

November 3, 2008

**VIA OVERNIGHT UNITED PARCEL SERVICE**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

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

Dear Secretary McNulty:

Enclosed for filing are an original and four (4) copies of Comments of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company (collectively, "FirstEnergy") in the above-referenced docket. Please date stamp the additional copy and return it as evidence of filing. Also enclosed is an electronic version of the filing on disk.

As indicated on the Certificate of Service, copies have been served on the parties in the manner indicated.

Please contact me at the above phone number should you have any questions.

Sincerely,



Linda R. Evers, Esquire

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Enclosures



**Response:**

As the Commission has recognized, Act 129 imposes a very aggressive timeframe on the Commission and electric distribution companies (“EDCs”) not only to develop the Commission’s energy efficiency program and the EDCs’ energy efficiency plans but, more importantly, to achieve the required ambitious reductions in energy consumption and peak load. The Commission’s procedures for review and approval of energy efficiency plans must enable expedient regulatory treatment if the objectives of Act 129 are to be achieved. A number of fundamentals need to be considered in developing the procedures for approval of an EDC’s plan. These fundamentals drive the need for an efficient, prompt, and transparent approval process.

a) Economics influence consumption – higher prices naturally encourage reduced usage by providing greater financial incentives for reductions.

(1) Market-based prices will be in effect only for five months (January 1, 2011 through May 31, 2011) before Met-Ed and Penelec must achieve the required reductions.

(2) The lack of market-pricing for most of the period between plan approval and May 31, 2011, means that plan approval should occur as early as possible – the sooner the Commission approves a plan, the sooner the programs may start and the more likely that the required reductions will be achieved.

b) Approval of programs and cost recovery by the PaPUC is necessary to begin to implement an EDC’s energy efficiency and peak load reduction plan.

(1) The timeline for approval of plans under a best case will allow for just one and one-half years to achieve the required May 31, 2011 energy reductions.

(2) EDCs' approved programs should be coordinated with parallel energy efficiency programs run by state agencies such as Pennsylvania's Department of Environmental Protection, Department of Public Welfare and the Department of Community and Economic Development. Such coordination will likely make the state agency programs more effective and EDCs should receive credit for reductions based on the EDCs' participation in these programs.

c) Act 129 only allows the Commission 120 days to approve an EDC's plan – weighing heavily in favor of a strictly prescribed schedule for notices, interventions, public hearing and final approval. In addition, approval of the cost recovery mechanism, conservation service provider contracts and other plan components should be permitted in a single approval process.

Section 2806.1(E)(1) and (2) specifically provides a number of requirements regarding Commission approval of plans:

- a) Public hearing
- b) Submission of recommendations by OCA, OSBA and the public
- c) Approval or disapproval within 120 days
- d) If disapproved:
  - i) PUC to state the reasons for disapproval
  - ii) EDC has 60 days to file revised plan
  - iii) PUC has 60 days to approve or disapprove revised plan

The FirstEnergy Companies recommend the following procedure for approval of the EDCs' plans. Although not identical, it incorporates more of a comment/reply comment process than a litigation process and is similar to the current procedure for Universal Service Plan filings:

- 1) Filings should contain:
  - (a) Information to meet requirements of 2806.1(B) (1)(a) through (k)
  - (b) Sufficient supporting materials
  - (c) Description of work to be performed by Conservation Service Providers (“CSPs”)
  - (d) Contracts for CSPs obtained through competitive bidding for approval by the Commission
  - (e) Description of competitive bid process used to retain CSPs
  - (f) Tariff sheets for all tariff changes and Section 1307 cost recovery mechanism - including proposed rates by class
  - (g) The Companies expected load for June 1, 2009 through May 31, 2010 with provisions made for weather adjustments and extraordinary loads that the Electric Distribution Company must serve
  - (h) The average peak load based on the 100 hours of peak demand for the period June 1, 2007 through May 31, 2008
- 2) The Office of Consumer Advocate and Office of Small Business Advocate should be copied on the initial filing. Publication of the Plan in the *Pennsylvania Bulletin* should occur within 20 days of filing, giving the date and location for the public hearing that will take place.
- 3) Filing of recommendations by OCA and OSBA should occur within 30 days of receiving the EDCs’ filing.
- 4) Hearing date should be assigned within 40 days of the date of filing for the Commission to receive recommendations from other parties who have not already submitted recommendations.

5) The EDC will have 15 days from the hearing date to consider the recommendations submitted and to submit reply comments and a revised plan, if necessary.

6) Based on the plans and recommendations submitted, the Commission shall approve or reject the EDC's plan within 120 days.

FirstEnergy believes that because the EDCs will be ultimately financially accountable for the effectiveness of their plans<sup>1</sup>, deference must be given to the EDCs' plans and the recommendations of others should be considered, but not ordered, absent good cause.

**(2) An evaluation process, including a process to monitor and verify data collection, quality assurance and results of each plan and the program.**

**Response:**

Each EDC Plan should provide for a process that measures, verifies and accounts for the reductions achieved, as well as the performance, in terms of energy savings and load reductions of the portfolio of programs relative to the requirements of the Act.

These requirements are met by:

**1) Adoption of protocols for measurement and verification (“M&V”) of the energy savings and load reductions associated with different measures.**

The Companies recommend that this can be most readily accomplished in Pennsylvania through updates to the Technical Reference Manual supported by participants and previously adopted by the Commission in the Alternative Energy

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<sup>1</sup> Section 2806.1 (F) (2) (I) provides for civil penalties up to \$20,000,000.00 for failure to achieve the required reductions.

Portfolio Standards proceeding. See *Annex A, Implementation of the Alternative Portfolio Standards Act of 2004; Standards for Participation of Demand Side Management Resources*, Docket No. M-00051865 (Order entered October 3, 2005). This standard should be expanded to provide for additional energy efficient technologies; peak load reduction and conservation focused projects; and rates/pricing designs to be implemented to reduce energy demand or overall energy consumption.

Further, the Commission should review the need to update the Technical Reference Manual periodically. It should also review changes that may influence the content of the Technical Reference Manual such as stakeholder processes at the RTOs (MISO and PJM) and external groups, e.g., the North American Energy Standards Board (NAESB). However, any changes to the Technical Reference Manual should only be made on a prospective basis.

**2) Requirement of auditable tracking processes to support reporting results**

The Companies further recommend that the Commission establish clear criteria on the level of information that is to be collected on each project and what, if any, systems common to all EDCs can be employed in this process to ensure accurate, repeatable and common reporting practices.

First, the Companies believe the rigor of annual reporting of compliance with Alternative Energy Portfolio Standards Act (“AEPS”) is sufficient to support the reporting requirements of Act 129. Rather than create a materially different report and reporting process, the Companies promote use of the PJM’s Generation Attribute Tracking System (“GATS”) for the final reporting of compliance to the Commission.

The Companies recommend that each EDC employ the use of a data repository to collect and house pertinent data needed to validate the annual compliance report. All program data should be housed in the EDC's data repository regardless of the source, i.e., the EDC, CSP or others. Eligibility for programs and program payments should be conditioned on providing pertinent data to the EDC's data repository. This would allow the Commission to go to one place to see the details needed for support of the annual report.

The Commission should define the minimum required data that is expected to be contained on the EDC's data repository. Data such as customer information, project information, and annual MWh reduction would be the types of information to be contained in the EDC's repository. Affidavits from residential and small commercial customers stating the information delivered to the EDC/CSP/other is true and accurate would be unduly burdensome but may be expected from large customers on non-standards projects. Definition of the required data ensures that all customers and all EDCs are placed on a common platform for the level of data to confirm compliance. Further, the Companies maintain customer information and the protection of the information is of the utmost importance. This means that customer information housed in the EDC repository is considered confidential and receives all applicable consumer, copyright and patent protections.

**3) The reporting process should be auditable.**

As part of the Program, it is expected that the Commission will audit in some form the plan results presented by the EDCs during the compliance reporting

process. Several fundamentals should be considered in developing and implementing the Commission audit process:

1. Use statistical sampling - avoid a time consuming and ultimately expensive auditing of every project
2. Minimize the burden on participant customers – avoid multiple contacts to customers by the Commission, EDC, and M&V contractor during the auditing process
3. Use existing processes, e.g., GATS
4. Encourage full involvement by the EDC in the audit process
5. Maintain confidentiality of customer information

**(3) An analysis of the cost and benefit of each plan submitted under subsection (b) in accordance with a total resource cost test approved by the commission.**

**Response:**

Approval of program proposals should be informed by a consistent framework of the cost effectiveness of the programs. The following key points outline a recommended framework for performance and use of analyses of cost effectiveness:

- a) The Total Resource Cost (TRC) test is defined in Section 2806.1 (M) 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 the avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures.”

The Act allows the Commission latitude to approve a TRC test. Given the shortage of time to develop a Pennsylvania TRC test standard, the FirstEnergy Companies recommend that the Commission adopt a TRC test similar to the “California Standard Practice Manual”. (The California test could be acceptable provided that certain important modifications are made which the Companies will discuss in later comments.) Any TRC test which is initially adopted may be revised as experience is gained.

b) Cost effectiveness assessments and regulatory approvals of EDC plans should be performed on a prospective basis, without risk of retrospective review relative to the assumptions used in the approved plan. EDCs should not be at risk for implementing programs in good faith that are approved by the Commission.

c) The cost-effectiveness assessments of residential, commercial, and industrial program measures should be reviewed as portfolios for each class and also considered in the context of the entire plan.

**(4) An analysis of how the program and individual plans will enable each electric distribution company to achieve or exceed the requirements for reduction in consumption under subsections (c) and (d).**

**Response:**

The Commission’s review and approval of the Companies’ analyses for how the program and individual plans will achieve or exceed the consumption and peak demand reduction requirements should include:

1. Review and approval of the calculation of the specific energy (MWh) and peak demand (MW) reduction requirements for each EDC.

The energy conservation reduction requirement by May 31, 2011 and May 31, 2013 should be determined by multiplying 1% and 3%, respectively, by the EDC's forecasted load for the period of June 1, 2009 through May 31, 2010. This forecast period is the baseline for which both the 1% and 3% reductions are based. For example, if the EDC's forecast for 2009/2010 is 5000 GWh, the target for 2011 would be 50,000 MWh and the target for 2013 would be 150,000 MWh, or an incremental 100,000 MWh.

The peak demand reduction requirement by May 31, 2013 (i.e., for the 2013/2014 delivery year) should be calculated by multiplying 4.5% by the average of the 100 hours of highest peak demand for the period June 1, 2007 through May 31, 2008. The amount derived from this calculation would be the required demand reduction which the EDC is responsible to show it has achieved through its programs.

2. Review and approval of the weather adjustment and extraordinary load impacts that could impact the reduction requirements.

3. Confirmation that the EDC's individual plans:

Include a portfolio of programs which, if implemented in good faith, are designed to be capable of delivering aggregated, projected consumption savings that meet or exceed the EDC's specific energy and peak demand reduction requirements. The projected program costs should not exceed more than 2% of the EDC's total annual retail revenue as of December 31, 2006.

Contain a cost-recovery tariff mechanism that will ensure recovery of prudently incurred expenditures for the propose programs, including administrative costs. Administrative

costs should include, but not be limited to, such costs as plan and program development, cost-benefit analysis, M&V, and reporting.

**(5) Standards to ensure that each plan includes a variety of energy efficiency and conservation measures and will provide the measures equitably to all classes of customers.**

**Response:**

The term, “equitably,” is the key aspect of this provision and means different things depending on perspective. The Companies believe that this requirement must be considered in the context of both the cost-effectiveness requirements of the Act, as well as the requirement that the customer class which derives the benefit from conservation measures should bear the associated costs as some guidance. (Section 2806.1(a)(11)) If the legislature intended that program measures, energy and demand reductions, or other aspects of Act 129 were to be spread across customer classes in some proportional manner, e.g., revenues, MWH, customers, it would have included language to accomplish its intent. However, Act 129 allows the Commission to determine an equitable manner.

The Companies recommend that each EDC Plan should be evaluated as a whole, i.e., will it through the totality of its components achieve the required reductions on a cost-effective basis? There is no doubt that some measures will be more cost-effective than others and that some classes of customers may present more cost-effective opportunities than others. An “equitable” distribution of programs across classes involves the consideration of whether the overall cost-effectiveness of the measures for a specific class when combined with the overall cost-effectiveness of the measures for each of the other classes will produce the EDC’s required total reductions. In other words, the approved portfolio of measures for each class should be based on the best combination of measures that produce the maximum benefit at the lowest cost and that

in combination with the portfolios of the other classes will yield the required reductions. This will not be a “one size fits all” analysis and sufficient flexibility must be built into the Commission’s review to allow for differences among EDCs and their customer classes.

**(6) Procedures to make recommendations as to additional measures that will enable an electric distribution company to improve its plan and exceed the required reductions in consumption under subsections (c) and (d).**

**Response:**

Section 2806.1 (I) (1) of Act 129 requires EDCs to submit an annual report regarding documentation of program expenditures, measurement and verification of energy savings and the evaluation of cost-effectiveness of expenditures. FirstEnergy proposes that when EDCs file this annual report, the EDCs include a section addressing any changes to the plan and the benefits thereof that the EDCs will be implementing. If there are no objections to the changes by the Commission within 30 days, the changes will be deemed approved. Additionally, the EDCs should have the right to submit plan revisions at other times as necessary via an informational filing. The filing should outline in detail the necessity for the revision and anticipated benefits. Likewise, if the Commission does not object to the filing within 15 days, the revised plan will be deemed approved.

Additionally, Section 2806.1 (E)(1), upon the submission of the EDC’s initial plan, allows for submission of recommendations by the Office of Consumer Advocate, Office of Small Business Advocate and members of the general public as to how the EDC can improve its plan. As discussed in comments to Section 2806.1(E) (1) and (2), the EDCs, at their option, may file for adjustments to their plans based on comments received from third parties.

**(7) Procedures to require that electric distribution companies competitively bid all contracts with conservation service providers.**

**Response:**

Section 2806.1 (B) (1) of the Act states:

“(D) The plan shall state the manner in which the plan will achieve the requirements of the program under subsection (a) and will achieve or exceed the required reductions in consumption under subsections (c) and (d).

(E) The plan shall include a contract with one or more conservation service providers selected by competitive bid to implement the plan or a portion of the plan as approved by the Commission.”

The Companies offer the following recommendations related to procurement with CSPs:

- 1) EDCs should have the flexibility to conduct the competitive bid process for CSPs either independently or jointly within a holding company, e.g., Penn Power + Penelec + Met-Ed together or each EDC independently.
- 2) CSPs participating in the competitive bid process must meet predefined criteria on financial strength, technical expertise, resource availability, relevant experience, etc. They also must either be on the Commission’s registry list or certify that they will be on the list.
- 3) The Commission's procedures requiring all contracts with CSPs be competitively bid should allow for maximum flexibility in designing the competitive bid process, and allow the EDCs to follow their existing procurement procedures, e.g. sealed bid, reverse auction, etc.
- 4) EDCs should have flexibility to control the selection process following the competitive procurement process and select the CSP based on the combination of quantitative and qualitative measures as set forth in the EDC’s approved plan.
- 5) To protect the competitive nature of such solicitations, pricing associated with EDC/CSP contracts must be treated as confidential.

Additionally, the definition of CSPs in the Act as “an entity that provides information and technical assistance on measures to enable a person to increase energy efficiency or reduce energy consumption and that has no direct or indirect ownership, partnership or other affiliated

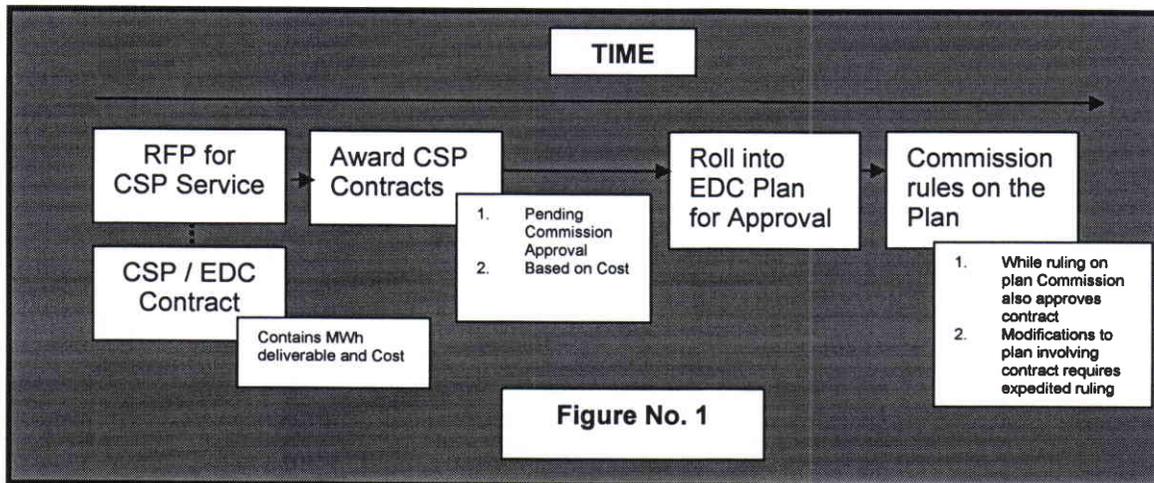
interest with an electric distribution company” could be construed in an overly restrictive manner which would be detrimental to customers.

Customers should be allowed to contract directly with CSPs of their own choosing to support energy decisions and perform work in their facilities, independent of CSPs under contract with EDCs. Customers in the market for conservation services would benefit from as many participants as possible. Therefore, EDC affiliates should not be barred from developing and providing conservation services directly to customers or non-affiliated EDCs.

**(8) Procedures to review all proposed contracts prior to the execution of the contract with conservation service providers to implement the plan. The Commission may order the modification of a proposed contract to ensure that the plan meets the requirements for reduction in demand and consumption under subsections (c) and (d).**

**Response:**

Figure No. 1 presents a flowchart of a Commission review process of CSP contracts.



The Companies view the bulk of the approval process as part of the initial filing of the EDC’s plans. This means, within the 120 days of filing the EDC’s plan, the Commission will not only approve the Plan, but also approve the contracts that enable the plan. The Companies

also recommend that any interim plan updates filed with the Commission be ruled on an expedited basis – within 15 days of informational filings or 30 days of annual report filings. (See also responses to (1) and (6) above.) FirstEnergy believes that any corrections required to the plan must be ruled on as soon as possible to allow any changes implemented to be effective in changing the course of the plan. Additionally, should the Commission agree overall with the Companies' plans, but determine that a deficiency exists in a CSP contract, the Companies recommend that the Commission otherwise approve the plans and allow the Companies 10 days to remedy the contract deficiency. Further, the Companies expect that Commission approval of the contracts between CSPs and EDCs will be the only level of approval required. It is not expected that the Commission will need to approve contracts between the CSP and its subcontractors such as installers, data managers and/or M&V experts.

Separately, the Companies would also recommend that in lieu of approving CSP contracts every time a plan or interim plan is filed, that the Commission develop standard contracts for EDCs and CSPs to use with common language for pertinent sections like credit requirements, damages, deliverables, etc. This would further expedite the process for approval of plans and give certainty to CSPs of the type of business relationships that will exist between the EDCs and CSPs, as well as, limit the amount of disparity among EDCs.

**(9) Procedures to ensure compliance with requirements for reduction in consumption under subsections (c) and (d).**

**Response:** Please see response to (4) above.

**(10) A requirement for the participation of conservation service providers in the implementation of all or part of a plan.**

**Response:** Please see responses to (7) and (8) above.

**(11) Cost recovery to ensure that measures approved are financed by the same customer class that will receive the direct energy and conservation benefits.**

**Response:**

Act 129 requires that EDCs obtain cost recovery when they implement their Commission approved plans. The Companies support the use of a reconcilable Section 1307(e) surcharge mechanism. A number of principles must be considered: 1) recovery of all reasonable costs; 2) minimize deferred costs; 3) simplicity; 4) avoidance of cross subsidization among classes through the use of class specific rates within the Section 1307 mechanism; 5) proper matching of costs and benefits; and, 6) entities benefiting from DSR. Another important issue is the distinction between the various types of expenditure – i.e., capital versus expense. Both capital and expense items should be included in the cost recovery mechanism, but they may require different treatment. Capital expenditures would include depreciation, a return component based on the EDC's weighted average cost of capital, and taxes.

**III. ADDITIONAL ISSUES**

Regarding weather data used for weather normalizations, the Companies propose that the Commission allow EDCs to keep their current practices for the amount of weather data used in developing load forecast data. EDCs use different numbers of years of historical data to calculate weather normalization. Rather than change EDC forecast processes, i.e., procuring more weather data, updating models, etc., the Companies believe current forecasting practices should be utilized.

**IV. CONCLUSION**

Please include the following on all correspondence related to this docket as well as the undersigned:

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FirstEnergy appreciates the opportunity to provide comments to the Secretarial Letter concerning the implementation of Act 129 of 2008. The Companies look forward to continued participation in the process.

Respectfully submitted,

Dated: November 3, 2008



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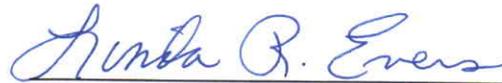


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Dated: November 3, 2008



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