|  |
| --- |
| **PENNSYLVANIA****PUBLIC UTILITY COMMISSION****Harrisburg, PA 17105-3265** |
| Public Meeting held March 17, 2016 |
| Commissioners Present:Gladys M. Brown, ChairmanAndrew G. Place, Vice ChairmanPamela A. WitmerJohn F. Coleman, Jr.Robert F. Powelson |
| Petition of PECO Energy Company for Approval of its Act 129 Phase III Energy Efficiency and Conservation Plan |  M-2015-2515691   |
|  |  |

**Table of Contents**

[I. Background 1](#_Toc444778274)

[A. Act 129 1](#_Toc444778275)

[B. The Company 3](#_Toc444778276)

[II. Procedural History 4](#_Toc444778277)

[III. Description of the Plan and the Settlement 6](#_Toc444778278)

[A. Settlement 6](#_Toc444778279)

[B. The Plan 13](#_Toc444778280)

[IV. Discussion 16](#_Toc444778281)

[A. Legal Standards 16](#_Toc444778282)

[B. Phase III Conservation and Demand Reduction Requirements 18](#_Toc444778283)

[1. Overall Conservation Requirements 18](#_Toc444778284)

[2. Overall Demand Reduction Requirements 19](#_Toc444778285)

[3. Requirements for a Variety of Programs Equitably Distributed 20](#_Toc444778286)

[4. Government/Educational/Non-Profit Requirement 21](#_Toc444778287)

[5. Low-income Program Requirements 22](#_Toc444778288)

[6. Proposals for Improvement of Plan 24](#_Toc444778289)

[C. Cost Issues 24](#_Toc444778290)

[1. Plan Cost Issues 25](#_Toc444778291)

[2. Cost Effectiveness/Cost-Benefit Issues 27](#_Toc444778292)

[3. Cost Allocation Issues 28](#_Toc444778293)

[4. Cost Recovery Issues 29](#_Toc444778294)

[D. Conservation Service Provider Issues 31](#_Toc444778295)

[E. Implementation and Evaluation Issues 32](#_Toc444778296)

[1. Implementation Issues 32](#_Toc444778297)

[2. Monitoring, Reporting and Evaluation Issues 33](#_Toc444778298)

[V. Conclusion 35](#_Toc444778299)

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition (Petition) of PECO Energy Company (PECO or the Company) for approval of its Act 129 Phase III Energy Efficiency and Conservation Plan (Plan) filed on November 30, 2015. Also before the Commission is the Joint Petition for Settlement (Settlement) filed by PECO, the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE‑PA), Nest Labs, Inc. (Nest), EnerNOC, Inc. (EnerNOC), and the Philadelphia Area Industrial Energy Users Group (PAIEUG) (collectively, Joint Petitioners) on February 17, 2016. Administrative Law Judges (ALJs) Angela Jones and Darlene Heep certified the record in this proceeding on February 19, 2016. For the reasons stated herein, we will approve, in part, the Petition and the Settlement, subject to the condition that no Party to the Settlement exercises its right to withdraw therefrom.

# I. Background

## A. Act 129

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 the Commission to adopt an Energy Efficiency and Conservation (EE&C) Program, under which each of the Commonwealth’s largest electric distribution companies (EDCs) was required to implement a cost-effective EE&C plan to reduce energy consumption and demand. Specifically, Act 129 required each EDC with at least 100,000 customers to adopt an EE&C plan to reduce energy demand and consumption within its service territory. Initially, Act 129 required each affected EDC to adopt an EE&C 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.

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 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 directed the Commission to evaluate the costs and benefits of the Commission’s EE&C Program and of the EDCs’ approved EE&C plans by November 30, 2013, and every five years thereafter. The Act provided that the Commission must adopt additional incremental reductions in consumption and peak demand if it determines that the benefits of the EE&C Program exceed its costs.

The Commission subsequently issued an Implementation Order at Docket Nos. M-2012-2289411 and M-2008-2069887 (*Phase II Implementation Order)*, which established required standards for Phase II EDC EE&C plans (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 the EDCs’ Phase II EE&C plans. Within the *Phase II Implementation Order*, the Commission tentatively adopted EDC-specific consumption reduction targets. The Commission subsequently approved a Phase II EE&C Plan (and, in some cases, modifications to the plan) for each affected EDC.

On March 11, 2015, the Commission issued a Tentative Implementation Order (*Phase III Tentative Implementation Order*) at Docket No. M-2014-2424864 for Phase III of the EE&C Program. Following the submittal and review of comments, on June 19, 2015, the Commission issued an Implementation Order at that same docket number (*Phase III Implementation Order*). Among other things, that Order established standards each plan must meet and provided guidance on the procedures to be followed for submittal, review, and approval of all aspects of EDC EE&C plans for the period from June 1, 2016 through May 31, 2021.

On July 6, 2015, the Energy Association of Pennsylvania (EAP) filed a Petition for Clarification of Final Act 129 Phase III Implementation Order (EAP Petition) seeking clarification of certain aspects of the peak demand reduction program. Also on July 6, 2015, the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (collectively, FirstEnergy) filed a Petition for Clarification of the Commission’s Act 129, Phase III, EE&C Implementation Order, or, in the alternative, Petition for Waiver of a Bidding Requirement as set forth in the Act 129, Phase III, EE&C Implementation Order (FirstEnergy Petition). By Order entered on August 20, 2015, the Commission granted both Petitions for clarification and denied FirstEnergy’s Petition for Waiver (*Phase III Clarification Order*).

## B. The Company

PECO is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal office located in Philadelphia, Pennsylvania. PECO provides electric delivery service to approximately 1.6 million customers and natural gas delivery service to more than 506,000 customers in Pennsylvania.

# II. Procedural History

In the *Phase III Implementation Order*, we adopted an EE&C plan approval process that included the publishing of a notice of each proposed plan in the *Pennsylvania Bulletin* within twenty days of the filing of the plan, as well as posting of each proposed plan on the Commission’s website. Answers, along with comments and recommendations, were to be filed within twenty days of the publication of the notice in the *Pennsylvania Bulletin*. Each plan filed in November, 2015 was to be assigned to an ALJ for an evidentiary hearing within sixty‑five days after the plan was filed, after which, the parties had ten days to file briefs. The EDC then had ten days to submit a revised plan or reply comments or both. The ALJ was directed to then certify the record to the Commission. The Commission will then approve or reject all or part of a plan at public meeting within 120 days of the plan filing. *Phase III Implementation Order* at 89‑91.

In the *Phase III Implementation Order*, we directed each EDC to file its proposed Phase III EE&C plan by November 30, 2015. *Id*. at 92. PECO timely filed a Petition for approval of its Plan on November 30, 2015. The Notice of the Petition was published in the Pennsylvania Bulletin on December 12, 2015, with a comment period ending January 4, 2016. 45 *Pa. B*. 7078. Additionally, the Petition and Plan were posted on the Commission’s website at <http://www.puc.pa.gov>. The Petition was assigned to ALJs Jones and Heep.

The following Parties filed Notices of Intervention or Petitions to Intervene: the OCA; the OSBA; CAUSE‑PA; Wal‑Mart Stores East, LP and Sam’s East, Inc. (Walmart); PAIEUG; the Retail Energy Supply Association (RESA); Nest; and EnerNOC. Comments were submitted by the OCA; CAUSE-PA; PAIEUG; RESA; Nest; Energy Efficiency for All; EnergyHub; and the Citizens for Pennsylvania’s Future.

By Prehearing Order dated January 15, 2016, the ALJs granted the Petitions to Intervene filed by CAUSE-PA, Walmart, PAIEUG, RESA, Nest Labs, and EnerNOC. The ALJs also issued a Protective Order, dated January 19, 2016, in response to PECO’s proposed Protective Order.

 An in-person hearing was scheduled for February 2, 2016. On February 1, 2016, counsel for PECO informed the ALJs that the Parties had reached a settlement in principle. Accordingly, the in-person hearing was changed to a telephonic hearing to allow all Parties the opportunity to place unopposed statements and exhibits into the record. The following Parties participated in the telephonic hearing: PECO, the OCA, the OSBA, CAUSE-PA, Walmart, PAIEUG, Nest, and EnerNOC.

 PECO, the OCA, CAUSE-PA, EnerNOC, and Nest presented written testimony with accompanying exhibits that were admitted into the record. PECO also offered PECO Exhibit 1, PECO’s Plan, which was admitted into the record. The OSBA, Walmart, and PAIEUG did not offer testimony or exhibits for the record.

The Joint Petitioners filed the Settlement on February 17, 2016. Along with the Settlement, the Joint Petitioners each filed a Statement in Support of the Settlement. PECO’s Revised Plan and Tariff Supplement were attached to the Settlement as Exhibits 1 and 2, respectively.[[1]](#footnote-1)

On February 16, 2016, RESA filed a letter indicating that it takes no position on the Settlement. On February 17, 2016, Walmart filed a letter indicating that it does not object to the Settlement.

On February 19, 2016, ALJs Jones and Heep certified the record to the Commission for consideration and disposition.

On March 1, 2016, PECO filed a letter with the Commission to address minor corrections it believed should be made to the ALJs’ Order Certifying Record to the Commission (Certification Order).  In response to PECO’s letter, we acknowledge that PECO submitted a proposed Protective Order on January 8, 2016.  We further acknowledge that the Protective Order is dated January 19, 2016.  These dates are accurately reflected in this Opinion and Order.

# III. Description of the Plan and the Settlement

As noted above, the Settlement was filed on February 17, 2016, resolving all issues. The Plan, as modified by the Settlement, is summarized below. The Settlement terms and conditions are also reflected, as appropriate, in the Revised Plan (Exhibit 1) and Electric Service Tariff Supplement (Exhibit 2) attached to the Settlement.

## A. Settlement

The specific settlement terms relating to PECO’s EE&C Plan are as follows:

**A. Multi-Family Programming**

 9. PECO will accept the GDS Associates’ definition of “multi-family” housing as set forth in the Energy Efficiency Potential Study for Pennsylvania (February 2015). In particular, PECO’s Plan will be revised to indicate that “multi-family” includes all building types with more than one unit when the building is bigger than a duplex (or 1-family attached unit).

 10. PECO does not designate buildings as low-income for purposes of its multi-family programming initiatives. In administering its [energy efficiency (EE)] programs henceforth, the Company will count savings from both individually-metered and certain master-metered multi-family buildings towards the low-income carve out if those savings can be attributed to households with incomes at or below 150% of the federal poverty income guidelines and subject to the Commission’s approval of this term as part of its approval of the Settlement. For individually-metered units, PECO will count savings from confirmed low-income customers. In master-metered buildings that have received federal, state, local, or tax credit funding and have long-term use restrictions on rent or income-eligibility, PECO will work with the building owner to identify units occupied by households whose income does not exceed 150% of the federal poverty income guidelines and will rely on the certification of the building owner when this information is readily verifiable by the building owner/operator.

 11. Notwithstanding the foregoing in paragraph 10, PECO agrees to work with interested parties as part of the Commission’s Multi-Family Working Group to develop an acceptable definition of “low-income building” for purposes of counting savings towards the low-income carve-out and present that definition to the Commission for approval.

 12. Both master-metered and individually-metered multi-family properties will be eligible for all measures contained in the entire portfolio. Costs and savings related to multi-family measures delivered to residential, individually-metered customers will be assigned to the residential class. Costs and savings related to multi-family measures delivered to residents in master-metered buildings will be assigned to the applicable commercial and industrial (“C&I”) class.

 13. For measures installed in common areas of multi-family buildings, the costs and savings will be assigned according to the type of meter associated with the particular common area. Common areas of buildings where at least 66% of its units are verified low-income residents will be eligible for the same subsidy as the Low-Income EE Program. For multi-family buildings in which verified low-income residents comprise less than 66% of units, the subsidies for common areas in individually-metered buildings and all subsidies for master-metered buildings, except for those subsidies provided to residences that are verified as low-income pursuant to the terms of paragraph 10, *supra*, will be consistent with those available to other customers in the rate class in which electric service is taken.

 14. No later than December 1, 2016, PECO will conduct a stakeholder meeting with interested multi-family housing owners, developers, and other interested stakeholders. PECO will work with the Housing Alliance of Pennsylvania, other interested groups (to be identified in collaboration with CAUSE-PA), and PECO’s conservation service providers (“CSPs”) to identify multi-family housing owners and developers to invite to the meeting. The purpose of the stakeholder meeting will be to solicit feedback about the Company’s multi-family offerings and to identify potential changes to the Company’s programs related to multi-family housing.

 15. To the extent practicable, PECO will coordinate with the Pennsylvania Housing Finance Authority (“PHFA”) to align the eligibility of measures in Act 129 low-income multi-family buildings with PHFA’s Qualified Allocation Plan and Energy Rebate Analysis.

**B. Residential and Small C&I EE Programs**

 16. Starting in Program Year 2018, PECO will begin to phase out incentives for compact florescent lights (“CFLs”) in its Residential and Small C&I EE Programs. By Program Year 2019, PECO will no longer offer incentives for the purchase of CFLs as part of its Residential and Small C&I EE Programs. Beginning in Program Year 2019, all lighting incentives for the Residential and Small C&I EE Programs will be for non-CFLs as proposed in the Plan.

 17. All EE kits in the Residential EE Program with lighting measures will include at least one light-emitting diode (“LED”) lamp. PECO may include additional LED lamps if their inclusion does not jeopardize the Company’s ability to meet its EE target within its budget.

 18. Following the end of Program Year 2017, PECO will provide the parties with a report (the “Final PY2017 Annual Report”) of the actual, verified savings achieved from the Residential Behavioral EE Solution for that program year. Following the receipt of the Final PY2017 Annual Report, if the Residential Behavioral EE Solution is not achieving its expected level of savings, then PECO and the other stakeholders will convene a meeting to discuss what strategies could be implemented to address any concerns related to that solution.

 19. PECO agrees that at least once per year, prior to the commencement of a program year, PECO will include a review of the content of the Residential home energy reports and Small C&I energy reports as an agenda item for a stakeholder meeting. PECO agrees that it will consider comments from the stakeholder meetings regarding the content of these reports.

 20. Smart/learning thermostats will be considered an eligible measure under the Residential New Construction Solution.

 21. PECO will offer a rebate for smart/learning thermostats in the range of $15 to $200 under the Residential Lighting, Appliances and HVAC Solution.

 22. At the end of Program Year 2017, PECO will evaluate the implementation of the energy intelligence aspect of its proposed Small C&I Behavioral Solution to help maximize customer engagement and program objectives. In Program Year 2018, PECO will provide the results of the evaluation to stakeholders and, through a collaborative process, will identify recommendations, which may include improvements to and/or the expansion of the existing Small C&I Behavioral Solution in Program Year 2019.

**C. Low-Income EE Program**

 23. The $1 million annual Low-Income EE Program expenditure dedicated to [Customer Assistance Plan (CAP)] customers with high usage and incomes at 0-50% of the Federal Poverty Level to which PECO agreed as part of the recent settlement of its Three-Year Plan proceeding[[2]](#footnote-2) will be an addition to funds that the Company would have otherwise dedicated to the Low-Income EE Program and these funds will be applied only towards direct install measures for this population.

 24. Starting in Program Year 2018, PECO will begin to phase out incentives for CFLs in the Low-Income EE Program. By Program Year 2019, PECO will no longer offer the direct installation of CFLs or provide CFLs in EE kits as part of its Low-Income EE Program, but will instead provide LEDs as part of the Program.

 25. Any distribution of EE kits as part of the Low-Income EE Program will be accompanied by an interactive educational component informing the kit recipient about how to install the contents of the kit and the benefits of that installation. A CSP completing direct installation measures as part of the Low-Income EE Program will provide an EE kit to the recipient of those measures if the CSP believes it would be beneficial for the recipient and would not be duplicative of the measures already installed.

 26. The Low-Income EE Program does not have a distinct education and awareness component and such activities do not comprise a substantial portion of the Program budget. The Company does, however, provide education to customers when directly installing measures in a low-income household and when providing EE kits.

 27. PECO will continue to implement the Low-Income EE Program after meeting its low-income carve-out subject to the Commission-approved budget for the Low-Income EE Program.

 28. As part of its Low-Income EE Program, PECO shall offer smart/learning thermostats to low-income customers and residents of master-metered multi-family buildings that are verified as low-income pursuant to the terms of paragraph 10, *supra*, as an eligible measure for residences for which such thermostats will control central electric heating and/or central electric cooling, subject to landlord approval, available Program funds and the overall program acquisition cost of the Low-Income EE Program. Consistent with the other direct install measures in the Low-Income EE Program, the smart/learning thermostats will be offered at no cost to low-income customers and residents of master-metered multi-family buildings that are verified as low-income pursuant to the terms of paragraph 10, *supra*.

**D. Cost Recovery Tariff**

 29. The Electric Service Tariff Supplement attached as Exhibit 2 to this Joint Petition corrects several typographical errors and provides additional clarity concerning reconciliation statements to address the issues raised by OCA witness Geoffrey C. Crandall.

**E. Stakeholder Meetings**

 30. In the first stakeholder meeting scheduled after Phase III begins, and in future stakeholder meetings as may be necessary, PECO will include an agenda item to discuss the recent changes in Federal Law relating to the replacement of 55 gallon and larger electric resistance domestic hot water heaters. PECO will consider comments from the stakeholder meetings regarding this change in Federal Law, and will explore ideas or programs that may be beneficial to its customers as to the new legal requirements for this group of domestic hot water heaters.

 31. PECO will review the performance of the three solutions in the Residential [Demand Response (DR)] Program with stakeholders after Program Year 2018 and will consider adjustments in approaches based on achieved results and the Commission-approved budget for the Residential DR Program.

 32. PECO will review the performance of the Small C&I DR Program with stakeholders after Program Year 2018 and consider adjustments to drive down Program costs and increase Program benefits to improve the cost-effectiveness of the Program, subject to the Commission-approved budget for the Small C&I DR Program.

 33. PECO will review the performance of the Large C&I DR Program with stakeholders after Program Year 2018 and consider adjustments in approaches based on achieved results and the Commission-approved budget for the Large C&I DR Program.

Settlement at 4-10.

The Joint Petitioners state that the Settlement is in the public interest because substantial litigation and the associated costs will be avoided. The Joint Petitioners also state that the Settlement is consistent with the Commission’s rules and practices encouraging negotiated settlements, as set forth in 52 Pa. Code §§ 5.231 and 69.391, and is supported by substantial record evidence. Settlement at 11.

Additionally, the Joint Petitioners aver that the Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement. The Settlement is without prejudice to any position the Parties may have advanced and may advance in future proceedings. *Id*. at 12.

The Settlement is conditioned upon the Commission’s approval of its terms and conditions. If the Commission disapproves or modifies the Settlement terms and conditions, the Settlement may be withdrawn by any Party upon written notice to the Commission and the Parties within five business days following the entry of this Opinion and Order. *Id*.

## B. The Plan

 In its Plan, PECO proposes five energy efficiency (EE) programs and three demand response (DR) programs. PECO’s EE portfolio consists of the following five programs: (1) Residential (excluding low-income); (2) Low-Income; (3) Small Commercial and Industrial (C&I); (4) Large C&I; and (5) Combined Heat and Power (CHP). The Company is also expanding DR opportunities for residential customers, maintaining its direct load control (DLC) program for small C&I customers, and adding a new DR program for large C&I customers. The Company estimates that its EE programs will produce a total of 2,100,875 MWh in energy savings over the course of the Program (Program Year (PY) 2016-2020), or 107%, of PECO’s overall energy savings target. Petition at 2. PECO’s DR programs are projected to produce an annual average potential peak demand savings of 171 MW for PY 2017-2020, or 106%, of PECO’s peak demand reduction target. *Id*. at 2-3.

 A summary of PECO’s EE programs is described below, as follows:

**Residential EE Program**. The Residential Program is designed to offer customers opportunities to save energy across all their electric end-uses and to market those opportunities in a way that minimizes lost savings opportunities. Program measures are bundled into the following Solutions: (1) Lighting, Appliance and HVAC Solutions (providing cash rebates and upstream discounts for efficient products); (2) Residential New Construction Solutions (promoting the design and construction of energy efficient homes); (3) Whole Home Solutions (providing energy audits and direct installation of measures); (4) Appliance Recycling Solutions (providing pick up of energy wasting appliances); and (5) Behavioral Solutions (development and mailing of Home Energy Reports to compare customer usage to similar households).

**Low-Income EE Program**. Program measures are bundled into the following Solutions: (1) Lighting Solutions (providing enhanced cash rebates and upstream discounts for efficient products); and (2) Whole Home Solutions (providing energy audits and direct installation of measures as well as providing pick up and replacement of energy wasting appliances at no cost to the consumer). Low-income residential customers may also take advantage of the Solutions in the Residential EE Program.

**Small C&I EE Program**. The program is designed to provide small C&I customers, including customers in the [government/educational/nonprofit (G/E/NP)] sector, a diverse array of savings opportunities. Program measures are bundled into the following Solutions: (1) Equipment and Systems Solutions (providing cash rebates and upstream discounts for efficient products); (2) New Construction Solutions (promoting the design and construction of energy efficient buildings); (3) Whole Building Solutions (providing energy audits and direct installation of measures); and (4) Behavioral Solutions (development and mailing of Energy Reports to compare customer usage to similar businesses).

**Large C&I EE Program**. The program is designed to provide large C&I customers, including customers in the G/E/NP sector, meaningful savings opportunities across a variety of electric end-uses. Program measures are bundled into the following Solutions: (1) Equipment and Systems Solutions (providing cash rebates and upstream discounts for efficient products); and (2) New Construction Solutions (promoting the design and construction of energy efficient buildings).

**CHP EE Program**.The CHP Program is designed to facilitate the installation of energy-saving CHP systems by addressing financial and technical barriers associated with this technology. The program is open to both large C&I and small C&I customers (including customers in the G/E/NP sector and master-metered multifamily buildings). The program has three types of incentives that are distributed at key milestones in the life of a CHP project: (1) design

incentives; (2) capacity incentives; and (3) performance incentives.

 Petition at 10-11.

 PECO’s DR programs are described as follows:

**Residential DR Program.**  The Residential DR Program includes the DLC Solution, the Smart Thermostat Solution and the Behavioral Solution. Similar to the Company’s Phase II residential Smart AC Saver Program, the DLC Solution provides a bill credit in exchange for allowing PECO to remotely cycle or shut down a customer’s central air conditioning (CAC) unit on short notice during DR events. The Smart Thermostat Solution provides a bill credit in exchange for allowing PECO to utilize Wi-Fi-enabled thermostats in customers’ homes to reduce CAC usage by increasing the set temperature during DR events. The final Solution, Behavioral, will alert participating customers with an Advanced Metering Infrastructure (AMI) meter the day before a DR event, suggest load curtailment actions, and provide a bill credit to customers who reduce demand during the event.

**Small C&I DR Program.** The Small C&I DR Program will offer customers a DLC Solution that is similar to the Company’s Phase II small C&I Smart AC Saver Program. During a DR event, PECO will remotely cycle or shut off a customer’s CAC unit on short notice to reduce demand. Participants receive a bill credit for allowing PECO to control their equipment.

**Large C&I DR Program.** The Large C&I DR program will use DR aggregators to engage customers in demand reduction activities. When PECO calls a DR event, the aggregators will relay the information directly to their enrolled large C&I customers. Those customers will then reduce their electric load by a specified amount for the duration of the event in exchange for financial incentives.

*Id*. at 11-12.

# IV. Discussion

For the reasons set forth in this Opinion and Order, we will approve, in part, the Petition and the Settlement, subject to the condition that no Party to the Settlement exercises its right to withdraw therefrom. We are also requiring PECO to:

(1) file a revised Phase III Energy Efficiency and Conservation Plan, consistent with the modifications in this Opinion and Order; (2) include in its compliance tariff a detailed description of the allocation methodology that will be used to assign costs to the various customer classes; and (3) submit its proposed Conservation Service Provider (CSP) request for proposal (RFP) process. To the extent the Settlement adopts the Plan and the Tariff Supplement, we find it appropriate to provide the Parties with an opportunity to respond to the above directives. We note that Paragraph 39 of the Settlement permits the Parties thereto to withdraw from the Settlement in the event that the Commission does not approve the Settlement as filed. We will, therefore, require all Parties to the Settlement to notify the Commission, within five business days of the entry date of this Opinion and Order, if they are electing to withdraw from the Settlement. If any Party exercises the right to withdraw, the Settlement and the Petition shall be rejected. If no Party exercises the right to withdraw, the Settlement and the Petition shall be granted, in part, and denied, in part, consistent with this Opinion and Order.

## A. Legal Standards

We note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are 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);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) see also, generally, [University of Pennsyl­vania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

Because the Joint Petitioners have reached a settlement, the Joint Petitioners have the burden to prove that the Settlement is in the public interest. Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. Settlement terms often are preferable to those achieved at the conclusion of a fully litigated proceeding. In addition, a full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. Act 129 cases often are expensive to litigate, and the reasonable cost of such litigation is an operating expense recoverable in the rates approved by the Commission. Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony, cross-examining witnesses in lengthy hearings, and preparing and serving briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission’s decision, yielding significant expense savings for the company’s customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pa. PUC v. C.S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985). In order to accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C.S. Water and Sewer Assoc.*, *supra*. 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).

## B. Phase III Conservation and Demand Reduction Requirements

### 1. Overall Conservation Requirements

The *Phase III Implementation Order* established a Phase III energy consumption reduction target of 1,962,659 MWh for PECO, which was based on a 5% reduction in the Company’s expected load as forecasted by the Commission for the period June 1, 2009, through May 31, 2010. *Phase III Implementation Order* at 57. Consumption reductions are measured using a savings approach. *Id.* at 108. Each EDC was directed to develop a plan that was designed to achieve at least fifteen percent of the target amount in each program year. *Id.* at 59.

In the *Phase III Implementation Order*, the Commission expressed concern that the carryover of all excess savings from phase to phase of the EE&C Program will lead to a scenario in whichEDCs meet most, if not all, of the reduction target simply with carryover savings. As a result, the Commission concluded that EDCs are allowed to carry-over only excess savings obtained in Phase II for application toward Phase III targets. *Phase III Implementation Order* at 84-85.

 PECO’s Plan proposes total energy savings of 2,100,875 MWh by the end of Program Year 2020 (May 31, 2021), or 107% of its targeted amount of 1,962,659 MWh. Plan at 9, Table 1. PECO proposes to obtain 20%, 21%, 22%, 23%, and 20% of its Phase III total consumption reduction target in Program Years 2016, 2017, 2018, 2019, 2020, respectively. Plan at Table 7.

In review of PECO’s Plan, we find that the Company’s Plan projects total energy savings that will exceed the prescribed Phase III energy consumption reduction targets set forth in our *Phase III Implementation Order.* Additionally, we find that the Plan complies with our directive that any carryover savings be limited only to savings actually obtained in Phase II. Moreover, we find that the Plan is designed to achieve at least fifteen percent of the total energy savings amount in each Phase III program year.

### 2. Overall Demand Reduction Requirements

Phase I of the EE&C Program included DR requirements. 66 Pa. C.S. § 2806.1(d). The Commission did not believe it had the information necessary at the time to definitively determine that a demand reduction program would be cost-effective as part of Phase II. Consequently, Phase II did not include DR requirements. *Phase II Implementation Order* at 32-33. For Phase III, the Commission concluded that it had sufficient information to determine that DR requirements would be cost-effective in the service territories of six of the seven EDCs (all EDCs except Penelec). *Phase III Tentative Implementation Order* at 36; *Phase III Implementation Order* at 34-35.

PECO’s peak demand reduction (PDR) target is an average annual potential savings of 161 megawatts (MW). This represents a 2.0% reduction relative to the peak demand of 2007-2008. *Phase III Implementation Order* at 35. Peak demand reductions are measured using the demonstrated savings approach. *Id*. at 111-112. Because EDCs are not required to obtain peak demand reductions during the first year of Phase III, the required reductions apply to the remaining four program years of Phase III. *Id.* at 35. The Commission will determine compliance with the peak demand reduction requirements outlined above based on an average of the MW reductions obtained from each event over the last four years of the Phase. However, EDCs are to obtain no less than eighty-five percent of the MW target in any one event. *Id.* at 36. Finally, each EDC plan must demonstrate that the cost to acquire MWs from customers that participate in the PJM Interconnection, LLC (PJM) Emergency Load Response Program (ELRP) is no more than half the cost to acquire MWs from customers in the same rate class that are not participating in PJM’s ELRP. *Id.* at 44.

PECO’s Plan projects average annual peak demand reductions of 170 MW for Program Year 2017 and 171 MW for Program Years 2018 through 2020. Plan at 15, Table 3. Our review of PECO’s Plan indicates that the projected average annual PDR will meet or exceed the prescribed Phase III PDR targets set forth in our *Phase III Implementation Order*. Additionally, PECO demonstrates that the MW acquisition costs for customers who participate in PJM’s ELRP are less than fifty percent of the acquisition costs for those that do not participate in PJM’s ELRP. Plan at Appendix E, Table E-8.

PECO states that it will contract with an evaluation, measurement and verification (EM&V) contractor before the launch of its programs. This contractor will conduct unbiased, independent estimations of verified gross energy impacts on all programs. These estimations will follow procedures outlined in the EM&V contractor’s EM&V Plan, to be developed prior to Phase III program implementation, providing implementation CSPs with information regarding the data to be tracked. PECO states that having the EM&V Plan completed and available to staff from PECO and its CSPs will help ensure that the implementers maintain appropriate and high quality records for savings verification for all programs, including demand response programs. Plan at 111, Section 6.1.1.

We find that PECO’s Plan is designed to adequately achieve compliance with the overall peak demand reduction requirements.

### 3. Requirements for a Variety of Programs Equitably Distributed

The *Phase III Implementation Order* did not require a proportionate distribution of measures among customer classes. However, it did require that each customer class be offered at least one program. *Phase III Implementation Order* at 113. In addition, the Commission required that EE&C Plans include at least one comprehensive program for residential customers and at least one comprehensive program for non-residential customers. *Id.* at 61.

PECO’s Plan includes eight programs, one geared toward residential energy efficiency savings, one geared toward energy efficiency savings for low-income customers, three geared toward C&I energy efficiency savings, and three geared toward demand response savings of the different customer rate classes (residential, small C&I, and large C&I). PECO’s Plan provides energy efficiency and demand response programs for each of its customer classes, including a specific program for low-income households. The Plan also forecasts participation from government/educational/nonprofit (G/E/NP) entities. The Plan contains financial incentives for energy efficient Residential and Commercial and Industrial equipment and construction, as well as financial incentives for retrofitting government buildings, schools, hospitals, and non-profits with energy efficiency measures. The individual EE&C programs are described in detail in Section 3 of PECO’s Plan. PECO’s Plan provides at least one comprehensive program for residential customers and non-residential customers. The Residential, Low-Income, Small C&I, and Large C&I programs each provide customers with opportunities to save energy across all electric end-uses. In addition, the CHP Program provides opportunities for savings by facilitating the installation of CHP technology. PECO St. 2 at 12. Based on our review of the Plan, we conclude that PECO’s Plan complies with the provisions of 66 Pa. C.S. § 2806.1(a)(5) and the *Phase III Implementation Order,* which require that EE&C Plans include a variety of EE&C measures and that these measures be provided equitably to all classes of customers*.*

### 4. Government/Educational/Non-Profit Requirement

Act 129 required that Phase I EE&C Plans obtain a minimum of ten percent of all consumption and peak demand reduction requirements from units of the Federal, State and local governments, including municipalities, school districts, institutions of higher education and non-profit entities (G/E/NP Sector). 66 Pa. C.S. § 2806.1(b)(1)(i)(B). The Commission believes that it has the discretion to modify and/or remove the specific sector carve-out for the G/E/NP Sector if no cost-effective savings can be obtained from that sector. *Phase III Implementation Order* at 71 and 74-75. We directed all EDCs to obtain at least three-and-one-half percent of their consumption reduction targets from the G/E/NP Sector. *Id.* at 76. EDCs are permitted to carryover excess savings for the G/E/NP Sector from Phase II for application to their Phase III G/E/NP Sector target.

PECO’s Plan is targeting savings in the G/E/NP Sector that exceed the three-and-one-half percent consumption reduction requirement. Specifically, PECO projects that 13% of its overall energy savings target will be generated by the G/E/NP Sector through participation in the Small C&I Program, Large C&I Program, and CHP Program. Plan at Table 9; PECO St. 2 at 11. Accordingly, we find that PECO’s Plan is designed to achieve compliance with the G/E/NP requirements set forth in our *Phase III Implementation Order.*

### 5. Low-income Program Requirements

Act 129 prescribed in Phase I that each EDC EE&C Plan must include specific energy efficiency measures for households at or below 150% of the FPIG, in proportion to that sector’s share of the total energy usage in the EDC’s service territory.  *See* 66 Pa. C.S. § 2806.1(b)(1)(i)(G).  For Phase III, the Commission proposed to continue this measure prescription.  In addition, the Commission required that each EDC obtain a minimum of five-and-one-half percent of its total consumption target from the low-income sector.  *Phase III Implementation Order* at 62-63 and 69.  Savings counted toward this target could only come from specific low-income programs or low-income verified participants in multifamily housing programs.  Savings from non-low income programs cannot be counted for compliance.  *Id.* EDCs are only allowed to carryover excess Phase II low-income savings into Phase III based on an allocation factor determined by the ratio of low-income specific program savings to savings from non-low-income specific programs.  *Id*. at 85.

The total energy usage attributable to low-income customers in the PECO service territory is 8.8%.  *Id*. at 63. Upon our review, it appears that PECO’s EE&C Plan includes sufficient low-income measures to meet the 8.8% requirement. However, PECO failed to address this low-income requirement in its Plan. Therefore, we direct PECO to clearly delineate the proportionate number of low-income measures in the revised Plan it must submit as a result of this Opinion and Order.

In the Plan, PECO proposes total energy savings from low-income customers of 118,490 MWh by the end of Program Year 2020 (May 31, 2021). Plan at 19, Table 7. In the Settlement, PECO agreed to expend an additional $1 million annually on the Low-Income EE Program, to be applied only towards direct install measures for Customer Assistance Program (CAP) customers with high usage and incomes at 0-50% of the Federal Poverty Level. PECO indicates that starting in 2018, the Company will begin to phase out CFLs for the Low-Income EE Program and replace them with LEDs. Settlement at 8. Additionally, PECO will include an interactive educational component with EE kits that are distributed as part of the Low-Income EE Program, PECO will continue to implement the Low-Income EE Program even after meeting the low-income carve-out, and PECO will offer smart/learning thermostats to low-income customers and verified low-income residents of master-metered multi-family buildings. *Id* at 8-9. We find that the Plan includes programs that are anticipated to obtain at least 5.5% of the total consumption reduction requirement from low‑income customers.

 We also find that the Settlement provisions are consistent with the public interest. As the OCA expresses, the Settlement ensures that a wide range of multifamily housing is eligible to participate under the Plan and clarifies the range of buildings that are targeted under the Plan and how eligibility and costs or savings are determined. OCA Statement in Support at 5. The OSBA believes that the Settlement provisions relating to common areas in individually-metered buildings and master-metered buildings reflect a reasonable compromise in the interest of PECO’s Small C&I customers. OSBA Statement in Support at 5. The remaining Settlement provisions, including the direct install measures and educational components with EE kits, help to ensure that the programs are beneficial and targeted to low-income customers.

### 6. Proposals for Improvement of Plan

The Commission’s EE&C Program must include “procedures to make recommendations as to additional measures that will enable an electric distribution company to improve its plan and exceed the required reductions in consumption.” 66 Pa. C.S. § 2806.1(a)(6). We note that through the Settlement, PECO agrees to adopt or investigate and study several improvements proposed by the Joint Petitioners. All Parties to this proceeding either agreed to the Settlement, did not oppose the Settlement, or indicated that they did not take a position regarding the Settlement. As these proposed improvements are addressed in the Plan as clarified by the Settlement and as there are no remaining contested issues related to these proposed improvements, we will not discuss them in this Opinion and Order.

## C. Cost Issues

In the *Phase III Implementation Order*, we stated:

The Act directs the Commission to establish a cost recovery mechanism that ensures that approved measures are financed by the customer class that receives the direct energy and conservation benefit of the measure. 66 Pa. C.S.
§ 2806.1(a)(11). All EDC plans must include cost estimates for implementation of all measures. 66 Pa. C.S. § 2806.1(b)(1)(i)(F). Each plan must also include a proposed cost‑recovery tariff mechanism, in accordance with Section 1307 (relating to sliding scale [of] rates; adjustments), to fund all measures and to ensure full and current recovery of prudent and reasonable costs, including administrative costs, as approved by the Commission. 66 Pa. C.S.
§ 2806.1(b)(1)(i)(H). In addition, each plan must include an analysis of administrative costs. 66 Pa. C.S.
§ 2806.1(b)(1)(i)(K). The Act dictates that the total cost of any plan must not exceed two percent of the EDC’s total annual revenue as of December 31, 2006, excluding LIURP, established under 52 Pa. Code § 58 (relating to residential Low Income Usage Reduction Programs). 66 Pa. C.S. § 2806.1(g). Finally, all EDCs, including those subject to generation or other rate caps, must recover on a full and current basis from customers, through a reconcilable adjustment clause under Section 1307, all reasonable and prudent costs incurred in the provision or management of its plan. 66 Pa. C.S. § 2806.1(k).

*Phase III Implementation Order* at 130-131.

### 1. Plan Cost Issues

####  a. Determination of Allowable Costs

#####  i. Phase III Allowable Costs

The Act allows an EDC to recover all prudent and reasonable costs relating to the provision or management of its EE&C Plan, but limits such costs to an amount not to exceed two percent of the EDC’s total annual revenue as of December 31, 2006, excluding Low‑Income Usage Reduction Programs established under 52 Pa. Code Ch. 58. 66 Pa. C.S. § 2806.1(g). The level of costs that an EDC will be permitted to recover in implementing its EE&C program was established in the Phase I proceedings. For PECO, the cap is $85,477,166. *Phase III Implementation Order* at 11 n.23. These are annual budgetary limitations, rather than a budget for all of Phase III. *Id.* at 135.

The two percent cost cap for all of Phase III for PECO totals $427,385,830. The total projected costs for the Phase III Plan of PECO is $427,385,830. Plan at 17. As the total projected costs for the Company’s Phase III Plan are equal to its associated two percent cost cap, we find that the Company complies with the two percent cost cap requirement. Therefore, we shall approve this amount.

#####  ii. Application of Excess Phase II Budget

EDCs cannot use excess Phase II funds to implement Phase III programs. After June 1, 2016, EDCs can only use Phase II budgets to finalize measures installed and commercially operable on or before May 31, 2016, and to finalize any contracts and other Phase II administrative obligations. *Phase III Implementation Order* at 140*.* Similarly, EDCs may continue to spend their Phase III budgets even if their consumption and/or peak demand reduction goals are met before the end Phase III. EDCs can spend their Phase III budgets past May 31, 2021 only to account for those program measures installed and commercially operable on or before May 31, 2021, and to finalize the CSP and administrative fees related to Phase III. The Commission’s Bureau of Audits will subsequently reconcile Phase III funds collected compared to expenditures, and direct the EDCs to refund any over-collections to the appropriate rate classes. *Id.* at 140.

Our review of the record indicates that PECO complies with the directive in our *Phase III Implementation Order* which prohibits the use of excess Phase II funds to implement Phase III programs. *See* Plan at Table C-4.

#####

#####  iii. Rebate Application Deadlines

The *Phase III Implementation Order* required EDCs to include rebate deadlines in their Phase III EE&C Plans. Although the Commission believes that EDCs and their stakeholders are in the best position to determine the appropriate deadlines, the Commission suggested that 180 days be the maximum deadline. *Phase III Implementation Order* at 142. While PECO’s Plan generally references deadlines for rebates, it does not contain rebate deadlines or language specifying that the maximum deadline for rebates is 180 days. *See* Plan at 75. Accordingly, we direct PECO to include such language addressing the Company’s rebate deadlines in the revised Plan it must submit as a result of this Opinion and Order.

### 2. Cost Effectiveness/Cost-Benefit Issues

The Act requires an EDC to demonstrate that its plan is cost-effective, using the Total Resource Cost (TRC) Test approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(I). The TRC Test to be used for evaluating Phase III EE&C Plans was approved by Order entered June 22, 2015, at Docket No. M-2015-2468992 (*2016 TRC Order*).

The Commission will maintain the practice, used in Phases I and II, of using a Net-to-Gross (NTG) ratio for making modifications to programs during the phase, and for planning purposes for future phases. The Commission, however, will determine compliance with targets using gross verified savings. *Phase III Implementation Order* at 105 and 107. We required EDCs to include net TRC ratios, as well as gross TRC ratios, and to incorporate language in their EE&C Plans to clarify the speculative nature of these estimates, in order to provide clarity to stakeholders regarding these values. *Id*. at 107.

PECO’s Plan shows a cost-benefit ratio of 1.3 for the energy efficiency measures. Plan at Table 5. Additionally, PECO’s Plan shows a cost-benefit ratio of 1.9 for the demand response measures. Plan at Table 6. As such, we find PECO’s Plan to be cost effective from both an Energy Efficiency and a Demand Response standpoint.

The Plan also includes both a net TRC ratio and a gross TRC ratio for each program. Plan at Appendix C, Tables C-5 through C-10. PECO did not include language regarding the speculative nature of net TRC ratio estimates as directed in our *Phase III Implementation Order*. While we will not reject PECO’s Plan based on this omission, we direct PECO to include such language in the revised Plan it must submit as a result of this Opinion and Order. On review of the record evidence, we find that PECO has satisfied the requirement outlined in our *Phase III Implementation Order* which instructed EDCs to include net TRC ratios and gross TRC ratios. Therefore, we find that PECO’s Plan, as a whole, is cost-effective.

### 3. Cost Allocation Issues

66 Pa. C.S. § 2806.1(a)(11) requires that EE&C measures be financed by the same customer class that receives the energy and conservation benefits of those measures. In the *Phase III Implementation Order*, we stated:

In order to ensure that all approved EE&C measures are financed by the customer classes that receive the benefit of such measures, it will be necessary to first assign the costs relating to each measure to those classes to whom it benefits. Therefore, once the EDC has developed an estimate of its total EE&C costs as directed above, the EDC is required to allocate those costs to each of its customer classes that will benefit from the measures to which the costs relate. Those costs that can be clearly demonstrated to relate exclusively to measures that have been dedicated to a specific customer class should be assigned solely to that class. Those costs that relate to measures that are applicable to more than one class, or that can be shown to provide system-wide benefits, should be allocated using reasonable and generally acceptable cost of service principles as are commonly utilized in base rate proceedings. Administrative costs should also be allocated using reasonable and generally acceptable cost-of-service principles.

*Phase III Implementation Order* at 144 (note omitted).

Upon review of the Company’s Plan and proposed Phase III Energy Efficiency and Conservation Program Charge (EEPC) tariff, we find that the Plan adequately addresses how the Company will allocate those costs that relate to measures that are applicable to more than one class, or that can be shown to provide system-wide benefits. However, we find that the proposed tariff does not provide a description of this methodology. To ensure that the allocation methodology is clearly defined in its EEPC tariff, we direct the Company, when it submits its compliance filing, to include a detailed description of the allocation methodology that will be used to allocate those costs that relate to measures that are applicable to more than one class, or that can be shown to provide system-wide benefits.

### 4. Cost Recovery Issues

The Act allows an EDC to recover from customers, on a full and current basis, through a reconcilable adjustment clause under 66 Pa. C.S. § 1307, all reasonable and prudent costs incurred in the provision or management of its plan. 66 Pa. C.S.
§ 2806.1(k)(1). Each EDC’s plan must include a proposed cost-recovery tariff mechanism, to fund all measures and to ensure a full and current recovery of prudent and reasonable costs, including administrative costs, as approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(H).

In the *Phase III Implementation Order*, the Commission adopted a standardized cost recovery and reconciliation process, and directed EDCs to transition from the cost recovery methodology used during Phase II to a new cost recovery methodology to be used during Phase III. *Phase III Implementation Order* at 145-147 and 149. Among other things, the Commission directed each EDC to include in its Phase III EE&C Plan an annual cost recovery methodology based on the projected program costs that the EDC anticipates will be incurred over the surcharge application year. Each EDC was directed to file a supplement to its tariff to become effective June 1, 2016, accompanied by an explanation of its application to each customer class. The Commission also directed each EDC to annually reconcile actual expenses incurred with actual revenues received for the reconciliation period. *Id.* at 147 and 149.

The Company proposes to recover the cost of its Phase III Plan through an EEPC in a manner similar to that used in Phase II. PECO submits that the Phase II EEPC was designed to comply with Section 1307 of the Code and, as the Commission required, was reconcilable and non-bypassable. Consistent with the *Phase II Implementation Order*, the EEPC was not a separate line item on residential customers’ bills and was not included in the price to compare. Instead, residential customers’ distribution rates were adjusted by the amount of the charge calculated for each rate class. For small commercial customers, the EEPC was based on energy use or kWh. For large commercial customers, the charge was based on a PJM Peak Load Contribution (PLC). The EEPC was listed as a separate item on small and large commercial customers’ bills and was not included in the price to compare. For its Phase III Plan, PECO proposes to follow the same format it used in Phases I and II. Plan at 115.

Based on our review of the Company’s cost recovery mechanism as contained in its proposed Phase III EEPC tariff, we believe the Company has fully complied with our directives set forth in the *Phase III Implementation Order.* Accordingly, weapprove the Company’s cost recovery mechanism. Plan, Exh. 2.

## D. Conservation Service Provider Issues

In the *Phase III Implementation Order*, the Commission required that all Phase III CSP contracts be competitively bid. As a result, the Commission required EDCs to file their Phase III RFP procedures for Commission review and approval. *Phase III Implementation Order* at 121 and 124. EDCs were encouraged to file their proposed RFP process by August 30, 2015. If Commission staff did not comment on the proposed process within fifteen days of its filing, the EDC was permitted to use that process. *Id.* at 121-122.

PECO states that it will be issuing RFPs for CSP selection for Phase III. The selected CSPs, their qualifications and the basis for their selection will be shared with the Commission. PECO notes that it will be relying on the experience and capabilities of the selected CSPs that will be responsible for implementation services as detailed in Section 3.2 of its Plan. PECO anticipates issuing, at a minimum, eighteen RFPs for Phase III implementation services. These RFPs range from the implementation of specific EE&C programs to providing marketing, call center, tracking system and EM&V services. Plan at 105.

As outlined in Section 4.1.1 of its Plan, PECO will engage an evaluation contractor to be responsible for the EM&V services of the portfolio. This will entail verifying that programs are meeting their goals and are being operated consistently with PECO’s approved plan; interfacing with the Commission’s Statewide Evaluator (SWE) to ensure M&V protocols are aligned with the Commission’s requirements; and providing periodic feedback to PECO on areas where delivery performance could be improved. Plan at 99.

As previously noted, the EDCs were to submit to the Commission their proposed RFP processes. Based on a review of our records, it appears that PECO has not filed its proposed RFP process with the Commission. While PECO outlined eighteen potential RFPs in its Plan, it did not include its proposed RFP procedures. Therefore, we direct PECO to submit its proposed CSP RFP process within thirty days of the entry date of this Opinion and Order. Pending Commission staff approval of that proposed process, we find that PECO’s plan to use eighteen CSPs is consistent with the requirements of Act 129 and the *Phase III Implementation Order*.

## E. Implementation and Evaluation Issues

### 1. Implementation Issues

The Act requires the Commission to establish procedures to ensure compliance with the consumption and peak demand reduction requirements. 66 Pa. C.S. § 2806.1(a)(9). PECO’s Program Management and Implementation Strategies are contained in Section 4 of its Plan. This section states that PECO will offer customer-centric energy management solutions that result in the reduction of PECO’s customer electric costs while delivering cost-effective energy and demand savings in order to meet its Commission-prescribed goals. PECO states that this will be accomplished through a portfolio of comprehensive program offerings. PECO will support the Plan implementation through a combination of internal resources, CSPs and the use of trade allies and retail distribution outlets. PECO notes that it assumes responsibility across all CSPs to provide strategic direction; to develop and review RFPs; to analyze program performance; to develop, coordinate and execute education and awareness-raising activities and promotions; to develop and recommend program changes; and to ensure overall program success and budget management. Plan at 99.

Based on our review of PECO’s Plan, we approve the implementation and management strategies contained in Section 4, finding them to be reasonable and consistent with Act 129 and the *Phase III Implementation Order*.

### 2. Monitoring, Reporting and Evaluation Issues

The Commission’s EE&C Program is to include an evaluation process including a process to monitor and verify data collection, quality assurance and the results of each plan and the program. 66 Pa. C.S. § 2806.1(a)(2). Consistent with this requirement, each EDC’s Plan is to “explain how quality assurance and performance will be measured, verified and evaluated.” 66 Pa. C.S. § 2806.1(b)(1)(i)(C). Each EDC is required to submit an annual report to the Commission relating to the results of its EE&C Plan. 66 Pa. C.S. § 2806.1(i)(1).

For Phase III, the Commission directed the EDCs to file semiannual reports on January 15 of each year, which are to provide information regarding the first two quarters of the program year. Additionally, on July 15 of each year, EDCs are to file a preliminary annual report for the program year that outlines the second half of the program year, as well as reported savings for that program year. Lastly, EDCs are to submit a final annual report by November 15 of each year, with reported savings for the program year, a cost‑effectiveness evaluation (TRC Test), a process evaluation, as well as items required by Act 129 and Commission Orders. The reports are to be submitted to the Commission’s Secretary’s Bureau at each EDC’s respective Phase III Docket Number. The EDCs are also required to post these reports on their respective websites. *Phase III Implementation Order* at 101 and 102.

PECO’s monitoring and reporting strategies are contained in Sections 5 and 6 of its Plan. In Section 5, PECO states that it will use one CSP to conduct impact and process evaluations and a separate CSP to develop and maintain an EM&V tracking system. The EM&V contractor will conduct impact and process evaluations and also interface with the SWE to determine the required data collection and reporting requirements. PECO notes that the EM&V evaluation contractor will then disseminate that information to the EM&V tracking system vendor and implementation CSPs to ensure that all data collection and reporting requirements are satisfied. Plan at 106.

The EM&V tracking system vendor will be responsible for developing and maintaining the tracking system on a secure, electronic platform. In June 2017, PECO intends to deploy a new EM&V Tracking System to replace its current Smart Ideas Database System (SIDS). PECO notes that it will conduct a two-stage process – issuance of a Request for Information followed by an RFP – to select a vendor for the EM&V Tracking System. The EM&V Tracking System will provide a variety of standard reports, as well as support any ad hoc querying and report development processes. PECO notes that the Tracking System will track two primary critical metrics: (1) all financial components of the programs, including incentives paid, implementation costs, administrative costs and forecasts; and (2) total kWh of energy conservation and kW of demand reductions achieved, including deemed, partially deemed and customer measure values. Plan at 106-108.

Section 5 of PECO’s Plan also includes an outline of the information to be included in, and a timeline for, the semiannual and annual reports to be submitted to the Commission. Plan at 106-107.

In Section 6, PECO describes how quality assurance will be measured, verified and evaluated. Additionally, PECO and the CSPs will develop specific protocols and procedures for the implementation of each program and solution. PECO states that these procedures will govern various aspects of the implementation, including:

* CSP representation of PECO;
* Appropriate outreach methods;
* Development and content of promotional messages;
* Assessment of participant/project eligibility;
* Procedures for site visits and audits;
* Required documentation and reporting of activities;
* Data collection, maintenance and entry in PECO’s EM&V Tracking System, for projects and rebate applications;
* Handling of incentive applications; and
* Addressing customer and equipment supplier/contractor satisfaction, problems and complaints.

Plan at 111.

 PECO states that it will contract with an EM&V contractor before the programs are launched. This contractor will conduct unbiased, independent estimations of verified gross energy impacts on all programs. These estimations will be based on statistically significant, verified savings, measured as described in the EM&V Plan to be developed prior to Phase III program implementation. PECO notes that the development of the EM&V Plan, which will contain detailed evaluation methodologies for each program, before program implementation will ensure that the implementers maintain appropriate and high quality records so that savings can be verified. Plan at 111-112.

Based on our review of PECO’s Plan, we shall approve the monitoring and reporting strategies contained in Sections 5 and 6 of the Plan, finding them to be reasonable and consistent with Act 129 and the *Phase III Implementation Order*.

# V. Conclusion

Based on our review of the record and the applicable law, we find that the Settlement is in the public interest to the extent that it is consistent with Act 129 and in compliance with the *Phase III Implementation Order*. Consequently, consistent with this Opinion and Order, we shall grant, in part, and deny, in part, the Petition of PECO Energy Company for approval of its Act 129 Phase III Energy Efficiency and Conservation Plan and grant, in part, and deny, in part, the Joint Petition for Settlement, subject to the condition that no Party to the Settlement exercises the right to withdraw therefrom; **THEREFORE;**

**IT IS ORDERED:**

1. That, if any Party elects to withdraw from the Joint Petition for Settlement, it shall file with the Commission, and serve on all Parties to this proceeding, within five (5) business days of the date this Opinion and Order is entered, a notice that it wishes to withdraw from the Joint Petition for Settlement.
2. That, if any Party elects to withdraw from the Joint Petition for Settlement, the Petition of PECO Energy Company for approval of its Act 129 Phase III Energy Efficiency and Conservation Plan, together with the Joint Petition for Settlement, shall be denied without further action by this Commission, and:
	1. PECO Energy Company shall file with this Commission, and serve on all Parties of record in this proceeding, a revised Energy Efficiency and Conservation Plan consistent with this Opinion and Order, within sixty (60) days of the entry of this Opinion and Order. Interested parties will have ten days to file comments on the revised Phase III Energy Efficiency and Conservation Plan, with reply comments due ten days thereafter. The Commission will approve or reject the revised Phase III Energy Efficiency and Conservation Plan at a public meeting within sixty (60) days of the date of the filing of the revised plan.
	2. PECO Energy Company shall submit a revised tariff with its revised Phase III Energy Efficiency and Conservation Plan, consistent with this Opinion and Order.
3. That, if no Party elects to withdraw from the Joint Petition for Settlement, the Petition of PECO Energy Company for approval of its Act 129 Phase III Energy Efficiency and Conservation Plan is granted, in part, and denied, in part, consistent with this Opinion and Order.
4. That, if no Party elects to withdraw from the Joint Petition for Settlement, PECO Energy Company’s Phase III Energy Efficiency and Conservation Plan, as modified by the Joint Petition for Settlement, is approved, in part, and rejected, in part, consistent with this Opinion and Order.

 a. That PECO Energy Company shall file with this Commission, and serve on all Parties to this proceeding, a revised Phase III Energy Efficiency and Conservation Plan consistent with the modifications directed in this Opinion and Order, within sixty (60) days of the entry date of this Opinion and Order.

 b. That PECO Energy Company is directed to include in its compliance tariff a detailed description of the allocation methodology that will be used to assign costs to the various customer classes.

 c. That PECO Energy Company shall submit its proposed Conservation Service Provider request for proposal process within thirty (30) days of the entry date of this Opinion and Order, consistent with the directive in this Opinion and Order.

 d. That PECO Energy Company is permitted to implement any portion of its Phase III Energy Efficiency and Conservation Plan that was approved without modification by this Opinion and Order.

1. That any directive, requirement, disposition or the like contained in the body of this Opinion and Order, which is not the subject of an individual Ordering Paragraph, shall have the full force and effect as if fully contained in this part.

****

 **BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: March 17, 2016

ORDER ENTERED: March 17, 2016

1. All references and page citations herein to the Plan and the Tariff Supplement will be to the Revised Plan and the Revised Tariff Supplement attached to the Settlement. [↑](#footnote-ref-1)
2. *See PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, Docket No. M-2012-2290911 (Order entered July 8, 2015) (approving the Joint Petition for Settlement). [↑](#footnote-ref-2)