



Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
November 3, 2008

Office of Energy and
Technology Deployment

717-783-0540

HAND DELIVERED

Commonwealth of Pennsylvania
Secretary's Bureau
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

PA PUC
SECRETARY'S BUREAU

2008 NOV -3 PM 2:55

RECEIVED

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

Dear Secretary McNulty:

Enclosed please find an original and three copies of the Department of Environmental Protection's comments on the Energy Efficiency and Conservation Program and EDC Plans required by Act 129 of 2008 and a compact disc containing an electronic version of the comments. Courtesy hard and electronic copies are also being provided to the Commission's Bureau of Fixed Utility Services, Bureau of Conservation, Economics, and Energy Planning, and Law Bureau.

Respectfully Submitted,

Daniel Griffiths
Deputy Secretary Director
Energy, Innovations and Technology Deployment

Enclosures

cc. FUS
CEEP
Law

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RECEIVED
2008 NOV -3 PM 2:55
PA PUC
SECRETARY'S BUREAU

*Energy Efficiency and Conservation
Program and EDC Plans*

Docket No. M-2008-2069887

The Department of Environmental Protection (Department) thanks the Public Utility Commission (Commission) for the opportunity to provide comments on the implementation of Act 129 of 2008. Act 129 establishes aggressive energy conservation and peak load reduction goals. Achieving and surpassing these goals is absolutely necessary if Pennsylvania is to moderate market prices, enable consumers to lower energy costs and meaningfully address the impacts of climate change. To that end, the Commission should adopt an energy efficiency and conservation program that promotes the most cost effective, meaningful and verifiable energy reductions possible.

The Department believes that two key components to a successful energy efficiency and conservation program will be the early deployment of smart meters and implementation of the time of use rates and real time price plans that smart meters support. Smart meters and time sensitive price plans effectively use market forces to reduce consumption, shift some uses to cheaper times of day, save the consumer money and provide system wide benefits to all consumers.

EDCs are required to file a smart meter technology procurement and installation plan by August 14, 2009. Although Act 129 allows EDCs to take up to 15 years to fully deploy smart meters, the law clearly contemplates that the Commission could require EDCs to furnish the meters at a faster rate. To achieve Act 129's important goals, the Department recommends that smart meters be fully deployed within 10 years. The Commission can make this happen by

reducing the service lives of existing meters. This is a reasonable approach as the value of smart meters will climb relative to existing meter technology due to an anticipated rise in future prices. The Department is hopeful that EDCs will take a leadership roll in promoting these important measures and begin voluntarily installing smart meters and offering time of use rates and real time price plans.

Where EDCs such as PPL have already installed smart meters, time of use rates and real time price plans should be implemented as soon as possible. The Commission should encourage EDCs to file petitions to implement these plans before their rate caps expire (and before January 1, 2010) and the Commission should expedite its review of the petitions whenever they are filed. Providing time of use rates and real time price plans where smart meters already exist is an inexpensive and easy way to get immediate energy conservation and load shifting results.

Importantly, Act 129 prohibits EDCs from recovering revenues that are lost as a result of reduced electricity consumption or shifting energy demand. However, the Department believes that properly designed decoupling mechanisms may be appropriate in the future. To the extent the Commission does consider a decoupling proposal, it should only be permitted where the EDC's energy efficiency programs have been conclusively demonstrated to significantly reduce revenues.

With respect to developing the energy efficiency and conservation program required by section 2806.1, the Department urges the Commission to focus on maximizing cost-effective energy savings in each building that receives services under utility plans. Generally, there is a significant overhead cost of providing service to each building. This overhead can become an obstacle to cost-effectiveness when limited measures are provided in each building. Thus, the Department urges the Commission to establish two core principles. First, all energy saving

measures that are also cost-effective should be provided in each building that receives services under utility plans. Second, buildings that present an opportunity for significant energy savings should be given preference in receiving service. These principles will result in the most cost-effective, hence prudent, use of the ratepayer funds that support these programs.

The first principle requires a different interpretation for each customer class and depends on whether the focus is on reducing consumption or peak load. For residential customers and many commercial customers, the Department supports a “whole building” approach. Rather than providing a number of possible measures according to convenience or the customer’s wishes, this focuses program resources on measures that are identified as cost-effective through mechanisms that satisfy the quality assurance standards defined in the act. It may be reasonable, on a case-by-case basis, to address commercial and industrial process applications rather than building. For example, process heat might be the most cost-effective focus for program services in some industrial settings.

The second principle requires screening of customers to ensure that services go first where they will produce the greatest possible energy savings. Utility billing systems already contain all information needed to highlight those customers in each class that use the most energy. Among these, simple survey mechanisms can be established to determine which of these customers have the potential for substantial energy savings. The Department urges the Commission to establish program requirements that ensure that utility programs focus resources first on these customers. With these principles in mind, the Department offers the following additional comments which we hope will aid in the development of successful energy efficiency and conservation plans.

§ 2806.1(a)(1) requires the Commission to develop procedures for the approval of plans submitted by an EDC as required by subsection (B). The Department recommends that the Commission adopt procedures that allow for participation by *all* interested parties as part of the plan approval process. These procedures should include the opportunity for the submission of written comments on the proposed plan as well as public meetings in the EDC's service territory where interested parties can provide written or oral comments. This broader public participation process – as opposed to an adjudicatory process - appears to be contemplated by § 2806.1(e)(1).

The Department also strongly encourages the Commission to ensure effective, routine communication and coordination. This should include measures requiring EDCs to work with each other as well as provided for continuous, direct oversight by the Commission. The objective should be to ensure that effective technical and administrative solutions are shared so that best practices can be quickly propagated across programs. The Department believes that this will enhance the Commission's execution of the Act and substantially reduce the time needed to identify unsuccessful measures and approaches.

The Commission bears a strong responsibility for oversight so the Commission should actively communicate with other entities to track the effectiveness of utility plans. The well-developed network of conservation service providers in Pennsylvania can serve as an early warning line regarding quality problems. In this regard, the Department urgently asks that the Commission take an active role in oversight. A program of this scope and cost cannot be effective under light handed regulation, at least in the first phases of implementation.

The Act contains strong penalties and the real possibility that the Commission will need to take over a utility program that fails to reach the mandated goals. Active monitoring of program results will contribute to reducing the risk that this will occur. Where the Commission

determines that a measure is not achieving the required reductions, the Commission should not hesitate to modify or terminate that part of its plan. Active oversight will also avoid the situation where the Commission is required to take over implantation of the plan.

The Department also asks that the Commission require that utilities develop plans that include proposals that can be implemented across the Commonwealth. State wide plans could serve to better educate a larger number of the customer base, provide opportunity for greater efficiency of program delivery and provide a cost savings for program implementation. To accomplish this, the Department recommends that all plans be submitted at the same time so that the Commission and the public can evaluate the strengths and weaknesses of the plans on a comprehensive basis rather than on a piecemeal basis.

Because plans must be approved within 120 days of submittal, the Department recommends that draft plans, with all necessary technical information needed for a proper evaluation, be submitted first. After interested parties have had an opportunity to review the plans and data, discuss the information with the EDCs and offer comments to the draft plans, revised final plans would then be submitted for Commission approval on or before the statutory July 1, 2009 deadline. After the final plans are submitted, the Commission could require written final comments on all plans then stagger its public meetings prior to issuing its orders.

§ 2806.1(a)(2) requires the Commission to adopt an evaluation process to monitor and verify data collection, quality assurance and results. The Department recommends that monitoring and verification be conducted by someone other than the EDC or an affiliate. Accurate, consistent information is fundamental to effective evaluation. In this regard, it is vital that data formats and

content be identical state-wide. Failing this, the Commission will face an added burden in tracking the success of company programs.

The Department suggests that the existing Energy Star Portfolio Manager data collection protocols offer a ready-made means for collecting and storing information regarding industrial and commercial customers. This ensures the consistency of data over time, provides a common database through which many sorts of analysis – particularly verification of energy savings – are supported, and offers a long-established and very widely used system supported by the Department of Energy. In addition, this platform is readily available to all utilities and contractors. This approach also makes available energy analysis tools that will permit the Commission to easily track ongoing program results, an opportunity that will be particularly important in the first few years of the program. The Department urges that the Commission require that all utility plans include this platform. As to residential customers, the Department asks that the Commission choose a standard format that will be consistent with Portfolio Manager.

With respect to quality assurance measures, for residential buildings there are a limited number of options satisfying the definition of “nationally recognized tools and certification programs.” See, § 2806.1(m). The Department has closely examined tools for home energy audits and inspection and identified three effective candidates. The first is Home Performance with Energy Star. It offers an option that should be given consideration. However, the best comprehensive approaches are embodied in the protocols established for new construction by the Residential Energy Services Network (Resnet) and for existing homes under the Building Performance Institute (BPI). The Department requests that the Commission establish a quality control requirement based on these standards.

§ 2806.1(a)(5) requires the Commission to establish standards to ensure that each plan includes a variety of energy efficiency and conservation measures and that those measures are distributed equitably to all customer classes. Because each customer class will bear the cost of the measures implemented within the class, but all classes will benefit from reduced demand, the Department believes that the degree to which the measure can achieve verifiable and cost effective energy reductions should be the determining factor as to whether the measures are distributed “equitably.” In other words, equity should be in terms of energy savings or peak load reduction benefits, not dollars spent by customer class.

In keeping with the principles initially discussed, the Department observes that the potential for peak-load reduction may be greater for some customers and customer classes than for others. Some companies have legacy direct load control programs that make possible the aggregation of the benefits of peak load reduction. Unfortunately, the Department believes that these tariffs are closed to new customers making this option unavailable for addressing the requirement of §2806.1(d). In addition, limited time of use programs remain in place. Thus, any new value to peak-load reduction will only exist where a smart meter is in place and an appropriate rate plan is in effect. While smart meter plans will be required for a number of companies within a few months, no utility need file the time of use and real-time pricing plans until after the end of their rate caps. Thus, until smart meters and the necessary rate mechanisms are widely available among residential customers, peak-load reduction programs may only be appropriate for large customers that are already served under tariffs that recognize the value of peak-load reductions. “Equity” in this instance is a matter for reasonable availability of programs among appropriate customers, not all customers.

Likewise, not all customers will equally benefit from energy efficiency measures. Customers who use little energy or whose buildings or processes already achieve a high standard of energy efficiency will see little benefit from efficiency services under this program. Thus the terms, “equity” and “a variety of measures” should be conditioned by having program services be reasonably available among customers who can gain significant benefits, not among all customers.

Finally, the Department emphasizes that equity among classes should not be confused with equity between customers. The most equitable outcome, and one which will be completely consistent with the purpose of the Act, will be maximum energy savings. This outcome will spread benefits to all customers through the strongest possible impact on market prices. The Department has no doubt that the Commission has this objective firmly in its sights but feels constrained to underline the request that, in no instance, should the Commission give in to the temptation to spread savings so that each customer receives a token level of services.

§ 2806.1(a)(6) requires the Commission to develop procedures to make recommendations for additional measures that will enable an EDC to improve its plan. Recommendations for additional measures by interested parties should be a routine expectation as a result of the annual report required by § 2806.1(i) and the cost effectiveness evaluation under § 2806.1(b)(1)(j). As discussed above and in keeping with § 2806.1(b)(2), active oversight by the Commission, particularly in the early years of this program, will be necessary to ensure high quality outcomes. The Commission must be able to distinguish the quality of results at a detailed level so that it can act promptly, where necessary, to direct that utilities reshape their programs. In particular, these

programs should not be assessed on a pass-fail basis but on the basis of standards that require a high quality of performance and continual improvement.

§ 2806.1(a)(7) and (10) and § 2806.2 These sections require that EDC's competitively bid all contracts with **approved** conservation service providers ("CSPs"), that CSPs be permitted to implement all or part of the plan and that contractors on the registry be qualified. The Department interprets these provisions to mandate that CSPs be allowed to bid on all contracts but also allow the EDC to offer to perform the service as well. The fundamental test should be one of cost-effectiveness. If the EDC can demonstrably perform the service more cost-effectively than the CSP or if no qualified CSPs bid on the contract, the EDC can implement that part of the program.

Because CSPs will be vital to the success of the program, the Commission should establish minimum CSP qualification requirements. This should take the form of both financial and technical fitness. Financial fitness, at a minimum, should include a determination that the contractor is credit worthy and has sufficient insurance to cover possible losses. Also, each contractor should demonstrate the ability to post a security deposit or performance bond. Regarding technical fitness, a minimum initial qualification should be a satisfactory report from the Better Business Bureau or similar organization. In addition, contractors should demonstrate a history of performing work in the relevant technical specialties.

Initial contractor qualifications should be supplemented by ongoing assessments of performance. This can be done as part of the inspection protocol related to quality control measures under §2601(a)(2). In addition, each utility should be made responsible to promptly

report problematic contractor performance to the Commission. The Commission, in turn, should maintain procedures through which unsatisfactory contractors are removed from the registry.

Finally, the Department requests that the Commission resolve potential confusion regarding the nature of a conservation service provider's role in utility plans. The definition of "conservation service provider" in § 2806.1 (m) implies that a CSP is restricted to providing "information and technical assistance," a limited set of responsibilities. The Commission should interpret this in the context of the registry under §2806.2 and the provisions of § 2806.1(a)(7) and (10). Here, it is clear that the CSP may also "provide conservation services" and implement *all* or a part of the plan". The Department urges the Commission to include both sets of responsibilities when considering the potential role of CSPs.

§2806.1(b)(1)(G) requires plans to include measures for low-income households. The Department observes the emphasis in this subsection on coordination with existing commission, state and federal conservation programs. The Department recommends that this take several forms. First, the Commission recently undertook an evaluation of the existing Low-Income Usage Reduction Program (LIURP) under 52 Pa. Code Chapter 58. The Department expects that information from this review will be used to improve LIURP.

Working from that foundation, the Commission can integrate programs under this section into the existing LIURP framework. Requirements under §2806.1 related to quality control should be extended to the existing LIURP to ensure high quality results. Beyond this, there has been recent coordination of low-income conservation programs between Commission staff and both the federal Weatherization Assistance Program (WAP) administered by the Department of Community and Economic Development and the Pennsylvania Housing Finance Agency.

Lessons learned there should be incorporated so that the interplay between these programs becomes a standard for all of the Commission's low-income energy efficiency efforts.

§2806.1(b)(2) changes to utility plans. Specific to this subsection, and consistent with the discussion above regarding active, ongoing monitoring of the implementation of utility plans, the Department observes that the process for plan modifications should be streamlined. This is needed to ensure that improvements to plans are not delayed by a complex or time-consuming process. The Department suggests that the Commission manage changes that it mandates to plans in terms of the scale of the change. Relatively minor changes, perhaps those involving less than 5% of total program expenditures, could be handled through an expedited administrative process. Plan modifications of a greater scale might be handled through a process that follows standard Commission procedures permitting public comments.

The Department thanks the Commission for this opportunity to comment on the implementation of Act 129 and looks forward to working with the Commission, the EDCs and other parties to achieve the goals of this important act.