources necessary to meet Act 129 of 2008’s demand reduction goals. As is further set forth below, PECO will be amending these contracts in the near future to enable it to take steps to secure additional demand response resources that it may call upon if prudent. Once amended, PECO will submit the contracts to the Commission through its normal Staff approval process.

**I. BACKGROUND**

1. PECO is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal office in Philadelphia, Pennsylvania. PECO

provides electric delivery service to approximately 1.6 million customers and natural gas delivery service to approximately 475,000 customers in southeastern Pennsylvania.

2. Act 129 of 2008 (“Act 129” or the “Act”) was signed into law on October 15, 2008 and was subsequently codified in the Pennsylvania Public Utility Code at Sections 2806.1 and 2806.2 (66 Pa. C.S. §§ 2806.1 & 2806.2). The Act’s energy efficiency provisions require each electric distribution company (“EDC”) with at least 100,000 customers to adopt an EE&C plan that will achieve annual consumption savings of at least 1% for its retail customer base by May 31, 2011 and at least 3% by May 31, 2013. 66 Pa. C.S. § 2806.1(c). In addition, the Act’s demand reduction provisions require each EDC with at least 100,000 customers to adopt an EE&C plan that will reduce the annual system peak demand for its retail customers over the 100 highest hours of demand by a minimum of 4.5% by May 31, 2013. 66 Pa. C.S. § 2806.1(d).

3. If an EDC fails to achieve the required consumption savings or demand reductions, it is subject to civil penalties of not less than \$1,000,000 but not more than \$20,000,000, and the responsibility to achieve the required reductions will be transferred to the Commission. 66 Pa. C.S. § 2806.1(f).

4. Act 129 required the Commission to adopt an EE&C program, including procedures for approval of EE&C plans, by January 15, 2009. The Act further required the Commission to develop procedures to review all Conservation Service Provider (“CSP”) contracts and also granted the Commission the authority to order CSP contract modifications to ensure that an EE&C plan meets the Act’s consumption savings and demand reduction requirements. 66 Pa. C.S. § 2806.1(a)(8). In an Implementation Order adopted on January 15, 2009, the Commission established EE&C plan standards and procedures necessary for plan

approval and modification. *See Energy Efficiency and Conservation Program*, Docket No. M-2008-2069887.

5. Pursuant to the Act and consistent with the Commission's Implementation Order, PECO filed its proposed EE&C Plan on July 1, 2009. The Commission approved PECO's Plan, with modifications, by Order entered February 17, 2010 (the "Plan Approval Order"). In the Plan Approval Order, the Commission specifically found that the demand reduction figures contained in PECO's Plan projected a "total peak demand reduction that will meet or exceed the 2013 targets." Plan Approval Order, p. 8.

6. On September 15, 2010, PECO filed its first Annual Report to the Commission regarding its EE&C Plan, and also proposed several revisions to its Plan. The Commission approved those revisions by Order entered January 28, 2011.

7. On July 15, 2011, PECO filed a petition for approval of several minor revisions to the Company's EE&C Plan pursuant to the Commission's expedited review process, which was established in its June 10, 2011 Final Order at Docket No. M-2008-2069887. On August 18, 2011, the Commission issued a Secretarial Letter approving the minor revisions.

8. On November 15, 2011, PECO filed its second Annual Report to the Commission regarding the Company's EE&C Plan. That report is currently pending Commission review.

## **II. THE COMMISSION SHOULD APPROVE THE DR CONTRACTS BECAUSE THE COMPANY UTILIZED APPROVED RFP PROCEDURES AND THE DR CONTRACTS ARE CONSISTENT WITH THE EE&C PLAN**

9. Pursuant to its EE&C Plan, the Company has implemented several demand response programs, including the Distributed Energy Resources ("DER") program and the Demand Reduction Aggregator ("DRA") program.

10. With this Petition, the Company is seeking approval of a contract for services to be provided in connection with the DER program. The contract is with Enerwise Global Technologies (“Enerwise”), a wholly-owned subsidiary of Comverge, Inc., is attached to this Petition as Exhibit A, and generally provides for Enerwise to produce firm electric load reduction.<sup>1</sup> Comverge, Inc. is a Commission-registered CSP and its registry renewal was approved by Secretarial Letter dated November 3, 2011 at Docket No. A-2009-2113604. In selecting Enerwise for provision of these services, PECO followed the RFP procedures approved in the Commission’s June 11, 2009 Secretarial Letter in this docket.

11. PECO is also seeking approval of three contracts for services in connection with the DRA program. The contracts are with: (1) Enerwise; (2) EnergyConnect, Inc.; and (3) EnerNOC, are attached to this Petition as Exhibits B, C and D, respectively, and generally provide for firm electric load reduction.<sup>2</sup>

12. EnergyConnect, Inc. is a Commission-registered CSP and its registry renewal was approved by Secretarial Letter dated March 10, 2011 at Docket No. A-2009-2091309.

13. EnerNOC is a Commission-registered CSP and its registry renewal was approved by Secretarial Letter dated July 25, 2011 at Docket No. A-2009-2102368.

14. In selecting these entities for the provision of services in connection with the DRA program, PECO followed the RFP procedures approved in the Commission’s June 11, 2009 Secretarial Letter in this docket.

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<sup>1</sup> Please note this contract is confidential and should be accorded such treatment by the Commission.

<sup>2</sup> Please note these contracts are confidential and should be accorded such treatment by the Commission.

15. The expeditious approval of these DR Contracts is necessary for PECO to further implement its DER and DRA programs.

### **III. PECO INTENDS TO AMEND THE DR CONTRACTS TO SECURE ADDITIONAL RESOURCES THAT IT MAY CALL UPON IF PRUDENT**

16. PECO has carefully and comprehensively planned to meet Act 129's demand reduction targets. The Company has developed a Demand Response Management System computer modeling program to aid the Company in more accurately forecasting customer load. In addition, PECO has performed specific detailed weather modeling based on its targeted load reduction of 355 MW. Based on this modeling and pursuant to the EE&C Plan, the Company has assembled a diverse portfolio of demand response resources, including the resources that will be provided by the DR Contracts.

17. PECO continues to project a total peak demand reduction that will meet or exceed the 2013 demand reduction target. However, there is inherent uncertainty regarding the Company's (and, indeed, any EDC's) ultimate compliance with Act 129's demand reduction requirements. This uncertainty exists for several reasons.

18. First, achieving a 4.5% load reduction over the 100 highest hours of demand is vastly different from producing energy consumption savings. The latter is an ongoing process during which an EDC can monitor, measure and make course corrections over time. In contrast, because the top 100 hours of demand are difficult to predict, no EDC will know unequivocally which specific hours constitute its top 100 *until after* its peak period has occurred. At that point, it will be impossible for the EDC to make course corrections to meet the Act's demand reduction requirements.

19. In addition, as the Commission is aware, the weather in Pennsylvania has been very unpredictable in recent years and, notwithstanding appropriate planning and committed demand resources, weather will be a major contributing factor with respect to meeting PECO's 2013 demand reduction target. For example, if it is extremely hot during the summer of 2012, it will be difficult to determine in real time whether a particular hour is going to fall within the top 100 and PECO may be tempted to over-comply. This, in turn, could lead to customer fatigue, as customers may choose not to, or may not be able to, reduce demand in response to repeated calls. On the other hand, if the summer of 2012 is cooler than normal, PECO may not call enough hours because the cooler temperatures would not be predicted to be in the top 100 based on "normal" summers.

20. Given these inherent uncertainties, PECO has concluded that it needs the flexibility to amend the DR Contracts to include a "pay for performance" provision. Such a provision would allow PECO to react on a timely basis, if, for whatever reason, the Company's existing suite of demand response resources were no longer expected to generate sufficient demand reductions. The provision would help the Company address not only weather risk but also program underperformance risk due to factors such as customer fatigue and the closure of participant businesses. All demand response expenditures, including any for "pay for performance" reductions, would be recovered by the budget for demand response programs previously approved by the Commission.

21. Once the terms for the "pay for performance" amendments are reached and the DR Contracts are revised, PECO will seek approval of the amendments through the normal approval process administered by Commission Staff.

22. The Commission should note, however, that even with the inclusion of the “pay for performance” amendments in PECO’s DR Contracts, due to the problematic nature of the Act’s requirement for a 4.5% load reduction over the 100 highest hours of demand, PECO cannot provide a 100% guarantee that it will meet the requirement.

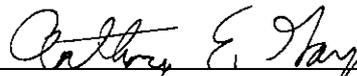
#### IV. NOTICE

23. Pursuant to 52 Pa. Code § 5.41, PECO is serving copies of this filing on the Pennsylvania Office of Consumer Advocate, the Pennsylvania Office of Small Business Advocate, the Commission’s Bureau of Investigation and Enforcement and the parties to its EE&C Plan proceeding. However, in light of the confidential nature of the DR Contracts, only the Commission will be provided with copies of the agreements.

#### V. CONCLUSION

Based upon the foregoing, PECO respectfully requests that the Commission grant this Petition and enter an Order approving the DR Contracts attached hereto.

Respectfully submitted,



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February 14, 2012

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