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	**)**	

MAIN BRIEF OF CITIZENS FOR
PENNSYLVANIA'S FUTURE

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BRIEF OF CITIZENS FOR PENNSYLVANIA'S FUTURE

Now comes Intervenor, Citizens for Pennsylvania's Future ("PennFuture"), by counsel, Heather M. Langeland, and submits the following brief in the above captioned proceeding.

INTRODUCTION AND PROCEDURAL HISTORY

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 Section 2806.1 of the Public Utility Code, 66 Pa. C.S. § 2806.1 ("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." 66 Pa. C.S. §§2806.1(c)3 and (d)(2).

The Commission retained a Statewide Evaluator ("SWE") to conduct market potential and baseline studies in order to comply with Act 129's requirement for cost-benefit analyses. Based on those studies and the Commission's interpretation of what the costs and benefits of Phase I have been to date the SWE concluded "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 EDC's 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.

On or about August 20, 2012, PECO filed a Petition seeking an evidentiary hearing challenging its specific consumption reduction target of 2.9%. 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]

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[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

Peco Petition for Evidentiary Hearing at pp. 4, 8. PECO argues that its consumption reduction target should be reduced based on the lack of funds for DLC and other DR programs, and the Commission's alleged overstatement of allowable spending. On October 3, 2012 an Evidentiary Hearing was held in this matter. Evidence was presented by Duquesne Light Company, the Statewide Evaluator, PennFuture, PECO Energy Company, Clean Air Council and the Sierra Club.

PennFuture submitted the testimony of Glenn Reed. Mr. Reed is the principal of Energy Futures Group, a Vermont-based consulting firm that specializes in efficiency programs, policies and markets. It provides its clients with expertise in a number of areas, including, but not limited to, efficiency program design, program implementation support, policy development, energy efficient potential studies, building energy codes, program evaluation, and collaborative engagements between efficiency program administrators and other stakeholders. *Reed Testimony*, at Answer to Question no. 3.

Over the past 25 years, Mr. Reed has been actively engaged in energy efficiency program design, program implementation oversight, baseline development, program evaluation, and energy codes and efficiency standards development. For the past several years he has worked with efficiency program administrators and other stakeholders in providing support for the design and oversight of energy efficiency programs in Massachusetts, Rhode Island, and Connecticut. He is the lead author of the Northeast Energy Efficiency Partnerships' regional Residential Lighting Strategy as well as its

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from electric generation suppliers ("EGSs") 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-2008-2069887) entered January 16, 2009; and (3) the year to which the 2% annual spending limit is applied. PennFuture renews that objection herein.

recent update. Over the past five years he has been involved in undertaking energy efficiency potential studies or in the critical review of such studies in Vermont, New York, Connecticut, Rhode Island, Louisiana, Pennsylvania, Ohio, Iowa, and Nova Scotia. He is also the project manager of a soon to be released white paper for the Regulatory Assistance Project on the ten most common pitfalls of energy efficiency potential studies. *Id.* at Answer to Question 12. He has previously submitted expert testimony before the Nova Scotia Utility and Review Board and the Massachusetts Department of Public Utilities, and has been published several times. *Id.* at Answer to Questions 6, 7.

Mr. Reed's extensive experience with energy efficiency programs gives him insights into the findings of the Statewide Evaluator's ("SWE") Electric Energy Efficiency Potential for Pennsylvania Final Report (Market Potential Study), and how these findings – and other relevant market and program information – should best be used to develop cost-effective and cost-efficient programs for PECO. *Id.* at Answer to Question 12.

THE BENEFITS OF ACT 129

Based on the "Statewide Evaluator Annual Report Program Year 2: June 1, 2010 – May 31, 2011," dated March 9, 2012, Phase I of Act 129 has been cost effective. Within the report the SWE indicates that Act 129 program Total Resource Cost ("TRC") test benefits for all seven EDCs combined outweigh program TRC costs by a ratio of 3.59 to 1, with a range from 1.73 to 4.98, demonstrating that all EE&C plans have been cost-effective. According to the 2011 TRC Test Order dated July 28, 2011, docket No. M-2009-2108601, a "benefit-to-cost-ratio above one indicates that the program is beneficial to the utility and its ratepayers." Since the Phase I EE&C Plans were found to be cost-effective when they were originally approved by the Commission, and were found to be cost-effective during the first two years of the program, it is likely that the remainder of the Phase I program will also be cost-effective. *Reed Testimony* at Answer to Question 15.

Additionally, the benefits of Act 129 outweigh the surcharge on customers' electric bills. As explained by witness Reed,

> [T]he EDC Act 129 programs have passed the Commission's TRC test. This indicates that "the program is beneficial to the utility and its ratepayers" and that the benefits outweigh the costs. Energy efficiency is the least cost resource to meet Pennsylvania's electricity demand and creates numerous benefits to electric customers. According to a recent report by Optimal Energy, "Pennsylvania 2013 – 2018 Energy Efficiency Goals" released on December 19, 2011, Act 129 energy efficiency programs in the first two program years created approximately $278 million in annual savings to electric customers that participated in Act 129 programs. It should also be noted that these savings were achieved in an extremely cost-effective manner. Over the expected life of the installed energy efficiency measures, these savings represent a present value of $2.3 billion for an upfront cost of only $281 million. This means that for every dollar spent on Act 129 programs, customers received $8 in energy savings.
>
> It is also important to clarify that customers pay bills not rates. Bills are the product of rates multiplied by consumption. Energy efficiency programs reduce energy consumption and therefore, even if rates go up, bills go down for many, if not most of those customers who participate in Act 129 programs. For example, if a customer reduces their use by 10% but rates go up by 2% then the customer's bill goes down by 8%. As EDCs continue to deliver programs, more and more customers will have an opportunity to experience these bill-reduction benefits.

Id. at Answer to Question 16.

Even customers that do not participate directly in programs benefit from Act 129. States are beginning to recognize Demand Reduction Induced Price Effects ("DRIPE") as a quantifiable benefit of energy efficiency. DRIPE is a measurement of the value of efficiency in terms of the reduction of wholesale energy prices seen by all retail customers. The reduced energy demand due to efficiency programs allows for the shedding of the most expensive resources on the margin and lowering the overall costs of energy. This reduces the wholesale prices of energy and demand, and in a restructured, competitive market, like Pennsylvania's, these price reductions in a restructured market, is passed on to retail customers. *Id.* at Answer to Question 22.

DRIPE effects in New England are now estimated to last eleven (11) years for peak capacity reductions, and thirteen (13) years for energy consumption reductions. The per kilowatt-hour (kWh) values of DRIPE vary based on energy period and region, but for New England it ranges from $0.001/kWh to $0.032/kWh for energy depending on energy period and region, and from $2.23/kilowatt (kW) to $59.07/kW for peak demand, depending on region. In addition, investing in energy efficiency reduces the need for costly upgrades and investments in distribution and transmission infrastructure, the cost of which would be passed down to ratepayers. *Id.*

If PECO's Act 129 funding is reduced, electric customers will lose benefits. PECO's past program efforts are cost-effective and future ones are projected to be so as well. By definition failure to fully fund these cost-effective programs is inefficient. Reduced program funding will require that more ratepayer dollars will need to be spent over time on fuel, generation capacity and expanded transmission and distribution infrastructure than would have been spent on energy efficiency. Limiting Act 129 funding will also mean that program budgets will be reduced and participation levels will be decreased. As a result, fewer Pennsylvania businesses and residences will be able to participate in energy efficiency programs and will not be able to reduce their electric bills accordingly. Finally, as noted above, DRIPE impacts – which benefit all customers by lowering the price of wholesale energy -- would be reduced. *Id.* at Answer to Question 23.

ARGUMENT

The party seeking affirmative relief from the Commission bears the burden of proof pursuant to Section 332(a) of the Code. 66 Pa. C.S. §332(a). The term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. *Pennsylvania Public Utility Commission v. Corey Transport, LLC*, 2012 Pa. P.U.C. LEXIS 223 (2012)(citing, *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. P.U.C. 300 (1976). For the reasons that follow, PECO has failed to sustain its burden of proof.

PECO FAILED TO SUSTAIN ITS BURDEN OF PROVING ALLOCATION OF FUNDS FOR DLC AND OTHER DR PROGRAMS IS NECESSARY FOR IT TO MEET ITS PHASE II TARGETS

PECO claims that it will not be able to meet its Phase II consumption reduction target of 2.9% and continue its existing DLC program in Phase II. Contrary to PECO's assertion, however, PECO will be able to continue its DLC program while readily meeting its Phase II consumption reduction target, which actually (and mistakenly) has been set too low.

Phase II consumption reduction targets are based on a formula that makes the 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 electricity sales for each EDC.

Witness Reed testified that SWE has overestimated the acquisition costs and therefore underestimated the achievable savings goals. In expanding on this opinion, Mr. Reed testified:

> My review reveals several issues with the Market Potential Study including the unsupported 25% mark-up of programs costs in Phase II; program design assumptions related to measure penetration rates; overstatement of the impacts from the Energy Independence and Security Act of 2007 (EISA) lighting standards; and an underestimated savings in the non-residential sectors.
>
> For the first point, the SWE does not provide any data to back up the 25% mark-up of program costs for Phase II. The acquisition cost of Phase II energy savings is one of the critical factors in determining the Phase II consumption reduction targets and therefore should not be determined arbitrarily. While the argument is made that subsequent savings will be more expensive (higher cost per kWh) no evidence to support this contention is made. Further, as noted in this testimony, PECO's Phase I acquisition costs are much lower than used to develop their Phase II targets as are those from other efficiency programs in a similar state of portfolio evolution. The addition of a 25% Phase II mark-up of program costs is unwarranted and will result in lower Phase II efficiency targets.
>
> As to program design and measure penetration estimates, the Market Potential Study makes simplifying assumptions that do not reflect good program design. The Market Potential Study assumes that when multiple measures "compete" for the same baseline technology that equal numbers of those measures are installed. This is a simplified and in many cases an incorrect assumption. It does not address that through good program design an EDC

will want to maximize program savings by more aggressively promoting more efficient technologies and work to do so in a way that minimizes the cost of those savings. Cost-efficiencies can be obtained through adjusting incentive levels, moving financial incentives upstream to reduce wholesale as opposed to retail pricing, etc.

For example, the Potential Report on page 46 gives the following example of equally allocating measure participation across all residential electric hot water measures:

"In instances where there are two (or more) competing technologies for the same electrical end use, such as heat pump water heaters, water heater efficiency measures and high-efficiency electric storage water heaters, an equal percentage of the available population is assigned to each measure using the applicability factor."

There are five cost-effective replace at burnout (ROB) domestic hot water (DHW) heaters that would compete with one another: three electric storage water heater measures with small incremental costs and very small per unit savings and two heat pump water heater (HPWH) measures with significant increases in incremental costs and with savings fractions approaching 50 percent or more. The report text implies that DHW replacement opportunities would be spread equally across all five measures. This assumption does not reflect the fact that the higher savings HPWH measure should be promoted much more aggressively than the storage water heater measures. Further, it is likely that the storage water heater measure would have significant free-ridership and cannibalize sales of the much more efficient HPWHs. While the SWE noted that the Potential Report was not a program design document, it is being used to establish program savings goals. Modeling of measure installation rates, particularly for the achievable and program potentials, should attempt to reflect likely program design. Few if any efficiency programs would adopt the lower savings storage DHW. This assumption leads to an underestimation of the savings potential in Phase II.

This critique holds true in the commercial and industrial sectors as well. For example, the five options for addressing the fluorescent lighting end-use have dramatically different costs, savings, and appropriate situations for installation. Treating them equally may dramatically underestimate savings.

In addition, I do not believe the SWE captures the remaining cost-effective energy lighting savings that will continue to be attainable over the next 8 to 9 years even with the new minimum federal lighting efficiency standards in place. For example, the detailed measure characterizations in the Market Potential Study do not appear to reflect an accurate interpretation of the EISA standards. Specifically, only three residential CFL measures are characterized: 100 watt, 75 watt and 40 watt CFL replacements. The 2012-2014 provisions of EISA only apply to general service lamps. There are over 20 lamp categories excluded from EISA coverage including reflector lamps, globe and candelabra lamps, three-way lamps, and more. Program administrators throughout much of the country have been increasingly focusing their CFL program efforts on these and other "specialty" CFL lamp categories since savings from these lamps will be higher as their baselines will not need to be adjusted upwards for EISA related efficiency improvements. The Potential Report does not appear to explicitly address these classes of lamps that are exempt from EISA coverage. This assumption arbitrarily lowers the potential savings from lighting in Phase II of Act 129.

Lastly, [t]he Potential Report appears to underestimate savings in the non-residential sectors. Of primary concern is the dramatically lower potential noted for non-residential as compared to the residential sector. This may be a result of the study's focus on "replace on burnout" opportunities, which leaves substantial amounts of cost-effective early-retirement potential unaddressed. I also note that the study omits savings from a potentially large fraction of all exterior lighting opportunities because it omitted the lighting-specific rate classes under which many of these fixtures operate.

Id. at Answer to Question 24. Because the SWE overestimated the relevant acquisition costs and therefore underestimated the achievable energy savings, PECO will readily achieve its artificially low Phase II consumption reduction target of 2.9% while continuing its DLC program.

Moreover, PennFuture showed that the Implementation Order allows PECO to use excess savings accumulated beyond its 3% Phase I target for compliance with Phase II targets. Mr. Reed testified, "The Implementation Order states that the Commission will allow those EDCs that have achieved their Phase I, 3% savings target before the end of Phase I to continue their programs and credit all of those savings above the Phase I target toward Phase II targets, so long as there are still Phase I funds available. *Reed Testimony*, at Answer to Question No. 31.

According to PECO's July 16, 2012 "Program Year 3, Quarter 4 Report to the Pennsylvania Public Utility Commission," PECO has already achieved 91% of the May 31, 2013, energy savings compliance target, based on verified gross savings through Program Year 2 and Program Year 3 reported gross savings as of May 31, 2012. *Reed Testimony*. at Answer to Question No. 32. Based on this information, Mr. Reed concluded that PECO will have excess savings from Phase I to use towards its Phase II consumption reduction target. "Based on the fact that PECO is already at 91% of its May 31, 2013 energy savings compliance target as of May 31, 2012 – a year in advance, and still has funding available, it is safe to assume PECO will achieve savings in excess of its Phase I goal." *Id.* at Answer to Question 33. Additionally, PECO anticipates excess savings of 83,000 MWh from Phase I of Act 129. *Cross-Examination of Frank Jiruska at p. 66 lines 16-19.* As a result, PECO could continue its DLC program while meeting its consumption reduction targets. *Reed Testimony* at Answer to Question 34.

Additionally, PennFuture showed that PECO's acquisition costs in Phase II are expected be lower than estimated. In his testimony, Mr. Reed noted that according to PECO's July 16, 2012 "Program Year 3, Quarter 4 Report to the Pennsylvania Public

Utility Commission," PECO has achieved a 1,080,267 megawatt-hour (MWh) reduction at a cost of $152,664,000. This equals an acquisition cost of $141 per first year MWh savings. *Reed Testimony* at Answer to Question 25. The SWE assumes an acquisition cost of $227.55 per first year MWh savings for Phase II, which is a 61% increase over PECO's Phase I acquisition costs. *Id.* at Answer to Question 26.

Mr. Reed went on to explain that the estimates of PECO's Phase II acquisition costs by both PECO and the SWE are too high:

> I believe the estimated Phase II acquisition cost is too high based on experience in other states. Pennsylvania's energy efficiency programs have only been in place for three years (4 years when Phase II begins). Therefore, there are still plenty of low cost energy savings to be captured. Looking at comparable states such as those in the Southwest where programs have only been in place for 5 years, it is clear that the Phase II acquisition costs are over estimated. For example, in 2009 and 2010, utilities in the Southwest achieved program savings at an average cost of $160-$190 per first year MWh savings. Specifically, Xcel in Colorado had an average cost of $180/MWh; Rocky Mountain Power in Utah had a cost of $190/MWh; and Arizona Public Service had a cost of $160/MWh. Similarly, costs for newly developed energy efficiency programs in several Midwestern states including Ohio, Michigan, Illinois, Iowa and Arkansas have been approximately $120 per first-year MWh.
>
> In addition, the SWE states that most of the lowest-cost measure savings have already been attained by EDCs in Phase I, yet there is no evidence to support that statement. Information from the residential and commercial baseline studies, such as current residential CFL saturations of only 17%, appears to contradict this claim.
>
> The Pennsylvania EDC's have also not fully realized cost efficiencies from enhanced program designs and implementation strategies. I will mention two here. First, the EDCs have not fully aligned their program designs and actively pursued joint implementation of their efficiency programs. Joint program implementation – not just

> coordinated program delivery – is able to bring about economies of scale as well as increased customer and trade ally participation. It creates market confusion and trade ally disinterest to have different program designs, implementation vendors, measure eligibility criteria, and incentive levels for similar programs all targeted to the same market segment, e.g., efficient residential products or commercial new construction. Statewide joint implementation has become increasingly commonplace among those states identified as energy efficiency leaders by the American Council for an Energy-Efficient Economy (ACEEE).
>
> Second, the EDC's have not fully realized the benefits of moving their financial incentive transactions upstream. Upstream incentives typically better leverage EDC funds by buying down wholesale as opposed to retail product pricing. While some progress has been made in the residential lighting market, other opportunities should be explored and pursued in commercial lighting, commercial and residential HVAC and DHW equipment, and consumer electronics and appliances.

Id. at Answer to Question 27. Given all of the above, Mr. Reed concluded that the estimated acquisition costs were too high.

PECO similarly presented testimony to describe the level of funding it deems necessary to set aside in anticipation that it will be required to achieve an additional incremental reduction in peak demand by the May 31, 2017 deadline imposed by Act 129, if the statewide DR program is ultimately found to be cost-effective.

PECO offered only speculative testimony concerning its future DR budget in support of its claim for an allocation of funding. There is nothing in Act 129 that requires the Commission to adopt peak demand reduction targets for later phases that are identical to those required in Phase I. Since the PUC hasn't ruled on the peak demand savings goals for Phase III or whether those goals will be based on the 100 hours of greatest demand or an alternative reduction, it is unknown how PECO can determine its required

DR budget. *Id.* at Answer to Question 37. Surely such speculative testimony is insufficient for PECO to sustain its burden of proof.

With respect to the need to set aside funds, PECO's petition ignores the fact that EDCs can incur Phase II costs in Phase I for performing administrative duties. The Commission specifically states in the Implementation Order that it will allow EDCs to start incurring Phase II costs in Phase I for performing administrative duties related to its Phase II EE&C Plan. *Implementation Order* at p. 107. The Commission states these duties include but are not limited to, contracting with contract service providers, trade allies and vendors; preparing marketing materials associated with Phase II measures; contracting with an independent evaluator; etc. The Commission goes on to direct that the recovery of Phase II costs allowed to be incurred during Phase I are to be deferred until Phase II cost recovery rates become effective. Assuming the Commission continues to follow the directive set forth in its Implementation Order in Phase III, PECO would not have to wait until Phase III begins to start planning and entering into with contracts with contract service providers, trade allies and vendors; preparing marketing materials associated with Phase III measures; contracting with an independent evaluator; etc. to lay the ground work to begin to obtain peak demand savings in the summer of 2016. *Reed Testimony* at Answer to Question 40. Instead, PECO will be able to use Phase III funds in Phase II to begin laying the foundation for Phase III DR programs. Therefore, there is no need for PECO to set aside Phase II funds for this purpose. *Id.* at Answer to Question 41.

In summarizing all of the relevant factors, Mr. Reed testified:

> My opinion is that PECO can continue its DLC program and meet its 2.9% consumption reduction target. My

> opinion on the allocation of funds for other DR programs is that it is not necessary given the flexibility of the Implementation Order that would allow for PECO to begin spending Phase III funds in Phase II to start laying the administrative and procedural ground work to achieve peak demand goals if needed in the summer of 2016.
>
> To summarize, the acquisition costs used to determine PECO's Phase II consumption reduction target are inflated based on both PECO's most recent experience, similar experience in other jurisdictions, and a more critical review of the SWE's Potential Study. PECO also fails to take into account the level of excess savings from Phase I that it can use for Phase II compliance. Lastly, PECO has reduced its available Phase II budget improperly and excessively for DR and DLC activities that have not been mandated, and PECO fails to account for the ability to spend Phase III funds in Phase II to begin to address its 2016 peak demand reduction targets.

Id. at Answer to Question 42. As a result, PECO has not sustained its burden of proof in this matter.

THE COMMISSION PROPERLY DETERMINED THE AMOUNT OF PECO ALLOWABLE SPENDING FOR PHASE II

PECO also challenges the Commission's determinations as to allowable spending. It does so on two bases: Use of amounts collected by PECO as a billing agent for electric generation suppliers ("EGSs") in calculating its consumption reduction target; and use of 2006 data to establish energy consumption and demand reduction funding levels. These will be discussed in turn.

A. *The Commission properly used amounts collected by PECO as a billing agent for EGSs in calculating PECO's consumption reduction target*

First, PECO argues that amounts collected as a billing agent for EGSs should not be calculated in determining a consumption reduction target. The Commission already has considered and rejected this argument. Specifically, the Commission's Phase I Implementation Order notes:

> Specifically, Duquesne commented that the cost limitation provision of Act 129 could be interpreted in a manner that makes compliance very difficult for any EDC where rate caps have been removed and significant electric competition has occurred. Duquesne points out that approximately half of its load were taking service with an EGS at the end of 2006, including about 50 percent of its commercial and 85 percent of its industrial customers. If the Commission were to interpret 66 Pa. C.S. § 2806.1(g) such that EDC generation and transmission revenues exclude those collected by EGSs, Duquesne would be limited to a substantially smaller program budget than other EDCs. And if, under this scenario, Duquesne did not meet the Act 129 targets, it would be subject to mandatory financial penalties that would not be recoverable from rate payers.
>
> To alleviate this situation, Duquesne proposed that it be allowed to revise its 2006 total annual revenue to reflect POLR revenues as if there had been no shopping. OCA, DEP and TRF, all suggest that EDC 2006 total annual revenues include generation and transmission revenues paid to an EGS through an EDC's combined bill. OSBA disagreed, asserting that the language in Section 2806.1(g) does not permit this outcome.
>
> The Commission agrees with Duquesne, OCA, DEP and TRF, in that the General Assembly intended Act 129 to be competitively neutral, and not disadvantage EDCs that had active retail electric markets. The Commission also notes that, in ascertaining legislative intent, the Commission is to presume that the General Assembly did not intend a result that was impossible of execution, unreasonable or unconstitutional. See 1 Pa. C.S. § 1922. Excluding these EGS revenues may so limit Duquesne's EE&C plan budget such that it could be impossible for it to meet the Act 129 EE&C targets. Therefore, the Commission interprets "amounts paid to the [EDC] for generation, transmission, distribution and surcharges by retail customer," set forth as the definition of EDC total annual revenue in 66 Pa. C.S. § 2806.1(m), to include all amounts paid to the EDC for generation service, including generation revenues collected by an EDC for an EGS that uses consolidated billing.

Phase I Implementation Order, pp. 35-36. PECO now asks the Commission to reinterpret a previously defined term. If the Commission were to reinterpret already defined terms, this would create confusion and uncertainty in matters which had previously been settled. Accordingly, the Commission should decline PECO's request to redefine "total annual revenue."

B The Commission properly followed the statutory mandate to use 2006 data to establish energy consumption and demand reduction funding levels

Next, PECO argues that instead of using 2006 data to establish energy consumption and demand reduction funding levels the SWE should have used 2011 data. This argument is disingenuous. In calculating these consumption reduction targets, the SWE considered energy efficiency program potential, acquisition costs and available annual funding equal to 2% of an EDC's 2006 annual revenues in its calculation of Phase II consumption reduction targets. In the case of PECO, the SWE assumes a three-year spending ceiling of $256,185,476 and an assumed acquisition cost of $227.55, which allows for a savings target of 1,125,851 MWh, or 2.9% of the 2009 energy year (June 1, 2009 – May 31, 2010). *Reed Testimony*, Answer to Question 16. The reason SWE uses 2006 data is because ***it is statutorily mandated***. Act 129 at 66 Pa. C.S. § 2806.1(g) reads, "The total cost 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." The SWE cannot be faulted for obeying this clear statutory mandate, and the Commission has no power to change the calculation period specified by the General Assembly. PECO's argument therefore must be denied.

C. *There is no basis for the dramatic reductions in energy efficiency spending advocated by PECO*

In addition to being fatally flawed from a legal standpoint, PECO's arguments would have devastating practical impacts on the Commonwealth's efforts to promote energy efficiency. If the Commission changes the annual spending limit to 2% of PECO's actual revenue in 2011, exclusive of amounts collected from electric generation suppliers, its Phase II allowable spending would be $165,590,000. This would reduce available annual spending for Phase II from $85.4 million to $55.2 million per year – a 35% reduction. *Reed Testimony* at Answer to Question 20. Such a drastic change should not be allowed. Here, as explained above, it is not authorized under the terms of Act 129 and the Commission's previous interpretations. The Commission must keep Pennsylvania's energy efficiency program on course by denying PECO's arguments and upholding the Implementation Order.

CONCLUSION

For all the foregoing reasons, PennFuture submits that PECO's arguments should be denied. The Implementation Order should be upheld in its entirety.

Respectfully Submitted,

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of October, 2012 served a true and accurate copy of PennFuture's **BRIEF OF CITIZENS FOR PENNSYLVANIA'S FUTURE** 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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