

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Energy Efficiency and Conservation :  
Program and EDC Plans :

Docket No. M-2008-2069887

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COMMENTS OF PECO ENERGY COMPANY  
ON STAFF'S FURTHER QUESTIONS AND DRAFT IMPLEMENTATION ORDER

INTRODUCTION

Pursuant to the November 26, 2008 Secretarial Letter issued in this docket, requesting comments on Staff's further Act 129 implementation questions and Draft Implementation Order (the "Draft Order"), PECO Energy Company ("PECO") submits its comments on the questions and the Draft Order.

I. EXECUTIVE SUMMARY

PECO commends Staff's efforts to develop a feasible Act 129 implementation plan that is consistent with the energy efficiency and conservation ("EE&C") requirements of the Act. PECO recognizes that Staff and the Commission are faced with a very short period to develop a lawful and workable Act 129 implementation plan. PECO believes that Staff's initial Draft Order is a significant first step toward such a plan.

PECO particularly commends Staff on its interpretation of Act 129's consumption and peak load reduction requirements. Staff agreed with the Department of Environmental Protection ("DEP"), PECO and PPL Electric Utilities ("PPL") that the Act's reduction targets "are intended to reflect energy and demand *savings*, as opposed to absolute reductions in consumption."<sup>1</sup> Staff's reading of the Act on this issue was correct, and was consistent with the Act's intent as well as its words.

<sup>1</sup> Draft Order at 15 (emphasis added).

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Nonetheless, PECO respectfully notes that some of the Draft's Order's proposed implementation language is inconsistent or unclear and needs to be modified so that the Commission and EDCs can effectively carry out the goals of the Act. Of significant concern are the Draft Order's time frames for approval of EDC load forecasts and Conservation Service Provider ("CSP") contracts. *As currently envisioned by the Draft Order's proposed schedules, the Commission's approval of the forecasts and CSP contracts cannot be accomplished in time for the EDCs to meet the Act's July 1, 2009 EE&C plan filing date.*

PECO's comments herein will follow the order of the attachments to the Secretarial Letter. Accordingly, PECO will first provide its comments in response to Staff's further questions. PECO will then comment on the provisions of the Draft Order that it believes should be modified in order to implement Act 129's requirements.

## **II. PECO'S COMMENTS RESPONDING TO STAFF'S FURTHER QUESTIONS**

### **1. Efficiency targets/Goals:**

- a. Should the Commission use the average usage during the 100 highest peak hours during the entire reference year, or the average usage during the 100 highest summer peak hours when calculating the peak demand reduction targets for each EDC?**

#### **PECO's Comment**

PECO agrees with the Draft Order on this issue, where it states that "[t]he Commission believes that focusing the EE&C program efforts on the summer peak period [when calculating the peak demand reduction targets] will provide the greatest benefit and be more cost effective."<sup>2</sup> For PECO, and for most Pennsylvania EDCs, the summer is the period of highest peak demand. Therefore, the summer peak period provides the greatest opportunity for demand reductions.

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<sup>2</sup> Draft Order at 22.

The Commission should recognize, however, that some EDCs might have summer peak periods that are slightly different from the June through August period set forth in the Draft Order. For example, PECO's summer peak runs from June through September and its existing rates for its customer classes are designed on that basis. Thus, the Commission should not adopt a "one size fits all" summer peak period with respect to determining each EDC's 100 hours of peak demand in the course of a year, but should allow EDCs to make modifications to the period consistent with their service territories and tariffs.

- b. Does Act 129 require reductions down to a fixed level, or require a fixed amount of decrease? How should this be calculated? Should the consumption reduction requirements contained in Section 2806.1(c) be treated the same as the demand reduction requirements contained in Section 2806.1(d)?**

**PECO's Comment**

Act 129 requires a fixed amount of decrease (the "savings approach"), as Staff correctly determined in the Draft Order.<sup>3</sup> The relevant language in Sections 2806.1 (c) and (d) of the Act requires that consumption or demand "shall be reduced *by* a minimum of [x]%", not "[*to*] a minimum of [x]%". Indeed, Staff correctly noted in the Draft Order that "as even TRF [which has advocated the fixed level "absolute reduction" approach] acknowledges, [this approach would] penalize an EDC for economic growth in terms of new customers and business in its service territory."<sup>4</sup> Clearly, the purpose of Act 129 was not to hinder economic growth in the Commonwealth in any way. To the contrary, the Act's purpose was to "adopt energy efficiency and conservation measures . . . designed to . . . promote economic growth . . ."<sup>5</sup> Accordingly, the savings approach is the methodology that is consistent with the Act's goals.

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<sup>3</sup> Draft Order at 12 & 15.

<sup>4</sup> Draft Order at 15.

<sup>5</sup> Act 129 Preamble, para. 2.

As to the question “how should this be calculated?”, the target for energy savings can be calculated by multiplying the EDC’s approved forecast by the appropriate percentage amount (e.g., 1%), which will yield a kWh result. The target for peak load reduction can be calculated by multiplying the average of the EDC’s 100 hours of highest demand from June 1, 2007 through May 31, 2008 by 4.5%. Attainment of the energy savings targets will be measured through either “deemed” or “verified” energy savings, as appropriate by customer class and program. For Act 129’s peak load reduction targets, the reductions should be calculated based upon the EDC’s demonstrated capability to reduce peak load.

**2. Program Design:**

- a. Statewide vs. EDC specific: Should the Commission encourage, by policy, a statewide approach to some programs that are likely to be effective across Pennsylvania? For example, should rebate programs be harmonized across the state? Should specific programs, such as Energy Audits, PJM load reduction programs, Home Performance with Energy Star, and Energy Star Homes be consistently available in all EDC service territories? If so, what programs should the EDC implement consistently across the state?**

**PECO’s Comment**

PECO believes that, at this time, the Commission should not implement a policy requiring specific programs to be part of the EDCs’ EE&C plans. As Staff noted in the Draft Order, “these plans are evolutionary in nature as the Act provides for modification of plans after approval.”<sup>6</sup> Therefore, while a statewide approach to some programs might be appropriate in the future, EDCs should be allowed the flexibility to craft their initial EE&C plans based upon their knowledge of their customers and service territories.

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<sup>6</sup> Draft Order at 7.

- b. Can Act 129 programs have negative impacts on existing cost effective energy efficiency and demand side programs by 3<sup>rd</sup> parties? If so, how can this Commission avoid damaging existing 3<sup>rd</sup> party efforts when socializing Act 129 energy efficiency and demand side programs through non-bypassable charges to all customers, while increasing customer participation in these services?**

**PECO's Comment**

PECO does not believe that Act 129 programs will have a negative impact on existing energy efficiency and demand side response programs. To the contrary, Act 129's requirements will increase consumer awareness of energy efficiency, conservation, and demand side response and, thus, help grow and provide opportunities for existing programs and program providers. In addition, the Act's requirement for a CSP registry will provide opportunities for existing program providers to become qualified as CSPs to help EDCs implement the Act's requirements. In short, PECO believes that Act 129 is a "win-win" for existing programs and providers.

- c. Should the Commission seek to harmonize Act 129 programs with other Federal, State, local, RTO or other group programs? If so, what specific programs should this Commission encourage EDCs to replicate, incorporate, or leverage as part of their compliance filings? How can this best be achieved?**

**PECO's Comment**

PECO is not clear on what this question is asking. If the question is asking whether EDC programs should dovetail with existing Federal, State, or other programs to provide additional rebates or customer support, PECO believes that this is a possibility that would need to be carefully explored as part of a working group. A critical element of any such approach must be that EDCs would be able to count the consumption or peak demand reductions resulting from the programs they supported toward their Act 129 targets.

However, if this question is asking whether EDCs should be required to duplicate existing programs as part of their initial EE&C plans, the answer is "no". As PECO stated in its

response to Question 2.a., the Commission should allow EDC's flexibility in establishing their initial plans to meet the Act's requirements.

### 3. Total Resource Cost Test

- a. **How can the Total Resource Cost Test that must be approved by the Commission under Sections 2806.1(a)(3) and 2806.1(b)(1)(i)(I) be simplified?**

#### PECO's Comment

PECO recommends that the Commission implement the Total Resource Cost ("TRC") test as set forth in the *California Standard Practice Manual, Economic Analysis of Demand-Side Programs and Projects* (July 2002).<sup>7</sup> The *California Standard Practice Manual* ("CSPM") defines the TRC as a test that "measures the net costs of a demand-side management [or energy efficiency] program as a resource option based on the total costs of the program, including both the participants' and the utility's costs."<sup>8</sup> The TRC test, as defined above, has been the most widely used EE&C program test for the last two decades. The Commission should approve this test without modification.

- b. **The Act defines "Total Resource Cost Test" (TRC 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 avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures." Under this definition, may the Commission limit consideration of monetary costs to the costs incurred by the EDC?**

#### PECO's Comment

No. As a threshold matter, nothing in the Act 129 limits the Commission's consideration of monetary costs solely to costs incurred by the EDC when applying the TRC. Second, as noted

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<sup>7</sup> As Staff noted in footnote 7 of the Draft Order, the *CSPM* can be obtained on the web at [http://www.clarkstrategicpartners.net/files/calif\\_standard\\_practice\\_manual.pdf](http://www.clarkstrategicpartners.net/files/calif_standard_practice_manual.pdf).

<sup>8</sup> *Id.* at 18.

above, the TRC is a test that includes “*both* the participants’ and the utility’s costs.”<sup>9</sup> If the Commission chose to limit its consideration of monetary costs solely to costs incurred by the EDC it would not be applying the Total Resource Cost test and, PECO believes, would not be following the Act.<sup>10</sup>

- c. Can the TRC test include avoided environmental costs or other avoided societal costs?**

**PECO’s Comment**

If the precise definition of the TRC (as set forth above) is used the answer to this question is “no.” The test Staff is referencing here is the Societal Benefits Test.

- d. If the Commission limits costs considered under the TRC Test to those incurred by the EDC, should the Commission exclude costs not incurred by the EDC from the test?**

**PECO’s Comment**

Yes. Should the Commission limit the costs it considers to those incurred by the EDC, it should exclude costs not incurred by the EDC from its test. As noted above, however, this test would no longer align with the TRC test.

- e. If participant costs that are not paid by the EDC are included, should these costs be reduced by tax credits or credits under the AEPS Act received by the participants?**

**PECO’s Comment**

Yes. These reductions are part of the net benefits to participants.

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<sup>9</sup> *Id.* at 18 (emphasis added).

<sup>10</sup> In fact, this would be the Utility or Program Administrator Cost Test, which: “measures the net costs of a demand-side management program as a resource option based on the costs incurred by the program administrator (including incentive costs) and excluding any net costs incurred by the participant.” *CSPM* at 23. PECO believes that if the General Assembly had wanted the Commission to apply this test in evaluating EE&C programs it would have expressly referenced the Utility Cost Test in Act 129.

- f. **What elements of the “avoided monetary costs of supplying electricity” should be included in the TRC test?**

**PECO’s Comment**

The components of the avoided cost should include avoided generation costs, as well as avoided marginal transmission and distribution costs.

- g. **Should these costs be valued at the marginal costs for the periods when there is a load reduction” as required by the draft Implementation Order? What does this mean precisely?**

**PECO’s Comment**

For peak load reduction programs, the capacity and energy costs should be valued at the appropriate incremental value.

- h. **Should the methodology for calculating the Net Present Value (NPV) and B/C ratio set forth in the *California Standard Practice Model- Economic Analysis of Demand-Side Programs and Projects* (July 2002) be used, or is there a better alternative?**

**PECO’s Comment**

PECO recommends that the *CSPM’s* methodology be used, as it has been the most widely used and accepted EE&C program methodology over the last 20 years.

- i. **What discount rate should be used in the calculation of NPV? How frequently should it be reevaluated? Should it be established for each EDC service territory, or for the Commonwealth as a whole?**

**PECO’s Comment**

The discount rate that should be used in the NPV calculation of the TRC test is the individual discount rate of each EDC. Therefore, it should be based on each EDC’s unique weighted average after tax cost of capital and should not be established for the Commonwealth

as a whole. The discount rate should be evaluated at the time of the submission of the EDC's EE&C plan and re-evaluated as appropriate.

- j. Should the elements used in the calculation of an EDC's total annual revenue be the same elements used to calculate the "avoided monetary costs of supplying electricity under the TRC Test?"**

**PECO's Comment**

The elements that are used in the calculation of the EDC's total annual revenue are Generation, Transmission and Distribution. These elements should be used to calculate the "avoided monetary supply cost of electricity" under the TRC test, however, the values for model purposes may need to be adjusted.

- k. The gas industry raised some interesting points on the net impact of displacing natural gas heating equipment (space and water) with electricity heating equipment. Should the TRC test include parameters to capture the consequences of net energy gains or losses in delivering alternative fuels to consumers?**

**PECO's Comment**

PECO assumes this question was meant to refer to "the net impact of displacing electric equipment with natural gas equipment." Assuming this interpretation of the question is correct, PECO believes that the TRC test should include parameters to capture net energy gains or losses in delivering alternative fuels to consumers.

**4. Evaluation, Measurement and Verification:**

- a. Should the Commission use a statewide, independent evaluator hired by the Commission to review EDC compliance with Act 129, pursuant to 2806.1(b)(1)(i)(J)? What would be the advantages and disadvantages of consolidating this review process?**

### PECO's Comment

Yes, it would be appropriate for the Commission to use a statewide, independent evaluator to review EDC compliance with Act 129. The advantages of doing so would be the implementation of a uniform review process. However, PECO emphasizes that the evaluator must be: 1) strictly independent so as to comply Section 2806.1(b)(1)(i)(J)'s requirement; and 2) highly experienced and knowledgeable because every EDC's plan will not (and should not) be exactly the same.

- b. What programs lend themselves to a “deemed savings” approach, and what programs require more rigorous pre- and post-verification processes? How often should savings estimates be reviewed and how?**

### PECO's Comment

Programs that lend themselves to a “deemed savings” approach are standard measures that can be calculated using assumptions and customer data in industry-accepted algorithms to provide a defined savings amount and whose savings would be difficult to measure without separate metering devices. Some examples include: residential compact fluorescent lamp (“CFL”) replacements; energy efficient appliances, and; HVAC system upgrades. In addition, commercial lighting system upgrades and energy efficient motor replacements, among others, fit this category.

Programs that would require a more rigorous pre- and post installation verification process would be larger, more complex customized programs, such as: energy efficient process improvements in an industrial facility; time-of use pricing programs, and; certain demand reduction programs.

- c. **The Commission has a revised draft update to the 2005 Technical Reference Manual (TRM) that provides energy savings calculations for standard measures. The draft update is ready to be reviewed by interested parties. Should the Commission use a Secretarial Letter process to seek comments on this and subsequent updates to the TRM in the future? What timetable would be optimal for periodically updating the TRM?**

**PECO's Comment**

A Secretarial Letter process should be used to seek comments on the current draft update given the short time period within which the Commission must develop its initial Act 129 implementation plan and the EDCs must develop their EE&C plans. This TRM will be a critical input into the EDCs' models for their initial plans. Therefore, it is imperative that it be released for review and comment as soon as possible.

For subsequent updates, either a Secretarial Letter or another expedited process can be utilized in reviewing the updates, depending on the nature of the changes. PECO recommends that the TRM be updated annually so as to encompass new energy efficiency developments and measures.

- d. **In addition to the TRM for standard measures, should the Commission adopt a standard measure and evaluation protocol for determining the energy savings from the installation or adoption of non-standard or customer measures not addressed in the TRM? If so, what protocols should be adopted? Comments to date have included the following protocols; 1) International Performance and Measurement Verification Protocol; 2) ISO New England Protocol; and 3) DOE Energy Star Portfolio Manager.**

**PECO's Comment**

Yes, the Commission should adopt a standard measurement and evaluation protocol for determining the energy savings from the installation or adoption of non-standard or customer measures not addressed in the TRM. The referenced protocols are acceptable to PECO.

- e. **How might the Commission simplify and streamline the monitoring and verification of data so as to maximize resources for program measures but enable a thorough evaluation of program results consistent with Act 129 requirements?**

**PECO's Comment**

PECO recommends that the Commission maximize the use of the “deemed savings” methodology for standard measures and use/develop measurement and verification protocols for non-standard or custom measures, as noted in response to question 4.d. above.

- f. **Should the Commission adopt standard data collection formats and databases for the evaluation of program benefits and results that would be used across all EDC service territories?**

**PECO's Comment**

Yes. However, the Commission should continue to recognize that EDCs need flexibility for specialized customer programs. These programs, by their nature, would not be standard and would need different evaluation tools.

**5. Revenue Requirement:**

- a. **The Act defines “Electric Distribution Company Total Annual Revenue” as amounts paid to the EDC for “generation, transmission, distribution, and surcharges” by retail customers. What “surcharges” should be included in the calculation of an EDC’s total annual revenue?**

**PECO's Comment**

The referenced surcharges should include: late payment charges, connection and disconnection fees, taxes and rents paid for use of electric property. These values are already included in the \$4,371,215,020 value shown on page 25 of the Draft Order. In addition, PECO believes that the 2006 total annual revenue amount should include the revenues paid by PECO customers who purchased generation and transmission service from Electric Generation

Suppliers since these amounts were paid to PECO via “consolidated billing”. This model would prevent the erosion of EE&C plan dollars if the Commission adopts future spending limits during a period when additional customer shopping is anticipated. This would increase PECO’s total 2006 annual revenue value to \$4,463,605,386.

**6. Cost Recovery Issues:**

- a. **Can one class of customers have EE&C charges in excess of 2% of class revenues, due to an abundance of cost effective opportunities relative to other customer classes, while overall EE&C charge remain below 2% of revenues for the utility as a whole?**

**PECO’s Comment**

Yes. PECO agrees with Staff that “the most cost effective EE and DR programs may not come proportionally from each customer class.”<sup>11</sup> Accordingly, PECO believes that EDCs may develop effective EE&C measures that result in one class of customers having charges in excess of 2% of class revenues while overall EE&C charges would not exceed 2% of revenues for the utility as a whole. This is consistent with the Draft Order’s statement that EDCs should implement “a well-reasoned and balanced set of measures that are tailored to usage and to the potential for savings and reductions for each customer class.”<sup>12</sup>

**7. CSP Issues:**

- a. **Does the definition of “Conservation Service Provider” (CSP) in the Act prohibit an affiliated company of an EDC from serving as a CSP to an EDC other than its affiliate?**

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<sup>11</sup> Draft Order at 16.

<sup>12</sup> *Id.*

### **PECO's Comment**

No. As PECO stated in its comments in the CSP docket,<sup>13</sup> the Commission's CSP standards should focus on establishing the minimum essential qualifications necessary to be an approved CSP in Pennsylvania so as to: 1) permit broad participation in the registry approval process by qualified CSPs, and 2) provide a large pool from which EDCs can solicit competitive bids for CSP services.

- b. Are there existing barriers to CSP market development that the Commission should address in the context of Act 129? For example, what data access, meter access or other barriers should the Commission accelerate resolution of in order to enhance Act 129's goal achievement?**

### **PECO's Comment**

PECO is not aware of any such barriers. However, to the extent that any may exist, they should be addressed in a comprehensive fashion as part of the Commission's pending CSP docket.

- c. How should the Commission ensure that EDC self supplied EE&C programs are more cost effective than similar services offered by CSPs? Should this Commission require EDCs to demonstrate in their implementation filing that their self supplied program is more cost effective than similar CSP provided services?**

### **PECO's Comment**

There is nothing in Act 129 requiring that EDC self-supplied EE&C programs be more cost effective than similar services offered by CSPs, and there should not be a higher standard for EDCs or, conversely, for CSPs. The Commission should implement a level playing field for all EE&C program providers. That will be the most effective way to advance Act 129's energy efficiency and conservation goals.

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<sup>13</sup> Docket No. M-2008-2074154

### **III. PECO'S COMMENTS ON STAFF'S DRAFT IMPLEMENTATION ORDER**

The following provisions of the Draft Order should be corrected or modified so that the Commission and the EDCs can effectively carry out the goals of Act 129 and comply with its deadlines:

- **The Draft Order's time frames for approval of EDC load forecasts and Conservation Service Provider contracts must be modified.**

As PECO noted in its Executive Summary, the Draft Order's time frames for approval of EDC load forecasts and CSP contracts are unworkable as they are presently structured.

Addressing the load forecast issue first, page 13 of the Draft Order states that:

Consumption is addressed at 66 Pa. C.S. § 2806.1(c), which requires the Commission to forecast each EDC's expected load for the period June 1, 2009, through May 31, 2010. In order to make this forecast, the Commission will need input from the EDCs and other interested parties. The Commission intends to complete these forecasts by \_\_\_\_\_.[sic] As such, the EDCs are to petition the Commission and serve the statutory advocates and interested stakeholders for such a forecast *at least six months prior to the Commission's forecast completion date.*<sup>14</sup> The EDCs must include in the pleading all relevant information upon which the Commission will base the forecast.

Although the Commission's forecast completion date was not inserted in the Draft Order, the six-month review period referenced in the draft means that EDC forecasts (and supporting information) would have to be submitted to the Commission at the time of, or very shortly after, the release of the Final Implementation Order (January 15, 2009) if they are to be approved prior to the submission of the EDCs initial plans. Putting aside the fact that this is impractical, the current approval time frame does not take into account that the Commission's *approved* forecast for each EDC is a critical element of the EDC's EE&C plan. Indeed, assuming the EDC's forecast is approved, it would not know this until June 15; meaning *15 days before its EE&C plan would have to be filed with the Commission.* This time frame is simply too short a period

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<sup>14</sup> Draft Order at 13 (emphasis added).

for EDC's to deliver a well-reasoned plan to the Commission and offers no time for submission and approval of a revised load forecast if the original forecast is not approved.

With regard to the CSP contract approval process, this process has similar timing problems. Section G of the Draft Order, at page 18, states that:

The Act requires the Commission to establish procedures to require EDCs to competitively bid all contracts with conservation service providers. The Act further requires the Commission to establish procedures to review all proposed contracts with conservation service providers prior to execution of the contract. 66 Pa. C.S. § 2806.1(a)(8). *The Act gives the Commission power to order the modification of proposed contracts to ensure that plans meet consumption reduction requirements. Id. The Act also requires each EDC to include in its plan a contract with one or more CSPs selected by competitive bid to implement all or part of the plan as approved by the Commission.* 66 Pa. C.S. § 2806.1(b)(1)(i)(E).

First, as the highlighted language above indicates, before an EDC can enter into a “contract” with a CSP “that meet[s] [the Act’s] consumption reduction requirements”, the EDC will have to have its approved forecast from the Commission. In other words, both the EDC and the CSP will need this information before they can enter into an agreement concerning consumption and peak load reduction targets.

Second, assuming that the EDC’s forecast is approved and the EDC has submitted a proposed contract, the Commission’s timeline for reviewing and approving that contract is not clear. The Draft Order states that “[i]f the Commission has not commented upon or disapproved the proposed contract within 45 days of it being submitted to the Commission for review, then the EDC is permitted to proceed with the contract without modification.”<sup>15</sup> However, given that the Act requires that the EDC’s plan “shall include a contract with one or more [CSPs] selected

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<sup>15</sup> Draft Order at 20.

by competitive bid”,<sup>16</sup> it is unclear whether the CSP contract must be submitted at least 45 days prior to the EDC’s EE&C plan or contemporaneously with the plan.

These load forecast and CSP contract timeline issues are fundamental matters that must be resolved quickly in order for the EDCs and potential CSPs to know how they will begin to implement the Act’s requirements. Accordingly, PECO recommends that these issues be referred to a working group immediately.

- **The Draft Order’s definition of the TRC test is incorrect.**

Page 11 of the Draft Order, the first full sentence, states that “[t]he Commission directs that EDCs shall evaluate the cost effectiveness of each of their energy efficiency or demand reduction programs using the TRC test, *which represents the combination of the effects of a program on both participating and non-participating customers.*” (Emphasis added). This definition of the TRC is incorrect.

As PECO noted in its response to Question 3.a. above, the TRC Test, as defined in the *CSPM*, “measures the net costs of a demand-side management [or energy efficiency] program as a resource option based on the total costs of the program, including *both the participants’* and the utility’s costs.” It does not include the “the effects of a program on . . . non-participating customers.” Accordingly, the Commission should remove this language from the Draft Order.

- **The Draft Order’s language concerning its adoption of the “savings approach” to consumption and peak load reductions needs to be consistent.**

Page 15 of the Draft Order makes it clear that Staff intended to adopt the savings approach advocated by DEP, PECO and PPL consumption and peak load reductions. However, parts of the Draft Order are inconsistent on this issue.

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<sup>16</sup> Act 129, Section 2806.1 (b)(1)(e).

First, page 12 of the Draft Order, the last sentence, states that “[s]pecifically, the Commission will conduct the evaluations using a *savings approach reduction approach*” (Emphasis added). The reference to the “reduction approach” should be deleted from this sentence.

Similarly, on page 13 of the Draft Order, the second paragraph reads

Thereafter, within 45 days after May 31, 2011, and after May 31, 2013, the EDCs are to file with the Commission (at the forecast petition docket, and serving the parties to that docket) information documenting their consumption for June 1, 2010, through May 31, 2011, and for June 1, 2012, through May 31, 2013, respectively. To be in compliance with the Act, an EDC’s 2010-2011 consumption must be at least 1% *less than* the forecasted 2009-2010 load; the 2012-2013 consumption must be at least 3% *lower than* the forecasted 2009-2010 load. (Emphasis added).

This language applies the reduction approach, which Staff rejected. PECO believes that this language should be replaced with the following paragraph, which applies the savings approach:

To be in compliance with the Act, an EDC must demonstrate, within 45 days after May 31, 2011, and after May 31, 2013, respectively, that the total savings in energy consumption from all measures included in the EDC’s filed and approved plan are at least 1% of the 2009-2010 forecasted load by May 31, 2011 and at least 3% of the 2009-2010 forecasted load by May 31, 2013.

Finally, a similar issue appears on page 14 of the Draft Order, in the first paragraph, second sentence, which states:

To be in compliance the EDC’s 100 hours of highest demand, weather normalized, for the period June 1, 2012, through May 31, 2013, must be 4.5% *less than* the 2007-2008 peak demand.

PECO believes that this sentence can be simplified, and apply the savings approach, if it is amended as follows:

To be in compliance, the EDC must demonstrate the ability to reduce its demand in an amount equal to or greater than its calculated demand reduction target.

- **The Act does not require specific funding levels for low-income customer programs or government and local programs.**

Page 16 of the Draft Order, second paragraph, states that “[t]here are clear requirements in the Act regarding proportions of funding for low-income customers (within a residential customer class) as well as for governments, schools, etc. (within a commercial customer class).” It is not clear why the Draft Order makes this statement regarding program funding but it does not appear to be consistent with Act 129.

With regard to low-income customers, Section 2806.1(b)(1)(G) of the Act states that: “[t]he 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.*” (Emphasis added).

Similarly, with regard to government and local programs, Section § 2806.1(b)(1)(i)(B) of the Act provides that “[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.” In short, the Act does not require specific funding levels for low-income customer programs or government and local programs and the above-referenced language to this effect should be removed from the Draft Order.

- **The Draft Order misconstrued PECO’s position with regard to “after-the-fact scrutiny.”**

Page 26 of the Draft Order, the first full paragraph, states that “we do not agree with PECO and Duquesne that EE&C measures and associated costs that are approved by the Commission should not be subject to after-the-fact scrutiny.” Staff misunderstood PECO’s position on this point.

PECO does not dispute that the Commission can direct an EDC to modify or terminate an approved plan or program if, after an adequate period for implementation, the Commission determines that the plan or program will not meet the EDC's required consumption and peak demand reductions. PECO's position is that it should not be penalized, by not being able to recover the costs it incurred to implement its approved plan, for events that neither it nor the Commission could have foreseen at the time the plan was approved.<sup>17</sup>

- **EDCs should not be required to include a class cost-of-service study in their plans.**

Page 28 of the Draft Order, at the end of the first full paragraph, states that:

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 is targeted. Therefore, once the EDC has developed an estimate of its total EE&C costs as directed above, we will require it to allocate those costs to each of its customer classes that will benefit from the measures to which the costs relate . . . *In this regard, the EDC will be required to include in its plan a class cost-of-service study for the limited purpose of allocating all costs expected to be incurred in the implementation of its EE&C plan.* (Emphasis added).

PECO agrees with the Commission that the EE&C program costs should be assigned to the appropriate targeted classes using reasonable and generally acceptable costing principles. In most cases, as the Commission has stated, the costs will be direct costs and can be directly assigned to specific customer classes. PECO, however, does not believe that a comprehensive cost-of-service study is necessary in order to perform allocations for indirect or program administration costs. Such a study would be time-consuming and costly. As noted above, the timelines presented in the current Draft Order are already difficult to achieve, if not impracticable. Moreover, a cost-of-service study will yield results that are not much more

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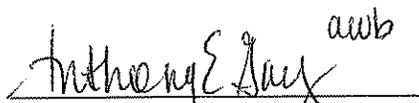
<sup>17</sup> This is consistent with the Draft Order's recognition that the EE&C "plans are evolutionary in nature." Draft Order at 7. As part this evolutionary process, the Commission and EDCs will learn that some program may be more effective than others, or may be more effective in certain service territories.

accurate than using some “common sense” cost allocation approaches. For example, since the EE&C program spend is based on the PECO 2006 total annual revenue, a simple revenue allocator could be used. Other allocation methods based on number of customers per class or consumption per class could also be considered.

**CONCLUSION**

Once again, PECO commends Staff for preparing a Draft Order that attempts to develop a lawful and workable Act 129’s implementation plan. While the Draft Order accomplishes this goal in some respects, other parts of the Draft Order, particularly its load forecast and CSP contract approval schedules, need to be revised. Accordingly, PECO requests that Staff amend the Draft Order and its template for implementation of Act 129’s requirements, consistent with PECO’s comments on the questions and the Draft Order.

Respectfully submitted,



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