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January 14, 2014

VIA EFILING

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

Re: Energy Efficiency and Conservation Program
Docket Nos. M-2012-2289411 and M-2008-2069887

Dear Secretary Chiavetta:

Enclosed please find **PECO Energy Company's Reply to Comments on the Commission's November 14, 2013 Tentative Order** in the above-referenced matter (the "Reply Comments"). Please note that these Reply Comments have also been electronically mailed in Word format to Megan G. Good (megagood@pa.gov) and Kriss Brown (kribrown@pa.gov).

If you have any questions, please do not hesitate to contact me at 215.841.4635.

Sincerely,

A handwritten signature in blue ink that reads "Anthony E. Gay".

Anthony E. Gay
Associate General Counsel

Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Energy Efficiency and
Conservation Program**

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Docket Nos. M-2012-2289411
M-2008-2069887

**PECO ENERGY COMPANY'S REPLY TO COMMENTS
ON THE COMMISSION'S NOVEMBER 14, 2013 TENTATIVE ORDER**

I. INTRODUCTION

On December 30, 2013, PECO Energy Company ("PECO" or the "Company") filed its Comments to the Pennsylvania Public Utility Commission's ("Commission") November 14, 2013 Tentative Order ("Order") at the above-referenced dockets. In the Order, the Commission sought comments on the Amended Act 129 Demand Response Study ("Study") prepared by the Statewide Evaluator ("SWE"), the SWE's recommended changes to demand reduction programs under Act 129 (the "Act"), and proposed "price suppression" and demand response ("DR") studies.

In its Comments, PECO emphasized that: (1) future DR programs should rely on competitive markets operated by PJM Interconnection, Inc. ("PJM"); (2) the Commission should clearly allocate funds between energy efficiency ("EE") and DR programs; and (3) adequate time should be provided for program development and implementation. Consistent with these principles, PECO recommended that the Commission eliminate DR programs for large commercial and industrial ("C&I") customers and not undertake a study of alleged "suppression" of wholesale energy prices by Act 129 DR programs given the potential adverse effects on competitive electricity markets. In addition, PECO recommended that:

- In the event the Commission determines to undertake a DR study, the study should be limited to "Mass Market" (residential and small C&I) customers and be based upon a common percentage allocation of between 14% and 18% of an

electric distribution company's ("EDC's") Act 129 funds, which is consistent with the funds that PECO will expend on its existing cost-effective Mass Market direct load control ("DLC") program. In the absence of any cost-effective DR programs, customers should retain the amount of money allocated for DR instead of being required to pay for additional EE programs.

- The "top 100" hour framework for DR should be entirely eliminated, and any DR "trigger" that may still be required should be based on day-ahead forecasts and not PJM real-time locational marginal prices ("LMPs").
- The Commission should adopt many of the SWE's recommendations for total resource cost ("TRC") calculations of Mass Market DLC programs that may be offered by EDCs, but should permit EDCs to continue to calculate any avoided energy costs and transmission and distribution ("T&D") costs instead of instructing the SWE to attempt such calculations.
- The Commission should establish a schedule with anticipated rulings on any Act 129 Phase III implementation order completed by November 3, 2014 and rulings on Phase III plans completed by June 1, 2015 to facilitate plan implementation, particularly if any DR goals are to be established.

Comments were filed by various interested parties, including the Office of Consumer Advocate ("OCA"), other EDCs,¹ industrial customers,² environmental groups,³ conservation service providers ("CSPs"),⁴ and electric power generators.⁵ There was significant agreement among several parties regarding many of the above issues, and PECO submits these Reply Comments to address the parties' key differences for the Commission's consideration in any final order.

¹ Comments were filed by PPL Electric Utilities ("PPL Electric") and Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company ("FirstEnergy"). Comments were also filed by the Energy Association of Pennsylvania ("EAP").

² Joint Comments were filed by Industrial Energy Consumers of Pennsylvania, Duquesne Industrial Intervenors, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors ("Industrials").

³ PennFuture, Clean Air Council, Keystone Energy Efficiency Alliance, and Sierra Club ("PennFuture et al.") also filed Joint Comments.

⁴ Comverge, EnerNOC and Johnson Controls ("DR Providers") also filed Joint Comments.

⁵ Comments were also filed by the Electric Power Generation Association ("EPGA").

II. REPLY TO COMMENTS

A. The Commission Should Not Establish Any EDC DR Targets Or Large C&I DR Programs And Should Allow Customers To Retain Any Savings in Act 129 Expenditures

No party disputes the conclusion of the Commission and the SWE that Phase I DR programs were not cost-effective. Because such programs were not cost-effective, PPL Electric, FirstEnergy, EAP and EPGA all assert that the Commission is precluded from establishing new DR mandates on the grounds that Section 2806.1(d)(2) of the Public Utility Code, 66 Pa.C.S. § 2806.1(d)(2), permits the Commission to set “additional incremental requirements” for peak demand reductions only if the Commission determines that the benefits of Phase I peak reduction programs exceeded their costs.⁶

PECO agrees with these parties that the Commission is precluded from setting new DR target requirements under Act 129. The OCA, PennFuture et al., and the DR Providers all support new, unspecified target requirements that they believe will be achievable with various changes to DR program total resource cost (“TRC”) calculations (several of which are plainly speculative, as discussed in Section D and E *infra*). However, none of those parties provide any statutory basis for mandating new peak reduction requirements for EDCs given the results of the Phase I programs.

Indeed, just as Act 129 plainly envisioned that EDCs would not have **any** target requirements after May 31, 2017, the Act also clearly envisioned that EDCs may be excused from further peak reductions by May 31, 2017, if the **Phase I** Act 129 programs were not cost-effective in achieving peak demand reductions by May 31, 2013. Because the original Act 129 Phase I DR programs were not cost-effective, there should be no additional Act 129 peak

⁶ PPL Electric Comments, pp. 6-9; FirstEnergy Comments, pp. 4-7; EAP Comments, pp. 5-7; EPGA Comments, pp. 3-6.

reduction requirements for EDCs.

The lack of statutory authority for the imposition of new peak reduction mandates does not mean that the Commission is foreclosed from approving cost-effective demand response programs voluntarily proposed by EDCs that achieve demand reductions and are paid for with Act 129 funds. PECO's Mass Market DLC program, which the Commission already has found to be cost-effective under its existing TRC methodology, provides an example of the type of program that can be acceptable under Act 129 and able to proceed in the absence of specific DR targets.⁷

As PECO explained in its Comments, such Act 129 DR programs for Mass Market customers are appropriate in light of the inability of those customers to participate directly in PJM's competitive markets. However, where customers are able to participate fully in competitive market programs – such as in the extensive DR programs offered by PJM – the Commission should refrain from approving additional DR programs which (as the SWE concedes) are unlikely to deliver any additional value.

Most of the parties who submitted comments on the Order agree that large C&I programs should not be offered in light of PJM's existing DR programs, including industrial customer groups across the Commonwealth whose members could be the beneficiaries of additional Act 129 funds under these programs.⁸ In contrast, the DR Providers, whose members enroll large C&I customer DR in Act 129 programs and directly receive Act 129 funds, contend that Act 129 large C&I programs should continue to be offered because they are “distinct and independent”

⁷ See *Petition of PECO Energy Company for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan*, Docket No. M-2012-2333992 (order entered May 9, 2013). PECO notes that while the SWE and other parties have correctly observed that Phase I DLC programs were not cost-effective, neither the SWE nor any other party has taken issue with the Commission's determination that PECO's existing Phase II DLC program is cost-effective.

⁸ See, e.g., *Industrials Comments*, pp. 3-5; *EAP Comments*, p. 4.

state programs, and were designed to “remediate high energy prices for consumers” instead of helping PJM “reduce demand during system constraints.” The DR Providers also argue that participants should be able to receive incentives from both PJM and Act 129 programs, just as entities can benefit from both federal and state tax deductions.⁹

The Commission should reject the DR Providers’ contentions for several reasons. First, the assertion that Act 129 programs provide distinct energy price benefits is undercut by their own recommendation that the Commission design any future Act 129 program curtailment requirements based upon peak load and capacity constraints, not energy prices,¹⁰ as well as by the SWE’s findings that Act 129 DR programs may provide little or no additional value beyond the load reduction achieved under PJM’s programs.

And, while the DR Providers maintain that customers (and, therefore, DR Providers) should be able to receive payments for the same DR resource under both PJM and Act 129, the essence of the DR Providers’ argument is that “it can never be known with certainty” whether two payments for the same resource was the basis for customers participating in any DR program. Such overpayment is obviously attractive from a program participant perspective, but cannot justify charging all other customers for such programs where no additional actual value is obtained.¹¹

⁹ DR Provider Comments, p. 11. PennFuture et al. do not take a clear position regarding DR programs for large C&I customers, but identify a number of questions as to whether Act 129 DR programs for those customers add any value beyond the value that may be available from PJM. *See* PennFuture et al. Comments, p. 5.

¹⁰ *Id.*, p. 12.

¹¹ The DR Providers’ reference to the additive nature of the proposed programs of Consolidated Edison is incomplete. As Consolidated Edison’s tariffs make clear, performance payments are not made by Consolidated Edison during any hours which are concurrent with the hours of events called by the New York Independent System Operator. *See, e.g.*, DR Providers Comments, Attachment 1, Rider S, Section I. While the programs are thus “additive,” DR Providers do not address what value is actually obtained by Consolidated Edison’s customers.

In its Comments, PECO proposed that the Commission establish a common statewide percentage allocation of Act 129 funds between EE and Mass Market DR programs, with Mass Market customers able to retain funds allocated for Mass Market DR under this common percentage if the Commission does not approve any Mass Market DR in an Act 129 phase. In their Comments, the Industrials advocate that the Commission reduce Act 129 budgets for each EDC's large C&I customer class by fifty percent (50%) to appropriately account for elimination of DR programs for large C&I customers.¹² PECO agrees with the Industrials and supports a reduction in EDC Act 129 energy efficiency and conservation ("EE&C") budgets to reflect the elimination of large C&I DR programs.

PennFuture et al. acknowledge that EE&C budgets are "capped" at two percent (2%) of an EDC's 2006 revenues, but request that the Commission provide "assistance" to PennFuture et al. and advise legislators that the 2% cap is no longer needed. PECO strongly opposes PennFuture et al.'s request, as it reflects a fundamental misunderstanding of the original goals of Act 129 and ignores the General Assembly's clear conclusion that spending on EE and DR should not be unlimited. There is no statutory basis to presume that EDCs should be required to spend up to the 2% cap and the amount of Act 129 funds collected from customers should be reduced to reflect the elimination of DR requirements, as both PECO and the Industrials propose.¹³

B. The Commission Should Permit Bidding Of Residential DLC Capacity During Act 129 Phase III Programs Without Establishing Precedent For Future Phases

In its Comments, PECO agreed with the SWE's recommendation that EDCs should be required to bid Mass Market DLC capacity into PJM capacity markets. PECO also proposed that

¹² Industrials Comments, pp. 11-12.

¹³ See Industrials Comments, pp. 11-12; PECO Comments, p. 2.

the Commission clarify that any PJM fees or penalties associated with Mass Market DLC also be “passed through” to participating customers along with any PJM benefits, and that the Commission give EDCs flexibility with respect to bidding in any Mass Market DLC capacity in light of PJM’s capacity market auction structure.

The OCA and PennFuture agree that EDCs should be required to bid residential DR capacity into PJM capacity markets, but the OCA also advocates that the Commission consider a long-term, multi-year commitment in light of the PJM capacity market auction structure.¹⁴ PPL Electric asserts that there are too many difficulties associated with such bidding, including auction timing, while EPGA strongly opposes any bidding of Act 129 DR resources because of potential competitive market distortions.¹⁵ The DR Providers argue that residential DR capacity should be bid into PJM capacity markets, but that any such bidding should be managed by CSPs and not EDCs.¹⁶

In light of the potential benefits to Mass Market customers, PECO believes that DR capacity from Mass Market DLC programs should be bid into PJM capacity markets in Phase III plans, but without establishing any precedent for future Act 129 programs. As PECO explained in its Comments, Mass Market DLC is justified in light of the inability of Mass Market customers to participate directly in existing PJM DR programs. Because that limitation may change over time as the DR market matures and automated meter infrastructure is deployed, any determination to permit bidding of Mass Market DLC capacity should be without prejudice to future determinations to allow competitive CSPs to manage this capacity in its entirety in subsequent Act 129 plans. EDCs should also be permitted, but not required, to allow CSPs to

¹⁴ OCA Comments, pp. 12-13.

¹⁵ PPL Electric Comments, pp. 28-31; EPGA Comments, pp. 6-11.

¹⁶ DR Providers Comments, pp. 8-9.

bid Mass Market DLC capacity on behalf of participating Mass Market customers if such a result is in the economic interests of those customers.

C. The “Top 100 Hour” Framework Should Be Eliminated

In the event that the Commission decides to establish a peak load reduction requirement, no party supports the continued use of the “Top 100 Hour” framework required for the Phase I Act 129 plans, which the SWE has also opposed for use in future phases. With respect to any required alternative framework, PECO, PPL Electric, and the DR Providers all support the use of a day-ahead forecast model proposed by the SWE under which DR resources would be called if an EDC’s day-ahead forecast is within a percentage range (97-99%, as suggested by PECO) of its summer peak demand forecast.¹⁷ FirstEnergy generally proposes that the Commission use triggers “similar to established PJM protocols” to address times other than the top hours in a summer period when resources may be needed, with an additional limit on the number of hours that can be called (both total and on consecutive days) and measurement based on “demonstrated capability” instead of actual reductions.¹⁸ The OCA recommends use of both a day-ahead forecast and a real-time LMP trigger alternative also identified by the SWE, while PennFuture et al. advocate for a trigger based on day-ahead LMP prices.¹⁹

PECO believes the use of a day-ahead forecast without incorporation of volatile LMP prices will provide important simplicity in achieving any required demand response that outweighs the potential advantages of using PJM protocols and LMP values together. Such day-ahead forecasts are already integrated into EDC operations, and adding additional complications

¹⁷ PECO Comments, pp. 13-14; PPL Electric Comments, pp. 19-21; DR Providers Comments, pp. 12-14.

¹⁸ FirstEnergy Comments, pp. 14-15.

¹⁹ OCA Comments, pp. 8-10; PennFuture et al. Comments, pp. 15-18.

that require on-going assessment of LMP values or PJM application of its DR protocols may undermine effective demand response. This is particularly relevant to Mass Market DLC programs, which require both notice and adequate deployment time to operate. PECO also supports the use of “demonstrated capability”, as proposed by FirstEnergy, as well as limitations on the number and duration of events. Together, these additional program design elements would enhance both the certainty of DR deployment and its effectiveness without adding additional complexity for either EDCs or customers.

D. The Commission Should Not Conduct A Wholesale Price Suppression Study

In its Comments, PECO explained that the Commission should not conduct a wholesale price suppression study because any such study would be based on speculation, and the adoption of uneconomic DR programs on such a basis would constitute government intervention in competitive electricity markets with potential long-term negative effects on existing electric generation resources as well as investment in future generation. Other parties strongly objected to the proposed study as well, emphasizing that the alleged price suppression would result in double-counting DR already taken into account in PJM markets,²⁰ fail to reflect the potential economic losses associated with the closure of generation forced to compete with uneconomic DR,²¹ and not constitute substantial evidence that could be relied upon by the Commission.²²

Those parties who do support a wholesale price suppression study – the OCA, DR Providers, and PennFuture et al. – do so only in very general terms and do not provide any basis to avoid concluding that the results of such a study would be speculative and harmful to

²⁰ PPL Electric Comments, pp. 11-12.

²¹ EGPA Comments, p. 13.

²² Industrials Comments, pp. 8-9.

competitive electric markets if used as the basis for supporting uneconomic DR. Notably, the OCA identified significant additional complex issues that would have to be addressed in any study, including the effects of DR in neighboring states already identified by the SWE.²³ The Commission should therefore instruct the SWE not to conduct any wholesale price suppression study, and any alleged price suppression “benefits” should not be incorporated into any TRC calculations.

E. Any DR Study Should Be Limited To Mass Market Customers

In its Comments, PECO did not oppose the conduct of a DR study limited to potential Mass Market DR. Such a study, however, should be conducted with a specific range of funding between 14% and 18% of an EDC’s Act 129 funds, which PECO believes is a reasonable allocation and sufficient to pay for the Company’s existing cost-effective Mass Market DLC program.

The OCA and DR Providers generally support a DR potential study.²⁴ If the Commission determines to establish additional DR targets, then PPL supports a DR potential study that is conducted simultaneously with an EE market potential study and consistent with a determination by the Commission as to the amount of an EDC’s Act 129 budget that should be allocated between EE and DR.²⁵ FirstEnergy and EAP contend that the Commission should not establish any DR targets, and that a potential DR study is, therefore, not required.²⁶ PennFuture et al. emphasize that it is important for the Commission to consider the appropriate balance between

²³ OCA Comments, p. 16.

²⁴ OCA Comments, p. 14; DR Providers Comments, p. 15.

²⁵ PPL Electric Comments, pp. 22-23.

²⁶ FirstEnergy Comments, pp. 4-7; EAP Comments, p. 8.

EE and DR programs, with any DR program providing “at least as much benefit” as any EE&C program.²⁷

While PECO agrees that the Commission cannot establish new DR targets under Act 129, PECO believes that a potential DR study limited to Mass Market customers may have merit in light of the inability of these customers to participate directly in the PJM DR markets. A potential DR study, properly designed, may identify additional programs which an EDC (or CSPs) could voluntarily offer Mass Market customers. As PECO originally observed in its Comments, and as PPL Electric agrees, any potential DR study will require the Commission to determine the proper allocation between EE and DR for Act 129 funding. In light of the comments filed by other parties, PECO believes that its proposed allocation percentage of 14-18% of Mass Market Act 129 funds for DR is appropriate for purposes of developing a potential DR study.

PECO does not support PennFuture et al.’s proposal to add a new requirement that DR programs have a TRC equal to the least cost-effective EE&C program. This recommendation has no basis in the provisions of Act 129. In fact, in accordance with Act 129, the Commission has developed standards to “ensure that each [Act 129 plan] includes a variety of energy efficiency and conservation measures,” and consistent with that goal, evaluates the TRC of EE&C plans on a “total plan” basis. Consistent with PECO’s proposed percentage allocation of funds between DR and EE, EDCs should continue to be able to propose cost-effective DR programs with any funds not used for DR retained by customers.

²⁷ PennFuture et al. Comments, p. 3.

F. The Commission Should Not Conduct Separate Avoided Capacity And T&D Cost Studies And Should Reject The Proposed Inclusion Of Other Speculative Costs In TRC Calculations

As described in the Company's comments, PECO opposes direction to the SWE to conduct avoided capacity and T&D cost studies, and proposes instead that any such studies be conducted voluntarily by EDCs as part of the Act 129 plans. Both PPL Electric and the Industrials oppose any T&D study by the SWE as speculative and unwarranted, and PPL Electric also proposes that any estimates of avoided generation capacity be conducted as part of a TRC order and not through a DR study.²⁸ The DR Providers support the SWE undertaking a T&D cost study, while PennFuture et al. argue for the inclusion of a variety of additional costs in TRC calculations, including avoided "environmental compliance costs."²⁹

PECO continues to believe that EDCs remain the appropriate entity to prepare avoided capacity and T&D cost studies as part of their Act 129 plan development. The Company notes that EDCs have historically included avoided capacity and T&D costs in their TRC calculations and that parties will have the ability to contest any findings or results as part of plan approval proceedings. The Company further believes that the range of new costs and benefits proposed by PennFuture et al. for inclusion in the TRC should be rejected because such costs and benefits are speculative in nature and PennFuture et al. have not provided sufficient (and in some instances any) detail regarding how values would be determined. To the extent that the Commission decides to consider these new categories of costs and benefits for future use in the TRC, they should be considered in the context of a TRC order.

²⁸ PPL Electric Comments, pp. 14-15, 22; Industrials Comments, pp. 9-10.

²⁹ DR Providers Comments, p. 10; PennFuture et al. Comments, pp. 6-11.

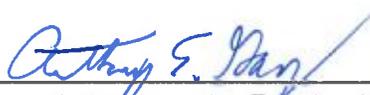
G. The Commission Should Establish An Anticipated Schedule For Approval Of Act 129 Phase III Plans By June 1, 2015

As reflected in several comments, EDCs and other stakeholders are concerned as to whether there will be adequate time for development and approval of Act 129 Phase III plans and the deadlines for meeting those plan obligations.³⁰ In its Comments, PECO prepared a tentative schedule for the Commission's consideration, which would lead to rulings on all EDC Phase III plans by June 1, 2015. PECO urges the Commission to consider its proposed schedule and establish a timeline in any final order for issuance of an Act 129 Phase III implementation order, as well as the filing and approval of EDC plans.

III. CONCLUSION

PECO appreciates the opportunity to provide these Reply Comments and looks forward to continuing to work with the Commission and other stakeholders on these critical issues.

Respectfully submitted,



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Dated: January 14, 2014

³⁰ See, e.g., EAP Comments, pp. 8-9; PPL Electric Comments, p. 31; PennFuture et al. Comments, p. 20.