

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy :
For an Evidentiary Hearing on the Energy : P-2012-2320334
Efficiency Benchmarks Established for the Period :
June 1, 2013 through May 31, 2016 :

MAIN BRIEF OF CLEAN AIR COUNCIL AND SIERRA CLUB

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**CLEAN AIR COUNCIL AND SIERRA CLUB'S
BRIEF IN OPPOSITION TO PECO ENERGY'S PETITION FOR
EVIDENTIARY HEARING**

I. INTRODUCTION

Clean Air Council (“Council”) and the Pennsylvania Chapter of the Sierra Club (“Sierra Club”) (collectively, “Intervenors”), on behalf of their respective members and the public interest, oppose PECO Energy’s (“PECO”) Petition for Evidentiary Hearing and PECO’s accordant attempts to revise downward its energy efficiency targets as part of the Phase II Implementation Order issued by the Pennsylvania Public Utility Commission (the “Commission” or the “PUC”) under Act 129. The targets specified for PECO in the Implementation Order are achievable and provide PECO with more than an adequate buffer to ensure that they are achieved within the spending cap specified by law while still allowing PECO to continue its demand response programs. PECO has failed to carry its burden to demonstrate otherwise, and has instead ignored its own prior experience in Phase I and relied on unsupported assumptions to argue that the spending allocations under Phase II are inadequate, despite being 25% higher than PECO’s actual cost per megawatt/hour of reductions in Phase I. Accordingly, the Phase II Implementation Order should remain unchanged, and PECO’s petition should be denied.

II. BACKGROUND

A. The Public Utility Commission's Phase II Implementation Order

On August 3, 2012, the PUC issued its Implementation Order, setting forth the implementation program for Phase II implementation of Act 129, Pennsylvania's energy efficiency law.¹ *See generally* Public Utility Commission Phase II Implementation Order, Docket Nos. M-2012-2289411, M-2008-2069887 (Aug. 2, 2012) ("Implementation Order"). This Implementation Order sets the follow-up to the first phase of implementation of Act 129, called "Phase I," and builds upon and incorporates gains made during that Phase. In the Implementation Order, the Commission set an energy efficiency reduction target for PECO of 2.9% over three years, or a total of 1,125,851 megawatt-hours ("MWh") in energy savings, at a calculated acquisition cost of \$227.55 per MWh. Implementation Order at 24, tbl. 1. This acquisition cost was calculated from PECO's historical acquisition cost from Phase I with a "25% adjustment factor . . . used to account for future uncertainties when establishing program goals." *Id.* at 19.

The Implementation Order declined to address demand response, however, noting that the Commission

[B]elieves that it is premature to determine whether or not the competitive wholesale market already provides sufficient funding to promote demand response programs. The Commission does not have the information required to make such a determination and will await the results of the [Statewide Evaluator]'s demand response study before proposing any specific peak demand reduction program design for Act 129.

¹ Act 129 is codified at 66 Pa. C.S. § 2806.1.

Id. at 33. Nonetheless, the Implementation Order notes that, “[s]hould the SWE’s demand response study result in a finding of cost-effective demand response programs for future phases of Act 129, the Commission will issue a tentative order proposing a TRC methodology for such demand response programs.” *Id.* at 40. Until that point, electric distribution companies (“EDCs”) “may continue, under the Act 129 EE&C Program, residential demand response curtailment measures, such as direct load control programs, that will be cost effective if continued.” *Id.* at 42. The Commission noted that EDCs electing to continue such programs are free to seek recovery for them under 66 Pa. C.S. § 1505(b) and 66 Pa. C.S. § 1319. *Id.* at 43.

In addition, the Implementation Order observed that “it is very important that cost-effective Act 129 Phase I programs continue until the beginning of Phase II programs,” to avoid “disruptive gaps in programs that could create confusion to customers, retailers and contractors, resulting in harm to the existing market transformation achievements of Act 129.” *Id.* at 60. As a result, the Implementation Order specifically allows EDCs to “credit all of those savings above the three percent Phase I target towards Phase II targets” going forward. *Id.* at 58.

As a further part of the Implementation Order, the Commission established a narrow pathway for EDCs like PECO “to contest the facts the Commission relied upon in adopting the consumption reduction requirements” in the Implementation Order, by filing “a petition requesting an evidentiary hearing on its specific consumption reduction target. *Id.* at 31. The Commission went on to state that “[t]he scope of any such proceeding will be narrow and limited to the consumption reduction requirement issue.” *Id.*

B. PECO’s Act 129 Experience in Phase I

As regards energy efficiency, PECO was tasked in Phase I with saving 1,125,851 MWh. *See* PECO Testimony at 8. To achieve this, as well as to achieve its Phase I demand response

targets, PECO was budgeted approximately \$327 million. *See* PECO Energy Efficiency and Conservation Plan (Program Years 2009-2012) (“PECO Phase I Plan”) at 5. Nonetheless, PECO is projected to save 1,264,000 MWh (*see* PECO Response to PennFuture Interrogatory No. 3) over the course of Phase I, and that total Phase I expenditures will be only \$228 million. *See* PECO Response to PennFuture Interrogatory No. 2.

C. Procedural History

On August 20, 2012, PECO petitioned the Commission for an evidentiary hearing concerning the Implementation Order, initiating this proceeding.

In its Petition, PECO requested an evidentiary hearing to address two limited matters: the allocation of funds for direct load control and other demand response programs, and the Commission’s statement of allowable spending. PECO Petition at 4, 8.

On August 30, 2012, Intervenors petitioned for intervention into this docket; intervention was subsequently granted on September 13, 2012.

On September 4, 2012, PECO filed an untimely petition for reconsideration of the Implementation Order, along with a concurrent motion for leave to untimely file its petition. That same day, the Commission issued an order in Docket Nos. M-2012-2289411 and M-2008-2069887, granting PECO’s motion to untimely file. In this petition for reconsideration, PECO argued, in pertinent part, that the Commission should have allocated funds for Direct Load Control (“DLC”) programs as part of Phase II. *See* PECO Petition for Reconsideration, Docket Nos. M-2012-2289411 and M-2008-2069887, at 13-14. Intervenors filed their brief in opposition, arguing in part that the Implementation Order provides ample cushions and flexibility to ensure that PECO can achieve its energy efficiency targets while still continuing DLC programs. *See* Answer of Clean Air Council and the Sierra Club in Response to the

Petition of PECO Energy Company for Reconsideration, Docket Nos. M-2012-2289411 and M-2008-2069887, at 10-11.

Subsequently, the PUC issued an order denying PECO's request for reconsideration, noting that it "decline[d]" to shift allocations from energy efficiency funding to DLC programs. Public Utility Commission Reconsideration Order, Docket Nos. M-2012-2289411, M-2008-2069887 (Sept. 27, 2012) ("Reconsideration Order") at 28.

On September 5, 2012, PECO filed testimony in this docket in support of its Petition for Evidentiary Hearing, and on October 3, 2012 made their testifying witness, Frank J. Jiruska available for cross-examination.

III. ARGUMENT

PECO has failed to carry its burden of proof in demonstrating either that a re-allocation of funds from energy efficiency to potential demand response programs is warranted or that the Commission improperly calculated the spending cap and therefore the energy efficiency targets for PECO. Nor could it—PECO's own testimony demonstrates that the spending cap set by the Implementation Order for Phase II for PECO allocates dramatically higher funds for energy reductions than were even needed by PECO during Phase I, and that PECO will have a significant credit going into Phase II from its overcompliance in Phase I. To the contrary, the evidence indicates that the energy efficiency targets set in the Implementation Order are entirely achievable, and thus PECO's Petition should be denied.

A. Standard of Review

A party seeking a rule or order from the Public Utility Commission bears the burden of proof. 66 Pa. C.S. § 332(a); *see also* Implementation Order at 31 ("The EDC contesting the consumption reduction requirement shall have the burden of proof"). As such, a "litigant's

burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990) (denying petition where based merely on substantial evidence, failing to present a preponderance of evidence). If a party upon whom the burden of proof is placed fails to carry that burden, denial of the relief requested is necessary. *See, e.g., Warwick Water Works, Inc. v. Pennsylvania Public Utility Com'n*, 699 A.2d 770, 774-75 (Pa. Cmwlth. 1997).

B. PECO Has Failed to Establish that Any Change in Allocation of Funds from Energy Efficiency to Demand Response is Warranted

PECO argues in its Petition that funding for energy efficiency must be diverted to fund potential demand response programs—both for programs PECO may desire to implement during Phase II, and in preparation for hypothetical demand response programs in a future Phase III—and that the energy efficiency targets must be decreased thereby. PECO is incorrect, however, and has failed to carry its burden in demonstrating that such diversion of funds is necessary. Ample funds exist to achieve both the Phase II energy efficiency targets and PECO’s desired demand response programs, and additionally alternative funding mechanisms exist for demand response both now and when and if future demand response programs are required. PECO’s Petition should be denied.

1. PECO Has Achieved Its Targets Substantially Under Budget for Phase I, and Has Significant Carryover Credits Available to It for Phase II, and Thus There Is Ample Funding in Phase II to Cover PECO’s Contemplated Demand Response Spending

PECO argues in its Petition that, in order to continue certain demand response programs that it considers to be cost-effective, funding must be taken from energy efficiency programs to pay for demand response programs. However, PECO is simply incorrect—PECO’s experience

with Phase I demonstrates that its energy efficiency targets are achievable well-below budgeted expenditures, and indeed, because PECO is projected to achieve significantly more energy efficiency reductions than mandated by Phase I, PECO already has a large jump start on Phase II.

As the following table shows, in Phase I, PECO has consistently come in way under budget:

Table 1: PECO Phase I Budget and Expenditures²

| Year | Dollars (in millions) | | | | |
|-----------------|-----------------------|-----------|-----------|--------------------------|-------|
| | 2009/2010 | 2010/2011 | 2011/2012 | 2012/2013 (projected) | Total |
| Budgeted Amount | 25.5 | 77.3 | 102 | 122 | 327 |
| Spent | 14.6 | 68.2 | 67.0 | 78.0 | 228 |
| Remainder | 10.9 | 9.1 | 35.0 | 44.0 | 99 |

All told, this works out to total Phase I costs for PECO of about \$228 million (*see* PECO Response to PennFuture Interrogatory No. 2), compared with a budget of \$328 million. *See* Hearing Transcript 64:10-15. As such, PECO is projected to complete all of Phase I—including hitting energy efficiency targets—at only about 70% of its budget, or about a hundred million dollars less than projected.

Moreover, PECO managed to not just come in way under budget for Phase I, but to also overcomply. PECO is projected to save an extra 83,000 MWh over and above its target for Phase I. *See* Hearing Transcript at 66:16-19.

² Sources: for Program Year 1 (2009/2010), *see* PECO Phase I Plan at 5; Annual Report to the Pennsylvania Public Utility Commission for the Period June 2009 through May 2010, Intervenor’s Exhibit 1 at 20; for Program Year 2 (2010/2011), *see* PECO Phase I Plan at 5; Annual Report to the Pennsylvania Public Utility Commission for the Period June 2010 through May 2011, Intervenor’s Exhibit 2 at 21; for Program Year 3 (2011/2012), *see* PECO Phase I Plan at 5; Quarterly Report to the Pennsylvania Public Utility Commission and Preliminary Annual Report For the Periods March through May 2012 Program Year 3, Quarter 4, and Program Year 3 Totals, Intervenor’s Exhibit 3 at 25; for Program Year 4 (2012/2013), *see* PECO Phase I Plan at 5; Docket No. P-2012-2320334 October 3, 2102 Hearing Transcript (“Hearing Transcript”) at 63:1-5.

All of this means that PECO has enormous surpluses potentially available to it in implementing Phase II. The Phase II Implementation Order specifically allows PECO to “credit all of those savings above the . . . Phase I target towards Phase II targets.” Implementation Order at 58. Thus, the 83,000 MWh extra savings from Phase I can be used to reduce PECO’s overall Phase II target of 1,125,851 MWh in energy savings, at a calculated acquisition cost of \$227.55 per MWh. *Id.* at 24, tbl. 1. This translates to a reduced Phase II target of 1,042,851 MWh, or a budget savings of roughly \$19 million. Hearing Transcript at 66:20-67:2. Additionally, PECO could, in the remaining time in Phase I, seek to secure more such credits by expending some or all of the \$99 million in unspent Phase I budget on further reductions, potentially yielding tens of millions in surpluses for Phase II.³

A further savings of roughly \$40 million would be realized if PECO were to achieve the remaining Phase II target of 1,042,851 at PECO’s historical energy efficiency target achievement cost of \$180 per MWh, instead of the \$227.55 per MWh with its built-in cushion the Commission calculates for Phase II. *See* Hearing Transcript 65:24-66:6, 67:3-11. The totaling tens of millions (potentially as much as \$60 million or more) in extra budget available to PECO in Phase II could easily be applied towards the demand response programs PECO indicates it may like to pursue.

By contrast, the total DLC funding PECO seeks is relatively small: only \$12 million per year, or \$36 million overall for the Phase II Mass Market DLC Program PECO suggests is cost-

³ For example, if all \$99 million were spent at the Phase I acquisition cost of \$180 per MWh, this would result in a theoretical maximum further reduction of 550,000 MWh, thus allowing an enormous savings to be carried over to Phase II. Whether or not PECO could realistically exhaust its Phase I budget in this way, the remaining Phase I budget represents an enormous pool of resources available to aid in Phase II compliance. However, PECO testified that it has made no attempt to increase spending to take advantage of its remaining Phase I budget, even if that would make compliance with Phase II easier. *See* Hearing Transcript at 67:12-68:22.

effective. *See* PECO Testimony at 13-14.⁴ This easily fits within the funds likely to be available to PECO during Phase II. Put another way, the evidence PECO has submitted and PECO's own testimony indicate that PECO could quite easily pursue its proposed DLC program during Phase II without re-allocation of funds away from energy efficiency and concomitant reduction of the energy efficiency targets. PECO has failed to carry its burden in establishing that such a reduction is necessary, and therefore its petition should be denied.

2. PECO Can and Should Seek Recovery for Any Voluntarily-Undertaken DLC Program through the Pathways the Commission Has Identified in the Implementation Order

However, even if some small portion of PECO's proposed DLC program could not be funded by the surplus and cushion available to PECO in Phase II, the Implementation Order already provides a ready pathway for PECO to recover for such voluntary activities. PECO's petition to have its energy efficiency target lowered to shift funds to demand response is thus unwarranted on these grounds as well.

In the Phase II Implementation Order, the Commission noted that EDCs electing to continue cost-effective demand response programs are free to seek recovery for them under 66 Pa. C.S. § 1505(b) and 66 Pa. C.S. § 1319. Implementation Order at 43. Section 1319 provides for recovery by utilities of "prudent and reasonable costs associated with the development,

⁴ PECO's submitted testimony includes both "Residential DLC" and "Commercial/Industrial DLC" in this proposed "Mass Market DLC" program. *See* PECO Testimony Exhibit FJJ-1. However, only the residential component appears to be cost-effective by PECO's calculation. *Id.* Thus, it is possible that the DLC program PECO may choose to continue may be even less costly than the \$36 million PECO projects, through exclusion of the Commercial/Industrial DLC portion of the program. Indeed, the Implementation Order specifically limits continuation of DLC programs to "residential demand response curtailment measures" (Implementation Order at 42); inclusion of other DLC programs—especially ones that are not cost-effective—merely inflates the overall DLC cost figure.

management, financing and operation” of “conservation or load management program[s].” 66 Pa. C.S. § 1319(a).

Accordingly, should PECO elect to continue with a demand response program such as the contemplated DLC program in Phase II, funding for that program could be recovered through a Section 1319 petition, and need not be diverted from energy efficiency.

Again, PECO has failed to carry its burden of demonstrating that changes to the Implementation Order are necessary, and therefore its Petition should be denied.

3. The Implementation Order Adequately Accounts for Any Need to “Ramp Up” for Phase III Demand Response

PECO argues in its Petition that Phase II funding for demand response programs now is “essential” if the Commission at some point down the line “determines that a peak DR target should be imposed” for Phase III in 2017. *See* PECO Petition at 7. PECO is simply incorrect.

First, PECO testified that it did not know what demand response targets may be included in a potential Phase III, or even whether demand response targets would be included at all:

Q: Is it PECO’s position that absent being able to spend Phase II funds, that you won’t be able to achieve Phase III demand response targets?

A: That’s correct, **should Phase III contain demand response targets, which is still unknown.**

Q: Yes. That was going to be my follow-up question, whether or not Phase III targets have been set.

A: They have not yet.

Q: They have not yet. **So you can’t say now that you know what those targets will be?**

A: **That’s correct.**

Hearing Transcript at 39:9-19 (emphasis added); *see also* Reconsideration Order at 29 (“The design of a future cost-effective peak demand reduction program is unknown at this point and may be drastically different from the current program”). PECO thus has no idea what if any requirements would be included in any Phase III demand response program, and thus its claims that resources must be transferred from Phase II energy efficiency programs to ramp up for such Phase III programs are completely baseless. Folding funding for a program that may or may not exist, three or more years out, into Phase II is unwarranted, and PECO has not carried its burden to establish otherwise. This is particularly the case given that, should a Phase III demand response program be established by the Commission, the Commission would of course be able to take into consideration any and all funding and logistical constraints in implementing said program.

Second, the Commission could and would of course apply reason to implementing potential future programs. Even if the Commission were to establish demand response programs as part of Phase III, it could easily do in Phase III what is being done in Phase II: the Phase II Implementation Order specifically contemplates spending Phase II moneys during Phase I on “administrative duties related to” an EDC’s “Phase II EE&C Plan.” Implementation Order at 114. Such a process would allow EDCs like PECO to prepare for possible Phase III demand response targets in advance of Phase III without spending Phase II funds.

Accordingly, no diversion of funds at this stage from energy efficiency targets in Phase II towards theoretical demand response targets in a future Phase III is warranted.

C. PECO Has Failed to Establish that the Commission Incorrectly Determined the Spending Cap for PECO’s Phase II Implementation Program

1. The Spending Cap in the Implementation Order Flows Directly from Act 129's Requirements

In its evidentiary petition, PECO makes an argument mirroring an argument made in its Petition for Reconsideration: that the Implementation Order improperly sets energy efficiency targets as a function of the 2% of annual 2006 annual revenues spending cap specified in Act 129—an argument already rejected by the PUC. *See* Reconsideration Order at 23. PECO's arguments should again be rejected.

The Implementation Order selects an entirely proper set of reduction targets that is entirely consistent with the language of Act 129, which reads in pertinent part:

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 provisions of this paragraph shall not apply to the cost of low-income usage reduction programs established under 52 Pa. Code Ch. 58 (relating to residential low income usage reduction programs).

66 Pa. C.S. § 2806.1(g). Thus, Act 129 requires that the cost of reduction plans be less than *or equal to* 2% of the EDC's 2006 annual revenue. Accordingly, there is no conflict between the targets that the Commission set and the plain language of this section, as the Implementation Order sets the cost cap for each EDC in Phase II at equal to 2% of 2006 total revenue.

PECO's arguments to the contrary are inapposite.⁵ PECO maintains that the Commission "improperly" used a formula that made the energy efficiency targets "a function of allowable spending levels." PECO Petition at 8. Yet, this fails to explain how the Commission's election of a cost cap at the top of the range allowable somehow impermissibly exceeds that range. Put another way, PECO appears to be arguing that the Commission's 2% cost cap exceeds the 2% cost cap in the statute. Yet, two is not greater than two. The Commission's understanding and implementation of Act 129 is reasonable, and should stand. *Schuylkill Twp. v. Pennsylvania Builders Ass'n*, 607 Pa. 377, 385 (Pa. 2010) (courts must give "substantial deference to an agency's interpretation of a statute the agency 'is charged with implementing and enforcing.'") (citing *Commonwealth, Office of Administration v. Pennsylvania Labor Relations Board*, 591 Pa. 176, 916 n. 11 (Pa. 2007)); see also *Cherry v. Pennsylvania Higher Education Assistance Agency*, 537 Pa. 186 (Pa. 1994) ("An interpretation by the agency charged with a statute's implementation is accorded great weight and will be overturned only if such a construction is clearly erroneous.").

2. PECO Has Abundant Resources Available to It for Phase II Implementation under the Implementation Order

As noted above, PECO has a "cushion" of at least \$19 million—and quite likely tens of millions of dollars more—for implementing Phase II, owing to credits available from Phase I, and from the "25% adjustment factor . . . used to account for future uncertainties when establishing program goals." Implementation Order at 19. Nonetheless, PECO argues that its

⁵ They are also beyond the scope of the evidentiary petition process provided for in the Implementation Order. See Implementation Order at 31 (evidentiary petitions are solely "to contest the facts the Commission relied upon in adopting the consumption reduction requirements" and "[t]he scope of any such proceeding will be narrow and limited to the consumption reduction requirement issue."). Arguing that the Commission somehow violated Act 129 by setting reduction targets by reference to the legal definition of the spending cap does not address the "facts the Commission relied upon."

energy efficiency target should be decreased for two reasons. First, PECO argues that the revenues that it receives are not actually “revenues” for the purposes of Act 129, and thus that the Commission over-calculated the spending cap. Second, PECO argues that the marketplace has changed since 2006, and thus calculating a cap with reference to 2006—as Act 129 calls for—is not preferable to PECO. Both arguments fail.

On the first point, it should be noted that PECO’s legal arguments fall outside the limited scope of the evidentiary petition process provided for in the Implementation Order. PECO appears to take issue with the Commission’s interpretation of the statutory language in Act 129 as regards the definition of “revenue.” But this evidentiary petition docket is established for the limited purpose of contesting the facts relied upon by the Commission in developing the Implementation Order’s reduction targets, not in arguing the law. *See* Implementation Order at 31 (evidentiary petitions are solely “to contest the facts the Commission relied upon in adopting the consumption reduction requirements” and “[t]he scope of any such proceeding will be narrow and limited to the consumption reduction requirement issue.”). PECO’s legal arguments as to the definition of “revenue” could have and should have been dealt with in PECO’s Petition for Reconsideration.

Nonetheless, the Commission’s interpretation of Act 129 here is proper. Act 129 limits expenditures to “2% of the electric distribution company's total annual revenue as of December 31, 2006.” 66 Pa. C.S. § 2806.1(g). The Act further defines “electric distribution company total annual revenue” as “[a]mounts paid to the electric distribution company for generation, transmission, distribution and surcharges by retail customers.” 66 Pa. C.S. § 2806.1(m). Thus, all moneys received by an EDC such as PECO from “retail customers” for not just generation, but also for distribution, transmission, or surcharges are properly considered “total annual

revenue” for the purposes of calculating the cost cap. The Commission’s determination that this includes the funds collected by PECO as a “billing agent” is thus entirely consistent with the statute. *Schuylkill*, 607 Pa. at 385; *Cherry*, 537 Pa. 186.

Regarding PECO’s second argument, that the marketplace has changed, the information that PECO proffers consists of hazy assertions as to information that was already available to both the PUC and the Pennsylvania legislature, and whose import is contradicted by PECO’s own testimony. Without specifying what the prices are or how they have changed, PECO claims that energy prices are “lower than they were in 2008 when Act 129 was enacted,” and that the Commission should thus “re-examine its approach.” PECO Testimony at 18. However, PECO admits that energy prices are widely-known, and that the Commission—as well as the legislature—are well-aware of them. Hearing Transcript at 69:10-19. Further, PECO admits that reductions in consumption of electricity (such as the reductions that are the heart and purpose of Act 129) are likely to result in decreases in the price of electricity. *Id.* at 73:3-8. Thus, PECO’s argument that electricity prices have decreased is effectively baked into both the legislative intent behind Act 129 and the Commission’s implementation thereof. Indeed, reducing the cost cap to accommodate what may be current lower electricity prices runs directly contrary to the objective of Act 129 of delivering cost-effective energy efficiency benefits to customers. *See, e.g.,* Implementation Order at 41 (discussing the importance of EDCs “maintain[ing] their full 2% annual budgets that will be spent on achieving cost-effective energy efficiency.”⁶)

What PECO appears to be seeking is ultimately more consistent with a change in the statute such that the spending cap is calculated with reference to revenues from some other year

⁶ PECO also admitted to not considering the fact that the purchasing power of the 2% spending cap, indexed as it is to 2006 revenues, has declined in the intervening 6 years due to inflation. *See* Hearing Transcript 69:20-22 (“Q: . . . [D]id you consider inflation? A: We did not consider inflation.”).

than 2006. But this is not what Act 129 currently provides. PECO is of course free to seek new legislation, but in this venue it has failed to carry its burden of demonstrating that revisions to the energy efficiency targets in the Implementation Order are necessary because of issues with the Commission's revenue calculations.

IV. CONCLUSION

For the foregoing reasons, PECO has failed to sustain its burden in demonstrating that alterations to the energy efficiency targets set for it in the Implementation Order should be altered. PECO's Petition should accordingly be denied.

Respectfully Submitted,

Date: October 19, 2012

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy :
For an Evidentiary Hearing on the Energy : P-2012-2320334
Efficiency Benchmarks Established for the Period :
June 1, 2013 through May 31, 2016 :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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