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| **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17120** | |
| Public Meeting held March 25, 2021 | |
| Commissioners Present:  Gladys Brown Dutrieuille, Chairman, Joint Statement  David W. Sweet, Vice Chairman, Joint Statement  John F. Coleman, Jr.  Ralph V. Yanora | |
| Petition of PECO Energy Company for Approval of its Act 129 Phase IV Energy Efficiency and Conservation Plan | M-2020-3020830 |
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**OPINION AND ORDER**

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**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 IV Energy Efficiency and Conservation Plan (Plan) filed on November 30, 2020. 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), and the Philadelphia Area Industrial Energy Users Group (PAIEUG) (collectively, Joint Petitioners)[[1]](#footnote-1) on February 26, 2021. Administrative Law Judge (ALJ) Emily DeVoe and Deputy Chief Administrative Law Judge (DCALJ) Mark Hoyer (collectively, ALJs) certified the record in this proceeding on March 2, 2021. For the reasons fully delineated herein, we will approve the Settlement, grant PECO’s Petition and approve the Plan.

# 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 1% 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 3%. Also, by May 31, 2013, peak demand was to be reduced by a minimum of 4.5% 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.[[2]](#footnote-2)

On March 12, 2020, the Commission adopted a *Phase IV Tentative Implementation Order*.[[3]](#footnote-3) Following the submittal and review of comments, on June 18, 2020, the Commission issued an Implementation Order at that same docket number (*Phase IV 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, 2021 through May 31, 2026.[[4]](#footnote-4)

## B. The Company

PECO is a corporation duly incorporated and validly subsisting 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 more than 534,000 customers in Pennsylvania.

# II. Procedural History

In the *Phase IV 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*. *Phase IV Implementation Order* at 87‑89.

In the *Phase IV Implementation Order*, we directed each EDC to file its proposed Phase IV EE&C plan by November 30, 2020. *Id*. at 89. PECO timely filed a Petition for approval of its Plan on November 30, 2020. The Notice of the Petition was published in the *Pennsylvania Bulletin* on January 2, 2021, and January 9, 2021, with a comment period ending January 29, 2016.[[5]](#footnote-5) 51 *Pa.B.* 116,51 *Pa.B*. 252. Additionally, the Petition and Plan were posted on the Commission’s website at <http://www.puc.pa.gov>. The Petition was assigned to ALJs DeVoe and Hoyer.

The following Parties filed Notices of Intervention or Petitions to Intervene: the OCA; the OSBA; CAUSE‑PA; the Natural Resource Defense Council (NRDC); PAIEUG; Industrial Energy Consumers of Pennsylvania (IECPA); and the Tenant Union Representative Network (TURN). Comments were submitted by the Energy Efficiency for All Coalition of Pennsylvania (PA-EEFA); Daikin U.S. Corporation (DIL); Ceres (CERES); and the Keystone Energy Efficiency Alliance (KEEA). Reply Comments were submitted by PAIEUG.

The ALJs held a prehearing conference on January 8, 2021. PECO, the OCA, the OSBA, CAUSE-PA, NRDC, PAIEUG, IECPA, and TURN were represented at the conference. As no Party objected to the Petitions to Intervene of CAUSE-PA, NRDC, PAIEUG, IECPA, and TURN, the ALJs granted the Petitions during the January 8, 2021 Prehearing Conference.

On January 8, 2021, CAUSE-PA, NRDC, the OCA, the OSBA, and TURN filed a Joint Expedited Motion for Extension of Procedural Schedule (Motion).[[6]](#footnote-6)

On January 11, 2021, the ALJs issued an Interim Order directing the Parties to: (1) file responses, if any, to the Motion by Wednesday, January 13, 2021, and (2) file responses, if any, to the ALJs’ Proposed Revised Schedule detailed in the January 11, 2021 Order by Wednesday, January 13, 2021. PECO, CAUSE-PA, IECPA, NRDC, the OCA, and the OSBA timely filed responses to the January 11, 2021 Order.

On January 13, 2021, the ALJs issued a Protective Order.

On January 14, 2021, Chief Administrative Law Judge Charles Rainey (CALJ Rainey) issued an Order Denying the Joint Expedited Motion for Extension of Procedural Schedule. CALJ Rainey’s Order provided that: (1) evidentiary hearings occur on or before February 8, 2021;(2) briefs were to be filed on or before February 18, 2021; (3) reply comments/revised plans were to be filed by March 1, 2021; and (4) the record was to be certified by March 2, 2021.

On January 15, 2021, the ALJs emailed the Parties advising that, in light of CALJ Rainey’s Order, they were suspending the litigation schedule and cancelling the evidentiary hearing scheduled for January 22, 2021. The ALJs’ email directed the Parties to confer regarding a litigation schedule and that the ALJs would meet with the Parties to set a new litigation schedule and hearing date.

A conference was convened on January 19, 2021 at 8:40 a.m.[[7]](#footnote-7) at which the ALJs heard arguments from the Parties regarding their positions on the new litigation schedule and hearing date and subsequently set a revised litigation schedule.

On January 19, 2021, the Commission issued a Notice rescheduling the evidentiary hearing for February 5, 2021 at 10:00 a.m.

On January 22, 2021, comments to the Company’s Phase IV Plan were filed by PA-EEFA, DIL, CERES, and KEEA.

On January 26, 2021, an Interim Order was entered adopting the revised litigation schedule, which included a hearing date of February 5, 2021.

On February 4, 2021, PECO, the OCA, the OSBA, CAUSE-PA, IECPA, TURN, NRDC, and PAIEUG (Stipulating Parties), filed a Joint Stipulation for Admission of Testimony, Exhibits, and Certain Responses to Discovery (Joint Stipulation). Each of the Stipulating Parties stipulated to the authenticity of the statements and exhibits listed in the Joint Stipulation and requested that they be admitted into the record of this proceeding. The Stipulating Parties also indicated they waived cross-examination.

By Notice dated February 4, 2021, the evidentiary hearing was cancelled.

An Interim Order was entered on February 8, 2021, adopting the Joint Stipulation and admitting the testimonies and exhibits listed in the Joint Stipulation into the record.

On February 26, 2021, the Joint Petitioners filed the Joint Petition for Settlement as well as Statements in Support of the Settlement.

The Joint Petitioners represented that NRDC, IECPA, and TURN did not oppose the Settlement.

On February 18, 2021, NRDC filed a Letter of Non-Opposition to the Settlement. On February 26, 2021, TURN filed a Letter of Non-Opposition to the Settlement.

On March 1, 2021, IECPA filed a letter advising that it did not oppose the Settlement. Also, on March 1, 2021, PAIEUG filed reply comments.

# III. Description of the Plan and the Settlement

As noted above, the Settlement was filed on February 26, 2021, 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 Plan attached as Exhibit 1 to the Settlement.

## A. The Plan

In its Plan, PECO proposes five energy efficiency (EE) programs. PECO’s EE portfolio consists of the following five programs: (1) Residential (excluding low-income); (2) Income-Eligible; (3) Residential Home Energy Reports; (4) Income-Eligible Home Energy Reports; and (5) Non-Residential. The Company estimates that its EE programs will produce a total of 1,605,958 MWh in energy savings over the course of Phase IV (Program Years (PYs) 2021-2025),8[[8]](#footnote-8)or 116%, of PECO’s overall energy savings target. Petition at 3. PECO’s peak demand response or DR programs are projected to produce annual peak demand savings of 53, 66, 77, 78, and 53 MW for PYs 2021-2025, respectively, for a total projected peak demand savings of 327 MW for Phase IV, equal to 128% of PECO’s peak demand reduction target. Plan at 9, Table 3.

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

**The Residential (excluding low-income) Program.** This Programis 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. The Program has multiple objectives including incentives for purchases of efficient lighting, appliances, HVAC upgrades, energy saving devices, and other energy savings technologies. The Program will offer appliance recycling services to remove old, inefficient refrigerators, freezers, and window AC units. The Program will include a new construction component that will drive the construction of energy-efficient homes and also have offerings for the customer premises and common areas of multifamily buildings (both individually metered and master-metered). The Program measures are bundled into the following sub-components: (1) Rebates and Marketplace (providing cash rebates, downstream discounts, point of purchase coupons, and instant rebates via PECO’s online marketplace for efficient products, ); (2) In-Home Assessments (Single Family) (in-home or virtual assessments and audits of homes to identify energy efficiency opportunities and educate customers); (3) Multifamily (providing analysis, direct install measures, and larger investment-level energy efficiency upgrades in multifamily buildings); (4) Appliance Recycling (providing pick up of energy wasting appliances); and (5) New Construction (supports construction of more energy efficient homes compared to those built to code).

**The Income-Eligible Program**. This Program is available to customers in the low-income sector. The foundational element of the Program is a direct install whole home solution, which provides in-home audits and education as well as the direct installation of EE measures at no charge to the participant. The Program also includes appliance recycling services to remove old, inefficient refrigerators, freezers, and window AC units. The Program will provide opportunities for income-eligible families living in multifamily buildings, including measures for the customer premise and common areas. The Income-Eligible program is designed to increase energy efficiency and reduce household energy costs for residential customers with a household income less than or equal to 150% of the federal poverty level. Program measures are bundled into two sub-components: (1) Single-Family Income-Eligible (100% subsidized measures to help reduce single-family homes for income-eligible customers to reduce electric bills via in-person or virtual free energy checkups and analysis of customer’s energy use); and (2) Appliance Recycling (providing pick up of energy wasting appliances for income-eligible, single-family customers).

**Income-Eligible Home Energy Reports Program**. This Program is similar to the Residential Home Energy Reports Program, but is targeted to customers in the low-income sector. The Income-Eligible HERs program involves regularly delivering direct mail or digital HERs that motivate customers to be more energy efficient by providing individualized energy usage information as well as neighborhood comparisons, and offering energy savings recommendations. This program is available to residential customers with a household income less than or equal to 150% of the federal poverty level. This program does not contain any sub-components.

**The Residential Home Energy Reports (HERs) Program.**  This Program involves regularly delivering direct mail or digital home energy reports that motivate customers to act through contextualized energy-usage information, personal and neighborhood comparisons, and energy savings recommendations. The Program is designed to influence participant behaviors and influence energy management in their homes. This program does not contain any sub-components.

**The Non-Residential Program**.This Program is a single, comprehensive program for both large and small commercial and industrial customers with rebates for a wide range of energy conservation measures. The Non-Residential Program is designed to facilitate energy savings measures and encourage non-residential customers to make upgrades where they are needed by providing rebates and easy access to technical support. The Non-Residential Program includes all non-residential rate classes, business types, and building types with the exception of multifamily master-metered and common spaces (which are delivered through the Residential program). The Program includes a prescriptive component containing measures in the Technical Reference Manual (TRM) and a custom component that can capture the interactive effects of multiple TRM measures. The measures are bundled into two sub-components: (1) Prescriptive (measures defined the 2021 Pennsylvania TRM that are available through multiple delivery channels); and (2) Custom (singular energy/peak reduction measure or combinations of measures that are not covered in the 2021 Pennsylvania TRM. This could also include multiple 2021 Pennsylvania TRM measures with interactive effects). Both components are available for retrofit and new construction and will employ a market-driven approach in which customers are free to choose where they buy the EE measures and who installs them.

Petition at 9-10; Plan at 1-2.

PECO’s program portfolio is designed to produce PDRs of at least 19% of its PDR target per year. As stipulated in the *Phase IV Implementation Order*,[[9]](#footnote-9) PECO will nominate up to 50 MW of PDRs into PJM’s Forward Capacity Market (FCM). The programs and measures selected for bidding into the FCM will meet the eligibility requirements set forth in PJM manual 18B.[[10]](#footnote-10)

Although PECO has a peak demand reduction target, the *Phase IV Implementation Order*[[11]](#footnote-11) directs EDCs to rely on coincident PDRs to achieve this target. Thus, for Phase IV, PECO does not have a demand response program.

## B. Settlement

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

**A. Pilots To Incentivize Comprehensive Projects**

10. PECO will dedicate no less than $500,000 of its total Plan Residential Research and Development budget to the design and implementation of a residential pilot to study the use of various techniques and incentives to drive customers to pursue more comprehensive projects where energy efficiency measures across multiple end uses are installed.

11. PECO will dedicate no less than $1 million of its total Plan Non-Residential Research and Development budget to the design and implementation of a non-residential pilot to study the use of various techniques and incentives to drive customers to pursue more comprehensive projects where energy efficiency measures across multiple end uses are installed. The techniques and incentives being studied will address both business and non-business customers, with careful consideration of the business disruption effects of the comprehensive projects. Out of the total $1 million Non-Residential dedication, $430,000 will be dedicated to Small Commercial/ Industrial and $570,000 will be dedicated to Large Commercial/Industrial.

12. As part of the pilots, PECO will test the use of tiered incentives for building retrofits. This will include evaluating customer response to different price signals, including bonus incentives for multiple measures and tiers whereby long-lived measures receive higher incentives than short-lived measures. The pilots will be funded through the Plan’s Research and Development budget. Each pilot term will be at least 24 months (including time for program design and evaluation).

13. PECO will present pilot proposals at an Act 129 stakeholder meeting in 2021. Such proposals will describe each pilot’s goals, how the performance of the pilots will be measured, the pilot data to be tracked, projected cost, performance and participation, and schedule. PECO will begin the pilots by May 31, 2022.

14. Once the pilot results have been analyzed, the Company will present pilot findings to PECO Act 129 stakeholders and discuss any recommended changes to energy efficiency offerings in PECO’s Phase IV Plan as a result of the pilot findings.

**B. Addition Of Long-Term Savings Component To The Income-Eligible Program**

15. To encourage the installation of long-term comprehensive measures, PECO will increase the total five-year Plan budget of the Income-Eligible Program by $1 million and dedicate this $1 million to a new, long-term savings component within the Program. This $1 million in additional funding will be funded through the Plan’s Residential Research and Development budget.

16. The long-term savings component will include, without limitation, the following measures: insulation, air sealing, duct sealing, heat pumps and residential heat pump

6 water heaters. The program component will also incorporate a 5% adder to the kWh payment made to the implementation conservation service provider (“CSP”) when an eligible measure is installed. The $1 million budget will be used for the direct installation costs of eligible measures as well as the cost of the 5% adder. If the total component budget is expended, direct installation of eligible measures can continue subject to the overall Program budget, but without the 5% adder. PECO will track the spending and savings associated with the long-term savings component and provide periodic reports as part of Act 129 stakeholder meetings.  
  
**C. Health And Safety Pilot For Income Eligible Customers**

17. PECO will dedicate a minimum of $400,000 and maximum of $500,000 of its total Plan Residential Research and Development budget to an income-eligible health and safety pilot to assess whether addressing health and safety barriers in income-eligible homes would allow PECO to provide increased efficiency measures to income-eligible customers while advancing its overall energy savings goals. The pilot term will be 12 to 18 months. Once the pilot results have been analyzed, the Company will present pilot findings to PECO Act 129 stakeholders and discuss any recommended changes to energy efficiency offerings in PECO’s Phase IV Plan as a result of the pilot findings.

**D. Enhanced Support For Heat Pumps**

18. PECO will include heat pump specific technology content within its customer newsletter (bill insert) twice a year as part of seasonal readiness communications. Content will include the benefits of heat pump technology and proper maintenance instructions.

19. PECO will provide a post installation email to customers with instructions on proper temperature settings and an overview of how heat pump technology works with tips regarding minimization of auxiliary heat systems and proper maintenance (sourced by Energy Star®)

20. PECO will work with the Electrical Association of Philadelphia (“EAP”) to develop a heat pump-specific education curriculum including right-sizing, proper installation, and customer instruction, as part of EAP’s education series. PECO will host one virtual and one in-person (post-pandemic) session for its contractor network each year throughout the phase.

**E. Residential Research And Development Budget**

21. PECO will dedicate up to $4.125 million of its total Plan research and development budget to explore innovative residential and income-eligible measures and program offerings, including the residential and income-eligible pilots identified in this Settlement.

**F. Insulating Customers From The Risk Of Potential Deficiency Charges Associated With Bidding Resources Into the PJM Forward Capacity Market**

22. PECO has committed in its Plan to use a competitively solicited turnkey provider that will “assume all risk associated with bidding (to include potential deficiency charges, audit risk, and M&V compliance risk) in return for some portion of the revenues generated by bidding into the PJM capacity market.” As part of the competitive solicitation process, the Company will seek to minimize the portion of the revenues retained by the turnkey provider (“Provider Revenues”). All such revenues, net of any Provider Revenues paid, will be returned to customers as an offset to Plan costs. PECO will submit its proposed contract with the turnkey provider to the Commission consistent with the process for all CSP contracts.

**G. Preventing The Double-Counting of Savings**

23. PECO will follow the Statewide Evaluator’s (“SWE’s”) Evaluation Framework and will utilize a SWE-approved Phase IV evaluation plan and an independent evaluator to verify all Plan-related savings and ensure that there is no double-counting of savings for programs that leverage outside funding.

**H. Continuity Of Income-Eligible Programming**

24. PECO will continue to implement the Income-Eligible Program after meeting its low income carve-out, subject to the Commission-approved budget for the Income-Eligible Program.

Settlement at 4-8.

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 8-9.

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 9.

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*. at 10.

# IV. Discussion

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 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);](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)

## Legal Standards

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. Plan and **Settlement Approval**

**1. Positions of the Parties**

We note that each of the five Joint Petitioners prepared a Statement in Support of the Settlement (Statements). The Statements, which are appended to Settlement, are summarized below.

1. **PECO**

PECO submits that the Settlement earmarks substantial funding (up to $4.125 million) for residential research and development (R&D) efforts, which includes a residential pilot to study ways to encourage comprehensive residential EE projects, the addition of long-term savings component within the income-eligible program, and an income-eligible health and safety pilot. PECO Statement at 5. Specifically, PECO will dedicate: (1) no less than $500,000 for residential and $1 million for non-residential pilots to incentive comprehensive projects where EE measures across multiple end uses are installed; (2) $1 million over a five-year period to support the installation of long-term savings measures – such as insulation, air sealing, duct sealing, heat pumps and residential heat pump water heaters – to the income-eligible program; and (3) between $400,000 and $500,000 to assess health and safety barriers in income-eligible homes that would allow PECO to provide increased EE measures to income-eligible customers. PECO Statement at 2-5.

Furthermore, PECO submits that the Settlement provides enhanced support for heat pumps, confirms the continuity of income-eligible programming, and confirms PECO’s commitment to prevent the double-counting of savings. PECO Statement at 5-7. Finally, PECO asserts that the Settlement clarifies the Company’s proposal to insulate customers from the risk of potential deficiency charges associated with bidding resources into the PJM forward capacity market. PECO Statement at 6.

1. **OCA**

The OCA supports PECO’s dedication of no less than $500,000 toward residential comprehensive projects, noting that the pilot will be at least 24-months and, during the course of the pilot, PECO will test the use of tiered incentives for building retrofits, including evaluating customer responses to different price signals, including bonus incentives for multiple measures and tiers whereby long-lived measures receive higher incentives than short-lived measures. OCA Statement at 4-5 (citing Settlement at ¶ 12). According to the OCA, the Company’s planned R&D efforts to study the use of various techniques and incentives are aimed at attracting more residential participants and, therefore, the Settlement is in the public interest. OCA Statement at 5.

The OCA supports PECO’s dedication of between $400,000 and $500,000 toward an income-eligible health and safety pilot to assess whether addressing health and safety barriers in income-eligible homes would allow PECO to provide increased efficiency measures to income-eligible customers while advancing its overall energy saving goals. OCA Statement at 5. The OCA also indicated its support of PECO’s dedication of $1 million over five years to a new, long-term savings component within the income-eligible program. The OCA noted that the program component will incorporate a 5% adder to the kWh payment made to the implementation CSP when an eligible measure is installed. The $1 million budget will be used for the direct installation costs of eligible measures as well as the cost of the 5% adder. If the total $1 million budget is expended, direct installation of eligible measures can continue subject to the overall Program budget, but without the 5% adder. PECO will track the spending and savings associated with the long-term savings component and provide periodic reports as part of Act 129 stakeholder meetings. The OCA submits that these Settlement terms are in the public interest as they are beneficial and appropriately aimed toward low-income customers. OCA Statement at 5.

Finally, the OCA submits that the information provided under the Settlement at ¶ 22, combined with the information identified in the Company’s Plan, will allow the Parties to be able to evaluate whether the Company’s bids are consistent with the *Phase IV Implementation Order* and will protect customers from the risks associated with bidding and seek to minimize the portion of revenues retained by the turnkey provider. The OCA submits that this Settlement provision improves upon the Company’s filed Plan because it serves to insulate customers from the risk of potential deficiency charges associated with bidding resources into the PJM forward capacity market and, therefore, should be adopted as part of the Settlement. OCA Statement at 6.

1. **OSBA**

The OSBA supports the Settlement because the Parties reached successful compromise to either exclude problematic proposals from the Settlement, or at least structured it in a way that avoids major problems for the integrated plan. OSBA Statement at 3. More specifically, the OSBA explains that the Settlement sets forth a comprehensive list of issues that were resolved through the negotiation process. OSBA Statement at 2. The following issues were the primary focus of the OSBA in this proceeding: (1) whether PECO’s EE&C programs for small businesses are cost-effective; (2) whether PECO’s overall EE&C budget is reasonably balanced between residential, commercial and industrial rate classes; (3) whether PECO’s proposed spending within the commercial class is reasonably balanced between business and non-business customers; and (4) whether PECO’s proposed incentive levels for commercial programs represent a reasonable balance between the need to encourage customer participation in the program and the equity considerations of requiring cross-subsidies from non-participating customers. OSBA Statement at 2.

The OSBA submits that it conducted a detailed evaluation of whether the Company’s proposals reasonably complied with these criteria considering the resource and scheduling constraints. In addition, the OSBA monitored the proposals of the intervenors in this proceeding. The OSBA was concerned that certain proposals offered by the Parties were (a) incomplete, in that the self-serving recommendations were not accompanied by the offsets necessary in an integrated plan, (b) inconsistent with Commission policy, in that they advocated that electric load enhancement programs be built into the EE&C plan, and (c) that revenues from EE&C charges be used for purposes other than energy conservation, notably those related to reductions in carbon emissions. The OSBA actively opposed such proposals and is satisfied that those proposals that have generally been excluded from the Settlement, or at least have been structured in a way that avoids major problems for the integrated plan. OSBA Statement at 2-3.

1. **CAUSE-PA**

CAUSE-PA supports the Settlement as being in the public interest because PECO has committed to taking steps to further incentivize comprehensive projects that will provide long lasting, meaningful savings to low-income customers, noting that PECO will be required to dedicate $1 million over five years to a new, long-term savings component within the Program. CAUSE-PA submits that the new long-term savings component will provide direct installation of insulation, air sealing, duct sealing, heat pumps and residential heat pump water heaters and provide a 5% adder to the kWh payment made to the implementation CSP when an eligible measure is installed in order to incentivize participation. Additionally, PECO has agreed to dedicate at least $500,000 to develop a residential pilot to study ways to drive customers to pursue more comprehensive projects that provide efficiency measures across multiple end-uses. CAUSE-PA Statement at 3-4. CAUSE-PA asserts that these provisions represent a reasonable compromise that appropriately balances the interests of the Parties and interested stakeholders. CAUSE-PA’s witness, Mr. Jim Grevatt, explained in testimony that the Company’s proposed plan over relied on measures that were not likely to lead to meaningful bill reductions for participants and recommended that PECO increase its focus on comprehensive, long-lived energy efficiency measures. CAUSE-PA asserts that the Settlement fairly addresses this concern, in balance with other issues and interests in this proceeding, because it requires the Company to increase its focus on providing comprehensive, long-lived energy efficiency measures that will provide meaningful savings to participating low-income households. CAUSE-PA Statement at 4 (citing CAUSE-PA St. 1 at 5, 26-27).

Furthermore, CAUSE-PA asserts that the provisions governing the new health and safety pilot represent a reasonable compromise that appropriately balances the interests of the parties and interested stakeholders. CAUSE-PA’s witness, Mr. Grevatt, recommended the Company initiate a health and safety pilot program for low-income homes to explore ways to install comprehensive energy 5 efficiency measures that could not otherwise be safely installed. CAUSE-PA Statement at 4-5 (citing CAUSE-PA St. 1-SD at 3-4). CAUSE-PA asserts that the Settlement fairly addresses this concern, in balance with other issues and interests in this proceeding, because the Company has agreed to implement a health and safety pilot in line with Mr. Grevatt’s recommendation. The data and experience gained through this pilot will help inform PECO, the Commission, and stakeholders to quantify the energy savings achievable through targeted health and safety remediation, which will be useful in future Act 129 program phases. CAUSE-PA Statement at 5.

CAUSE-PA further submits that the Settlement is in the public interest because PECO has agreed to continue to implement the Income-Eligible Program after meeting its low-income carve-out subject to the Commission-approved budget for the Income-Eligible Program. CAUSE-PA Statement at 5 (citing Joint Petition at ¶ 24). CAUSE-PA asserts that this provision will ensure that the low-income programs do not prematurely “go dark” before the program budgets are spent, thus helping ensure that programs reach as many eligible households as possible. Finally, CAUSE-PA supports PECO’s dedication of up to $4.125 million in total Plan R&D budget to explore innovative residential and income-eligible measures and programs offerings, including residential and income-eligible pilots in the Settlement because this term will help ensure that PECO’s programs, including its low-income programs, are able to offer innovative offerings in future phases. CAUSE-PA Statement at 5.

1. **PAIEUG**

PAIEUG submits that the Settlement is in the public interest because: (1) as a result of the Settlement, expenses incurred by the Joint Petitioners and the Commission for completing this proceeding will be substantially less than they would have been if the proceeding had been fully litigated; (2) uncertainties regarding further expenses associated with possible appeals from the Final Order of the Commission are avoided as a result of the Settlement; (3) the Settlement results in terms and provisions that present a just and reasonable resolution of the Company's proposed Phase IV EE&C Plan; and (4) the Settlement reflects compromises on all sides presented without prejudice to any position any Joint Petitioner may have advanced so far in this proceeding. Similarly, the Settlement is presented without prejudice to any position any party may advance in future proceedings involving the Company. PAIEUG Statement at 2-3. Furthermore, the Settlement also satisfies the specific concerns of PAIEUG by providing the Company's commitment to ensure that programs benefitting specific customer classes are funded by the budgets for those specific customer classes receiving the resulting benefits. PAIEUG Statement at 3 (citing Settlement, ¶¶ 10-17). Moreover, the Settlement provides for PECO's commitment to use a competitively solicited turnkey provider that will assume all risk associated with bidding in return for some portion of the revenues generated by bidding into the PJM market with PECO seeking to minimize the portion of the revenues retained by the turnkey provider. PAIEUG Statement at 3 (citing Settlement ¶ 22). In addition, all such revenues, net of any revenues paid to the provider, will be returned to customers as an offset to Plan costs. Furthermore, the Settlement provides that PECO will follow the Statewide Evaluator's (SWE) Evaluation Framework and will utilize a SWE-approved Phase IV evaluation plan and an independent evaluator to verify all Plan-related savings and to ensure there is no double-counting of savings for programs that leverage outside funding. PAIEUG Statement E at 3 (citing Settlement ¶ 23).

**2. Disposition**

As stated above, all Parties to this proceeding either support, or do not oppose, the terms of the proposed Settlement. The Settlement provides for certain modifications to the Phase IV Plan initially proposed by PECO and represents a compromise among the Joint Petitioners that resolves all of the issues that have been raised in this proceeding. Based on our review of the record, we conclude that the proposed Settlement is in the public interest and shall approve it without modification.

We are in agreement with the Joint Petitioners that the proposed Settlement represents a reasonable compromise and resolution of the issues that the Joint Petitioners raised in this proceeding. The Joint Petitioners avers that the Settlement terms and conditions constitute a carefully crafted package representing reasonably negotiated compromise on the issues addressed herein. The Joint Petitioners further assert, and we agree, that approval of the Settlement will avoid further administrative, and possible appellate, proceedings, thereby avoiding substantial costs to the Joint Petitioners and to PECO’s customers by lending certainty to the outcome of this proceeding. Settlement at 8-9.

In addition, we conclude that PECO’s Revised Phase IV Plan attached as Exhibit A to the Settlement is in the public interest because it conforms to the Commission’s previously described requirements as set forth in Act 129 and our *Phase IV Implementation Order*.

## C. Phase IV Conservation and Demand Reduction Requirements

### 1. Overall Conservation Requirements

The *Phase IV Implementation Order* established a Phase IV energy consumption reduction target of 1,380,837 MWh for PECO, which is an approximate 3.5% reduction in the Company’s expected load as forecasted by the Commission for the period June 1, 2009, through May 31, 2010. *Phase IV Implementation Order* at 8. Consumption reductions are measured using a savings approach. *Id.* at 48. Each EDC was directed to develop a plan that was designed to achieve at least 15% of the target amount in each program year. *Id.* at 22.

In the *Phase IV 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 III for application toward Phase IV targets. *Phase IV Implementation Order* at 43-46.

PECO’s Plan proposes total energy savings of 1,605,958 MWh by the end of Program Year 2025 (May 31, 2026), or 116% of its targeted amount of 1,380,837 MWh. Plan at 8, Table 2. PECO proposes to obtain 19%, 23%, 27%, 28%, and 19% of its Phase IV total consumption reduction target in Program Years 2021, 2022, 2023, 2024, 2025, respectively. Plan at Table 2.

In review of PECO’s Plan, we find that the Company’s Plan projects total energy savings that will exceed the prescribed Phase IV energy consumption reduction targets set forth in our *Phase IV 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 III. Moreover, we find that the Plan is designed to achieve at least 15% of the total energy savings amount in each Phase IV 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. Phase IV contains demand reduction targets, but it does not require demand reductions to be implemented in the same manner as Phase III. Because the Commission sought the best use of Phase IV funding, it was determined that PDR would be done through coincident PDR provided by the EE measures. The Commission also required EDCs to nominate a portion of PDRs into PJM’s FCM. Revenue generated from this will be used to offset the costs of implementing this program, thus reducing the amount to be collected from PECO’s Act 129 Rider. *Phase IV Implementation Order* at 59-67.

PECO’s PDR target is 256 megawatts (MW). This represents a 3.2% reduction relative to the peak demand of 2007-2008. *Phase IV Implementation Order* at 80. Peak demand reductions are measured using the demonstrated savings approach. *Id*. at 81-83. PECO is required to achieve a minimum 15% of the target during each program year. *Id. at 81.* PECO proposes to obtain 21%, 26%, 30%, 30%, and 21% of its Phase IV total demand reduction target in Program Years 2021, 2022, 2023, 2024, 2025, respectively. Plan at Table 3. The Commission will determine compliance with the PDR requirements outlined above based on the savings approach for measuring annual consumption reductions and the definition of peak demand from Phases II and III in the 2021 TRM. *Id.* at 82. Finally, each EDC plan must state how many MWs of PDR they are going to nominate into the PJM FCM. PECO proposes to nominate up to 50 MW of PDRs into the PJM FCM. Plan at 11.

PECO’s Plan projects annual PDRs of 53, 66, 76, 76, and 53 MW for Program Years 2021, 2022, 2023, 2024, 2025, respectively. Plan at Table 3. Our review of PECO’s Plan indicates that the projected annual PDR will exceed the prescribed Phase IV PDR target and the annual percent toward the target as set forth in our *Phase IV Implementation Order*.

PECO states that it will contract with a vendor to supply PJM bidding services. This contractor will handle all details of bidding into the Reliability Pricing Model, including the selection of measures and programs, submitting documentation as required by PJM, and the actual bidding services. PECO further expects the provider will assume all risk associated with bidding (including potential deficiency charges, audit risk, and M&V compliance risk). Plan at 119-120, Section 4.3.3.

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

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

The *Phase IV 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 IV Implementation Order* at 93. 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 22-23.

PECO’s Plan includes five programs, one geared toward residential HERs (excluding low-income), one geared toward low-income HERs, one geared toward residential energy efficiency measures (excluding low-income), one geared toward low-income energy efficiency measures, and one geared toward non-residential energy efficiency measures. PECO’s Plan provides energy efficiency and coincident PDR for each of its customer classes, including a carve-out for low-income households. The Plan contains financial incentives for energy efficient Residential (including low-income) and Commercial and Industrial equipment and construction. 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 five programs each provide customers with opportunities to save energy across all electric end-uses. In addition, PECO has one Residential program and one Non-Residential program (with a separate prime CSP leading each) which encourages deeper retrofits, rather than asking customers to cross-reference many programs and apply through various channels. Plan at 19. 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 IV 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 10% 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. *Phase IV Implementation Order* at 37. In Phase III, we directed all EDCs to obtain at least 3.5% of their consumption reduction targets from the G/E/NP Sector. *Id.* at 38. For Phase IV, the Commission directed the SWE to determine if this sector could realize cost-effective consumption savings and the extent of the possible MWh savings. *Id.* at 38. Based on the findings of the SWE and the amount of potential that still exists, the carve-out for the G/E/NP sector was removed. However, EDCs are directed to still report on the savings achieved in this sector and to highlight how this sector will be served in their EE&C plans. *Id.* at 43.

PECO’s Plan is to have a specific assigned outreach representative for engagement in the prescriptive and custom sub-components of the Non-Residential Program. PECO proposes that the outreach representative will coordinate with PECO’s economic development, large customer services team and government affairs to work collaboratively to engage and educate these customers on the value of energy efficiency and participation in PECO programs. Plan at 108. Accordingly, we find that PECO’s Plan is designed to achieve compliance with the G/E/NP requirements set forth in our *Phase IV Implementation Order.*

### 5. Low-income Program Requirements

Act 129 prescribed in Phase IV, as in all prior phases of Act 129, proposed that each EDC EE&C Plan must include specific energy efficiency measures for households at or below 150% of the Federal Poverty Income Guidelines, 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).[[12]](#footnote-12) In addition, the Commission proposed to require each EDC to obtain a minimum of 5.8%[[13]](#footnote-13) of its total consumption reduction target from programs solely directed at low-income customers or low-income-verified participants in multifamily housing programs. Savings from non-low-income programs, such as general residential programs, would not be counted toward these targets.[[14]](#footnote-14) Additionally, the Commission stated that the EDCs will be allowed to carryover low-income carve-out savings only if they have carryover savings for the entire portfolio of programs in Phase III and if they have low-income carve-out savings attained in Phase III in excess of their Phase III carve-out targets for application towards Phase IV targets. *Phase IV Implementation Order* at 27-28, 44.

PECO is required to obtain a minimum 5.8% of its total consumption reduction target from its low-income sector, which is 80,089 MWh. *Phase IV Implementation Order* at35-36. PECO proposes to exceed its minimum consumption reduction target with a total cumulative energy savings from low-income customers of 98,271 MWh by the end of Program Year 2025 (May 31, 2026). Plan at 8, Table 2. PECO indicates that its Income-Eligible Home Energy Reports Program, Income-Eligible Program, and the multifamily portion of its Residential Income-Eligible Program will contribute to the low-income carve-out savings. Plan at 1. Under the Settlement, PECO will continue to implement the Income-Eligible Program after meeting its low income carve-out, subject to Commission approval of the program budget. Settlement at 24.

In the Settlement, PECO agreed to increase the Income-Eligible Program budget by $1 million over the five‑year period to fund: (1) additional long-term savings measures such as insulation, air sealing, duct sealing, heat pumps and residential heat pump water heaters; and (2) incorporate a 5% adder to the kWh payment made to the implementation CSP when an eligible measure is installed. If the $1 million is expended prior to the end of the five-year period, direct installation of eligible measures will continue subject to the overall Program budget, but without the 5% adder.[[15]](#footnote-15) Settlement at 15-16, Plan at 51.

Additionally, a minimum of $400,000 and maximum of $500,000 of its total Plan Residential Research and Development budget will be dedicated to a health and safety pilot to assess whether addressing health and safety barriers in income-eligible homes would allow PECO to provide increased efficiency measures while advancing its overall energy savings goals over a 12-to-18-month term.[[16]](#footnote-16) Settlement at 17, Plan at 119.

We find that the Settlement provisions are consistent with the public interest. As the OCA expresses, the Settlement terms are beneficial and are appropriately targeted to low-income customers. OCA Statement in Support at 5. We also agree with CAUSE-PA that the data and experience gained through the implementation of the health and safety pilot will help PECO, the Commission, and stakeholders quantify the energy savings achievable through targeted health and safety remediation. CAUSE-PA Statement in Support at 4-5.

### 6. Proposals for Improvement of Plan

Act 129 requires the Commission to establish “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.

## D. Cost Issues

In the *Phase IV 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 or 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 Low‑Income Usage Reduction Programs 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). The following sections detail the Commission’s proposed handling of EDC cost recovery issues for Phase IV based on our interpretation of the relevant provisions of Act 129 and experience obtained during prior Phases.

*Phase IV Implementation Order* at 119.

### 1. Plan Cost Issues

#### a. Determination of Allowable Costs

##### i. Phase IV 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 2% 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 IV Implementation Order* at 11-12. These are annual budgetary limitations, rather than a budget for all of Phase IV. *Id.* at 11.

The 2% cost cap for all of Phase IV for PECO totals $427,385,830. The total projected costs for the Phase IV Plan of PECO is $427,385,830. Plan at B-5 Table 12. As the total projected costs for the Company’s Phase IV Plan are equal to its associated 2% cost cap, we find that the Company complies with the 2% cost cap requirement. Therefore, we shall approve this amount.

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

EDCs cannot use excess Phase III funds to implement Phase IV programs. After June 1, 2021, EDCs can only use Phase III budgets to finalize measures installed and commercially operable on or before May 31, 2021, and to finalize any contracts and other Phase III administrative obligations. *Phase IV Implementation Order* at 132. Similarly, EDCs may continue to spend their Phase IV budgets even if their consumption and/or peak demand reduction goals are met before the end of Phase IV. EDCs can spend their Phase IV budgets past May 31, 2026 only to account for those program measures installed and commercially operable on or before May 31, 2026, and to finalize the CSP and administrative fees related to Phase IV. The Commission’s Bureau of Audits will subsequently reconcile Phase IV funds collected compared to expenditures and direct the EDCs to refund any over-collections to the appropriate rate classes. *Id.*at 132.

Our review of the record indicates that PECO complies with the directive in our *Phase IV Implementation Order* which prohibits the use of excess Phase III funds to implement Phase IV programs. *See* Plan at B-1 to B-5, Tables 10-12.

**iii. Rebate Application Deadlines**

The *Phase IV Implementation Order* required EDCs to include rebate deadlines in their Phase IV 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 IV Implementation Order* at 133. PECO’s Plan explicitly states that 180 days is the maximum length of time for a rebate application to be submitted. Plan at 32. Accordingly, we find PECO to be in compliance with this section.

### 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 IV EE&C Plans was approved by Order entered December 19, 2019, at Docket No. M-2019-3006868 (*2021 TRC Test Final Order*).

The Commission will maintain the practice, used in Phases I through III, 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 IV Implementation Order* at 109. 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*.

PECO’s Plan shows a cost-benefit ratio of 1.06 for the portfolio, inclusive of all common costs. Plan at 4, Figure 5. As such, we find PECO’s Plan to be cost effective.

The Plan also includes both a net TRC ratio and a gross TRC ratio for each program as directed in the *Phase IV Implementation Order*. *Phase IV Implementation Order* at 109. PECO’s Plan shows a gross TRC ratio and a net TRC ratio, of 1.22 and 1.16, respectively. These TRC ratios differ from the overall TRC ratio as these exclude common costs. Plan at B-6 and B-7, Table 13. On review of the record evidence, we find that PECO has satisfied the requirement outlined in our *Phase IV 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 IV 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, we proposed that the EDC be required to allocate those costs to each of its customer classes that will benefit from the measures or programs to which the costs relate. Those costs that demonstrably and exclusively relate to measures or programs that have been dedicated to a specific customer class should be assigned solely to that class. Those costs that relate to measures or programs 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 IV 1Implementation Order* at 134 (note omitted).

Upon review of the Company’s Plan and proposed Phase IV 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.

### 4. Cost Recovery Issues

The Act allows all EDCs to recover, on a full and current basis from customers, 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. The Act also requires that each EDC’s plan include a proposed cost‑recovery tariff mechanism, in accordance with 66 Pa. C.S. § 1307 (relating to sliding scale of rates; adjustments), 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.

In the *Phase IV Implementation Order*, the Commission adopted a standardized cost recovery and reconciliation process. *Phase IV Implementation Order* at 141-143. Among other things, the Commission directed each EDC to include in its Phase IV 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 to attain the conservation targets. The Commission also directed each EDC to annually reconcile actual expenses incurred with actual revenues received for the reconciliation period. Furthermore, the Commission directed, for transparency purposes, the 1307(e) reconciliation statement should clearly identify PJM FCM proceeds as cost reductions and PJM FCM deficiency charges as cost increases.

The Company proposes to recover the cost of its Phase IV Plan through an EEPC in a manner similar to that used in Phase III. PECO submits that the Phase III 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 III 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. 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 IV Plan, PECO proposes to follow the same format it used in Phase III. Plan at 136.

In addition, the Company states that the revenue from PDR resources that are bid into and clear in the PJM FCM will be used to reduce EE&C Phase IV Plan surcharges and collections from the customer classes from which the savings were acquired. These will be clearly identified in the 66 Pa. 1307(e) reconciliation statement as cost reductions, while any deficiency charges will be identified as cost increases. FCM proceeds or penalties will not be treated as “defacto” increases or reductions in the EE&C Phase IV budget and will not be included in the 2% spending cap. Plan at 138.

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

## E. Conservation Service Provider Issues

In the *Phase IV Implementation Order*, the Commission required that all Phase IV CSP contracts be competitively bid. As a result, the Commission required EDCs to file their Phase IV Request for Proposal (RFP) procedures for Commission review and approval. *Phase IV Implementation Order* at 112. EDCs were encouraged to file their proposed RFP process by August 30, 2020. *Id.* PECO filed a Procedure for Awarding Contracts to Act 129 Conservation Service Providers on July 30, 2020. Subsequently, on August 27, 2020 a Secretarial Letter was issued approving PECO’s Procedure for Awarding Contracts filing.

As outlined in Section 4.3 of its Phase IV Plan, PECO will engage an evaluation contractor to be responsible for the Evaluation, Measurement and Verification (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 121.

## F. 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 details: (1) the services provided by the EDC, consultants, trade allies and CSPs; (2) risk categories and risk mitigation strategies; (3) human resource and contractor resource constraint issues; (4) stakeholder engagement; (5) executive management structure; and (6) the selection, work, and measures of CSPs. PECO notes that it assumes responsibility across all CSPs to: (1) provide strategic direction; (2) develop and review RFPs; (3) analyze program performance; (4) develop, coordinate and execute education and awareness-raising activities and promotions; (5) develop and recommend program changes; and (6) ensure overall program success and budget management. Plan at 117.

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 IV 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 IV, 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, EDCs are to submit a final annual report by September 30 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 IV Docket Number. The EDCs are also required to post these reports on their respective websites. *Phase IV Implementation Order* at 102 and 103.

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 123.

The EM&V tracking system vendor will be responsible for developing and maintaining the tracking system on a secure, electronic platform. The data tracking system will interact with PECO’s existing systems. Plan at 124. The EM&V Tracking System will provide the information required for a variety of standard reports, such as the semiannual and final annual 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 122.

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 121.

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 component. 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 126-127.

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 IV 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 125-127.

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 IV Implementation Order*.

## G. COVID-19 Impacts on Reduction Targets

We note that the Commission received comments regarding the potential impact of the COVID-19 pandemic on the Phase IV programs during the development of the *Phase IV Implementation Order*. The Commission declined to establish a process to revise the targets in the *Phase IV Implementation Order*, considering it speculative and premature. Therefore, we decline to discuss this matter here. *Phase IV Implementation Order* at 144-145.

# V. Conclusion

Based on our review of the record and the applicable law, we find that the Settlement is in the public interest. We also find that the Settlement is consistent with Act 129 and in compliance with the *Phase IV Implementation Order*. Consequently, for the reasons set forth, *supra,* and based on our review of the record and the applicable law, we will grant PECO’s Petition for Approval of its Energy Efficiency and Conservation Phase IV Plan, approve the Joint Petition for Settlement, and approve PECO’s Revised Phase IV Energy Efficiency and Conservation Phase IV Plan, consistent with this Opinion and Order; **THEREFORE;**

**IT IS ORDERED:**

1. That the Petition of PECO Energy Company for Approval of its Energy Efficiency and Conservation Phase IV Plan is granted, consistent with this Opinion and Order.
2. That the Joint Petition for Settlement filed on February 26, 2021 is approved.
3. That PECO Energy Company is permitted to implement its Revised Energy Efficiency and Conservation Phase IV Plan, attached as Exhibit 1 to the Joint Petition for Settlement, consistent with this Opinion and Order.
4. 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 25, 2021

ORDER ENTERED: March 25, 2021

1. Attached to the Settlement as Exhibit 1 is PECO’s Revised Phase IV Plan and Statements in Support of the Settlement. The Revised Phase IV Plan includes some rebate range corrections. Specifically, a data transfer error was corrected in Table 7 for the Residential, Income-Eligible and Non-Residential Programs. According to the Joint Petitioners, maximum incentive ranges have also been corrected to reflect the accurate values and that this correction has no impact on the modeled incentive levels for any measures and therefore does not impact budgets, total resource cost calculations, or incentive percent forecasts presented throughout the Plan. Settlement at 4. The Revised Phase IV Plan will hereinafter be referred to as the Plan in this document. [↑](#footnote-ref-1)
2. On July 6, 2015, the Energy Association of Pennsylvania (EAP) filed a Petition for Clarification of the *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 *Phase III Implementation Order*, or, in the alternative, Petition for Waiver of a Bidding Requirement as set forth in the *Phase III Implementation Order* (FirstEnergy’s Petition for Waiver). 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*). [↑](#footnote-ref-2)
3. *See Energy Efficiency and Conservation Program Tentative Implementation Order,* at Docket No. M‑2020-3015228 (entered March 12, 2020) (*Phase IV Tentative Implementation Order*). [↑](#footnote-ref-3)
4. The *Phase IV Implementation Order* included four plan design requirements: (1) plans must be designed to achieve at least 15% of the megawatt hour (MWh) savings target and Peak Demand Reductions (PDRs) target each program year; (2) plans must include at least one comprehensive program for residential customers and one comprehensive program for non-residential customers; (3) plans must allocate at least 50% of all spending to incentives, with less than 50% allocated to non-incentive categories; and (4) EDCs must describe their strategy to nominate a portion of the projected PDRs into PJM’s FCM. [↑](#footnote-ref-4)
5. It is unclear as to why the notice was republished on January 9, 2021. The notice as published on January 9, 2021, provides that comments and recommendations are to be filed within 20 days, which is January 29, 2021. [↑](#footnote-ref-5)
6. This Motion was also filed at Docket No. M-2020-3020824 (Petition of PPL Electric Utilities for Approval of its Act 129 Phase IV Energy Efficiency and Conservation Plan), Docket No. M-2020-3020818 (Petition of Duquesne Light Company for Approval of its Act 129 Phase IV Energy Efficiency and Conservation Plan), and Docket Nos. Docket No. M-2020-3020820, M-2020-3020821, M-2020-3020822, and M- 2020-3020823 (Consolidated Petitions of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of Act 129 Phase IV Energy Efficiency and Conservation Plans). [↑](#footnote-ref-6)
7. Due to the short period of time between the scheduling of the conference and the conference itself, a court reporter was not scheduled, and the conference was held off the record. The ALJs discussed only procedural matters with the Parties. [↑](#footnote-ref-7)
8. 8 Phase IV covers five program years starting June 1, 2021 and ending on May 31, 2026.  In this Order, we refer to Program Years as follows:

   PY 2021: June 1, 2021 – May 31, 2022

   PY 2022: June 1, 2022 – May 31, 2023

   PY 2023: June 1, 2023 – May 31, 2024

   PY 2024: June 1, 2024 – May 31, 2025

   PY 2025: June 1, 2025 – May 31, 2026 [↑](#footnote-ref-8)
9. *See* the *Phase IV Implementation Order* at <https://www.puc.pa.gov/pcdocs/1666981.docx>, pages 65-67. [↑](#footnote-ref-9)
10. *See* PJM Manual 18B: Energy Efficiency Measurement and Verification at [https://www.pjm.com/- /media/documents/manuals/m18b.ashx](https://www.pjm.com/-/media/documents/manuals/m18b.ashx). [↑](#footnote-ref-10)
11. *See* the *Phase IV Implementation Order* at <https://www.puc.pa.gov/pcdocs/1666981.docx>, pages 50-85, for more information on peak demand reduction targets and methodology to account for peak demand reductions. [↑](#footnote-ref-11)
12. *See Report of the Act 129 Low-Income Working Group* at Docket No. M‑2009-2146801, Table 1 at page 6, that was adopted by the Commission in an April 27, 2010 Secretarial Letter at the same Docket. [↑](#footnote-ref-12)
13. The Commission required that each EDC obtain a minimum of 5.5% of its total consumption target from the low-income sector in Act 129 Phase III. *Phase III Implementation Order* at 62-63 and 69. [↑](#footnote-ref-13)
14. We are not proposing a low-income carve-out for the peak demand reduction requirements. [↑](#footnote-ref-14)
15. PECO will track the spending and savings associated with the long-term savings component and provide periodic reports as part of its Act 129 stakeholder meetings. Settlement at 16, Plan at 51. [↑](#footnote-ref-15)
16. Once the pilot results have been analyzed, PECO will present pilot findings to its Act 129 stakeholders and discuss any recommended changes to energy efficiency offerings in its Phase IV Plan as a result of the pilot findings. Settlement at 17, Plan at 119. [↑](#footnote-ref-16)