

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY)
COMPANY FOR AN EVIDENTIARY) DOCKET NO. P-2012-2320334
HEARING ON THE ENERGY)
EFFICIENCY BENCHMARKS)
ESTABLISHED FOR THE PERIOD)
JUNE 1, 2013 THROUGH MAY 31, 2016)**

**CITIZENS FOR PENNSYLVANIA’S FUTURE’S
RESPONSE TO PECO ENERGY COMPANY’S
MOTION *IN LIMINE* TO EXCLUDE FROM
THE RECORD PORTIONS OF THE DIRECT
TESTIMONY OF GLENN REED**

Now comes Intervenor, Citizens for Pennsylvania’s Future (“PennFuture”), by counsel, Heather M. Langeland, and submits the following response to PECO Energy Company’s (“PECO”) Motion *in Limine* to exclude from the record portions of the direct testimony of Glenn Reed.

INTRODUCTION

Act 129 of 2008 amended the Pennsylvania Public Utility Code by requiring Pennsylvania electric distribution companies (“EDCs”) to file energy efficiency and conservation (“EE&C”) plans by July 1, 2009 containing the plan elements specified in that section (Phase I). Act 129 also requires the Pennsylvania Public Utility Commission (“Commission”), by November 30, 2013, to evaluate the costs and benefits of the Phase I Program and, if the benefits of the Program are found to exceed their costs, to adopt “additional required incremental reductions in consumption” and “additional incremental requirements for reduction in peak demand.”

The Commission retained a Statewide Evaluator (“SWE”) to conduct market potential and baseline studies in order to comply with the requirements for cost-benefit analyses imposed by Act 129. Based on those studies and the Commission’s interpretation of the program cost imposed by Act 129, the SWE concluded that “instituting a second phase of Act 129 electric energy efficiency programs will be cost-effective for Pennsylvania ratepayers.” *Phase II Implementation Order*, pp. 11-12. On or about August 3, 2012, the Commission entered its Implementation Order establishing EDCs’ specific consumption reduction targets for Phase II of Act 129.

The Implementation Order states “[i]f an EDC desires to contest the facts the Commission relied upon in adopting the consumption reduction requirements . . . it has until August 20, 2012, to file a petition requesting an evidentiary hearing on its specific consumption reduction target. The EDC contesting the consumption reduction requirement shall have the burden of proof in accordance with 66 Pa. C.S. §332(a). ***The scope of any such proceeding will be narrow and limited to the consumption reduction requirement issue.***” *Id.* at 31 (emphasis added).

On or about August 20, 2012, PECO filed a Petition seeking an evidentiary hearing. Despite the narrow scope of proceedings mandated by the Implementation Order, PECO requested a hearing on “Allocation of funds for direct load control (“DLC”) and other DR [demand reduction] programs,” and “the Commission’s overstatement of allowable spending.”¹

¹ PennFuture expressly objected to matters outside the limited scope of review in its PreTrial Hearing Memorandum submitted on September 7, 2012. Examples of matters raised in PECO’s Petition that are outside the scope of these proceedings include: (1) Issues pertaining to whether or not PECO will be able to meet future peak demand reduction targets; (2) Whether or not the Commission should include amounts collected from electric generation suppliers in the 2% annual spending limit, even though this issue has been ruled upon by the Commission in its Energy Efficiency and Conservation Program Implementation Order (Docket No. M-2008-

In petitioning for review of the allocation of funds for DLC and other DR programs, PECO noted:

The Commission has decided to establish Phase II consumption reduction targets based on a formula that makes those targets a function of: (1) an EDC's total revenues, up to the 'cap' imposed by Section 2806.1(g); and (2) the projected '*acquisition cost*,' expressed in dollars per MWh, for an EDC to achieve reductions in consumption. Thus, the total dollars available to be spent divided by the projected *acquisition cost* (in dollars per MWh) produces, arithmetically, the mandated target, expressed in MWh, which the Commission converted to a percentage savings requirement using forecasted EDC sales.

PECO's Petition for Evidentiary Hearing at p. 4 (emphasis added).² Despite clearly recognizing that acquisition cost is directly relevant to the consumption reduction targets, PECO now brings this instant motion arguing that the issue of acquisition cost is outside of the narrow scope of this evidentiary hearing.

ARGUMENT

PECO seeks to have portions of PennFuture's direct testimony excluded from the record. Specifically, it seeks to exclude testimony related to an EDC's acquisition cost, arguing that this is outside the scope of the evidentiary hearing. As an initial matter, the acquisition cost is used to determine PECO's Phase II consumption reduction targets. This fact has been recognized by PECO in both its pretrial memorandum, as well as its direct testimony. PECO's direct

2069887) entered January 16, 2009; and (3) the year to which the 2% annual spending limit is applied.

² PECO argues that "the scope of the evidentiary hearing would be defined by the EDC's petition, and other parties, whose participation is limited to the status of 'intervenor,' would be permitted to address only those issues raised by the EDC." Motion *in Limine* at p. 2. Contrary to this assertion, it is the Commission in its Implementation Order that sets forth the scope of the evidentiary hearing.

testimony, submitted by Frank J. Jiruska, specifically notes “EDC-specific Phase II consumption reduction targets were based on a formula that makes those targets a function of: (1) 2% of an EDC’s total revenues; and (2) the projected *acquisition costs*, expressed in dollars per MWh, for an EDC to achieve reductions in consumption.” Response to Question 11 of Jiruska’s direct testimony (emphasis added). Accordingly, the acquisition costs are well within the scope of these proceedings.

Despite the fact that acquisition costs are directly relevant and partially determinative of the consumption reduction targets, PECO argues that since it is not challenging the acquisition costs, that that issue is outside the scope of these proceedings. PennFuture is not raising new issues in discussing the acquisition costs. Rather, it is simply using facts to respond to PECO’s direct testimony. As noted in its direct testimony at the response to Question 14, PECO indicates that it cannot meet its 2.9% Phase II savings goal and continue to offer its DLC programs. PennFuture is simply submitting evidence to counter this claim.

PennFuture’s direct testimony discusses the acquisition costs because assumptions used to inform Phase II acquisition costs directly relate to PECO’s Phase II savings goal and whether that goal is conservative. Whether PECO’s Phase II goal is conservative directly correlates with whether PECO can meet its 2.9% goal and continue offering DLC programs. The fact that PECO is not challenging the acquisition costs does not mean that this is outside the scope of the consumption reduction issue. Simply because PECO is seeking a different avenue to challenge the consumption reduction goals does not preclude another party from presenting evidence regarding acquisition costs and how that correlates with an EDC’s consumption reduction.³

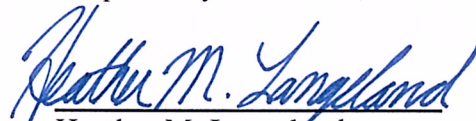
³ The fact that PECO challenged the acquisition cost in the Tentative Order, and that challenge was rejected by the Commission, is of no moment.

Finally, PECO criticizes PennFuture for failing to note in its PreTrial Memorandum that it would seek to expand the scope of the evidentiary hearing. The reason this was not raised in PennFuture's PreTrial Memorandum is simple: It was not raised because PennFuture is not seeking to expand the scope of these proceedings. Acquisition costs are directly related to calculation of the consumption reduction targets. Moreover, calculation of PECO's Phase II acquisition costs directly relates to whether or not it will need to set aside funding for DLC and DR programs. Finally, PECO put acquisition costs in issue through both its PreTrial Memorandum, as well as its Direct Testimony. Given all of the above, PECO's motion *in limine* should be denied.

CONCLUSION

As acknowledged in both its PreTrial Memorandum, as well as its direct testimony, acquisition costs directly relate to consumption reduction targets. These targets are calculated based in part on acquisition costs. As PECO is challenging these targets, PennFuture should be permitted to present evidence that the acquisition costs are conservative in order to rebut its challenges. Accordingly, PECO's Motion *in Limine* should be denied.

Respectfully Submitted,



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO for an)
Evidentiary Hearing on the Energy) Docket No. P-2012-2320334
Efficiency Benchmarks Established for the)
Period of June 1, 2012 through May 31, 2016)

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of October, 2012 served a true and accurate copy of PennFuture's **CITIZENS FOR PENNSYLVANIA'S FUTURE'S RESPONSE TO PECO ENERGY COMPANY'S MOTION *IN LIMINE* TO EXCLUDE FROM THE RECORD PORTIONS OF THE DIRECT TESTIMONY OF GLENN REED** upon the parties listed below via electronic service, and further certify that a hard copy was deposited in the United State mail, postage prepaid, and addressed to:

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