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April 21, 2017

VIA eFILING

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

Re: Energy Efficiency & Conservation Program
Docket No. M-2012-2289411

Re: Petition Of PECO Energy Company For Approval Of Its Act 129 Phase II Energy Efficiency & Conservation Plan
Docket No. M-2012-2333992

Dear Secretary Chiavetta:

Enclosed for filing, on behalf of **PECO Energy Company**, is the **Petition of PECO Energy Company Regarding Initial Determinations in the Phase II Compliance Order** (the "Petition") in the above-referenced matter.

Copies of the Petition will be provided to all parties as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me at 215.963.5384.

Very truly yours,

Kenneth M. Kulak

KMK/tp
Enclosures

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ENERGY EFFICIENCY & CONSERVATION PROGRAM	:	**DOCKET NO. M-2012-2289411**
PETITION OF PECO ENERGY COMPANY FOR APPROVAL OF ITS ACT 129 PHASE II ENERGY EFFICIENCY & CONSERVATION PLAN	:	**DOCKET NO. M-2012-2333992**

CERTIFICATE OF SERVICE

I hereby certify that I have this date served true and correct copies of the **Petition of PECO Energy Company Regarding Initial Determinations in the Phase II Compliance Order** upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

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Dated: April 21, 2017

Counsel for PECO Energy Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ENERGY EFFICIENCY & CONSERVATION PROGRAM	:	**DOCKET NO. M-2012-2289411**
PETITION OF PECO ENERGY COMPANY FOR APPROVAL OF ITS ACT 129 PHASE II ENERGY EFFICIENCY & CONSERVATION PLAN	:	**DOCKET NO. M-2012-2333992**

PETITION OF PECO ENERGY COMPANY REGARDING INITIAL DETERMINATIONS IN THE PHASE II COMPLIANCE ORDER

Pursuant to the 52 Pa. Code § 5.41, PECO Energy Company ("PECO" or the "Company") hereby contests the initial determination made by the Pennsylvania Public Utility Commission (the "Commission") in its April 6, 2017 Act 129 Energy Efficiency and Conservation ("EE&C") Compliance Order (the "Compliance Order") precluding the use of savings in excess of its Phase II EE&C plan carve-outs for low-income and government, educational and non-profit ("G/E/NP") customers to meet Phase III carve-out requirements. As explained below, the Company believes that excess low-income and G/E/NP savings should be available for use in a subsequent plan to meet carve-out requirements consistent with the Commission's prior guidance regarding program continuity.

I. BACKGROUND

1. PECO is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal office in Philadelphia, Pennsylvania. PECO provides electric delivery service to approximately 1.6 million customers and natural gas delivery service to approximately 503,000 customers in southeastern Pennsylvania.

2. On October 15, 2008, Governor Edward G. Rendell signed into law Act 129, which, among other things, added Section 2806.1 to the Pennsylvania Public Utility Code. The

applicable provisions of Act 129 required Pennsylvania electric distribution companies ("EDCs") to file EE&C plans by July 1, 2009 containing the plan elements specified in Section 2806.1(b) ("Phase I EE&C Program").[1] 66 Pa.C.S. § 2806.1(b). Additionally, Sections 2806.1(c) and (d) required that EDCs' Phase I EE&C plans be designed: (1) to reduce retail energy consumption by a minimum of 1% by May 31, 2011 and a minimum of 3% by May 31, 2013; and (2) to reduce peak demand, measured by reference to the 100 highest hours of demand, by a minimum of 4.5% no later than May 31, 2013. 66 Pa.C.S. § 2806.1(c) and (d).

3. The EE&C plan filing requirements set forth in Section 2806.1(b) included provisions mandating that energy savings be derived from certain customer segments during Phase I. Specifically, a minimum of 10% of an EDC's consumption reductions had to be obtained from the G/E/NP sector. 66 Pa.C.S. § 2806.1(b)(1)(i)(B). In addition, each EDC's Phase I plan was to include specific energy efficiency programs for households with income at or below 150% of the Federal Poverty Income Guidelines ("low-income sector") that are proportionate to such households' share of the total energy usage in the EDC's service territory. *Id.* at § 2806.1(b)(1)(i)(G).

4. In compliance with Section 2806.1 and the Commission's Order entered January 15, 2009 at Docket No. M-2008-2069887, implementing that section, PECO prepared and submitted its EE&C plan for the Phase I EE&C Program on July 1, 2009. The Commission subsequently approved PECO's Phase I Plan, with modifications, on October 28, 2009. *See Petition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program*, Docket No. M-2009-2093215. Certain revisions were adopted in subsequent orders.

[1] 66 Pa.C.S. § 2806.1(l) exempts EDCs with fewer than 100,000 customers from this requirement.

5. Act 129 further required the Commission, by November 30, 2013, to evaluate the costs and benefits of the Phase I EE&C Program. If the benefits of the Program were found to exceed its costs, the Commission was directed to adopt "additional required incremental reductions in consumption" and "additional incremental requirements for reduction in peak demand." 66 Pa.C.S. §§ 2806.1(c)(3) and (d)(2).

6. On August 3, 2012, the Commission entered its *Phase II Implementation Order*, adopting EDC-specific targets for reducing energy consumption for the next EE&C Program term (June 1, 2013-May 31, 2016).[2] *See Energy Efficiency and Conservation Program,* Docket Nos. M-2012-2289411 and M-2008-2069887 (Order entered August 3, 2012) *("Phase II Implementation Order"),* p. 24. PECO's Phase II consumption reduction target was set at 2.9% of its expected sales for the June 1, 2009 through May 31, 2010 period. *Id.* at 23-24. The Commission directed EDCs to continue to comply with the statutory requirements established for Phase I, namely that: (1) 10% of an EDC's consumption reduction requirement come from the G/E/NP sector; and (2) a plan's portfolio of measures include a proportionate number of low-income measures. *Id.* at 45, 53-54. In addition, the Commission adopted a new requirement mandating that EDCs obtain a minimum of 4.5% of their consumption reduction requirement from the low-income sector. *Id.* at 54.

7. In the *Phase II Implementation Order*, the Commission recognized that some EDCs anticipated achieving their 3% Phase I consumption reduction target before the end of Phase I. *Id.* at 58. In order to ensure that there would be "no disruptive gaps in programs that

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[2] The Commission did not establish any Phase II peak demand reduction requirement in its August 3, 2012 Order because, at that time, it did not have enough information to determine the cost-effectiveness of the Phase I peak demand reduction programs. The Commission did, however, allow EDCs to voluntarily offer cost-effective DR programs during Phase II. *Phase II Implementation Order,* pp. 33, 42.

would create confusion to customers, retailers and contractors, resulting in harm to the existing market transformation achievements of Act 129," the Commission determined that savings in excess of the Phase I target could be applied towards Phase II targets. Excess Phase I savings would be applied in Phase II by customer group. *Id.* at 59-60.

8. Consistent with the *Phase II Implementation Order*, PECO submitted a Phase II Plan that was approved by the Commission on February 28, 2013.[3]

9. On June 11, 2015, the Commission adopted an Implementation Order for Phase III EE&C Plans, which established both consumption reduction and peak demand reduction targets for the June 1, 2016-May 31, 2021 period.[4] A minimum of 5.5% of each EDC's total consumption reduction target in Phase III must be obtained from the low-income sector and at least 3.5% of the overall target must be obtained from the G/E/NP sector. Savings counted towards the 5.5% target may only come from specific low-income programs or low-income verified participants in multi-family housing programs.[5]

10. For PECO, the Commission established a consumption reduction target of 1,962,659 MWh (5.0% of the 2009/2010 forecast baseline) over the five-year term of Phase III. PECO's demand reduction target for the four-year period June 1, 2017 through May 31, 2021 is an average annual potential savings of 161 MW.[6]

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[3] *See* Opinion and Order, *Petition of PECO Energy Company for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan*, Docket No. M-2012-233392 (Order entered February 28, 2013). Thereafter, PECO proposed, and the Commission approved, a voluntary DR program. *See* Secretarial Letter, *Petition of PECO Energy Company for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan*, Docket No. M-2012-233392 (May 9, 2014).

[4] *See* Implementation Order, *Energy Efficiency and Conservation Program*, Docket No. M-2014-2424864 (Order entered June 11, 2015) ("*Phase III Implementation Order*").

[5] *See Phase III Implementation Order*, p. 69.

[6] EDCs are not required to obtain peak demand reductions in the first program year (PY 2016) of Phase III. *Phase III Implementation Order*, p. 35.

11. In the *Phase III Implementation Order*, the Commission again addressed the issue of savings in excess of an EDC's consumption reduction target as well as the application of savings in excess of the low-income and G/E/NP carve-outs towards future carve-outs. Specifically, the *Phase III Implementation Order* provided that EDCs are only permitted to carry over savings actually obtained in Phase II in excess of their overall consumption reduction target to use towards the Phase III consumption reduction target. Similarly, for the G/E/NP carve-out, only savings obtained in Phase II in excess of the carve-out may be carried over towards the Phase III carve-out.[7] With regard to low-income carryover savings "to be applied toward the [Phase III] low-income carve-out," EDCs must apply an allocation factor based on the ratio of low-income specific program savings to savings from non-low-income programs.[8] The Commission noted that by clarifying how excess low-income savings would be handled, "EDCs who have already exceeded the 4.5% Phase II [low-income] target may have a chance to enhance their ratios, rather than stopping or significantly reducing their low-income programs until the beginning of Phase III."[9]

12. Consistent with the *Phase III Implementation Order*, PECO submitted a Phase III Plan, which the Commission approved.[10]

13. PECO submitted its final Phase II Annual Report on November 15, 2016. In the Report, the Company claimed overall Phase II savings of 1,090,505 MWh, which exceeded the Company's overall Phase II consumption reduction target when combined with Phase I

[7] *Id.* at 85.

[8] *Id.* at 84-85.

[9] *Id.* 85-86.

[10] *See* Order, *Petition of PECO Energy Company for Approval of its Act 129 Phase III Energy Efficiency and Conservation Plan*, Docket No. M-2015-2515691 (March 17, 2016) and Order, *Petition of PECO Energy Company for Approval of its Act 129 Phase III Energy Efficiency and Conservation Plan*, Docket No. M-2015-2515691 (May 19, 2016).

carryover savings of 242,793 MWh. With respect to the G/E/NP and low-income carve-outs, the Company claimed excess Phase II savings of 115,400 MWh and 3,729 MWh, respectively.

14. The Phase II Final Report of the Act 129 Statewide Evaluator ("SWE") validated PECO's claimed overall savings and excess Phase II G/E/NP savings. With regard to excess Phase II low-income savings, the SWE calculated excess savings of 24,332 MWh (in contrast to PECO's claimed 3,729 MWh).[11]

15. In the Compliance Order, the Commission made an initial determination that PECO was in compliance with its overall Phase II target and its G/E/NP and low-income carve-outs.[12] The Commission also made an initial determination that PECO was not entitled to carry over any of its excess Phase II G/E/NP or low-income savings into Phase III because the Company did not obtain sufficient savings in Phase II alone to meet the Company's overall Phase II target since it relied upon Phase I savings. To allow such carryover, the Commission reasoned "would, in essence, permit a carryover for the total Phase III consumption reduction requirement." Compliance Order, p. 25.

II. PECO SHOULD BE PERMITTED TO CARRY OVER ITS EXCESS PHASE II G/E/NP AND LOW-INCOME SAVINGS INTO PHASE III

16. PECO disagrees with the Commission's conclusions in the Compliance Order that the carryover of excess G/E/NP savings is dependent upon an EDC exceeding its overall savings target with "in phase" savings. As explained herein, consistent with prior Commission guidance, PECO is only seeking to carryover excess Phase II carve-out savings for credit against its Phase III carve-out requirements, and not its overall Phase III consumption reduction target.

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[11] *See* Compliance Order, pp. 8, 24-25. 26. PECO has reviewed the SWE's calculations and agrees that they were performed correctly.

[12] *Id.* at 8, 12, 20.

17. In the *Phase III Implementation Order*, the Commission separately discussed the carryover of savings in excess of the Phase II target, the low-income carve-out, and the G/E/NP carve-out. With regard to savings in excess of the Phase II target, the Commission found that an EDC could only bank those savings actually attained in Phase II in excess of its target to apply towards the Phase III target.[13] The Commission reasoned that this approach would "encourage EDCs to continue the full implementation of programs and not allow programs to 'go dark,' without reaching a scenario where target attainment is achieved solely through multiple phase carryover savings."[14] PECO understood the Commission's directive regarding the G/E/NP carve-out to apply similarly, requiring the G/E/NP carve-out to be exceeded in Phase II in order to carry over excess G/E/NP savings to Phase III but not incorporating the overall Phase II consumption reduction target.[15]

18. When the Commission addressed low-income savings, it expressly provided for excess savings "to be applied toward the [Phase III] low-income carve-out" in accordance with an allocation factor based on the ratio of low-income specific program savings to savings from non-low-income programs. The Commission provided the following example: "if an EDC has 40% of their verified low-income savings from low-income specific programs, then they may apply 40% of any excess low-income savings towards the Phase III 5.5% carve-out."[16] The Commission further stated that the timing of its direction regarding low-income savings in the *Phase III Implementation Order* would allow EDCs who had already exceed their Phase II 4.5%

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[13] *Id.* at 84-85.

[14] *Id.* at 83.

[15] After describing what savings could be carried over to the Phase III consumption reduction target, the Commission stated "this directive applies to excess savings in the G/E/NP sector as well." *Id.* at 85.

[16] *Id.* at 85.

low-income carve-out to enhance their ratios "rather than stopping or significantly reducing their low-income programs until the beginning of Phase III."[17] The Commission did not state that excess low-income savings could only be carried over if an EDC first demonstrated that its overall savings actually attained in Phase II exceeded its overall Phase II consumption reduction target.

19. In support of its initial determination denying PECO any low-income or G/E/NP carryover savings in the *Phase III Implementation Order*, the Commission stated that "[b]oth the low-income and G/E/NP savings are a carve-out or subset of the whole, accordingly, to allow a carryover for these carve-outs into Phase III, would, in essence, permit a carryover for the total Phase III consumption reduction requirement."[18]

20. PECO is not seeking to apply its excess Phase II low-income and G/E/NP savings towards its Phase III consumption reduction target. The Company understands that, per the direction in the *Phase III Implementation Order*, it is not permitted to do so because PECO's savings actually attained in Phase II do not exceed its Phase II target.

21. PECO is, however, seeking to apply its excess Phase II low-income and G/E/NP savings towards their respective Phase III *carve-outs*. This means that PECO will still have to obtain 1,962,659 MWh of savings during Phase III to meet its overall consumption reduction target, but it may deduct 24,332 MWh from its Phase III low-income savings requirement and 115,400 MWh from its Phase III G/E/NP savings requirement. These deductions are meaningful because they will provide PECO with additional flexibility in plan implementation. For example, with those additional savings included, PECO will be able to direct more resources towards comprehensive projects for low-income customers.

[17] *Id.* at 85-86.

[18] Compliance Order, p. 25.

22. The Commission has previously highlighted how carryover savings can encourage the continuation of low-income savings programs – which are generally more expensive than other consumption savings programs – even after a savings carve-out is met.[19] If the carryover of carve-out savings is dependent upon exceeding the consumption reduction target for the entire phase, EDCs will not be incentivized to continue costlier programs at normal levels if carve-out obligations are satisfied prior to the end of a phase.

[19] *See* Paragraph 7 *supra*.

III. CONCLUSION

Based upon the foregoing, PECO respectfully requests that the Commission approve this Petition and enter an order providing that PECO may carryover over 24,332 MWh of low-income savings and 115,400 MWh of G/E/NP savings into Phase III. The carryover savings would be applied towards PECO's Phase III carve-out obligations and not the Company's overall Phase III consumption reduction target.

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