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January 15, 2013

Via E-Filing
Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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:

Enclosed, please find the Main Brief and attached Certificate of Service filed on behalf of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) in the above captioned proceeding. Please feel free to contact me with any questions.

Respectfully submitted,

Harry S. Geller

Harry S. Geller, Esquire
Patrick M. Cicero, Esquire
Counsel for CAUSE-PA

CC: Certificate of Service

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**

Certificate of Service

I hereby certify that I have this day served copies of the Main Brief of CAUSE-PA upon the parties and counsel of record in the captioned matter as set forth below in accordance with the requirements of 52 Pa. Code § 1.54:

VIA E-MAIL and UNITED STATES FIRST CLASS MAIL

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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

MAIN BRIEF OF THE COALTION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA

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INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), through its counsel at the Pennsylvania Utility Law Project, files this brief in support of its positions and the positions advanced by its witness Mitchell Miller through his written testimony and accompanying exhibit. The uncontroverted evidence in the captioned proceeding demonstrates that PECO Energy Company's ("PECO" or the "Company") Act 129 Phase II Energy Efficiency and Conservation Plan ("Phase II EE&C Plan" or "Plan") must achieve energy savings of 4.5% from economically vulnerable low-income households within its service territory whose household incomes are at or below 150% of Federal Poverty Guidelines ("FPG".)

PROCEDURAL HISTORY

On November 1, 2012, PECO filed its Plan with the Pennsylvania Public Utility Commission (Commission) in compliance with 66 Pa.C.S. § 2806.1(b) (relating to energy efficiency and conservation programs.)

On December 3, 2012, CAUSE-PA filed a Petition to Intervene which was granted by the Hon Administrative Law Judge ("ALJ") Dennis J. Buckley on December 4, 2012. The following parties have also intervened in this proceeding: the Philadelphia Area Industrial Energy Users Group ("PAIEUG"); the City of Philadelphia (the "City"); Wal-Mart Stores East, LP and Sam's East, Inc. (collectively, "Walmart"); the Office of Consumer Advocate ("OCA"); Citizens for Pennsylvania's Future ("PennFuture"); the Office of Small Business Advocate ("OSBA"); and Comverge, Inc.

On December 21, 2012, CAUSE-PA served the direct testimony of Mitchell Miller (CAUSE-PA ST-1) which provided "recommendations as to actions which PECO may take to enable its low-income Act 129 programs to comply with the Act and Commission Orders and to achieve energy efficiency results in a cost-effective manner most beneficial to low-income households." (CAUSE-PA ST-1 at. 4.) Direct testimony was also filed by OCA and the City.

On January 4, 2013, PECO filed the rebuttal testimony of Frank J. Jiruska (PECO Statement No. 1-R.)

The hearing in this matter was held on January 9, 2013.CAUSE-PA ST 1, exhibit MM-1, accompanying affidavit and joint CAUSE/PECO exhibit 1 were entered into the record at that time.

STATEMENT OF POSITION

CAUSE-PA submits that the Plan initially filed by PECO failed to clearly indicate that it will achieve the required level of targeted energy savings solely from households whose income is at or below 150% FPG. However, during the course of this proceeding PECO clarified its position through the Rebuttal Testimony of witness Frank J. Jiruska. Mr. Jiruska testified that PECO will only count savings generated by households at or below 150% of the FPIG and that the low-income sector savings will be obtained from LEEP (4.25%), other Phase II programs (.13%), and banked Phase I savings (.12%). (PECO Statement No.1-R, at 2-3.)

Subsequently, PECO and CAUSE-PA ("Stipulating Parties"), through their respective counsel, entered into a Stipulation which was entered into the record (Joint CAUSE-PECO Exhibit 1) without objection. At the Hearing, Mr. Jiruska was made available to all parties for questioning and examination regarding the stipulation. The Stipulating Parties have agreed that PECO's Phase II Plan should incorporate the following elements:

a. For purposes of meeting the 4.5% low-income savings requirement, PECO will only count savings generated by households at or below 150% of the FPIG.

b. PECO will separately track LEEP expenditures for customers at or below 150% of the FPIG; and

c. When a customer at or below 150% of the FPIG participates in a Phase II program other than LEEP, the Company will provide the customer's information to the Company's Low-income Usage Reduction Program ("LIURP") and/or LEEP to determine eligibility for those programs.

CAUSE-PA respectfully requests that the Commission, as part of the final Order in this case, adopt the Stipulation and hold that the Plan incorporates stipulated items a., b, and c.

In addition, CAUSE-PA requests that the Commission adopt the additional recommendations of its witness, Mitchell Miller regarding actions which PECO may take to enable its low-income Act 129 programs to comply with the Act and Commission Orders and to achieve energy efficiency results in a cost-effective manner most beneficial to low-income households. Specifically, Mr. Miller recommended that PECO commit to targeting multi-family housing in which low and lower income households reside (CAUSE-PA ST 1,17:3-6), that PECO Phase II programs coordinate to a greater degree with other low-income energy efficiency programs (CAUSE-PA ST 1,17:16-18) and that PECO more effectively incorporate into its low-income program a greater degree of high savings Energy Star appliance exchanges for older model appliances and efficient hot water heating installations; that PECO act to eliminate, where feasible, *de facto* electric heating; and that PECO, where feasible, promote the switching from electric heat to an efficient natural gas system. (CAUSE-PA ST 1, 19:3-11.)

LEGAL SUPPORT

Act 129 of 2008 specifically addresses requirements to be met for low-income households. In 66 Pa. C.S. §2806.1(b)(1)(i)(G), Act 129 provides that each Electric Distribution Company ("EDC") Energy Efficiency and Conservation ("EE&C") Plan must include specific energy efficiency measures for households at or below 150% of the federal poverty income guidelines (FPIG), in proportion to that sector's share of the total energy usage in the EDC's service territory. The Commission adopted this requirement for all Phase I EDC Plans.

For Phase II, the Commission continued its Phase I low-income requirement that each plan include specific energy efficiency measures for households at or below 150% of the federal poverty income guidelines (FPIG), in proportion to that sector's share of the total energy usage and required, *in addition,* that each EDC Phase II EE&C Plan should obtain a minimum of four-and-a-half percent (4.5%) of its consumption reduction requirements from the low-income sector.[1]

The Commission also determined that eligibility for the Phase II low-income sector programs be limited to households with incomes at 150% of the Federal Poverty Income Guidelines ("FPIG") or below.[2]

The issue of the appropriate income level to be used for low-income households received significant attention from the Commission in its consideration of Phase II elements. In its March 1, 2012, Secretarial Letter, regarding Phase II, the Commission identified eight specific issues and topics for which it sought comment. One of those eight topics concerned the inclusion of a

1 . Implementation Order (IO), entered August 3, 2012, Energy Efficiency and Conservation Program, Docket No. M-2012-2289411, M-2008-2069887 at 55.

2 Ibid at 58.

low-income carve-out and the appropriate household income level at which the target was to be set. The Commission stated:

> In addition, assuming this carve-out will continue, we are seeking comments on whether we should expand the requirement to include low-income households at or below 250% of the Federal Poverty Income Guidelines.[3]

In its Tentative Implementation Order, the Commission put forward for comment a proposal that the provision of energy efficiency measures within the low-income sector to 250% of Federal Poverty Income Guidelines be voluntary and left to the determination of each EDC.[4] However, following the receipt and consideration of a significant number of comments regarding this proposal, the Commission, in its Phase II Implementation Order, determined that the appropriate income level of low-income households was to be set at 150% FPIG or below. The Commission stated:

> Upon consideration of the comments received, **we will maintain the 150% FPIG standard for the low-income carve out.** There are a significant number of households in that income bracket that have not been reached yet. Moreover, we are concerned that if the eligibility criteria is expanded to customers above the 150% FPIG, there will be less funding available to the poorest households in the Commonwealth.[5]

For Phase II, the Commission continued its Phase I low-income requirement that each plan include specific energy efficiency measures for households at or below 150% of the federal poverty income guidelines (FPIG), in proportion to that sector's share of the total energy usage and required, *in addition,* that each EDC Phase II EE&C Plan should obtain a minimum of four-and-a-half percent (4.5%) of its consumption reduction requirements from the low-income sector.[6]

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[3] March 1, 2012, Secretarial Letter, at 6.
[4] Tentative Implementation Order at 27 (emphasis added).
[5] IO at 58.
[6] IO at 55.

Thus, the three part standard for measuring threshold compliance with Act 129's low-income sector requirements is that there be available measures targeted toward low-income households in proportion to their share of the total energy usage; that 4.5% of energy savings come from the low-income sector; and that the low-income sector be comprised solely of households with income at or below 150% of the federal poverty income guidelines.

LOW-INCOME ECONOMIC REALITIES AND ENERGY EFFICIENCY NEEDS

As detailed in the uncontroverted testimony of Mr. Miller, but worth summarizing here, the economic realities facing PECO's low-income households lead to the undeniable fact that their income is simply inadequate to pay all necessary expenses (CAUSE-PA ST-1 at 13:6).

According to the latest PUC, Bureau of Consumer Services Report on Universal Programs and Collections Activity ("Report"), PECO estimates that of its 1.4 million plus[7] residential electric customers, 364,116 have incomes at or below 150% FPIG.[8] Thus, more than one-quarter of PECO's customers are income eligible for its Act 129 Phase II EE&C low-income program services. The maximum annual household income for a family of four is $34,575. However, the Report indicates that even when the eligibility requirement is set at 150% FPIG, the average income of Pennsylvania households who avail themselves of utility company low-income assistance programs is much lower. For example, in 2011, the household income of the typical Pennsylvania CAP customer was a mere $13,400, or only about 70% of Federal Poverty Guidelines.[9]

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[7] 2011 Report on Universal Service Programs & Collections Performance of the Pennsylvania Electric Distribution Companies & Natural Gas Distribution Companies,, Pennsylvania Public Utility Commission, Bureau of Consumer Services, at 8.
[8] *Ibid.* at 10.
[9] Ibid at 33.

Households at 150% FPG lack sufficient income to pay for all of their essential needs. Before all of the bills are paid, low-income families scraping by routinely run out of money. Many of them cannot afford to pay for utility service because of the cost of competing essential needs like rent, food, and medicine. This fact is evidenced in the high termination rate for the Company's confirmed low-income customers as compared to all residential customers. In 2011, the termination rate for confirmed low-income PECO electric customers was 9.49% compared to 5.73% of all residential customers. This data indicates that PECO's low-income electric customers are significantly more likely to be disconnected than its other electric residential customers.[10]

Significantly, many of PECO's involuntarily terminated customers are often financially unable to restore service. The Commission's most recent Cold Weather Survey indicates that, on December 17, 2012, 2,673 of PECO customers had no safe central heat source as they were about to enter the winter.[11]

Mr. Miller concluded that PECO's emphasis on increasing its light bulb distribution in LIURP, LEEP and in its public outreach will not effectively reduce the electrical energy usage of low-income households in which household conditions require more aggressive physical remediation efforts (CAUSE-PA ST 1 at 18:23-19:3.) Accordingly, he recommended that PECO commit to targeting activities would provide significant energy savings to low-income households and would enable these households to be better able to afford and maintain their basic utility service. (CAUSE-PA ST 1 at 19:12-14).

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[10] Ibid at 11.

[11] http://www.puc.state.pa.us/general/publications_reports/pdf/Cold_Weather_Results_2012.pdf at 1.

CAUSE-PA respectfully requests that, given the demonstrated and unquestioned need of PECO's low-income population, the Commission direct PECO to place a greater emphasis on implementing Mr. Miller's suggestions to achieve effective levels of individual household savings through exchanging high savings Energy Star appliances to replace older less efficient appliances; through the installation of efficient hot water heaters, through eliminating, where feasible, *de facto* electric heating; and that PECO, where feasible, promote the switching from electric heat to an efficient natural gas system. (CAUSE-PA ST 1, 19:3-11.)

LEVERAGING OF BENEFITS

Mr. Miller indicated that there are a number of publicly funded energy efficiency programs that target the same low and lower income households that may be included in PECO Phase II plans and that PECO Phase II programs should coordinate with these programs. Such coordination would not only leverage scarce funds but would better enable PECO to continue, in Phase II, successful initiatives that it had undertaken in Phase I. An example of such coordination cited by Mr. Miller is that undertaken by PECO and the Department of Community and Economic Development ("DCED") Weatherization Assistance Program (WAP) in PECO's Act 129 EE&C Phase I in which energy efficient refrigerators were paid for by PECO, when appropriate, in WAP treated households. (CAUSE- PA ST 1 at 17:16-21.) Besides providing meaningful energy efficiency to low-income PECO customers, administrative costs for PECO may be decreased because outreach, intake and income verification would be completed under the public program. Thus, public funds would be leveraged with ratepayer funds for maximum benefits to the household and ratepayers. The combined funding would allow additional households to receive services. (CAUSE- PA ST 1 at 17:22-18:3.)

MULTI-FAMILY HOUSING

Many low and lower income households live in multi-family dwellings or in a master metering situation where, although the household is low-income and falls within the definition of a low-income household for purposes of the statute, the household is not the customer of record with the public utility. Rather, it is the landlord or property owner who, as the customer of record, usually in a commercial account, purchases the utility service and redistributes it to the low-income households through some form of resale arrangement. Therefore, even though Act 129 seeks to reduce electric usage by these low-income households, because the landlord or property owner is the customer of record and would most likely be charged commercial rates, the low-income household likely will be barred from participating in PECO's LEEP, or LIURP. The Smart Multi-Family Solutions Program has the potential to address this issue. (CAUSE ST 1 at 15:15-16:2.) CAUSE-PA witness Mitchell recommended that PECO develop a component in its Smart Multi-Family Solutions Program specifically targeted to multifamily buildings housing low and lower income households and that PECO directly collaborate with PHFA regarding development of this component. (CAUSE ST 1 at 17:2-5.) Although PECO has indicated that it views the Pennsylvania Housing Finance Agency ("PHFA") as an appropriate collaborator to identify appropriate low-income multi-family buildings and to identify the technical and financial assistance available to multi-family building operators and tenants it has chosen not to develop a specific low-income multifamily program. CAUSE-PA views this oversight as a lost opportunity to provide energy efficiency services to a significantly underserved market. A collaboration of PECO and PHFA is uniquely situated to fill such a role. (CAUSE ST 1 at 16:21-17:6) PHFA is uniquely knowledgeable in DOE eligibility rules as well as the rules for HUD coordination. PHFA is knowledgeable about and has used the DOE required multiunit energy audit methodology. This unique base of knowledge and experience puts PHFA in a singular category to deliver and leverage the benefits of a PECO multifamily program targeted to low and lower income households. (CAUSE ST 1 at 17:7-12.)

CONCLUSION

The Commission has clearly indicated that Act 129 Phase II plans are to include specific energy efficiency measures for households at or below 150% FPIG, in proportion to that sector's share of the total energy usage and that each EDC Phase II EE&C Plan should obtain a minimum of four-and-a-half percent (4.5%) of its consumption reduction requirements from the low-income sector defined as at or below 150% FPG. Low-income customers make up a significant portion of PECO's residential customer base and their unique needs must be taken into consideration to ensure that those needs are adequately addressed. CAUSE-PA respectfully requests that as part of the final Order in this case, the Commission adopt the Stipulation between CAUSE-PA and PECO and hold that the PECO Plan incorporates the items stipulated. In addition, CAUSE-PA submits that the Commission should adopt the additional recommendations of its witness, Mitchell Miller regarding meaningful measures, appliance exchanges, leveraging, and the targeting of low-income multifamily housing.

Respectfully submitted,

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