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December 3, 2013

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

Re: Review of Long-Term Infrastructure Improvement Plan  
Docket No. L-2012-2317274

Dear Secretary Chiavetta:

Pursuant to the March 14, 2013 Proposed Rulemaking in the above-referenced docket, enclosed please find **PECO Energy Company's Comments on the Review of Long-Term Infrastructure Improvement Plan.**

Please do not hesitate to contact me should you have any questions regarding this filing.

Sincerely,

A handwritten signature in cursive script that reads "Jack R. Garfinkle".

Jack R. Garfinkle  
Assistant General Counsel

JRG/adz  
attachment

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION 2013 DEC 10 PM 4:43

Rulemaking Re Review of Long-Term  
Infrastructure Improvement Plan

: Docket No. L-2012-2317274

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**COMMENTS OF  
PECO ENERGY COMPANY  
TO THE PROPOSED RULEMAKING ORDER  
ENTERED ON MARCH 14, 2013**

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**I. INTRODUCTION**

On February 14, 2012, Governor Corbett signed into law Act 11 of 2012 ("Act 11"), which amends Chapters 3, 13 and 33 of the Pennsylvania Public Utility Code 66 Pa. C.S. §§ 308, 1307, 1311, 1327 and 1350-1360. Act 11, among other things, authorizes electric distribution companies, natural gas distribution companies ("NGDCs"), water and wastewater utilities or a city natural gas distribution operation to petition for a distribution system improvement charge ("DSIC"). A DSIC is a ratemaking mechanism that allows for the recovery of reasonably incurred costs related to the repair, improvement and replacement of eligible utility infrastructure through a surcharge mechanism. The DSIC mechanism is subject to reconciliation, audit and other consumer protections. In order to obtain approval for a DSIC, a petitioning party must first file and receive approval of a Long-Term Infrastructure Improvement Plan ("LTIP").

On March 14, 2013, the Public Utility Commission ("PUC" or "Commission") entered a Proposed Rulemaking Order ("2013 Order") to establish the procedures and criteria for the filing and subsequent periodic review of LTIPs. PECO appreciates this opportunity to provide

comments to the 2013 Order. PECO's numbered comments below correspond to the identical proposed Chapter numbers and sections as provided in Annex A to the 2013 Order ("Annex A").

## **II. COMMENTS**

### **A. §121.2. Definitions.**

This section sets forth the definitions for certain key terms used throughout the proposed regulation. PECO has two comments in this section and each relates to the proposed definition of "Major modification." First, subsection (ii) of that definition includes as a category of "major modifications" any extension of the schedule for repairing, improving or replacing a category of eligible property by more than two years. PECO believes that rather than including a specific time period (e.g., two years), the Commission should consider a "major modification" to include any extension which increases the schedule by more than 15%. This change would capture more impactful schedule extensions on a total project plan basis. For example, a two year schedule extension on a forty year schedule project (5% extension) does not impact the overall schedule of a project as much as a two year extension on a ten year schedule project (20% extension).

Subsection (iii) of the "Major modification" definition would include, as a major modification, an increase in the total estimated cost of the LTIP by more than 15%. Given that some LTIP plans may be in effect for a ten year term, the 15% cost increase qualifier is a rather low hurdle. The cost estimates included in the LTIP are preliminary, as the work described therein may not be performed for a number of years. Estimates prior to the completion of engineering and design work could easily be later revised by a factor of 25% or more.

Accordingly, PECO recommends that this percentage be increased to 25% to account for this, as well as the impact of inflation.

**B. §121.3. LTIP.**

This section sets forth the specific elements that must be contained in a proposed LTIP. The lead-in language to this section states that “[a]n LTIP ***shall*** be filed by a utility and shall include the following elements...” (emphasis added). As a technical matter, utilities are not required to file an LTIP; the requirement arises only as a result of seeking approval for a DSIC. Accordingly, PECO respectfully requests that the lead-in language to this section be changed to read as follows: “An LTIP **that is filed by a utility** shall include the following elements...”

PECO also has concerns with elements (8) and (9) of the proposed Section 121.3(a). Specifically, neither of these elements was contained in the Act 11 legislation and both appear to go beyond the intended scope for LTIPs. Specifically, element (9), which references issues such as damage prevention, corrosion control, and emergency response time, has nothing to do with main replacement. It is not clear how these two elements came to be included in this proposed regulation, and PECO requests that they be removed since they are not relevant to an LTIP.

**C. §121.4. Filing and Commission Review Procedures.**

This section sets forth the filing procedures for LTIPs, as well as the comment period, and the manner in which the Commission will review a proposed LTIP. The lead-in language in subsection (a) indicates that an LTIP must be filed with a number of parties including “the parties to the utility’s most recent base rate case.” Given the large number of parties that may intervene in a base rate case, many of whom are not active participants in the

litigation process, PECO suggests amending this language to include only parties that are included in the official service list. Subsections (e) and (f) of this section indicate that the Commission will review the LTIP and determine if the LTIP is “sufficient to ensure and maintain adequate, safe, reliable and reasonable service,” and the Commission will order a utility to file a new or revised LTIP if the LTIP does not meet the criteria in this section. PECO believes this subsection should be clarified to make it clear that if the Commission does not find an LTIP to be sufficient to ensure and maintain service, then the utility may withdraw its LTIP and forego recovering any additional amounts under its DSIC. Because an LTIP is a voluntary filing, there should be no requirement to file a new or revised LTIP if the utility does not desire to do so.

**D. §121.5. Modifications to and Expiration of an LTIP.**

This section sets forth procedures for modifying a Commission-approved LTIP and filing a new LTIP prior to the expiration of a previously filed plan. Subsection 121.5(b) discusses “minor modifications,” which, generally speaking, are modifications that do not qualify as “major modifications” to an LTIP. The first sentence of subsection 121.5(b) refers to “major changes” as defined in §121.2; however, PECO believes that the correct reference here should be “major modifications,” which is the defined term in §121.2.

This subsection also indicates that minor modifications to an LTIP will be addressed concurrent with the Commission staff’s review of a utility’s Annual Asset Optimization Plan (“AAO Plan”). PECO notes, however, that a utility is not required to file an AAO Plan unless it has an approved DSIC (see proposed §121.6). Accordingly, if a utility desires to make a minor modification to its LTIP, but does not have an approved DSIC (and therefore is not required to file an AAO Plan), there is no process in the current draft regulation for this to be handled.

PECO recommends that this subsection permit minor modifications to be made through a less formal, simplified process; perhaps through a process similar to minor Energy Efficiency and Conservation Plan changes under Act 129.

Subsection 121.5(c) states that “[a] utility shall file a new LTIP with the Commission at least 120 days prior to the expiration of a currently-effective LTIP.” As drafted, this language suggests that once a utility has filed an LTIP, it must continue to file new LTIPs in perpetuity. PECO would propose that this sentence be revised as follows in order to allow for the possibility that a utility may choose to withdraw its LTIP at some point in the future: “A utility **that intends to continue its LTIP/DISC beyond its current term** shall file a new LTIP with the Commission at least 120 days prior to the expiration of a currently-effective LTIP.”

**E. §121.6. AAO Plan Filings.**

This section sets forth the procedures for filing the AAO Plan and the elements that are to be included in the AAO Plan. Subsection (a) indicates that AAO Plans are to be filed on or before March 1<sup>st</sup> of each year. PECO notes that it files an annual report with the U.S. Department of Transportation, which will include information relevant to its AAO Plan, on March 15<sup>th</sup> of each year. Given this timing and the desire to have consistent reporting between AAO Plan and DOT reports, as well as the number of filings already required for utilities in the early part of the calendar year (e.g., SEC filings), PECO requests that the filing date be pushed back to “on or before **April 1<sup>st</sup>** of each year.” This will provide utilities with some additional time in order to comply with this new regulatory filing requirement, but will not create a material delay for other parties to review.

In §121.6(b), the specific elements of the AAO Plan are discussed. Subsection 121.6(b)(2), requires that “[a] description of the eligible property to be improved in the

upcoming 12-month period.” PECO respectfully requests that the Commission clarify what “the upcoming 12-month period” means. Is that the 12-month period beginning on the date on which the AAO Plan is filed, a 12-month calendar year or a utility’s fiscal year? On balance, PECO recommends that this be done based on a utility’s fiscal year. This would align the annual utility budget and construction plans with the AAO Plan.

Subsection 121.6(b)(3) also requires that “system reliability data for the prior 5 years” be included in a utility’s AAO Plan. PECO respectfully disagrees that an AAO Plan need include this information. First, PECO notes that this data, as it relates to electric utilities, is already filed with the Commission. There should not be a need to refile this information in a second report. Second, it is not clear to PECO how this system reliability data would apply to other types of utilities. For example, what would natural gas reliability data include? Assuming this requirement only relates to electric utilities, and since this information is already filed with the Commission<sup>1</sup>, PECO believes that this element can be removed from the AAO Plan.

Subsection 121.6(d) provides that AAO Plan’s will be reviewed by the Commission to determine if a utility has complied with its LTIIIP. If the Commission finds that the utility has not complied with its LTIIIP, then the Commission will direct the utility to file a petition for modification as outlined in §121.5(a). As noted above, PECO believes that the intent of the AAO Plan filing requirement was to provide the Commission a means to determine if the utility was following its approved LTIIIP. If a utility is not in compliance with its approved LTIIIP, it should not be required to modify its LTIIIP, rather it should be required to conform to the provisions of its approved plan. In addition, this subsection focuses on the AAO Plan, which is a tool to confirm that a utility is complying with an approved plan. If the LTIIIP requires

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<sup>1</sup> See 52 Pa. Code §57.195.

modifications because it is not in conformity with the law or Commission requirements, that is handled separately in Section 121.7 in connection with a periodic review of the LTIP.

Finally, subsection 121.6(e) provides that “[a]bsent any major modifications, adverse comments or Commission action within 60 days, the AAO plan will be deemed approved.” PECO has two concerns with this provision. First, it is unclear what would constitute an “adverse comment.” There is no definition provided for an “adverse comment,” and it could be difficult to determine whether a comment is truly “adverse” based on its technical drafting. Accordingly, PECO respectfully requests that this phrase be removed. Second, PECO notes that this provision discusses the AAO Plan being “deemed approved” upon the passage of 60 days. There is no requirement for an AAO Plan to be approved in Act 11. Again, PECO believes the intent of the AAO Plan is to provide a “check” for the Commission and other interested parties to ensure that the utility is operating in compliance with its LTIP Plan. PECO is not aware of any intent for the AAO Plan to be an additional DSIC-related plan subject to approval beyond the LTIP.

**F. §121.7. Periodic Review of an LTIP.**

This section sets forth the procedures for the periodic review of the LTIP. PECO notes that subsection (a) of this section requires Commission review of an LTIP at least once every five (5) years. It is unclear, however, why this periodic review is needed if the LTIP is already reviewed annually, as set forth in draft Section 121.6, in connection with its AAO Plan. Section 121.6(d) notes that “[i]f the Commission determines that a major modification to the LTIP is necessary to maintain and improve the safety, adequacy and reliability of its existing distribution infrastructure, the Commission will direct the utility to file a petition for modification...” Since it will already be checking the adequacy and reliability of the LTIP



annually, PECO believes there is no additional need for further review every five years. As noted in its comments to Section 121.6, PECO believes that Section 121.6 should be revised to require an annual review of an AAO Plan to determine whether a utility is in compliance with its LTIP; it should not be used as a tool to analyze the appropriateness of the LTIP. Whether or not an LTIP is adequate to address safety, reliability and other related issues should be handled by means of a separate LTIP review as contemplated by the current draft of Section 121.7.

Subsection (d) provides that if the Commission determines, after review, that a utility LTIP is not adequate to ensure and maintain efficient, adequate, safe, reliable and reasonable service, it may direct the utility to “revise, update or resubmit its LTIP as appropriate.” Because an LTIP is a voluntary filing, PECO would propose adding that a utility may “withdraw” its LTIP if found not to be adequate. It is understood that withdrawing the LTIP would also require a suspension of any then-active DSIC, but there should not be a requirement to keep maintaining an LTIP (or amending the LTIP) if the Commission finds it to be inadequate or if the utility does not wish to continue using it.

**G. §121.8. Enforcement of LTIP Implementation.**

This section sets forth enforcement of Act 11 and the remedies for noncompliance that may be utilized by the Commission. PECO does not believe that a remedy for noncompliance with an approved LTIP should include “civil penalties.” An LTIP is a voluntary filing that forms a part of a DSIC petition. If a utility is not in compliance with its LTIP, then the appropriate remedy is for the utility to cease being permitted to use its DSIC and the ability to collect thereunder. While PECO appreciates that the proposed regulation provides that “minor changes or deviations” may not be the basis for an enforcement complaint, it is not

clear what those “minor changes or deviations” include (or exclude). In addition, the “noncompliance” standard is too indefinite to provide any meaningful assurance that a utility will not find itself subject to a civil penalty for a deviation that is not deemed after the fact to be “minor.”

### III. CONCLUSION

PECO appreciates the opportunity to provide comments with respect to the review of Long-Term Infrastructure Improvement Plans. The Commission-approved DSIC mechanism is a welcome tool for utilities to help ensure and maintain efficient, adequate, safe, reliable and reasonable service to its customers. The LTIIIP is a significant component of the DSIC mechanism, and ensuring that the LTIIIP approval and maintenance process is well designed will be of critical importance to all interested parties.

Respectfully submitted,



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*For PECO Energy Company*

Date: December 3, 2013