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December 21, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

RE: Petition of PECO Energy Company For Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan; Docket No. M-2012-2333992

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Comments of the Philadelphia Area Industrial Energy Users Group ("PAIEUG") in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served with a copy of this document.

Sincerely,

McNEES WALLACE & NURICK LLC

By
Adeolu A. Bakare

Counsel to the Philadelphia Area Industrial Energy Users Group

c: Administrative Law Judge Dennis J. Buckley (via First Class Mail and E-Mail)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant.)

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Dated this 21st day of December, 2012, in Harrisburg, Pennsylvania.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan	:	Docket No. M-2012-2333992

COMMENTS OF THE
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP

I. INTRODUCTION

A. Act 129 History

On October 15, 2008, Governor Rendell signed into law House Bill 2200, or Act 129 of 2008 ("Act 129" or "Act"). Among other effects, Act 129 expanded the Pennsylvania Public Utility Commission's ("PUC" or "Commission") oversight responsibilities and set forth new requirements for electric distribution companies ("EDCs")[1] with respect to energy conservation, default service procurements, and the expansion of alternative energy sources.

Specifically, with regard to energy efficiency and conservation ("EE&C"), Act 129 required EDCs to adopt a plan, approved by the Commission, to reduce electric consumption by at least 1% by May 1, 2011, and by at least 3% by May 31, 2013, adjusted for weather and extraordinary loads. 66 Pa. C.S. § 2806.1(c). In addition, by May 31, 2013, peak demand was to be reduced by a minimum of 4.5% of the EDC's annual system peak demand in the 100 hours of highest demand, measured against the EDC's peak demand during the period of June 1, 2007,

[1] As articulated in the Act, only EDCs with at least 100,000 customers are required to submit energy efficiency and conservation programs. *See* 66 Pa. C.S. § 2806.1, *et seq.*

through May 31, 2008. *See id.* § 2806.1(d). By November 30, 2013,[2] the Commission was required to evaluate the cost-effectiveness of the aforementioned EE&C programs. *See id.* § 2806.1(c)(3). If the benefits of the programs exceeded the costs, then the Commission would impose additional reductions on the eligible EDCs. *See id.*

Consistent with the Act's requirements, on July 1, 2009, all Pennsylvania EDCs, including PECO Energy Company ("PECO" or "Company") filed with the Commission proposed EE&C plans (*i.e.*, "Phase I EE&C Plans"), which sought to meet the Act's EE&C requirements. PECO's Phase I EE&C plan was adopted on October 28, 2009, but subject to further revisions.[3]

B. PUC Phase II Implementation Order

On August 2, 2012, the Commission issued an Implementation Order establishing the procedural and substantive requirements for EDCs' Phase II EE&C Plans. Importantly, the Commission held that energy efficiency programs should be continued during Phase II based on the Statewide Evaluator's ("SWE") Market Potential Study, which indicated that energy efficiency programs were cost-effective for consumers during Phase I. Implementation Order, p. 12. Mandatory demand reduction programs, however, were not to be included in Phase II Plans, because the cost-effectiveness of Phase I demand reduction programs could not be evaluated before Phase II implementation. Implementation Order, p. 40. In addition, the Commission stressed the importance of developing balanced Phase II EE&C Plans (*i.e.*, plans

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[2] The Commission also engaged an independent consultant, the Statewide Evaluator, to evaluate the cost-effectiveness of certain EE&C programs before this date.

[3] *See, e.g., Petition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program;* Docket No. M-2009-2093215 (Order entered Oct. 28, 2009); *Petition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program;* Docket No. M-2009-2093215 (Order entered Feb. 17, 2010); *Petition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program;* Docket No. M-2009-2093215 (Order entered Jan. 27, 2011).

that do not disproportionately impact specific customer classes). Implementation Order, p. 87. Finally, the Commission outlined the following procedural process in its Implementation Order:

> The Commission will publish a notice of each proposed plan in the *Pennsylvania Bulletin* within 20 days of its filing. In addition, the Commission will post each proposed plan on its website. An answer *along with comments* and recommendations are to be filed within 20 days of the publication of the notice in the *Pennsylvania Bulletin*. Each plan will be referred to an Administrative Law Judge (ALJ), who will establish a discovery schedule and hold a public input hearing(s) in the EDC's service territory upon request of any party, as well as an evidentiary hearing(s) on issues related to the EE&C plan. Such hearings are to be completed on or before the 65th day after a plan is filed, after which, the parties will have 10 days to file briefs. The EDC will then have 10 days to submit a revised plan or reply comments or both. The ALJ will then certify the record to the Commission.

Id. at 62 (emphasis added).

C. Brief Summary of PECO's Phase II EE&C Plan

On November 1, 2012, PECO petitioned the Commission for approval of its Phase II EE&C Plan ("Petition"). PECO's Phase II EE&C Plan proposes to fulfill the requirements of Act 129 through the implementation of 13 energy efficiency programs for the Company's Residential, Small Commercial and Industrial ("C&I"), and Large C&I customer classes, plus additional programs specifically targeting Governmental/Non-Profit/Institutional ("GINP") entities.[4] *See* Petition, p. 2. PECO anticipates meeting its mandated 2.9% energy reduction at a total overall cost to customers of $256.4 million, which represents approximately two percent of the Company's annual revenue as of December 31, 2006. PECO Phase II EE&C Plan, p. 15.

On November 21, 2012, the Philadelphia Area Industrial Energy Users Group ("PAIEUG") filed a Petition to Intervene in this proceeding in order to protect its members'

[4] Large C&I customers are defined by PECO as those customers served through Rate Schedules PD, HT, and EP. PECO Phase II Plan, Exhibit RAS-2.

interests.[5] PAIEUG's Petition to Intervene was granted by Administrative Law Judge Dennis J. Buckley at the November 30, 2012, Prehearing Conference.

Consistent with the process outlined in the Implementation Order and approved at the Prehearing Conference, PAIEUG submits these Comments in order to set forth preliminary positions and concerns regarding PECO's proposed Phase II EE&C Plan. PAIEUG will supplement these positions in its post-hearing brief and reserves the opportunity to modify positions and submit recommendations regarding additional issues based on the arguments raised by other parties, the factual evidence adduced during the evidentiary hearings, and any further clarifications regarding the Phase II EE&C Plan provided by PECO during the course of discovery or adjudication of the Plan.

II. COMMENTS

A. PECO's Phase II EE&C Plan Must Be Closely Reviewed and Monitored to Ensure Compliance With the Act 129 Requirement of Offering Energy Efficiency Programs to Customer Classes in an Equitable Manner.

Act 129 requires the Commission to establish "[s]tandards to ensure that each plan includes a variety of energy efficiency and conservation measures and will provide the measures equitably to all classes of customers." 66 Pa. C.S. § 2806.1(a)(5). In the Implementation Order, the Commission interpreted this mandate as requiring that "EDCs must offer a well-reasoned and balanced set of measures that are tailored to usage and to the potential for savings and reductions for each customer class." Implementation Order, p. 87. Fundamentally, it is important that classes neither receive a disproportionate share of EE&C Plan benefits nor bear a disproportionate burden of the costs in relation to the overall plan. To achieve this objective, the

[5] PAIEUG is an *ad hoc* group of energy-intensive customers receiving electric service from PECO under Rates HT and PD. PAIEUG members consume substantial amounts of electricity in their manufacturing and operational processes, and these electric costs are a significant element of their respective costs of operation. Any modification to PECO's electric rates may impact PAIEUG members' cost of operations.

Company's Phase II EE&C Plan should reflect parity between the overall revenues received by an EDC from a customer class and the Phase II EE&C Plan budget allocated to the same customer class.

With regards to the Large C&I customer class, further information is required to determine whether PECO's proposed Phase II EE&C Plan may be reasonably balanced from a cost allocation standpoint. The costs associated with PECO's two Large C&I programs total approximately $44.5 million. PECO Phase II EE&C Plan, p. 191. Additionally, PECO allocates $7.6 million of common costs to Large C&I customers, bringing the total Large C&I costs to $52.1 million. Finally, Large C&I customers are also responsible for a portion of GINP program costs (*i.e.*, approximately $18 million). As a result, PECO appears to intend to recover approximately $70 million in total program costs from Large C&I customers.[6]

The reasonableness of PECO's budget allocation cannot be conclusively determined at this time because PECO did not seem to include the information necessary to evaluate customer revenues in its Phase II Plan. PAIEUG has propounded discovery upon PECO seeking precise revenue amounts attributable to each customer class in order to assess whether PECO's Phase II Plan reflects the cost causation principles set forth in Act 129. PAIEUG further encourages the Commission to closely monitor PECO's cost allocation methodologies to ensure that implementation of PECO's Phase II Plan does not create interclass subsidization.

Moreover, although EE&C Plans are primarily governed by Act 129, the Commission and all stakeholders should remain cognizant of the enormity of collecting an additional $256.4 million on top of traditional electric distribution rates. The significant expenses proposed to be collected through the Company's Phase II EE&C Plan warrant scrupulous review of cost allocation methodologies to ensure that customers pay for Act 129 program expenses in

[6] PAIEUG has propounded interrogatories on PECO to confirm these calculations.

proportion to their available benefits. In addition to reviewing whether the Company's Phase II EE&C Plan follows the cost causation principles set forth in Act 129, PAIEUG encourages the Commission to closely monitor the Company's cost allocation methodologies to ensure that implementation of the Company's Phase II EE&C Plan does not create interclass subsidization.

B. PECO's Phase II Cost Recovery Mechanism for Large C&I Customers Remains Appropriate.

The Company proposes to continue the Phase I cost recovery methodology during Phase II, stating that "for large commercial customers, the [Phase II] charge was based on a PJM Peak Load Contribution ("PLC")." PECO Phase II EE&C Plan, p. 172. PAIEUG endorses this cost recovery mechanism, particularly with respect to the calculation of Large C&I customer demand based on individual customers' PLCs. Utilization of the PLC provides consistent charges to customers and further encourages peak load reduction by both EE&C Plan participants and non-participants. Finally, because PLCs are determined annually on a one-time basis, a demand charge based on the PLC provides a consistent charge to customers and constant, reliable cost recovery to EDCs.

C. PAIEUG Encourages the Company to Facilitate a Smooth Transition Between Phase I and Phase II EE&C Plans.

The Commission's Implementation Order recognizes the importance of a "smooth transition" between Phase I and Phase II. Implementation Order, p. 114. The Commission further found that programs installed by customers after Phase II has begun (*i.e.*, June 1, 2013) will no longer be eligible for Phase I funds. *Id.*

PAIEUG welcomes the Commission's efforts to remain consistent with cost causation principles (*i.e.*, program benefits are only triggered when costs are incurred). Nevertheless, PAIEUG also supports a smooth transition between Phase I and Phase II, which could be a challenge for those customers installing program measures at the end of Phase I. As a result, at a minimum, PAIEUG recommends that the Company endeavor to inform all customers participating in Phase I programs of the impending deadline for receiving Phase I funds. In addition, the Company should provide a streamlined application process for those customers who fail to install measures before the expiration of Phase I, but would continue to be eligible for incentives under the Company's Phase II Plan.

D. PECO's Phase II EE&C Plan Warrants Further Review to Evaluate the Reasonableness of Revenues Recovered From Customers and Allocated towards Non-Incentive Costs.

Act 129 includes various protections collectively designed to deliver customer benefits, including not only the aforementioned cost causation and cost effectiveness provisions, but also a related requirement that each EE&C Plan include an analysis of its administrative costs. While the Commission has adopted the Total Resource Cost ("TRC") Test as the cost/benefit metric for EE&C Plans, PAIEUG submits that the Commission should additionally consider the ratio of customer incentive expenses to administrative or third-party expenses. In the case of PECO's Phase II EE&C Plan, it appears that the non-incentive costs comprise a significant percentage of PECO's program expenditures.

The ratio of customer incentives to overall program budgets for PECO's Phase II EE&C Plan raises questions regarding the overall program benefit flowing to customers. Through the proposed Phase II EE&C Plan, PECO anticipates providing customer incentives totaling $104.3 million, while collecting $256.4 million from customers. PECO Phase II EE&C Plan, p. 191. On a percentage basis, the customer incentives amount to 40.7% of PECO's Phase II expenditures. The remaining $152 million of EE&C revenues from customers are presumably allocated amongst PECO's administrative expenses, common costs, and third party contractor expenses, but PECO's Phase II Plan does not appear to provide a detailed breakdown of non-incentive costs. *Id.* Accordingly, PAIEUG encourages the PUC to further review PECO's Phase

II EE&C Plan to ensure that the benefits of the Plan (*i.e.*, customer incentives) are as robust as possible in comparison to the costs (*i.e.*, non-incentive costs).

E. PAIEUG Reserves the Right to Challenge the Company's Proposed Phase II Programs After Completion of the SWE's Final Audit.

As acknowledged in the Implementation Order, the Commission faces the difficult task of structuring Phase II EE&C Plans prior to completion of the inaugural Phase I EE&C Plans. In assessing the cost effectiveness of Phase I EE&C Plans, the Commission relied upon the SWE Market Potential Study based on "national trends in energy efficiency programs, Pennsylvania-specific circumstances and forward-looking cost estimates..." Implementation Order, p. 14. Although the Commission adopted the Market Potential Study's finding that the "benefits of a Phase II Act 129 program will exceed the costs," the Commission also noted that "we cannot definitively determine whether the benefits of the Phase I EE&C Program exceeded its costs, as Phase I is not yet complete." *Id.* at 13. PAIEUG agrees with the Commission's acknowledgement that the cost-effectiveness of Phase I EE&C Plans remains uncertain and submits that any assessment of Phase II costs and benefits remains similarly tenuous. Accordingly, with appreciation of the tremendous revenues associated with the Company's Phase II EE&C Plan, PAIEUG intends to monitor the Commission's review of the Company's Phase I Plan and reserves the right to petition for changes to the Company's Phase II EE&C Plan based upon the results of the final Phase I analysis.

In addition to the Market Potential Study relied upon by the Implementation Order, the Commission should condition any findings with regards to the Company's Phase II EE&C Plan upon the potential for further modification based upon its forthcoming SWE audit and Commission evaluation of Phase I EE&C Plan. On or around June 1, 2013, the SWE will audit all Phase I EE&C programs, including those within the Company's Phase I Plan that may be continued during Phase II. *See* Implementation Order, p. 70. Additionally, the Commission will complete an evaluation of Phase I EE&C Plans by November 30, 2013 and, as required by Act 129, determine "how the plan will be adjusted on a going-forward basis as a result of the evaluation." *Id.* at 13; *see also* 66 Pa. C.S. § 2806.1(b)(1)(i)(J). With the Phase I Plans continuing through May 31, 2013, the Phase I EE&C Plan cannot be evaluated in their entirety prior to completion of the instant proceeding. As a result, the SWE audit and/or the Commission's evaluation may provide critical information regarding cost-effectiveness of these programs that has yet to be available to stakeholders.

To ensure that the Company's Phase II Plan appropriately reflects any relevant findings from the SWE audit or the Commission's pending evaluation of Phase I EE&C Plans, PAIEUG intends to review the SWE analysis related to the Large C&I programs. PAIEUG will assess the cost-benefit results of the Large C&I programs based on actual results, and may, in the future, argue that the program design was inappropriate and contrary to the Act 129 requirements and goals. Accordingly, PAIEUG reserves the right to challenge any such programs based on the results of the 2013 SWE audit and the Commission evaluation.

III. CONCLUSION

WHEREFORE, the Philadelphia Area Industrial Energy Group respectfully requests that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Comments.

Respectfully submitted,

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By ________________________

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