

Legal Department

Exelon Business Services Company
2301 Market Street/523-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Telephone 215.841.4000
Fax 215.568.3389
www.exeloncorp.com

Business Services
Company

Direct Dial: 215 841 4941

November 3, 2008

VIA FEDERAL EXPRESS

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: **Energy Efficiency and Conservation Program and EDC Plans**
Docket No. R-2008-2069887

Dear Secretary McNulty:

Enclosed are an original and three copies of the **Comments of PECO Energy Company** to be filed in the above-captioned matter. An additional copy of the Comments and an additional copy of this letter are also enclosed to be date-stamped and returned to us.

The Comments are also provided on the enclosed disc, as requested.

Very truly yours,



Kent D. Murphy
Enclosures

cc: Chairman James H. Cawley (federal express)
Vice Chairman Tyrone Christy (federal express)
Commissioner Wayne E. Gardner (federal express)
Commissioner Kim Pizzingrilli (federal express)
Commissioner Robert F. Powelson (federal express)
Karen Oill Moury, Director of Operations (federal express)
Robert F. Wilson, Director, Fixed Utility Services (federal express)
Paul Diskin, Energy, Fixed Utility Services (federal express)
Mitchell A. Miller, Director, Bureau of Consumer Services (federal express)
Bohdan R. Pankiw, Chief Counsel (federal express)

Robert F. Young, Deputy Chief Counsel (federal express)
Louise Fink Smith, Assistant Counsel (federal express)
Wayne L. Williams, Director, Conservation, Economics and
Energy Planning (federal express)
Cal Birge, Conservation, Economics, and Energy Planning (federal express)
June Perry, Director, Legislative Affairs (federal express)
Tom Charles, Manager, Office of Communications (federal express)
Veronica Smith, Chief Administrative Law Judge (federal express)
David Salapa, Administrative Law Judge (federal express)
Cheryl Walker Davis, Director, Office of Special Assistants.(federal express)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Re: Energy Efficiency and Conservation :
Program and EDC Plans : **Docket No. M-2008-2069887**

COMMENTS OF PECO ENERGY COMPANY

Pursuant to the Secretarial Letter dated October 20, 2008 (“October 20th Letter”), PECO Energy Company (“PECO”) hereby submits its comments on the issues identified by the Pennsylvania Public Utility Commission (“Commission”) that are related to the various energy efficiency and conservation provisions of Act 129 of 2008 (“Act 129”).

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I. INTRODUCTION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Act 129 contains new statutory provisions that deal with a spectrum of important issues affecting electric distribution companies (“EDCs”), their customers, and a variety of other interested stakeholders. Specifically, the Act imposes a variety of rigorous obligations on EDCs such as PECO in the areas of energy efficiency and conservation (“EE&C”), modified post-rate cap electricity procurement standards, market misconduct, smart meter technology deployment, and time-of-use tariff services. PECO takes these various obligations seriously and looks forward to the implementation of the statutory provisions.¹

As to the EE&C area, Act 129 imposes an aggressive time-line not only for the EDCs but also for the Commission. Specifically, by January 15, 2009, the Commission must establish a

¹ PECO’s commitment to energy efficiency and demand side management is at the forefront of the industry. At Docket No. P-2008-2032333, PECO is awaiting final approval from the Commission to implement a residential real-time pricing pilot. Additionally, PECO currently has pending before the Commission, at Docket No. P-2008-2062740, an Energy Efficiency Package (“EEP”) that was submitted on September 10, 2008, a month before Act 129 become law. As part of the EEP, PECO has proposed a compact fluorescent lamps (“CFL”) and residential direct load control program as a first step towards its then self-imposed goal of achieving 1-2 percent energy usage reduction targets for its distribution system. With the more ambitious goals of Act 129, PECO believes that the EEP can be a significant component of its Act 129 EE&C compliance portfolio.

multi-faceted “program” for application to EDC EE&C plans that must be submitted to the Commission no later than July 1, 2009, and approved by the Commission no later than 120 days after the plans are submitted. The EDC plans must implement EE&C measures that would result in weather-normalized electricity usage reductions equal to 1% of total retail sales by May 31, 2011, and 3% by May 31, 2013, as well as weather-normalized peak demand reductions of 4.5% by May 31, 2013. Failure to achieve these reductions within the timelines could result in penalties for the EDCs in the range of \$1-20 million.

Sections 2806(A)(1)-(11) provide eleven major elements that must be a part of the Commission’s program. As discussed in these comments, these mandatory elements range from developing procedures for approving plans to be submitted by the EDCs, to providing standards for ensuring that each plan includes a variety of energy efficiency and conservation measures, and to providing that each EDC is permitted to implement an appropriate full cost recovery rate mechanism. Sections 2806.1(B)(1)(I)(a)-(k) further includes eleven major sub-elements that an EDC must factor into its EE&C plan. These factors include proposing specific EE&C measures designed to meet the consumption and demand reduction requirements of the Act, explaining how quality assurance and performance will be measured, verified and evaluated, and ensuring that specific energy measures are available for low income customers.

In the October 20th Letter, the Commission seeks input on the program elements it must develop by January 15, 2009. Specifically, the Commission “seeks stakeholder input on likely procedural, technical, interpretive, and implementation issues; measurement of EDC compliance; and the level of detail required for providing adequate direction to EDCs in regard to their plans.” Additionally, the Commission seeks input from the industry on other elements of the

EE&C provisions of Act 129 as they relate to the EDC's obligations. PECO welcomes the opportunity to file comments on these issues.

II. COMMENTS

PECO's comments are divided into seven sections.² First, PECO will discuss generally how it believes the Act 129 EE&C provisions should be interpreted and implemented. Second, PECO will analyze the eleven program elements of Section 2806.1(A) and offer its view as to how each element should be interpreted and applied. Third, PECO will discuss certain aspects of the EDCs' EE&C plan obligations set forth in Section 2806.1(B). Fourth and fifth, PECO will discuss aspects of the legislation that permit the Commission to modify an EDC's plan and issues related to defining and implementing the energy usage and demand reduction targets. Sixth and seventh, these comments will address the penalty provisions in Section 2806.1(F) and certain definitions in Section 2806.1(M), respectively.

A. Principles for Interpreting and Applying Act 129's EE&C Provisions.

PECO believes that the Commission should design its EE&C program with the following principles in mind:

- As Act 129 gives the Commission only 120 days to approve an EDC's EE&C plan, the process should minimize trial-type hearing procedures and encourage a collaborative settlement-oriented process.
- In developing its program, the Commission should recognize that each EDC should be given latitude to design and develop a plan that is tailored to the specific characteristics of its service territory.
- The Commission's program should adopt standards that are generally accepted for quantifying achievable or "deemed" energy savings as it has in the Alternative Energy Portfolio Standards rules regarding demand side measures.

² PECO would note that, in addition to these comments, it joins the comments submitted in this proceeding by the Energy Association of Pennsylvania.

- The Commission’s measurement and evaluation standards should focus on verifying that measures have been deployed and installed rather than assessing whether usage actually declined.
- As customer participation in the EE&C programs is absolutely essential for the EDCs to satisfy the statutory reduction targets, the Commission’s program should be designed to ensure that EDCs expend reasonable efforts to deploy and install measures in accordance with an approved plan and that the plan appropriately encourage customers to change their behavior.

These principles reflect PECO’s belief that, due to the novelty and stringency of the EE&C provisions of Act 129, the Commission should not only be open-minded in how the EDCs’ plans should be processed, but also, in developing the program, should adopt from standards and methods that have proven track records. For example, the Commission should adopt the standards it previously adopted for determining the amount of Alternative Energy Portfolio Standards (“AEPS”) credits for demand side measures in its *AEPS Technical Reference Manual* (“TRM”), as updated, and for the tracking and verification of demand side management (“DSM”)/energy efficiency measures undertaken as part of AEPS compliance.³ Similarly, PECO encourages the Commission to adopt the generally accepted *California Standard*⁴ Total Resource Cost (“TRC”) Test for determining the relative benefits of the various energy efficiency and demand side measures included in EDC EE&C plans. Application of these established standards will go a long way towards assisting in the efficient development of EDC EE&C plans.

³ See *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for Participation of Demand Side Management Resources*, Docket No. M-00051865 (issued October 3, 2005)(“AEPS DSM Order”).

⁴ See *California Standard Practice Manual: Economic Analysis of Demand-Side Programs and Projects*, State of California, Governor’s Office of Planning and Research, July 2002.

B. The Eleven “Program” Elements of Section 2806.1(A)

1. Section 2806.1(A)(1): Procedures for the approval of plans submitted under subsection (B).

Section 2806.2(E)(2) requires the Commission to issue an order approving an EDC’s EE&C plan within 120 days after the submission of the plan to the Commission. Litigated rate proceedings before the Commission consume up to nine months, which allows time for discovery, an exchange of testimony, trial-type hearings, the issuance of a recommended decision by an administrative law judge, and a final order by the Commission itself. 120 days typically is the time allotted in a general rate proceeding, after the record has closed, for the parties to draft initial and reply briefs, for the ALJ to draft and issue a recommended decision, for the parties to draft initial and reply exceptions, and for the Commission to issue its final order after a public meeting where it decides the matter.

Due to the abbreviated period for approving an EE&C plan and getting the programs to market in a timely manner, the Commission should establish procedures that provide parties with ample opportunity to be heard in accordance with due process, but also recognize that its order must be issued expeditiously once the filing is made. Such a streamlined process would include the following elements:

- A docketed proceeding for each EDC that is established when the Commission issues its Section 2806.1(A) program rules (no later than January 15, 2009).
- A requirement that parties interested in a particular EDC’s plan must intervene within 15 days after publication of a notice of the proceeding in the *Pennsylvania Bulletin*.
- A requirement that the EDC and intervening stakeholders engage in a collaborative proceeding that commences a minimum of 60 days before the submission of the EDC’s plan, during which time the intervening stakeholders are required to submit their views, in the form of comments, of how the EDC’s EE&C plan should be designed and to convene at least one meeting to discuss the merits of the various design proposals.

- Post-filing Days 1-50. Once the plan is submitted, parties should be given 30 days to comment on the EDC's plan, after which the EDCs would have 20 days to respond in writing to those comments. Any statements of fact would have to be submitted by affidavit or pre-filed testimony.
- Post-Filing Days 51-70. Hearings in front of an ALJ to address material issues of disputed fact should be held no later than 20 days after the EDC's responsive comments are submitted. The ALJ would not issue a recommended decision but would certify the record for the Commission.
- Post-Filing Days 71-90. Initial and reply brief schedule of 10 and 10 days, respectively.
- Post-filing Days 90-120. Commission drafts and issues its final, appealable order.

This process and associated timeline will give all parties ample opportunity to air their views on the elements of an EDC's plan, both prior to the submission of the plan and afterwards.

2. Section 2806.1(A)(2): An evaluation process, including a process to monitor and verify data collection, quality assurance and results of each plan and the program.

As noted in Section II.A above, PECO believes that the Commission should apply the same standards adopted in the AEPS DSM Order for the purposes of EE&C monitoring and verification of data collection, quality assurance and measuring the results of each plan and the program. In evaluating the results of the plan and the program, the Commission should credit the EDC for the "deemed" energy savings for all EE&C measures deployed (distributed or installed) in accordance with the plan. Calculating the actual savings achieved by each measure would dramatically increase the cost of monitoring and verification beyond a reasonable level due to the complexities involved in evaluating individual customer behavior (e.g., the cost of ensuring that a customer installs the light bulb sold to it or tracking whether a customer's actual usage behavior matched the *Technical Reference Manual* "deemed" energy savings standard). Holding EDCs accountable for customer usage behavior is not appropriate because that behavior

is not within the control of the EDC and would be extremely expensive, if not impossible, to be that precise in measuring the actual impact of a particular measure.

Regarding quality assurance, PECO intends that its program will be managed in such a way to sustain a Commission audit, as required under Section 1307. This means that all costs and savings measures associated with the program will be documented. This will enable the Commission to determine that any proposed cost recovery is reasonable, that the EDC has run its energy conservation function in accordance with the approved plan, and that the measures claimed to have been deployed have been deployed (sold or installed, depending on the measures). Once the latter fact (“measures have been deployed”) has been established, the EDC should be given full credit for the “deemed” energy savings in accordance with the TRM standard.

3. Section 2806.1(A)(3): An analysis of the cost and benefit of each plan submitted under subsection (B) in accordance with a total resources cost test approved by the Commission.

As defined in Act 129 generally, the TRC Test measures the net cost or benefit of a particular program based on a comparison of the total costs and benefits of the program, including those experienced by the utility and the program’s participants.⁵ The benefits applied in the TRC Test are the avoided supply costs (the reduction in generation, transmission, distribution and capacity costs) valued at marginal cost. The costs applied in the TRC Test are the program costs of both the participants and the utility.

While application of the TRC Test should be applied to the EDC’s plan as a whole, it should not be used to rule out measures that are foundational in nature or are utilized for general

⁵ Section 2806.1(M) defines “Total Resource Cost Test” as “A standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures.”

awareness and education purposes. For example, the benefits of measures such as energy audits and consumer education and awareness programs may not directly influence customer usage. However, these measures are important because they provide valuable information customers can utilize in deciding whether or not to request the measures that will produce the savings (e.g., install weatherization, light bulbs, new appliances, etc.).

4. Section 2806.1(A)(4): An analysis of how the program and individual plans will enable each EDC to achieve or exceed the requirements for reduction in consumption under Sections 2806(c) and (d).

This element requires the Commission to develop an analytical framework for evaluating how its program and individual EDC plans will allow the EDCs to satisfy the usage reduction requirements under Section 2806.1(B). To PECO, this analysis simply should include a description of each type of measure approved for the plan, the number of applications for each measure, the amount of usage or demand reduction potential for each category, and a straight mathematical calculation of the energy savings for all measures approved for deployment under its plan.

5. Section 2806.1(A)(5): Standards to ensure that each plan includes a variety of energy efficiency and conservation measures and will provide the measures equitably to all classes of customers.

This element requires the Commission to ensure that there is sufficient measure diversity, as well as an equitable spread of those measures among the various customer classes. One question that the equitable mix determination raises is whether the mix of measures should be gauged based on the relative customer class cost impact. Under the Act, cost recovery must be

from the same customer class that will receive the direct energy and conservation benefits.⁶ It is possible that the most cost-effective mix may burden one class with relative costs that are greatly in excess of the costs borne by another class simply because that class's measure are less cost-effective than the other class's. The Commission should consider relative class cost responsibility as a factor in determining the appropriate mix of measures to be included in an EDC's plan portfolio.

6. Section 2806.1(A)(6): 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 under sections 2806.1(C) and (D).

Under this provision, the Commission is expected to establish procedures as to additional measures that will enable an EDC to exceed the required reductions in consumption expressed in Sections 2806.1(C) and (D). Prior to May 2013, an EDC could recommend additional EE&C measures that would provide usage/demand reductions that exceed the statutory targets or at least improve the likelihood of satisfying the statutory reduction requirements. However, before an EDC can be expected to implement such additional measures, the Commission first must ensure that the costs of those measures are fully recoverable. The Commission may also recommend additional programs for the same purposes but, again, must allow for recovery of the ensuing costs.

With this in mind, PECO does not believe the Commission needs to establish formal procedures for the vetting of measures that potentially would achieve energy/demand reductions above the statutorily mandated targets. PECO intends to engage in an ongoing collaborative process to identify ways that its EE&C plan can be improved. If the opportunity arises through

⁶ See Section 2806.1(A)(11).

that process for PECO to propose additional measures to gain larger than mandated reductions, it will petition the Commission for approval of the program and for recovery of the related costs.

7. Section 2806.1(A)(7): Procedures to require that electric distribution companies competitively bid all contracts with conservation service providers.

PECO believes that a competitive bid process should be established for each EDC in its compliance plan to be filed before July 1, 2009. In that plan, the EDC would articulate whether the conservation service providers (“CSP”) would be selected through a request for proposal (“RFP”), auction, or other type of process and identify the various elements of the selection process. As part of the filing, the EDC could include a pro forma contract that would serve as the basis for its relationship with the selected CSPs.⁷ Due to the time constraints of the legislation, the Commission should have a relatively short-time frame (e.g., 3 days) to confirm that the approved process was properly used to select the winning CSPs.

PECO would note that a road map for the process of approving CSPs and CSP contract terms and conditions has been documented in the PECO AEPS proceeding at Docket No. P-00072260.⁸ With Commission approval, PECO utilized an RFP process, including a pro forma agreement approved by the Commission, and selected the successful bidder using a scorecard methodology, which the Commission subsequently confirmed. PECO believes that a similar process would be appropriate for use in selecting CSPs.

⁷ This process would not preclude an EDC, if it desires, from entering into an agreement with a CSP that it would include in its plan submission. That contract would then be part of the plan the Commission would review during the 120-day process.

⁸ See, *Petition of PECO Energy Company for Approval of (1) A Process to Procure Alternative Energy Credits during the APES Banking Period and (2) a Section 1307 Surcharge and Tariff to Recover AEPS Costs*, Docket No. P-00072260, Opinion and Order (entered December 26, 2007).

8. Section 2806.1(A)(8): Procedures to review all proposed contracts prior to the execution of the contract with conservation service providers to implement the plan. The Commission may order the modification of a proposed contract to ensure that the plan meets the requirements for reduction in demand and consumption under sections 2806.1(C) and (D).

PECO's position on the process of gaining approval of the CSP contract terms and conditions is set forth above in Section II.A.7.

Regarding contract modifications, PECO believes that the Commission, in the order approving an EDC's plan, should articulate any such modifications. Imposing contract modifications that take place belatedly after the plan is approved would jeopardize the effectiveness of the competitive bid process, both where the modification occurs before the CSP selection process takes place or where the modification occurs after the winning CSP is selected. Belated contract modifications simply add risk and delay to the process unnecessarily. That risk inevitably translates into increased bid amounts and reduced bidder participation.

9. Section 2806.1(A)(9): Procedures to ensure compliance with requirements for reduction in consumption under sections 2806.1(C) and (D).

PECO believes that procedures for requiring compliance with the EDC consumption reduction targets should be clearly stated in advance of the plan filing date. This is necessary to ensure that EDCs will be able to properly evaluate the effectiveness of their programs towards achieving the targets. Applying vague compliance standards to plans already approved would result in confusion and arbitrariness in the compliance determination.

PECO also believes that the procedures to ensure compliance should focus on whether the EDC has properly followed the plan. This determination would be limited to whether the

plan's measures have been deployed in accordance with the plan. The approved plan will be designed to achieve the targets based on the efficiency standards approved for the types and numbers of approved EE&C measures. The method of measurement and verification, therefore, should be limited to the question of whether those deployment figures have been met.

10. Section 2806.1(A)(10): A requirement for the participation of conservation service providers in the implementation of all or part of a plan.

As defined under the Act, a conservation service provider is “an entity that provides information and technical assistance on measures to enable a person to increase energy efficiency or reduce energy consumption and that has no direct or indirect ownership, partnership or other affiliated interest with an electric distribution company.”⁹ As part of its obligations under Section 2806.2(A), the Commission is required to establish a registry of CSPs that meet certain experience and other qualifications. Importantly, an EDC must include in its plan “a contract with one or more conservation service providers selected by competitive bid to implement the plan or a portion of the plan as approved by the Commission.”¹⁰

PECO recognizes a need for using CSPs in a variety of functions related to an EDC's EE&C plan. These functions, however, would include but not be limited to program functions essential to the deployment and delivery of EE&C measures once the plan is approved, to measuring and verifying deployment, and to assuring quality control. Other functions would seem more appropriately performed by the EDCs. These functions include CSP management and overall program oversight, compliance tracking, cost tracking, CSP contractor performance, and other administrative tasks. By performing these functions, EDCs are in the best position to

⁹ Section 2806.1(M).

¹⁰ Section 2806.1(B)(1)(e).

ensure that the program is implemented properly and that the costs associated with the program (which customers will be expected to bear) are incurred in a prudent and reasonable manner.

11. Section 2806.1(A)(11): Cost recovery to ensure that measures approved are financed by the same customer class that will receive the direct energy efficiency and conservation benefits.

Pursuant to Section 2806.1(K), EDCs are entitled to recover the costs of their EE&C plans through a Section 1307 rate reconciliation mechanism. Section 2806(B)(1)(h) requires the EDC to include such a mechanism in its plan filing “to fund the energy efficiency and conservation measures and to ensure full and current recovery of the prudent and reasonable costs of the plan, including administrative costs, as approved by the commission.” Section 2806.1(A)(11) directs the Commission to ensure that “the measures approved by the Commission are financed by the same customer class that will receive the direct benefits of the program.”

PECO believes that the Commission should simply apply reasonable cost of service principles to determine which class benefits from each measure and to assure that costs are assigned for recovery purposes to the appropriate class based on that determination. Residential customers should bear the cost of measures intended for residential customers, and so forth. When the costs are not so easily assigned (e.g., program administrative costs), a reasonable means of allocating those costs should be determined.

Further, PECO believes that the appropriate place for determining the proper cost assignment and allocation method is the 120-day proceeding under Section 2806.1(F)(2). In that proceeding, the EDC should propose a means of assigning and allocating costs by customer class. The Commission should then approve that means if it follows reasonable class cost of service principles.

C. The Eleven “Plan” Elements of Section 2806.1(B).

The mandatory elements of the EDC EE&C plan are found in Section 2806.1(B)(1)(I)(a)-(k). The requirements of a few of these provisions have been discussed in Section II.B above (i.e., subsections (e) and (h)). However, other plan elements need clarification (i.e., (b), (g), (i) – (j).

- 1. Section 2806.1(B)(1)(I)(b): A minimum of 10% of the required reductions in consumption under subsections (C) and (D) shall be obtained from units of federal, state and local government, including municipalities, school districts, institutions of higher education and nonprofit entities.**

This provision requires an EDC to obtain at least 10 percent of its targeted consumption and peak demand reductions from “units of federal, state and local government, including municipalities, schools, institutions of higher education, and nonprofit entities.” To be certain, obtaining the required usage reductions from these entities within an EDC’s service territory will require cooperative participation by the EDC’s customers. Stated simply, reasonable efforts by EDCs to offer EE&C measures will fail if that cooperation, including budgetary funding, is not forthcoming. To make the programs work, government units, schools, and other entities covered by this section likely will need to commit some level of funding and other resources to ensure that EE&C measures are implemented in line with the EDC product offerings.

The definition of “nonprofit entities” needs to be clarified. One interpretation would be that only entities that are recognized as non-profit organizations for tax purposes should qualify under this provision. Other interpretations could be more expansive. Clarifying that definition will assist EDCs and potentially eligible customers to understand who would be eligible for treatment as a nonprofit entity and which customers’ usage reduction can be credited against the

10 percent target. PECO believes that the provision should be broadly construed by the Commission to attract greater participation.

- 2. Section 2806.1(B)(1)(I)(g): The plan shall include specific energy efficiency measures for households at or below 150% of the federal poverty income guidelines. The number of measures shall be proportionate to those households' share of the total energy usage in the service territory. The electric distribution company shall coordinate measures under this clause with other programs administered by the commission or another federal or state agency. The expenditures of an electric distribution company under this clause shall be in addition to expenditures under 52 Pa. Code Ch. 58 (relating to residential low income usage reduction programs).**

The requirement that “the number of [low-income] measures shall be proportionate to those households’ share of the total energy usage in the service territory” means that the number of EE&C measures allocated for deployment to low-income residential markets must be based on those households’ share of the electric energy usage in the service territory. If low-income households represent 20% of the “total energy usage of the service territory”, then funds sufficient to finance 20% of the total number of measures should be allocated to the low-income market.

- 3. Section 2806.1(B)(1)(I)(i): The electric distribution company shall demonstrate that the plan is cost-effective using a total resource cost test approved by the Commission and provides a diverse cross section of alternatives for customers of all rate classes.**

As to the diversity of alternatives that must be made available to the different customer classes, PECO would simply note that program diversity might result in greater overall plan

costs. Maintaining a larger variety of programs may increase administrative, inventory, and installation costs. Accordingly, when applying this provision, the Commission should consider the potential cost impact of requiring an EDC to take a menu approach.

4. Section 2806.1(B)(1)(I)(j): The plan shall require an annual independent evaluation of its cost-effectiveness and a full review of the results of each five-year plan required under subsection (c)(3) and, to the extent practical, how the plan will be adjusted on a going-forward basis as a result of the evaluation.

This element appears to require two evaluations. First, an EDC's plan is to be evaluated annually by an independent evaluator to measure the cost effectiveness of the plan. Second, the element also requires "a full review of the results of each five year plan required under Section 2806.1(C)(3)."¹¹ The purpose of that review is to "evaluate the costs and benefits of the program established under subsection (A) and of approved energy efficiency and conservation plans submitted to the program." Furthermore, the "evaluation shall be consistent with a total resource costs test or a cost-benefit analysis determined by the Commission."¹² If the Commission determines that the benefits of the program exceed the costs, the Commission is required to adopt additional required incremental reductions in consumption.

As to the annual evaluation, the Commission will need to establish the factors that an EDC must address. In determining cost-effectiveness, PECO would suggest that the Commission base the evaluation on a comparison of actual costs versus the estimated costs used in the TRC Test approved by the Commission. If this comparison shows a significant variance of 10% or more in any category, the EDC would be required to explain the variance. However, except in the case of the various administrative functions performed by the EDC, the costs will

¹¹ See Section 2806.1(C)(3)

¹² *Id.*

be based on competitively bid contracts that have performance clauses approved by the Commission, so invariably the reasonableness of those costs cannot seriously be brought into question from a ratemaking perspective.

In connection with both types of evaluation, PECO believes that the independent evaluator should be one chosen by the EDC through competitive process. Once chosen, the evaluator would be required to apply evaluation factors determined in the approved EE&C plan.

D. Section 2806.1(B)(2): The Commission shall direct an electric distribution company to modify or terminate any part of a plan approved under this section if, after an adequate period for implementation, the Commission determines that an energy efficiency or conservation measure included in the plan will not achieve the required reductions in consumption in a cost-effective manner.

Section 2806.1(B)(3): If part of a plan is modified or terminated under paragraph (2), the electric distribution company shall submit a revised plan describing actions to be taken to offer substitute measures or to increase the availability of existing measures in the plan to achieve the required reductions in consumption under subsections (C) and (D).

These provisions are of concern to PECO because of the potential disruption to the EDC's ability to achieve the Act's consumption and demand reduction targets and, of equal importance, the potential impact that the changes may have on an EDC's ability to recover costs of modified or terminated measures. Moreover, the Commission should clarify what is meant by "adequate period for implementation."

Regarding the potential for disruption, EDCs should be able to reasonably rely on a Commission order to implement approved EE&C measures. If, at a later date, the Commission determines that the measures are not cost-effective even though implemented in accordance with the plan, the usage savings associated with the measure to date still should be credited to the

EDCs' reduction goals. Revising previously approved plans should not have adverse consequences for the EDCs.

Regarding cost recovery, PECO believes that the Commission should clarify that once a measure is approved, recovery of costs associated with that measure is assured. Hindsight determinations should not be applied to costs associated with measures that were implemented in accordance with approved plans simply because savings standards were not, in fact, achieved or the programs became more costly than the plan estimates.

The Commission should also clarify which factors it will consider in determining whether an implemented measure is cost-effective after it has been implemented. Cost variables, as well as the value of benefits, change with the cost of materials, market energy prices and so forth. Cost effectiveness, or the lack thereof, may then be temporal and ride on transient market conditions. The factors should not be applied to eliminate any reasonable opportunity for the EDC to satisfy its reduction targets.

Finally, the term "adequate period for implementation" does not readily lend itself to interpretation. Some programs require considerable up-front infrastructure costs whereas others do not. Some programs can only succeed with large numbers of customers participating and therefore require significant ramping up periods to achieve the scale needed to render the program cost-effective. Without guidance on this term or an understanding on how the term will be applied in practice, EDCs may be left implementing approved programs that are doomed to fail simply because of a subsequent policy turn by the Commission. Therefore, the Commission should clarify, in its order approving an EDC's Act 129 EE&C compliance plan, the specific factors it will consider in determining how long an implementation period must be to be deemed

“adequate” for the purposes of modifying or terminating a measure on the basis of lack of cost-effectiveness.

E. Sections 2806.1(C) and (D)(relating to reductions in consumption and peak demand).

These provisions set forth the consumption and peak demand reduction targets that EDCs are required to satisfy by dates specified therein. The reductions are based on “total annual” “weather-normalized” consumption (in the case of usage), or the “weather normalized” annual system peak in the 100 hours of highest demand (in the case of peak demand), applied against a base year. It is clear from the language of the statute that the reductions targeted for each utility will be based on consumption and demand data derived for each EDC system. At least four issues requiring comment present themselves here.

First, PECO believes that the term “retail customers” must be defined to include all customers taking distribution service from the EDC. To define the term otherwise would seriously compromise a plan’s capacity to meet the designated target. For example, limiting the class definition to an EDC’s retail generation customers would wreak havoc on the ability of the EDC to satisfy the reduction targets if, during the term of the plan, a large number of customers migrated to competitive retail generation supply. PECO’s interpretation is competitively neutral because customers should be eligible for plan measures either way, whether or not an alternative electric generation supplier is serving them.

Second, for the annual consumption reductions specified in Section 2806.1(C)(1) and (2), an EDC is to utilize a budgeted base year (twelve months ending May 31, 2010) with “provisions for weather adjustments and extraordinary loads that the electric company must serve.” Weather adjustments are typically performed by utilities in calculating weather normalized annual

consumption. PECO suggests that the phrase “extraordinary loads” includes loads that result from dramatic shifts in the economy of a service territory, technological innovation (e.g., electric hybrid cars), legislation mandating the use of electricity to serve a particular load, and self-generation load that returns to the EDC and the EDC is required to serve

Third, regarding Section 2806.1(D), it is unclear what is meant by “annual system peak demand in the 100 hours of highest demand” as compared against the EDC’s peak demand for the base year of June 1, 2007, through May 31, 2008. At the outset, which hours will be the “100 hours of highest demand” cannot be known until after the peak season has occurred. Therefore, PECO suggests that the phrase “annual system peak demand” should be the mathematical average of the “100 hours of highest demand” of the base year.

Clarification of the concept of “weather normalized demand” in the construct of Section 2806.1(D) is also needed. PECO would urge that the concept be applied only to determine whether the EE&C measures deployed by an EDC would provide sufficient “deemed” savings, as determined from the Commission-approved standards, to satisfy the 4.5% demand reduction. “Deemed” savings typically are defined as savings to be achieved under a defined set of weather conditions. Thus, the savings achieved under those conditions should be the basis for weather normalization.

Fourth, in determining compliance, all registered demand side resources in an EDC’s RTO zone should be credited towards meeting the 4.5% target based on a resource’s capacity to reduce demand. PECO should be able to rely on registered resources within its PJM zone because these resources should be available in the event of a curtailment event.

F. Section 2806.1(F): Penalties.

PECO believes that the Commission should adopt a set of guidelines and factors that would be applied in determining the level of any penalties that should be assessed if it is determined an EDC has failed to satisfy any of the reduction targets. Similar to enforcement penalty guidelines recently adopted by the Federal Energy Regulatory Commission, these guidelines should be based on the severity of the failure to achieve the target, the efforts expended by the EDC to achieve the targets, the degree to which the targets were not met as a result of customers failing to participate despite reasonable efforts on behalf of the EDC and its CSPs, and other factors that may provide good cause for the EDC's failure to achieve the target. In other words, the magnitude of any penalty should be gauged to fit the magnitude of the violations and the reasons associated therewith.

PECO also believes that any penalty considered by the Commission should take into account the 2% cost cap set forth in Section 2806.1(G). That cap limits the amount of funding for an EDC's EE&C plan, yet the possibility exists that such funding may be inadequate to generate the level of reductions required by the legislation. Accordingly, penalties should not be assessed if an EDC's plan fails to generate sufficient reductions as a result of the 2% cap.

G. Section 2806.1(M): Definitions.

1. "Conservation Service Providers"

PECO believes that the definition of CSP should be clarified by the Commission to exclude expert consultants or other agents that the EDC will utilize in connection with the development of its plan submission. This function would be distinguished from program

managers and those responsible for delivery of the plan once it is approved. EDCs should be given discretion in determining the individuals it employs in the development of its plan.¹³

2. “Energy Efficiency and Conservation Measures”

Section 2806.1(M)(2) provides that “energy efficiency and conservation measures shall include solar photovoltaic panels, energy efficiency windows and doors, [etc.]” While not prejudging the cost-effectiveness of any particular measure, PECO believes that the word “shall” should not be construed to mean that every plan “must” include each of the measures listed in Section 2806.1(M)(2). EDCs should have the discretion to design a mix of measures that is cost-effective and should not be required to include measures that do not score as well as other measures under the TRC Test. PECO suggests that the Commission should clarify that this its interpretation as well.

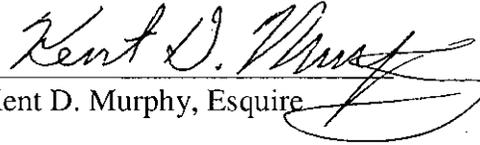
III. CONCLUSION

PECO offers the above comments to assist the Commission in meeting the aggressive timelines established in the Act 129 legislation. From this discussion, PECO urges the Commission to adopt the principles set forth above and to recognize that the consumption and demand reductions required in Act 129 have equally aggressive timelines and goals. Developing and implementing EE&C plans for that purpose will be facilitated by clear standards that have already been adopted by the Commission in the AEPS context relative to “deemed” savings, and by streamlined processes for approving plans as well as the competitive selection of CSPs. Finally, penalty assessments should be based on whether the EDC followed the plan and

¹³ PECO believes, however, that there should be no distinction between CSPs and expert consultants from the perspective of cost recovery. All costs reasonably incurred in developing and implementing an EDC’s plan should be considered recoverable from an EDC’s customers through its Section 1307 mechanism. Incremental internal costs (labor, services, and materials) should also be recovered through the Section 1307 process.

exercised reasonable efforts to implement it, and not strictly on whether the plan achieves the targeted reductions.

Respectfully submitted,



Kent D. Murphy, Esquire

Exelon Business Services Company
2301 Market Street/S23-1
Philadelphia, PA 19103
Telephone: 215.841.4635
Facsimile: 215.568.3389
E-mail: kent.murphy@exeloncorp.com

Dated: November 3, 2008

Counsel for PECO Energy Company

Attachment A

Total Resource Cost Test

The TRC Test used by PECO follows the California Cost Benefit Methodology, based on the California Standard Practice Model.

The Total Resource Cost Test (TRC) measures the net costs of demand-side programs as a resource option; based on the total costs of the program, including both the utility and participant costs.

The TRC test benefits are the avoided supply costs for distribution, transmission and generation, excluding the effects of free riders. The TRC test costs are participant equipment, installation and lifecycle O&M costs; utility program administration costs less any available tax credits or incentives. The distribution revenue loss is not considered in the California TRC test.

The formula is expressed as follows:

$$TRC = \Sigma (UTB)/(NPC+UPC)$$

and

$$UTB = UAC+UCC+UEC+UAT+UAD$$

Where:

NPC = Net Participants Cost = Equipment Cost + Installation Cost + Lifecycle O&M Costs
– Tax Credits

UAC = Utility Avoided Ancillary Services Costs

UAD = Utility Avoided Distribution Costs

UAT = Utility Avoided Transmission Costs

UCC = Utility Avoided Capacity Costs

UEC = Utility Avoided Energy Costs (Summer, Non-Summer, On-Peak, Off-Peak)

UPC = Utility Program Costs (less Incentives)

UTB = Utility Total Benefits

From: Origin ID: PSQA (215)841-5604
Zulma Rodriguez
Exelon
2301 Market Street, S23-1

Philadelphia, PA 19103



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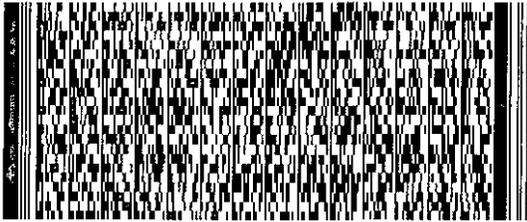
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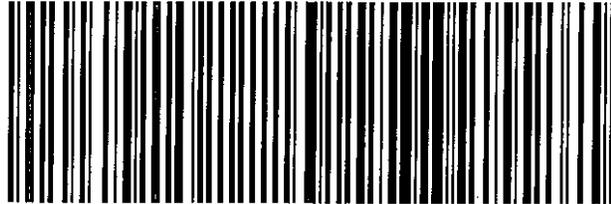


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