



Direct Dial: 215.841.6841

August 13, 2013

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

RE: Thomas Egan v. PECO Energy Company
PUC Docket No.: C-2013-2368645

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the following documents in the matter referenced above.

- Answer
- Answer & New Matter
- Motion Objecting to Continuance Request
- Motion for Judgment on the Pleadings
- Motion to Admit Exhibits
- X** Preliminary Objection
- Exceptions
- Reply Exceptions
- Main Brief
- Reply Petition

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,

Shawane Lee
Counsel for PECO Energy Company
SL/lo

Scheduling Recommendation: Call of the Docket

Not Call of the Docket

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

THOMAS EGAN	:	
Complainants	:	
v.	:	DOCKET NO. C-2013-2368645
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objection within 10 days from service of this notice, a ruling may be entered against you. Your response must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Shawane L. Lee, and where applicable, the Administrative Law Judge presiding over the issue.

File with:
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

With a copy to:
Shawane L. Lee
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, August 13, 2013



Shawane L. Lee
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103
(215) 841-6841
Shawane.Lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

THOMAS EGAN	:	
Complainants	:	
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**PRELIMINARY OBJECTION OF RESPONDENT,
PECO ENERGY COMPANY**

Respondent, PECO Energy Company (“PECO Energy”), pursuant to 52 Pa. Code § 5.101(a)(4) respectfully petitions this Honorable Commission to dismiss the instant Complaint as legally insufficient.

1. On June 14, 2013, PECO Energy was served with a formal complaint filed by Thomas Egan (hereafter “Complainant”).
2. In the Complainant’s formal complaint, he states the reason for his complaint as:

In the spring of 2012 I was contacted by Peco and asked to participate in the AC Savers program. In exchange for allowing Peco to shut my AC off in times of peak electric usage, Peco stated I would receive \$30.00 off my bill for the months: June, July, August, and September. I agreed to participate.

Peco came to my house drilled holes in the foundation of my house, attached a ‘box’ and integrated that box into my AC unit.

On May 24, 2013, I received a notice from Peco that they were not going to honor their original agreement and were reducing the amount of the monthly discount.

I contacted the PUC and asked if PUC was aware of this...PUC personnel stated “no” and I was told to contact Peco first.

I called Peco at 1-888-573-2672 (the phone number supplied on the notice). When I asked why Peco was not honoring their agreement with me she stated “...due to legislative actions and action by PUC, Peco was not required to reserve a certain level of Kilowatt hours...” Therefore Peco was reducing the discount.

See the Complainant's formal complaint, attached hereto as Exhibit "1".

3. In the "relief" section of the Complainant's formal complaint, he states:

PECO should honor their original agreement.

See the Complainant's formal complaint, attached hereto as Exhibit "1".

4. In his formal complaint, the Complainant disputes the reduction of the Smart A/C Saver Program credit from \$30.00 to \$20.00.

5. PECO Energy filed an Answer and the instant Preliminary Objection.

6. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.¹

7. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible.²

8. A complaint must be able to recover under the law to survive a preliminary objection.³

9. All of the non-moving party's averments must be taken as true for the sake of deciding the preliminary objection.⁴

10. The court does not, however, need to accept, "unwarranted inferences from facts, argumentative allegations, or expressions of opinions."⁵

11. Section 703 of the Public Utility Code, 66 Pa.C.S.A. § 703(b) provides that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.

¹ Equitable Small Transportation Interveners v. Equitable Gas Co., 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994)

² 2006 Pa. PUC Lexis 111, *7.

³ Milliner v. Enck, 709 A.2d 417, 418 (Pa. Super. Ct. 1998) ("preliminary objection should be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover").

⁴ Id. at 7-8.

⁵ Feingold v. McNulty, 2009 Phila. Ct. Com. Pl LEXIS 167, *3.

12. A hearing is required only when there is a disputed question of fact, and is not required to resolve questions of law. Dee-Dee Cab, Inc. v. Pa.Pub. Util. Comm'n, 817 A.2nd 593 (Pa.Comm. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

13. Here, there are no genuine issues of fact and PECO Energy is entitled to judgment as a matter of law. Therefore, the complaint is legally insufficient and should be dismissed.

14. The Complainant disputes the fact that the Smart A/C Saver Program credit reduced from \$30.00 to \$20.00.

15. By way of background, Governor Edward Rendell signed Act 129 of 2008 into law on October 15, 2008. The Act took effect 30 days thereafter on November 14, 2008, and amended Section 2807 of the Public Utility Code.

16. Among other things, the Act specifically directed that electric distribution companies (such as PECO Energy) with more than 100,000 customers to adopt a plan to reduce energy demand and consumption within its service territory. See 66 Pa. C.S. § 2806(1)(a).

17. On January 15, 2009, the Commission adopted an Implementation Order at Docket No. M-2008-2069887 (Phase I Implementation Order) which established the standards each plan must meet, and which provided guidance on the procedures to be followed. See Phase I Implementation Order, entered January 15, 2009, at Docket No. M-2008-2069887.

18. PECO Energy implemented a Direct Load Control Program (“DLC Program”) as a part of the Company’s Phase I Plan.

19. Under PECO Energy’s DLC Program, the company recruited over 86,000 customers and installed over 100,000 load control devices, such as the Smart A/C Saver Program load control device installed at the Complainant’s residence.

20. On April 26, 2010, PECO Energy launched the Smart A/C Saver Program to satisfy the requirements stipulated from Act 129 legislation and the company's DLC Program.

21. Under the program, PECO Energy offered a \$30.00 A/C Compressor cycling credit for residential customers for the Summer Period (June 1 through September 30) for a total of 4 monthly credits. See Tariff Provision, attached hereto as Exhibit "1".

22. The \$30.00 credit was approved by the Public Utility Commission ("PUC") and it is contained within PECO Energy's Electric Service Tariff ("Tariff") approved by and on file with the PUC. See Exhibit "1".

23. On August 3, 2012, the Commission entered the Phase II Implementation Order at Docket No. M-2012-2299411, which established the standards each plan must meet and provided guidance on the procedures to be followed.

24. At a Public Meeting held on May 9, 2013, PECO Energy proposed for the DLC Program in Phase II to reduce customer incentives from thirty dollars to twenty dollars during the Summer Period (June 1 through September 30). See Opinion and Order, p. 8, Docket No. M-2012-2333992, (Order entered May 9, 2013), attached hereto as Exhibit "2". .

25. PECO Energy's Phase II proposal, including the A/C Saver reduction from \$30.00 to \$20.00 was approved by the Commission by Order entered May 9, 2013. See Exhibit "2".

26. The reduced \$20.00 A/C Compressor cycling credit for residential customers for the Summer Period (June 1 through September 30) was approved by the PUC and it is contained within PECO Energy's Tariff approved by and on file with the PUC. See Tariff Provision, attached hereto as Exhibit "3".

27. The Tariff provisions approved by the PUC are prima facie reasonable. 66 Pa. C.S.A. § 316 (1999); See also, Kossman v. Pennsylvania Public Utility Commission, 694 A.2d

1147 (Pa. Cmwlth. 1997). Moreover, tariffs that have been approved by the PUC have the full force and effect of law and are binding on both the utility and its customers. Brockway Glass Co. v. Pennsylvania Utility Commission, 437 A.2d 1067 (Pa. Cmwlth. 1981).

28. The reduction of the Smart A/C Saver Program credit was approved by the Commission as part of PECO's Phase II DLC Program on May 9, 2013, docket number M-2012-2333992 and is just, reasonable and lawful.

29. Thus, assuming that everything the Complainant alleges in his Complaint is true, PECO Energy is operating under the basis of a Commission approved Order and reduced the credit from \$30.00 to \$20.00 with the specific approval of the Commission.

30. The Complainant's complaint, objecting to the reduction of the Smart A/C Saver Program credit from \$30.00 to \$20.00 does not allege a violation of any order, law or tariff that can be the basis of any finding against PECO Energy.

31. Accordingly, the Complainant's formal complaint should be dismissed as a matter of law.

REQUEST FOR RELIEF

WHEREFORE, for all of the reasons stated herein, PECO respectfully requests that your Honorable Commission dismiss the instant complaint with prejudice.

Respectfully submitted,



Shawane L. Lee
Counsel for PECO Energy Company
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P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
Shawane.Lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

THOMAS EGAN	:	
Complainants	:	
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	:	
PECO ENERGY COMPANY	:	
Respondent	:	

VERIFICATION

I, Shawane L. Lee, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.



Date: August 13, 2013

Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

THOMAS EGAN	:	
Complainants	:	
v.	:	DOCKET NO. C-2013-2368645
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a copy of PECO Energy Company's Answer in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Thomas Egan
7 Waters Road
Malvern, PA 19355

Dated at Philadelphia, Pennsylvania, August 13, 2013



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
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Philadelphia, PA 19101-8699
(215) 841-6841
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Direct Dial: 215 841-6841

August 13, 2013

Thomas Egan
7 Waters Road
Malvern, PA 19355

RE: Thomas Egan v. PECO Energy Company
PUC Docket No.: C-2013-2368645

Dear Mr. Egan:

Enclosed is a copy of PECO Energy Company's response to the formal complaint filed in the above-referenced docket. The law requires PECO Energy to file an answer to your Public Utility Commission complaint. Keep these papers for your records. This is not a decision on your complaint. PECO's response may include a New Matter, Motion or Preliminary Objection. Please note that if you do not respond to a New Matter, Motion, or Preliminary Objection an unfavorable decision may be rendered against you. Responses to New Matters and Motions must be filed within 20 days. Responses to Preliminary Objections must be filed within 10 days. If there is no New Matter, Motion or Preliminary Objection included, no response is required.

Soon, the Public Utility Commission will schedule either a settlement conference or a hearing on your complaint. The Commission will let you know by mail whether there will be a conference or a hearing and will include instructions on what to do next. If the matter is set for hearing, the notice will provide you with information about the date, time and place of the hearing. If we are unable to resolve your complaint and have to proceed with a hearing, a judge will be at the hearing and will decide your complaint. You must call the Public Utility Commission if you have any questions about the hearing or if you cannot attend the hearing.

Thank you for your time and attention on this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawane Lee", with a long, sweeping underline.

Shawane Lee
Counsel for PECO Energy Company

SL/lo
Encl.

EXHIBIT “1”

RESIDENTIAL DIRECT LOAD CONTROL PROGRAM (DLCP) RIDER

AVAILABILITY.

Central Air Conditioning Cycling Control Option:

This rider is available to any residential retail customer under rates R, RH, RS-2 and CAP that (a) is the owner of the premises at which service hereunder is to be provided (or can provide an authorization form from the owner); (b) is provided with electric service at such premises through a separate meter; (c) has a fully functional electric central air conditioning system (AC) as the principal and dedicated source of air conditioning for such premises, the electric service for which is delivered by the Company through such separate meter and is (are) capable of accepting a Company control device(s), as determined by the Company or its agent; (d) allows the Company to periodically cycle such AC compressor(s); and (e) is located at a premises where the Company's control signal can reach a control unit mounted near such connected unit. (C)

Electric Water Heater Control Option:

This rider is available to any residential retail customer under rates R, RH, RS-2 and CAP that (a) is the owner of the premises at which service hereunder is to be provided (or can provide an authorization form from the owner); (b) is provided with electric service at such premises through a separate meter; (c) has a fully functional electric water heater, the electric service for which is delivered by the Company through such separate meter and is (are) capable of accepting a Company control device(s), as determined by the Company or its agent; (d) allows the Company to periodically control such electric water heater(s); and (e) is located at a premises where the Company's control signal can reach a control unit mounted near such connected unit.

Service hereunder is not restricted to residential retail customers that obtain full requirements electric supply from the Company under Default Service.

Notwithstanding the previous provisions of this Availability section, the availability of this rider is limited by the ability of the Company and its agent to purchase and install the necessary controls needed to implement and administer the Residential Direct Load Control Program (DLCP).

PROGRAM PROVISIONS.

The DLCP allows the Company to obtain temporary reductions in the electric power and energy demands on the electric delivery system located in its service territory through reductions in residential retail customers' electric power and energy usage requirements. The Company reserves the right to activate the DLCP for any reason, including (a) response to shortages of available capacity on the Company's distribution system; (b) response to shortages of available capacity on the transmission system located in the Company's service territory; (c) preservation of the availability of other load response resources or (d) reduction of peak load. A residential retail customer to which this rider is available that elects service hereunder is defined as a participant. An activation of the DLCP is defined as an event. (C)

During an event, a participant in the DLCP allows the Company to remotely control the duty cycle of such participant's AC compressor(s) and/or control such participant's electric water heater(s). The Company is allowed to exercise such control without notice at any time. Control events will be limited to the period beginning June 1 and extending through September 30 of each year, except holidays.

Event Performance:

During an event, the Company is allowed to cycle the participant's AC compressor(s) for the full duration of the event, with such cycling performed so that the AC compressor(s) alternates every fifteen (15) minutes between being available for cooling and not being available for cooling.

(C) Denotes Change

RESIDENTIAL DIRECT LOAD CONTROL PROGRAM (DLC) RIDER (continued)

(C)
During an event under the electric water heater control option, the Company is allowed to control the participant's electric water heater for the full duration of the event.

A participant commences service hereunder on the date the Company inspects and approves the functionality of the participant's AC compressor(s) and/or electric water heater and installs the remote control device(s).

INSTALLATION.

The Company or its agent installs the remote control device(s) used to cycle the AC compressor(s) and/or electric water heater(s), and the Company owns, operates, and maintains such device(s). The participant is responsible for maintaining a safe operating environment for such device(s). For a situation in which the participant replaces its AC compressor(s) and/or water heaters, the participant is responsible for providing the Company with adequate notice so that the Company has time to schedule the removal of such device(s) from the AC compressor(s) and/or water heater(s) being removed and the installation of such device(s) on the replacement AC compressor(s) and/or electric water heater(s).

Testing & Verification:

The Company is allowed to inspect the remote control device(s) at any time and without notice to insure such device(s) is (are) fully operational, and the participant grants the Company permission to enter upon its premises to conduct such inspections. If, in the course of such inspection, the Company determines that the participant interfered with the functionality of the device(s) in any way, (a) the participant is immediately removed from the (DLCP) and service hereunder is terminated, with such termination effective as of the date of the installation of such device(s) or of the most recent passing inspection, whichever is more recent; (b) all credits previously given to such participant since such effective termination date are immediately reimbursed by such participant to the Company; and (c) such participant is not eligible to take service hereunder or participate in the (DLCP) for a period of not less three (3) calendar years following such effective termination date.

For a situation in which the Company performs excessive maintenance or replacement of any remote control device(s) due to vandalism or other cause, the Company may remove the participant for which such device(s) is (are) provided from the (DLCP) and terminate service hereunder to such participant. In such situation, the Company may deny future participation in the (DLCP) to such participant.

COMPENSATION.

The Company provides a credit to the participant on each bill issued for the Summer Period (June 1 through September 30) for a total of 4 monthly credits. The credit applied to such participant's bill corresponds with the Program option selected by such participant.

Central AC Compressor Cycling Credit:	\$30.00 per bill per installed device for the summer billing period
Electric Water Heater Control Credit:	\$12.00 per bill per installed device for the summer billing period

The participant shall begin receiving the bill credit on the next appropriate bill cycle following a complete enrollment in the program. The participant shall receive the applicable bill credit for each device installed. The total annual credit shall not exceed (a) \$120.00 per device installed on an AC compressor, and (b) \$48.00 per device installed on an electric water heater. Consistent with the terms in this tariff, incentives will be paid through September 30, 2012.

(C) Indicates Change

RESIDENTIAL DIRECT LOAD CONTROL PROGRAM (DLC) RIDER (continued)

The credit provided in accordance with this rider is separately stated on the participant's bill.

(C)

MINIMUM CHARGE.

The minimum charges for the rate schedules listed in the Availability section apply to service under this rider. The credits under this rider cannot be applied against any applicable minimum charges.

MISCELLANEOUS GENERAL PROVISIONS.

The Company or its agent will certify a participant's equipment prior to installation of a load control device. Any equipment determined to not meet the certification standards will be ineligible to participate in the DLCP. Eligible equipment includes fully functional central air conditioning systems and electric water heaters in good condition. Window air condition units are not eligible for participation.

The Company is not liable for any damage or injury, including any consequential damage, resulting from the intentional or unintentional interruption of the operation of the participant's AC compressor(s) and/or water heater(s). Only CAC units are eligible for program participation. Window mounted air conditioners do not qualify.

Provisions contained in this rider do not serve to modify the Company's rights contained in the General Terms and Conditions of the Company's Schedule of Rates.

TERMS OF CONTRACT.

The initial term of participation within this program shall end on May 31, 2012, but extended participation is possible, but predicated on future regulatory directives as yet to be determined. The Company reserves the right to modify the terms of this Rider at any time. Participants who have elected to terminate, can return to the program, but must wait 12 months before being permitted to do so.

(C) Indicates Change

EXHIBIT “2”

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held May 9, 2013

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner
James H. Cawley
Pamela A. Witmer

Petition of PECO Energy Company for
Approval of its Act 129 Phase II Energy
Efficiency and Conservation Plan

Docket No. M-2012-2333992

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition of PECO Energy Company (PECO or Company) for Approval to Amend its Act 129 Phase II Energy Efficiency and Conservation (EE&C) Plan (Revised Phase II Plan)¹ to Continue its Mass Market Direct Load Control Program (DLC Program) from June 1, 2013, to May 31, 2014 (DLC Petition). Answers to the DLC Petition were filed by Citizens for Pennsylvania's Future (PennFuture) on April 10, 2013, and by Comverge, Inc. (Comverge) on April 15, 2013. The Office of Consumer Advocate (OCA) filed Comments on April 15, 2013. For the reasons fully delineated, *infra*, we shall grant the DLC Petition.

¹ PECO has submitted a Revised Act 129 Phase II EE&C Plan, dated March 13, 2013, as Exhibit 2 to the DLC Petition.

I. Background

On October 15, 2008, House Bill 2200 was signed into law as Act 129 with an effective date of November 14, 2008. Among other requirements, Act 129 directed that EE&C Programs be developed by each of the Commonwealth's largest electric distribution companies (EDCs) and be approved by the Commission. Specifically, Act 129 required each EDC with at least 100,000 customers to adopt a plan to reduce energy demand and consumption within its service territory. Initially, the Act required each affected EDC to adopt a plan to reduce electric consumption by at least one percent of its expected consumption for June 1, 2009, through May 31, 2010, by May 31, 2011. By May 31, 2013, the total annual weather-normalized consumption was to be reduced by a minimum of three percent. Also, by May 31, 2013, peak demand was to be reduced by a minimum of four-and-a-half percent of each 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 through May 31, 2008.²

On January 15, 2009, the Commission adopted an Implementation Order at Docket No. M-2008-2069887 (*Phase I Implementation Order*) which established the standards each plan must meet, and which provided guidance on the procedures to be followed for submittal, review and approval of all aspects of the EE&C plans. The Commission subsequently approved an EE&C plan (and, in some cases, modifications to the plan) for each affected EDC.

Another requirement of Act 129 directs the Commission to evaluate the costs and benefits of the adopted EE&C Program by November 30, 2013, and every five years thereafter. The Act provides that the Commission must adopt additional incremental reductions in consumption and peak demand if the benefits of the EE&C

² The Act 129 consumption and peak load reduction targets are set forth at 66 Pa. C.S. §§ 2806.1(c)(1), (c)(2) and (d)(1).

Program exceed its costs.³ In accordance with that directive, the Commission issued a Secretarial Letter on March 1, 2012, at Docket No. M-2012-2289411 seeking comments on several issues related to the design and implementation of any future phase of the EE&C Program, and whether additional incremental consumption and peak demand reduction targets would be adopted. On May 10, 2012, in response to the Comments received pursuant to the Secretarial Letter, the Commission issued a Tentative Implementation Order (*Phase II Tentative Implementation Order*), at Docket No. M-2012-2289411, to begin the process of evaluating the costs and benefits of the initial EE&C Plans and the possible establishment of new reduction targets. In the *Phase II Tentative Implementation Order*, the Commission found that the benefits of a Phase II Act 129 Program will exceed the costs. Therefore, the Commission proposed the adoption of additional required incremental reductions in consumption for another program term and sought additional comments on its specific proposals.

Subsequently, in response to the Comments filed pursuant to the *Phase II Tentative Implementation Order*, on August 3, 2012, the Commission entered the *Phase II Implementation Order* at Docket No. M-2012-2289411. The *Phase II Implementation Order* established the standards each plan must meet (including the additional incremental reductions in consumption that each EDC must meet) and provided guidance on the procedures to be followed for submittal, review and approval of all aspects of EDC EE&C plans. Within the *Phase II Implementation Order*, the Commission tentatively adopted EDC-specific consumption reduction targets which varied from a high of 2.9% for PECO to a low of 1.6% for West Penn Power Company. *Phase II Implementation Order* at 24. The *Phase II Implementation Order* provided that these targets would become final for any applicable EDC that did not petition the Commission for an evidentiary hearing by August 20, 2012. *Id.* at 30-32.

³ The Act 129 requirements regarding the evaluation of the costs and benefits of subsequent EE&C programs are set forth at 66 Pa. C.S. §§ 2806.1(c)(3) and (d)(2).

The Commission did not include any demand reduction (DR) targets and corresponding DR programs for the EDCs' Phase II EE&C Plans. In the *Phase II Implementation Order*, the Commission explained that its interpretation of Section 2806.1(d)(2) of Act 129, 66 Pa. C.S. § 2806.1(d)(2), is that, in order for the Commission to prescribe specific peak DR targets for subsequent phases of Act 129, the DR programs must be proven to be cost-effective. *Phase II Implementation Order* at 32. Therefore, in order to determine the cost-effectiveness of current and potential future DR programs, the Commission directed the Statewide Evaluator (SWE) to complete a DR study.⁴ *Id.*

On August 20, 2012, PECO filed a Petition for an Evidentiary Hearing on the Energy Efficiency Benchmarks Established for the Period June 1, 2013 through May 31, 2016 (Benchmark Petition). Among the issues raised in the Benchmark Petition, PECO requested an evidentiary hearing to present evidence that shows that its existing residential DR program, in particular DLC, is cost-effective and should continue into Phase II on an interim basis. Benchmark Petition at 6.

The Benchmark Petition was assigned to the Office of Administrative Law Judge with a certified record deadline of November 2, 2012. Petitions to intervene were filed by the following Parties: (1) the Community Action Association of Pennsylvania; (2) the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); (3) the Clean Air Council and the Sierra Club (CAC/SC); (4) Comverge; (5) PennFuture; (6) Duquesne Light Company; and (7) the Philadelphia Area Industrial Energy Users Group (PAIEUG). By Order Certifying the Record dated November 2, 2012, Administrative Law Judge (ALJ) Elizabeth H. Barnes provided a history of the proceeding; delineated the transcripts, statements and exhibits admitted into the record; and certified the record to the Commission for its consideration and disposition.

⁴ See *Energy Efficiency and Conservation*, Secretarial Letter issued March 4, 2011, at Docket No. M-2008-2069887.

On September 4, 2012, PECO filed a Motion for Leave to File a Petition for Reconsideration and a Petition for Reconsideration of the *Phase II Implementation Order* (Petition for Reconsideration).⁵ In the Petition for Reconsideration, PECO requested, *inter alia*, that the Commission reconsider its decision to require all permissible EDC Phase II funding to be dedicated solely to consumption reduction and to provide no Act 129 funding during Phase II to any DR programs. Petition for Reconsideration at 14.

By Reconsideration Order entered September 27, 2012, at Docket Nos. M-2012-2289411 and M-2008-2069887 (*Phase II Reconsideration Order*), the Commission, *inter alia*, denied the Petition for Reconsideration filed by PECO.

By Opinion and Order entered December 5, 2012, at Docket No. P-2012-2320334 (*PECO Phase II Benchmark Order*), the Commission, *inter alia*, reaffirmed that PECO's Phase II consumption reduction target shall remain at 2.9% and that available funds for its Phase II Plan shall remain at two percent of PECO's 2006 annual revenue. The Commission stated that PECO shall not allocate Phase II funds for DR programs, including its DLC Program, unless it can show that it can fund such programs while meeting the 2.9% EE reduction target and show that the programs are cost-effective. The Commission invited PECO to present evidence that it can fund such DR programs while meeting the 2.9% EE reduction target and that such DR programs are cost-effective as part of the Commission's then pending investigation into its Phase II EE&C Plan. *PECO Phase II Benchmark Order* at 25.

⁵ In addition to PECO's Petition for Reconsideration, on August 20, 2012, Petitions for Reconsideration and/or Clarification of the *Phase II Implementation Order* were filed by PPL Electric Utilities Corporation and jointly by Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company. All three Petitions were addressed in the *Phase II Reconsideration Order*.

On November 1, 2012, PECO filed its Petition requesting approval of its Phase II EE&C Plan (Phase II Plan) at this docket (Phase II Petition). PECO asserted that the Phase II Plan is intended to reduce energy consumption in compliance with the requirements of Act 129 and the *Phase II Implementation Order*. PECO requested that the Commission issue an Order: (1) approving PECO's Phase II EE&C Plan and finding that the Plan satisfies the requirements of 66 Pa. C.S. § 2806.1(b)(1) and the *Phase II Implementation Order*; (2) approving PECO's proposed tariff provisions to implement a Section 1307 surcharge to recover Phase II Plan costs; (3) approving Phase II treatment for certain Phase I projects; and (4) approving the contract between PECO and JACO Environmental, Inc. Phase II Petition at 1.

Petitions to Intervene were filed by PAIEUG, the City of Philadelphia, Wal-Mart Stores East, L.P. and Sam's East, Inc., PennFuture, CAUSE-PA and Converge. In addition, the OCA filed a Public Statement and Notice of Intervention and the Office of Small Business Advocate (OSBA) filed a Notice of Intervention. By Order Certifying the Record dated January 28, 2013, the ALJ provided a history of the investigation into PECO's Phase II Plan; delineated the transcripts, statements, exhibits and briefs admitted into the record; and certified the record to the Commission for our consideration and disposition.

By Opinion and Order entered February 28, 2013 (*PECO Phase II Order*), the Commission granted, in part, and denied, in part, PECO's Phase II Petition. The *PECO Phase II Order* permitted PECO to implement its Phase II Plan and directed PECO to address the Commission's specific concerns including, but not limited to: (1) the documentation of energy savings derived from government, educational and non-profit customers; (2) the coordination of the Low-Income Energy Efficiency Program with specific ongoing conservation programs; (3) modifications to the Smart Builder Rebates Program; and (4) the revenue and cost reporting, reconciliation, and recovery process set forth in PECO's tariff. *PECO Phase II Order* at 47-49.

II. History of the Proceeding

On March 15, 2013, PECO filed the instant DLC Petition to, *inter alia*, amend its Phase II Plan to continue its DLC Program from June 1, 2013 to May 31, 2014. PECO is also proposing to adjust the incentive levels for five specific programs, correct some “inadvertent” errors in the Phase II Plan, and add two measures that were “inadvertently” omitted from the Phase II Plan, but were included in the 2013 Technical Reference Manual. DLC Petition at 1, 9-10, 11-12.

Answers to the DLC Petition were filed by Comverge on April 10, 2013, and by PennFuture on April 15, 2013. Also on April 15, 2013, the OCA filed Comments on the DLC Petition.

III. Description of Plan Revisions

A. Addition of the DLC Program

PECO explained that the objective of the DLC Program is to realize demand reductions from eligible residential and small commercial customers in PECO’s service territory during peak hours. PECO reported that, during the initial implementation of the DLC Program as part of the Company’s Phase I Plan, PECO recruited over 86,000 customers and installed over 100,000 load control devices. PECO submitted that the DLC Program delivered as much as ninety-nine MWs toward PECO’s demand response target in Phase I.⁶ PECO averred that the continuation of the DLC Program into Phase II is designed to preserve the residential and small commercial DLC measures as a demand response resource and to retain existing participants. In addition,

⁶ PECO’s Phase I demand reduction target was to achieve a 4.5% reduction in the Company’s peak demand sustained for the highest one hundred hours (approximately 355 MW) for the program year ending May 31, 2013. PECO Revised EE&C Plan, Volume 1 at 13.

the Company stated that it intends to maintain this consistent population of active load control devices by replacing customers that exit the DLC Program once the new DLC Program is implemented. DLC Petition at 9-10.

PECO explained that the DLC Program proposed for Phase II is substantially similar to the DLC Program implemented by PECO during Phase I, except the Company is proposing changes to dispatch methodology and incentive level. PECO noted that, during Phase I, DR resources were dispatched during the forecasted top one hundred hours of system demand in order to meet the Phase I Act 129 requirement to reduce peak demand (across the top one hundred hours) by a minimum of 4.5% no later than May 31, 2013.⁷ PECO stated that, as an alternative to the top one hundred hours demand reduction target, and in light of alternative dispatch methodologies recently identified by the SWE,⁸ the Company is proposing to dispatch DLC Program resources if the day-ahead peak load forecast is ninety-five percent or more of the forecasted 2013 system peak. The Company projected that this new dispatch methodology will lead to a lower number of dispatch hours than the top one hundred hours methodology. *Id.* at 10.

Because the new DLC Program dispatch methodology will result in fewer dispatch hours, the Company is also proposing to reduce customer incentives from thirty dollars to twenty dollars per summer month (June – September), for an annual incentive of eighty dollars per installed load control device. *Id.*

PECO estimated that the annual cost to administer the DLC Program for one year, from June 1, 2013 to May 31, 2014, will be approximately \$10,000,000.

⁷ 66 Pa. C.S. § 2806.1(d).

⁸ PECO noted that, on February 21, 2013, the SWE presented an update on the Demand Response Study in which the limitations of the “top 100 hours” protocol were discussed and alternative protocols, including one based on peak load forecast, were described. See http://www.puc.pa.gov/Electric/pdf/Act129/SWE-DR_Stakeholders_Presentation022113.pdf

PECO proposed that these costs, along with all other Phase II Plan costs, would be recovered through PECO's Energy Efficiency and Conservation Program Charge. *Id.*

PECO noted that the Company submitted testimony in its Phase II EE&C Plan proceeding demonstrating the cost-effectiveness of the DLC Program.⁹ PECO pointed out that the DLC Program has a total resource cost (TRC) benefit-cost ratio of 2.38,¹⁰ which PECO averred "demonstrates significant benefits to its customers." *Id.* at 11. PECO explained that, in the first quarter of 2014, the Company intends to assess overall Phase II Plan requirements to determine whether the DLC Program should be continued for an additional year (from June 1, 2014 to May 31, 2015). PECO projected that it would seek separate Commission approval for any DLC Program continuation beyond May 31, 2014. *Id.*

B. Modification of Incentive Levels

PECO stated that after recent discussions with its conservation service providers (CSPs) and its Phase II Plan design consultant, Navigant Consulting, Inc. (Navigant), the Company has identified five programs for which initial incentive levels can be modified within the originally-approved rebate ranges without affecting the projected customer participation or savings. *Id.* PECO has proposed to reduce incentive levels in selected measures within the following five programs:

Residential

- Smart Home Rebate Program

Commercial and Industrial (C&I)

- Smart Equipment Incentives Program

⁹ PECO St. No. 1-S & PECO Exhibits FJJ-1 – FJJ-4.

¹⁰ The Commission's reservations with the TRC estimate submitted by PECO for the Phase II DLC Program are discussed, *infra*.

- Smart Multi-Family Solution Program
- Smart Equipment Government, Institutional and Non-profit Incentives Program
- Smart Construction Incentives Program

DLC Petition, Exhibit 1 at 2. PECO estimated that these incentive changes would reduce the overall Phase II Plan cost by approximately \$10 million, which PECO stated is sufficient to fund the DLC Program from June 1, 2013 to May 31, 2014. DLC Petition at 12.

C. Correction of “Inadvertent” Errors and Omissions

PECO explained that, in the course of reviewing the Phase II Plan, the Company identified a limited number of errors and omissions that it is proposing to correct as part of the instant Phase II Plan amendment. The errors, which are described in detail in Exhibit 1 to the DLC Petition, include the correction of the C&I rebate level for replacing a standard T-8 lamp with a reduced wattage T-8 lamp from \$0.02/unit to a range of \$0.20 - \$0.30/unit. PECO is also proposing to correct a misaligned table showing the projected participation rates for the Smart Business Solutions and Multi-family Solutions programs. The two additional measures proposed by the Company, also described in Exhibit 1, relate to new information in the Commission’s 2013 Technical Reference Manual regarding T-12 lighting as an acceptable baseline condition and the switch from an electric to gas water heater. *Id.*

PECO submitted that none of these corrections or additions change the overall Phase II Plan costs or savings projections. The Company explained that it addressed the increase in incentive cost resulting from the C&I rebate correction by reducing incentive levels within the Commission-approved ranges for other C&I measures throughout the Phase II Plan. PECO also explained that, for the new measures, it is not projecting any participation at this time. PECO stated that it will ensure that any

use of these measures in the future fits into existing program budgets by adjusting the mix of measures within the affected program. *Id.*

IV. Discussion

A. Legal Standards

The Company has the burden of proof in accordance with 66 Pa. C.S. § 332(a). Courts have held that “[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 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Company’s evidence must be more convincing, by even the smallest amount, than that presented by the other Parties. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

We note that any issue that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that the Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

B. Cost-Benefit Analysis of the DLC Program

Before we address the merits of continuing a DLC program as part of PECO’s Phase II Plan, we shall address some issues related to the TRC cost-benefit

analysis of continuing the Phase II DLC Program. PECO has estimated that the Residential DLC Program (Residential Smart AC Saver Program) to be implemented during the first twelve months of Phase II will result in a TRC benefit-cost ratio of 3.01. Revised Phase II Plan at 73. PECO projected the TRC benefit-cost ratio for the Commercial Smart AC Saver Program to be 1.03. *Id.* at 165.

As part of our review of PECO's DLC Petition, the Commission Staff, in collaboration with the SWE, issued a data request to PECO by Secretarial Letter issued April 19, 2013, at this docket.¹¹ As a result of our assessment of PECO's response to the data request received on April 26, 2013, we are concerned that the avoided transmission and distribution costs being utilized by PECO appear high in comparison to those utilized by other Pennsylvania EDCs and those observed in other jurisdictions. However, we recognize that, in developing its TRC benefit-cost analysis for the Phase II DLC Program, PECO followed the TRC Test protocols, as outlined in Commission Orders.¹² As such, we will direct the Commission's Bureau of Technical Utilities Services, in collaboration with the SWE, to consider the avoided transmission and distribution costs guidance as part of the Commission's next review of the TRC Test.

C. Positions of the Parties

In addition to PECO, the OCA, Comverge and PennFuture all support the approval of the DLC Petition.

In its Comments, the OCA states that it has consistently supported the continuation of PECO's cost-effective DLC Program. The OCA explains that once an

¹¹ The Commission's data request and PECO's response to the data request were also served on the OCA, Comverge and PennFuture, the three active parties to this proceeding.

¹² The Commission's most recent TRC Test Order for Phase II EE&C plans was entered August 30, 2012, at Docket No. M-2012-2300653.

EDC installs a DLC switch on the customer's premises and a communication system to control that switch, those infrastructure costs are sunk whether the switch is used or not. Therefore, that OCA recommends that demand response programs, once implemented, should be sustained so that the continuing savings made possible by the initial investment can be realized. The OCA states that it agrees with PECO that its DLC Program "has been a successful and cost-effective component [of PECO's Phase I Plan]." OCA Comments at 1. The OCA also supports the proposed modifications to the Phase II version of the DLC Program as well as PECO's proposal to modify the rebate levels for the five programs in order to allow for the funding of the Phase II DLC Program. *Id.* at 3-4.

In addition to the arguments presented by the OCA, Comverge and PennFuture point out that if the DLC Program is not continued, PECO may incur the extra costs to remove the load control equipment. Comverge and PennFuture also aver that not extending the DLC Program will create customer confusion, adverse customer reaction and overall dissatisfaction with the Act 129 Program. Comverge Answer at 5; PennFuture Answer at 4.

Comverge and PennFuture also cite the benefits of DR programs to both DLC Program participants as well non-participating customers across PECO's service territory. Among the benefits presented by Comverge and PennFuture are improved system reliability, the ability to reduce energy and capacity market prices, and the ability to reduce investments in new generation and distribution facilities. *Id.*

D. Disposition

1. Addition of the DLC Program

As noted, *supra*, in the *PECO Phase II Benchmark Order*, the Commission directed that PECO shall not allocate Phase II funds for DR programs, including its DLC Program, unless it can show that it can fund such programs while meeting the 2.9% energy reduction target and show that the programs are cost-effective. *Phase II Benchmark Order* at 25. While there may be some concerns with the avoided transmission and distribution cost estimates, discussed, *supra*, we believe that the annual benefits of continuing the DLC Program still outweigh the costs of the incentives and administrative costs, particularly since most of the investment in the DLC Program has already been incurred in Phase I. Therefore, consistent with the directives in the *PECO Phase II Benchmark Order*, we find that PECO has proposed to implement a cost-effective, modified version of its DLC Program, as part of its Phase II Plan, and still implement its Revised Phase II Plan that:

- (1) continues to exceed its 2.9% reduction target of 1,125,851 MWh by projecting energy savings of 1,184,422 MWh over the three years of the Phase II program;
- (2) continues to project an overall TRC benefit-cost ratio of 1.4, which demonstrates that the overall Revised Phase II Plan is cost-effective; and
- (3) continues to implement the Revised Phase II Plan within the \$256 million spending cap.

Revised Phase II Plan at 8. Accordingly, we find that the proposed addition of the DLC program is in the public interest and shall be approved.

2. Modification of Incentive Levels and Correction of Errors and Omissions

The modifications of the incentive levels and the corrections proposed by PECO do not have an impact on the projected energy savings, participation levels and TRC benefit-cost ratio of the programs initially proposed for Phase II. As discussed, *supra*, PECO has proposed to lower the incentive levels for selected measures in five programs. Since these incentive levels were included in the Phase II Plan as incentive ranges, the specific changes to the incentive levels are not reflected in the Revised Phase II Plan. The only indications that the incentive levels have changed are the lower program cost projections in the proposed budget.

The Company explained that it addressed the increase in incentive costs resulting from the C&I reduced watt T-8 lamp rebate correction by reducing incentive levels, within the Commission-approved ranges, for other C&I measures throughout the Phase II Plan. PECO also explained that, for the new measures, it is not projecting any participation at this time. PECO stated that it will ensure that any use of these measures in the future fits into existing program budgets by adjusting the mix of measures within the affected program.

In the *PECO Phase II Order*, the Commission found, *inter alia*, that PECO's Phase II Plan met the overall conservation requirements of the *Phase II Implementation Order*. The Commission also addressed the applicable requirements of Act 129, 66 Pa. C.S. § 2806.1,¹³ and determined that PECO's proposed Phase II Plan should be approved, subject to specific modifications. We have reviewed the proposed changes to PECO's Phase II Plan, addressed, *supra*, and find that they do not alter our

¹³ In particular, the Commission found that the Phase II Plan met the Act 129 requirements for: (1) a variety of programs equitably distributed; (2) ten percent of energy reductions from government, institutional and non-profit customers; and (3) specific energy efficiency measures for low-income households.

determination that the Revised Phase II Plan complies with the *Phase II Implementation Order* and the applicable requirements of Act 129. Accordingly, the proposed modifications and corrections shall be approved.

V. Conclusion

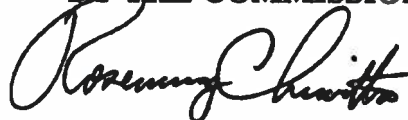
For the reasons set forth, *supra*, we shall: (1) grant PECO's DLC Petition; and (2) direct the Commission's Bureau of Technical Utility Services, in collaboration with the SWE, to consider the avoided transmission and distribution costs guidance as part of the Commission's next review of the TRC Test; **THEREFORE,**

IT IS ORDERED:

1. That the Petition of PECO Energy Company for Approval to Amend its Act 129 Phase II Energy Efficiency and Conservation Plan to Continue its Mass Market Direct Load Control Program from June 1, 2013 to May 31, 2014, is granted.
2. That PECO Energy Company's Act 129 Phase II Energy Efficiency and Conservation Plan, as amended, is approved, consistent with this Opinion and Order.
3. That the Commission's Bureau of Technical Utility Services, in collaboration with the Statewide Evaluator, shall consider the avoided transmission and distribution costs guidance as part of the Commission's next review of the Total Resource Cost Test.

4. That a copy of this Opinion and Order be served on all active parties of record.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: May 9, 2013

ORDER ENTERED: May 9, 2013

EXHIBIT “3”

PECO Energy Company

RESIDENTIAL DIRECT LOAD CONTROL PROGRAM (DLCP) RIDER

AVAILABILITY.

Central Air Conditioning Cycling Control Option:

This rider is available to any residential retail customer under rates R, RH, RS-2 and CAP that (a) is the owner of the premises at which service hereunder is to be provided (or can provide an authorization form from the owner); (b) is provided with electric service at such premises through a separate meter; (c) has a fully functional electric central air conditioning system (AC) as the principal and dedicated source of air conditioning for such premises, the electric service for which is delivered by the Company through such separate meter and is (are) capable of accepting a Company control device(s), as determined by the Company or its agent; (d) allows the Company to periodically cycle such AC compressor(s); and (e) is located at a premises where the Company's control signal can reach a control unit mounted near such connected unit. (C)

Electric Water Heater Control Option:

This rider is available to any residential retail customer under rates R, RH, RS-2 and CAP that (a) is the owner of the premises at which service hereunder is to be provided (or can provide an authorization form from the owner); (b) is provided with electric service at such premises through a separate meter; (c) has a fully functional electric water heater, the electric service for which is delivered by the Company through such separate meter and is (are) capable of accepting a Company control device(s), as determined by the Company or its agent; (d) allows the Company to periodically control such electric water heater(s); and (e) is located at a premises where the Company's control signal can reach a control unit mounted near such connected unit.

Service hereunder is not restricted to residential retail customers that obtain full requirements electric supply from the Company under Default Service.

Notwithstanding the previous provisions of this Availability section, the availability of this rider is limited by the ability of the Company and its agent to purchase and install the necessary controls needed to implement and administer the Residential Direct Load Control Program (DLCP).

PROGRAM PROVISIONS.

The DLCP allows the Company to obtain temporary reductions in the electric power and energy demands on the electric delivery system located in its service territory through reductions in residential retail customers' electric power and energy usage requirements. The Company reserves the right to activate the DLCP for any reason, including (a) response to shortages of available capacity on the Company's distribution system; (b) response to shortages of available capacity on the transmission system located in the Company's service territory; (c) preservation of the availability of other load response resources or (d) reduction of peak load. A residential retail customer to which this rider is available that elects service hereunder is defined as a participant. An activation of the DLCP is defined as an event. (C)

During an event, a participant in the DLCP allows the Company to remotely control the duty cycle of such participant's AC compressor(s) and/or control such participant's electric water heater(s). The Company is allowed to exercise such control without notice at any time. Control events will be limited to the period beginning June 1 and extending through September 30 of each year, except holidays.

Event Performance:

During an event, the Company is allowed to cycle the participant's AC compressor(s) for the full duration of the event, with such cycling performed so that the AC compressor(s) alternates every fifteen (15) minutes between being available for cooling and not being available for cooling.

(C) Denotes Change

PECO Energy Company

RESIDENTIAL DIRECT LOAD CONTROL PROGRAM (DLCP) RIDER (continued)

During an event under the electric water heater control option, the Company is allowed to control the participant's electric water heater for the full duration of the event.

A participant commences service hereunder on the date the Company inspects and approves the functionality of the participant's AC compressor(s) and/or electric water heater and installs the remote control device(s).

INSTALLATION.

The Company or its agent installs the remote control device(s) used to cycle the AC compressor(s) and/or electric water heater(s), and the Company owns, operates, and maintains such device(s). The participant is responsible for maintaining a safe operating environment for such device(s). For a situation in which the participant replaces its AC compressor(s) and/or water heaters, the participant is responsible for providing the Company with adequate notice so that the Company has time to schedule the removal of such device(s) from the AC compressor(s) and/or water heater(s) being removed and the installation of such device(s) on the replacement AC compressor(s) and/or electric water heater(s).

Testing & Verification:

The Company is allowed to inspect the remote control device(s) at any time and without notice to insure such device(s) is (are) fully operational, and the participant grants the Company permission to enter upon its premises to conduct such inspections. If, in the course of such inspection, the Company determines that the participant interfered with the functionality of the device(s) in any way, (a) the participant is immediately removed from the (DLCP) and service hereunder is terminated, with such termination effective as of the date of the installation of such device(s) or of the most recent passing inspection, whichever is more recent; (b) all credits previously given to such participant since such effective termination date are immediately reimbursed by such participant to the Company; and (c) such participant is not eligible to take service hereunder or participate in the (DLCP) for a period of not less than (3) calendar years following such effective termination date.

For a situation in which the Company performs excessive maintenance or replacement of any remote control device(s) due to vandalism or other cause, the Company may remove the participant for which such device(s) is (are) provided from the (DLCP) and terminate service hereunder to such participant. In such situation, the Company may deny future participation in the (DLCP) to such participant.

COMPENSATION.

The Company provides a credit to the participant on each bill issued for the Summer Period (June 1 through September 30) for a total of 4 monthly credits. The credit applied to such participant's bill corresponds with the Program option selected by such participant.

Central AC Compressor Cycling Credit:	\$20.00 per bill per installed device for the summer billing period	(D)
Electric Water Heater Control Credit:	\$12.00 per bill per installed device for the summer billing period	

The participant shall begin receiving the bill credit on the next appropriate bill cycle following a complete enrollment in the program. The participant shall receive the applicable bill credit for each device installed. The total annual credit shall not exceed (a) \$80.00 per device installed on a AC compressor, and (b) \$48.00 per device installed on an electric water heater. Consistent with the terms in this tariff, incentives will be paid through October 31, 2013.

(D) Indicates Decrease
(C) Indicates Change

PECO Energy Company

RESIDENTIAL DIRECT LOAD CONTROL PROGRAM (DLCP) RIDER (continued)

The credit provided in accordance with this rider is separately stated on the participant's bill.

MISCELLANEOUS GENERAL PROVISIONS.

The Company or its agent will certify a participant's equipment prior to installation of a load control device. Any equipment determined to not meet the certification standards will be ineligible to participate in the DLCP. Eligible equipment includes fully functional central air conditioning systems and electric water heaters in good condition that are compatible with the load control technology used for the program. Window air conditioning units are not eligible for participation. (C)

The Company is not liable for any damage or injury, including any consequential damage, resulting from the intentional or unintentional interruption of the operation of the participant's AC compressor(s) and/or water heater(s). Only AC units are eligible for program participation. Window mounted air conditioners do not qualify.

Provisions contained in this rider do not serve to modify the Company's rights contained in the General Terms and Conditions of the Company's Schedule of Rates.

TERMS OF CONTRACT.

The initial term of participation within this program shall end on May 31, 2014, but extended participation is possible, but predicated on future regulatory directives as yet to be determined. The Company reserves the right to modify the terms of this Rider at any time. Participants who have elected to terminate, can return to the program, but must wait 12 months before being permitted to do so. (C)

(C) Indicates Change