

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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January 8, 2016

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17105-3265

Re: Petition of PECO Energy Company for  
Approval of its Act 129 Phase III Energy  
Efficiency and Conservation Plan  
Docket No. M-2015-2515691

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lauren M. Burge".

Lauren M. Burge  
Assistant Consumer Advocate  
PA Attorney I.D. # 311570

Enclosures

cc: Honorable Angela T. Jones  
Honorable Darlene D. Heep  
Certificate of Service

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company :  
For Approval of its Act 129 Phase III : Docket No. M-2015-2515691  
Energy Efficiency and Conservation Plan :

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PREHEARING MEMORANDUM  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. Section 333, and in response to the December 23, 2015 Prehearing Conference Order issued in the above-captioned matter, the Office of Consumer Advocate (OCA) provides the following information:

**I. Introduction**

On October 15, 2008, Act 129 of 2008 (Act 129 or the Act) was signed into law by Governor Edward G. Rendell. Act 129 made numerous amendments to Chapter 28 of the Public Utility Code and required the seven major electric distribution companies (EDCs) to file energy efficiency and conservation plans (EE&C Plans), which occurred in the summer of 2009. The Phase I Plans expired on May 31, 2013. Phase II of the EE&C Plans began on June 1, 2013 and will continue until May 31, 2016. The Commission has now established the requirements and process for Phase III of the EE&C Plans to operate from June 1, 2016 through May 31, 2021. Energy Efficiency and Conservation Program, Docket No. M-2014-2424864 (June 19, 2015) (Phase III Implementation Order). This proceeding concerns the Phase III Plan filing of PECO Energy Company (PECO or the Company).

The Phase III Implementation Order directed that each EDC meet a consumption reduction target and a demand response target. Phase III Implementation Order at 35. The Phase

III Implementation Order also established that 5.5% of the consumption reduction target must be met through the low-income customer sector programs and that 3.5% of the consumption reduction target must be met through the Government/Education/Non-Profit (G/E/NP) sector programs. Phase III Implementation Order at 68-70 (low-income customer segment consumption reduction target), 74-76 (G/E/NP customer segment consumption reduction target).

The Total Resource Cost (TRC) test will continue to be used to evaluate each EDC's EE&C Plan. Phase III Implementation Order at 102, citing 66 Pa. C.S. § 2806.1(a)(3). Act 129 caps annual spending on the Plan at 2% of the EDC's total revenues for the calendar year 2006. 66 Pa. C.S. § 2806.1(g). The Act provides for full and current cost recovery of the Plan costs through an automatic adjustment rider, but it prohibits the recovery of lost revenues by the EDC through the automatic adjustment rider. 66 Pa. C.S. § 2806.1(k). The costs incurred are to be allocated to the classes that directly benefit from the program measures implemented, unless a system wide benefit can be shown.

PECO is required to file a Plan under Act 129 and the Phase III Implementation Order. Under the timeline set forth in the Phase III Implementation Order, PECO's EE&C Plan must be ruled upon within 120 days of the Company's filing, or by March 29, 2016.

## **II. Procedural History**

On November 30, 2015, PECO filed its Petition for Approval of its Energy Efficiency and Conservation Phase III Plan pursuant to Section 2806.1 of the Public Utility Code and pursuant to the Phase III Implementation Order. PECO plans to reduce annual energy consumption by 2,100,875 MWh and reduce demand by 171 MW by May 31, 2021. EE&C Plan at 8. The five-year cost of PECO's EE&C Phase III Plan is projected to be \$427,385,830. Id. With respect to residential customers, PECO has proposed a Residential Energy Efficiency Program and a Low-Income Energy Efficiency Program. EE&C Plan at 5. The Residential EE

Program includes the following five (5) solutions: (1) Lighting, Appliance and HVAC Solutions; (2) Residential New Construction Solutions; (3) Whole Home Solutions; (4) Appliance Recycling Solutions; and (5) Behavioral Solution. The Low-Income EE Program includes Lighting and Whole Home Solutions, and also allows low-income customers to participate in the Residential EE programs. Petition at 8, 10. PECO has also proposed a demand response (DR) program for residential customers including three (3) solutions: (1) Direct Load Control (DLC); (2) Smart Thermostat; and (3) Behavioral. Petition at 11.

PECO's filing was assigned to the Office of Administrative Law Judge and further assigned to Administrative Law Judges Angela T. Jones and Darlene Heep for investigation. On December 23, 2015, ALJ Jones and ALJ Heep issued a Prehearing Conference Order. On January 12, 2016, the Prehearing Conference will be held telephonically.

On December 10, 2015, the OCA filed a Notice of Intervention and Public Statement in this proceeding.

On January 4, 2016, the OCA filed Comments in accordance with the Phase III Implementation Order and the directive included in the publication of the filing in the *Pennsylvania Bulletin*.

### **III. Issues and Sub-issues**

Based upon a preliminary analysis of PECO's filing and participation in the stakeholder meetings, the OCA has compiled a list of issues and sub-issues that it anticipates will be included in its investigation of the filings. It is anticipated that other issues may arise and may be pursued during the course of these proceedings.

The following list sets forth the issues at this time that the OCA anticipates it will examine:

(1) Whether the proposed energy conservation plan and the individual program design meets the requirements of Section 2806.1 of the Code and the Commission's Phase III Implementation Order;

(2) Whether the portfolio of programs proposed is reasonably balanced and whether the programs are equitably distributed across rate classes;

(3) Whether the Plan is reasonable and meets the requirements of Section 2806.1 and the Phase III Implementation Order for low-income and government/educational/non-profit customers;

(4) Whether the proposed multi-family buildings programs are reasonably designed and the proposed cost allocation of those programs is reasonable;

(5) Whether the design of the proposed demand response program measures are reasonable and appropriately meet the requirements of the Phase III Implementation Order's identified demand response targets;

(6) Whether the proposed cost recovery mechanisms, including the proposed budgets, are reasonable;

(7) Whether the proposed program measures, including the cost-effectiveness of the Plan, are reasonable as measured by the Total Resource Cost (TRC) test; and

(8) Whether the proposed measurement and verification and evaluation plan is appropriate and reasonable.

The OCA reserves the right to raise additional issues as may be necessary.

#### **IV. Witnesses**

The OCA intends to present the direct testimony of the following witness in this proceeding. In order to expedite the resolution of this proceeding, the OCA requests that copies

of all interrogatories, comments and answers to interrogatories be mailed directly to the expert witness as well as to counsel for the OCA.

EE&C Plans and Cost Recovery

Geoffrey Crandall  
MSB Energy Associates  
Suite 162  
6907 University Ave.  
Middleton, WI 53562-3135  
Telephone: (608) 831-1127  
Fax: (608) 836-1290  
E-mail: [Crandall@msbnrg.com](mailto:Crandall@msbnrg.com)

Low-Income/Multifamily Aspects of EE&C Plan

Roger Colton  
Fisher, Sheehan and Colton  
34 Warwick Road  
Belmont, MA 02478  
Telephone: 617-484-0597  
E-mail: [roger@fsconline.com](mailto:roger@fsconline.com)

The OCA specifically reserves the right to call additional witnesses, as necessary. As soon as the OCA has determined if an additional witness or witnesses will be necessary for any portion of its case, all parties of record will be notified.

**V. Service on the OCA**

The OCA will be represented in this case by Assistant Consumer Advocate Lauren M. Burge and Senior Assistant Consumer Advocate Darryl A. Lawrence. Two copies of all documents should be served on the OCA as follows:

Lauren M. Burge  
Assistant Consumer Advocate  
Darryl A. Lawrence  
Senior Assistant Consumer Advocate  
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[DLawrence@paoca.org](mailto:DLawrence@paoca.org)

## **VI. Discovery**

To date, the OCA has issued one set of formal interrogatories and has participated in one informal call regarding this proceeding. The OCA may also participate in additional informal discovery conferences, as may be necessary, in order to expeditiously resolve discovery questions.

In order to effectively investigate and adequately develop a record on these issues in the limited timeframe for this proceeding, the OCA requests a modification of the Commission's procedural rules, as set forth below:

(1) Answers to written interrogatories shall be served in-hand within seven (7) calendar days of service.

(2) Objections to interrogatories shall be communicated orally within three (3) calendar days of the service of interrogatories; unresolved objections shall be served to the ALJ in writing within five (5) calendar days of service of the interrogatories.

(3) Motions to dismiss objections and/or answering of interrogatories shall be filed within three (3) calendar days of service of such motions.

(4) Answers to motions to dismiss objections and/or answering of interrogatories shall be filed within three (3) calendar days of service of such motions.

(5) Ruling over such motions shall be issued, if possible, within seven (7) calendar days of the filing of the motion.

(6) Responses to requests for document production, entry for inspection, or other purposes must be served in-hand within seven (7) calendar days.

(7) Requests for admissions will be deemed admitted unless answered within seven (7) calendar days or objected to within five (5) calendar days of service.

(8) Interrogatories served after noon on Friday or after noon on the day before a holiday will be due as if served the following business day.

The OCA reiterates that all time periods established in the foregoing discovery schedule should be calculated using calendar days.

## **VII. Schedule**

The OCA proposes the following procedural schedule:

Comments	January 4, 2016
Prehearing Conference	January 12, 2016
Other Parties' Direct Testimony	January 21, 2016
Rebuttal Testimony	January 29, 2016
Evidentiary Hearing	February 2, 2016
Main Briefs due	February 12, 2016
Revised Plan (if necessary)	February 22, 2016
Certification of the Record	February 24, 2016

The OCA agrees to waive its right to file a Reply Brief only for the purposes of this Phase III Plan proceeding due to the expedited nature of this proceeding and the scheduling difficulties that were presented by this proceeding. The OCA specifically does not waive its right to file a Reply Brief in any future EE&C Plan proceeding.

Respectfully Submitted,



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DATE: January 8, 2016

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CERTIFICATE OF SERVICE

Petition of PECO Energy Company :  
For Approval of its Act 129 Phase III : Docket No. M-2015-2515691  
Energy Efficiency and Conservation Plan :

I hereby certify that I have this day served a true copy of the foregoing, the Office of Consumer Advocate's Prehearing Memorandum, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 8th day of January 2016.

SERVICE BY E-MAIL and INTEROFFICE MAIL

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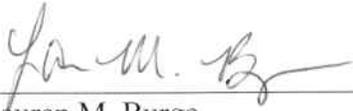
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