

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048  
800-684-6560 (in PA only)

IRWINA. POPOWSKY  
Consumer Advocate

FAX (717) 783-7152  
consumer@paoca.org

November 3, 2008

James J. McNulty  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

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

Dear Secretary McNulty:

Enclosed are the original and ten (10) copies of the Comments of the Office of Consumer Advocate, in the above-referenced proceeding.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Tanya J. McCloskey".

Tanya J. McCloskey  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 50044

Enclosure

cc: Bohdan R. Pankiw, LAW – Via Electronic and Hard Copy  
Robert F. Young, LAW – Via Electronic and Hard Copy  
Kriss Brown, LAW – Via Electronic and Hard Copy  
Louise Fink Smith, LAW – Via Electronic and Hard Copy  
Robert F. Wilson, FUS – Via Electronic and Hard Copy  
Paul Diskin, FUS – Via Electronic and Hard Copy  
Wayne L. Williams, CEEP – Via Electronic and Hard Copy  
Cal Birge, CEEP – Via Electronic and Hard Copy

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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COMMENTS OF THE  
OFFICE OF CONSUMER ADVOCATE

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Tanya J. McCloskey  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 50044  
E-Mail: [TMcCloskey@paoca.org](mailto:TMcCloskey@paoca.org)

Counsel for:  
Irwin A. Popowsky  
Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152

Dated: November 3, 2008

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## I. INTRODUCTION

On October 15, 2008, Governor Ed Rendell signed into law House Bill 2200 as Act 129 of 2008 (Act 129). Act 129 becomes effective on November 14, 2008 and will make significant changes in the obligations of electric distribution companies (EDCs) in Pennsylvania and in the regulatory responsibilities of the Commission. Among the provisions of Act 129 are the establishment of specific standards for the reduction of energy consumption and peak demand, the enhancement of default service procurement to provide adequate and reliable service to customers at the least cost over time, the expansion of the deployment of smart metering technology, and the expansion of alternative energy resources.

The Declaration of Policy in Act 129 is particularly instructive in considering the implementation of the Act. The General Assembly specifically recognized the following:

- (1) The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account any benefits of price stability, over time and the impact on the environment.
- (2) It is in the public interest to adopt energy efficiency and conservation measures and to implement energy procurement requirements designed to ensure that electricity obtained reduces the possibility of electric price instability, promotes economic growth and ensures affordable and available electric service to all residents.

Act 129 (Declaration of Policy). It is clear from the declaration of policy, and the provisions of Act 129, that the General Assembly intends for Pennsylvania's electric distribution companies to provide least cost service to their customers over time through a combination of supply-side and demand-side resources. It is no longer permissible for Pennsylvania electric utilities to accept their load demands as a given, and then serve those loads by acquiring generation at "prevailing

market prices.” Rather, the electric utilities must now take affirmative steps to reduce and shape their loads for the benefit of all customers, and to provide needed generation to their non-shopping customers at the lowest cost over time through a prudent mix of long-term, short-term and spot market purchases.

A critical first step in this endeavor is the development of an Energy Efficiency and Conservation Program by the Pennsylvania Public Utility Commission that requires electric distribution companies to adopt and implement cost effective energy efficiency and conservation measures that would reduce energy demand and consumption in the Commonwealth. Through a Secretarial Letter issued October 21, 2008, the Pennsylvania Public Utility Commission (Commission) announced its intention to implement Act 129 in phases based on the time frames and deadlines contained within the Act. In the first phase, the Commission intends to address the Commission’s obligation to adopt an energy efficiency and conservation program by January 15, 2009. The Secretarial Letter requests comments on each individual aspect of the energy efficiency and conservation program required under Section 2806.1(a)(1)-(11). The Commission is seeking stakeholder input on procedural, technical, interpretive, and implementation issues, as well as measurement of EDC compliance and the level of detail needed for each EDC plan. Following the receipt and review of the comments, the Commission intends to prepare a draft proposal and convene a working group to further discuss these matters.

The OCA appreciates this opportunity to provide preliminary comments on the issues identified by the Commission in the Secretarial Letter. The OCA recognizes that the task before the Commission is significant and time is short. The OCA submits, however, that the Commission need not “reinvent the wheel” in its endeavors. Many states have implemented programs for energy efficiency and demand response pursuant to legislative or regulatory

initiatives. In the time available, the OCA has reviewed materials available from Florida, California, Connecticut, Massachusetts, New Jersey, Nevada, Indiana, Missouri and other states. These states, whether through Orders, regulations, or practice manuals, have addressed many of the implementation issues that the Commission will have to decide for its Program.

Additionally, the OCA anticipates that assistance may be available to the Commission from outside entities such as the Environmental Protection Agency (EPA), the American Council for an Energy Efficient Economy (ACEEE), the Regulatory Assistance Project (RAP), and the Northeast Energy Efficiency Partnerships (NEEP). The Commission may wish to seek assistance from these resources, and may also wish to retain independent outside consultants to assist the Commission and Commission Staff in these efforts. Act 129 specifically provides that the costs to the Commission of implementing this Program shall be recovered from the EDCs. Section 2806.1(h). The General Assembly properly sought to ensure that the Commission had the resources necessary for this vital task and the OCA urges the Commission to obtain the necessary assistance to develop the program.

As the OCA reads Section 2806.1(a) of Act 129, the requirement for the Commission to establish a “program” should be read to mean that the Commission should establish a framework under which each EDC will be required to identify the specific “measures” that the EDC proposes to meet the requirements of the Act. The framework that the Commission must develop includes the load forecast for each EDC that will be used to determine compliance with the consumption reduction requirements, the peak demand calculation for each EDC that will be used to determine compliance with the demand reduction requirements, the types of analyses that are to be used for evaluating the measures to be deployed within the EDC Plans, the detail as to measurement and verification protocols, the details as to the evaluation

process for the EDC Plans, the procedural steps necessary to conduct the review of the EDC Plans in accordance with the requirements of the Act, and other items necessary for each EDC to develop and implement its Plan. While the Commission may wish to suggest a menu of recommended energy efficiency and demand response measures that EDCs should consider for inclusion in their Plans, or for state-wide implementation, the OCA does not view the Commission's initial Program as one designed to mandate specific measures to meet the goals of the Act. The identification of detailed measures will be included in each EDC's Plan to be submitted on July 1, 2009.

Given the short time frame for this phase of the implementation, the OCA will focus its comments on some of the procedural and technical issues that the Commission should resolve and include within the Commission's Program. By way of summary, some of the OCA's key recommendations for the Commission's January 15, 2009 Program are as follows:

- retain an outside expert to work with the Commission staff to develop the statutorily-required load forecast for each EDC
- calculate the demand in the 100 highest hours for the statutorily-determined baseline period for each EDC
- require each EDC to immediately conduct and complete a Technical Potential Study to assess the technical and achievable potential for energy savings and demand reductions on their system and for each class
- develop the Total Resource Cost test methodology including the specification of the discount rate to be used in the analysis
- address the technical issues related to measurement, verification, evaluation and compliance with the Act
- establish the standards for ensuring that a variety of measures are provided equitably to all classes
- establish a procedure for a collaborative process to work on the development of individual EDC Plans during the Spring of 2009 so that

interested stakeholders can provide input into the plan development process

- establish the filing requirements of the EDC Plans including the provision of “live” spreadsheets and models, subject to an appropriate Protective Order, at the time of EDC Plan filing
- establish a procedure for comments and *en banc* public hearings before the Commission to allow for a Commission Order within 120 days. A proposed schedule is set forth in Section B.1.a. of these Comments.
- establish the cost recovery mechanism and the procedure for the review of costs to ensure that costs are reasonable and prudent
- establish procedures for the periodic review of the EDC Plans to determine whether modifications are necessary

The OCA provides more detailed recommendations on these points in these Comments.

## II. COMMENTS

### A. Preliminary Issues

#### 1. Introduction

In reviewing the requirements of Act 129, the OCA has identified several issues that may be critical to the overall implementation of the energy efficiency and demand response programs called for under the Act. As noted above, many of the preliminary and technical issues that the OCA has identified have been addressed in other states and in other forums. The Commission should seek assistance from these sources as it develops its Program for energy efficiency and demand reduction.

#### 2. Section 2806.1(c): Development of the Load Forecast

Section 2806.1(c) sets forth the reductions in consumption that an EDC must achieve. The reductions are measured, on a weather normalized basis, against the EDC's expected load as forecasted by the Commission for the period June 1, 2009 through May 31, 2010. The OCA submits that this load forecast will be one of the most critical aspects of implementing the energy efficiency programs required by Act 129 and of realizing the intent of the General Assembly. This load forecast serves as the starting point from which the energy usage reductions required by the Act will be measured. Additionally, the load forecast will allow each EDC to determine the kilowatt-hour savings that must be achieved to comply with the Act.<sup>1</sup>

The language of the Act is clear that this load forecast is to be performed by the Commission, not by the EDCs. Section 2806.1(c)(1) and (2). The OCA recognizes that preparing a load forecast for each EDC is a major undertaking for the Commission. But, the General Assembly has specifically provided that the costs incurred by the Commission in

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<sup>1</sup> The load forecast will provide the annual kilowatt-hour sales of the EDC which will be necessary information for the EDC in designing its programs.

implementing the Act are to be recovered from the EDCs. In this area in particular, the Commission should consider retaining an independent outside expert to assist the Commission and its Staff in timely developing the load forecast for each EDC.

The OCA recommends that the Commission immediately begin to acquire the necessary information from each EDC to prepare a load forecast for each service territory. As noted above, the Commission should also immediately consider retention of an independent outside consultant to assist the Commission and its staff in preparing the load forecasts.

In preparing the load forecast, there are a number of methodological and data issues that the Commission may need to resolve. Of importance, the OCA recommends that the Commission first make clear that the methodology and procedures for the load forecast will be included in the Program and will be the same for each EDC. Uniformity of methodology and procedures will be necessary to ensure the equitable implementation of Act 129 across the Commonwealth. Additionally, the methodology and procedures will need to be used uniformly in the years to come to properly measure compliance with the requirements of the Act.

As part of the methodology and procedures, the OCA has identified several definitional or technical issues that the Commission will need to resolve for its Program. Specifically, the Act requires that the load forecast make provision for “weather adjustments” and “extraordinary loads.” As to the issue of “extraordinary loads,” the Commission will need to provide a clear definition of what constitutes an extraordinary load and how such loads are to be taken into account in the load forecast and in measuring compliance. The OCA submits that “extraordinary loads” should be defined to include both increases and decreases in loads. For example, an EDC should not be penalized for adding a major new industrial customer if that additional load would make it impossible for the EDC to meet the requirements of the Act. By

the same token, the unexpected loss of a large industrial customer should not be used to comply with the reductions called for by the Act. As can be seen, clearly establishing a definition of “extraordinary loads” and its application to the load forecast and compliance measures will be important to realizing the intent of the Act. This task is further complicated by the current national economic situation, which makes even a near-term, one year load forecast extremely difficult.

Act 129 also calls for the load forecast to be presented on a weather normalized basis and that the consumption of the retail customers used to measure compliance be weather normalized. Weather normalization methodologies have often been controversial issues in the context of base rate cases, as the Commission is aware. The differences in data selection and methodology can produce significant differences in expected consumption. Without raising the merits of the different positions here, the OCA submits that for the purposes of implementing Act 129, and measuring compliance with Act 129, the Commission should specify the weather normalization methodology that it will utilize and should consistently utilize that methodology when measuring compliance with Act 129.

In summary, the OCA recommends that the load forecast methodology, the weather normalization procedures, and the proposed treatment of extraordinary loads be provided to the EDCs and all interested stakeholders with the January 15, 2009 Commission Program. The Commission will need to provide the actual load forecasts to each EDC as soon as feasible after January 15, 2009. The Commission should also take steps to ensure that it has the required expert assistance to prepare these load forecasts in a timely manner.

### 3. Development of a Technical Potential Study

The OCA recommends that the Commission require each EDC to conduct a Technical Potential Study for its service territory and for each class within its service territory as soon as possible (if the EDC does not already have an up to date one). The Technical Potential Study should be presented to the Commission and interested stakeholders as soon as possible, but no later than February of 2009. A Technical Potential Study is used to determine the energy efficiency and demand response that is available in a service territory. The first step of the study determines the potential for all energy efficiency and demand response that is technically feasible. The study can then assess the measures that are achievable. i.e., the study determines the market penetration that can be achieved with a concerted, sustained, and aggressive campaign. Finally, the study can assess the potential for penetration of measures that are cost effective on a Total Resource Cost test basis. A Technical Potential Study will serve as the foundation for determining the energy and demand savings that can be achieved in the service territory and in each class. A sound Technical Potential Study should guide the EDC's efforts in developing its energy efficiency and demand response plans that will be submitted on July 1, 2009.

Besides guiding the development of a reasonable, comprehensive plan, a Technical Potential Study will be necessary for the Commission to consider whether other requirements of Act 129 have been met. For example, Section 2806.1(a)(5) requires that each EDC Plan include a variety of measures and that the measures be provided equitably to all classes of customers. Only after a comprehensive, utility-specific Technical Potential Study will the Commission be able to determine whether all reasonable, cost-effective measures have been

deployed for each class, a determination that will be fundamental to ensuring that measures are equitably deployed.

A comprehensive Technical Potential Study should be ordered by the Commission as soon as possible and should be included as a requirement in the Commission's Program. The OCA recommends that the Commission direct each EDC to conduct a Technical Potential Study as soon as practicable, if they do not have a current one, and provide the Study to the Commission and the interested stakeholders.

4. Section 2806.1(a)(3): Development Of The TRC Test To Be Approved By The Commission

Section 2806.1(a)(3) requires that the Commission analyze the costs and benefits of each program in accordance with the total resource cost test approved by the Commission. The total resource cost (TRC) test is defined in Act 129, but it is not detailed in the Act. The total resource cost test is defined in the Act as follows:

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 conservations measures.

Section 2806.1 (Definitions).

While there is general understanding of this test in the industry, to avoid any controversy, the Commission should detail the methodology for the TRC test and the elements that will be included in the TRC test and specifically approve a TRC test as required by the legislation. The OCA is aware that several states have provided guidance in this regard. See, e.g., California Practice Manual, Chapter 4.<sup>2</sup>

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<sup>2</sup> [http://www.state.ar.us/psc/EEInfo/CA\\_Stndrd\\_Prac\\_Man.pdf](http://www.state.ar.us/psc/EEInfo/CA_Stndrd_Prac_Man.pdf)

Under the Total Resource Cost Test, all quantifiable costs and benefits of the measure, including the utility cost and the participant cost, are included in the analysis. Costs could include such things as equipment and administration by the utility and equipment and maintenance costs that will be incurred by the participant. Benefits should reflect avoided energy and capacity costs, capacity payments as well as any transmission and distribution costs that may be avoided. The TRC is presented on a net present value basis, *i.e.*, it is discounted. As the Commission is aware, the selection of a discount rate can be a contentious and critical item in any analysis. The Commission should establish the discount rate that is to be used in the analysis as part of its Program.

The OCA submits that by clarifying the methodology and application of the total resource cost, and specifically approving a defined and detailed test to be used by all EDCs, the Commission can reduce controversy and ensure consistent implementation of Act 129 across the Commonwealth.

B. Procedural And Technical Issues

1. Sections 2806.1(a)(1) and (e)(2): Procedures For Development And Approval of the EDCs' Plans

a. Development of EDC Plan Approval Procedure

One of the key procedural issues related to Act 129 will be the process for review and approval of the Plans filed by each EDC. See, Section 2806.1(a)(1) and (e)(2). Pursuant to Section 2806.1(e), once the Plans are filed, the Commission is to conduct public hearings, allow for the submission of recommendations by the OCA and others on the Plan, and issue an Order within 120 days. Given that the Plans will become a significant component of the overall utility service that an EDC will provide, and have the potential to significantly impact the rates that

customers will pay, the Commission must balance the need for meaningful opportunity for hearings, comments and recommendations with the time frames provided in the Act.

The OCA submits that there are at least two key aspects to achieving the necessary balance. As discussed more below, given the limited time frame, it will be impossible for the OCA and other interested stakeholders to conduct extensive discovery to get at the underlying facts and analyses of the EDC Plans in a timely manner after the plans are filed. In light of this, as discussed in Section B.1.b. below, the OCA strongly recommends that the Commission require that each filing be accompanied by detailed information in support of the plan, including all analyses and studies, as well as “live” versions of all spread sheets and models utilized in the development of the plan. EDCs should not be permitted to utilize models that are not available to the OCA (and others) for review and use in analyzing these critical plans. While the OCA would agree to reasonable proprietary restrictions on the use of any models, the OCA (and other stakeholders) must not be denied access to the models on a “live” basis. The spread sheets and any models must be “live,” *i.e.*, able to be utilized by the reviewing parties and the Commission staff to test assumptions, rerun the models under different sets of assumptions, and check for any errors in the spread sheets or models.

Second, as to meeting the 120 day schedule, the OCA recommends that the Commission clearly lay out the procedure as part of its Program filed on January 15, 2009. Given the short time frame, and the need for the Commission to rule on each EDC Plan by the same date, the OCA submits that the Commission should not seek an Administrative Law Judge Recommended Decision in these initial EDC Plan filings. Rather, the Commission should directly consider the recommendations and public hearing comments in making its determination.

Additionally, the OCA strongly recommends that the Commission establish a pre-filing collaborative process with each EDC and the appropriate stakeholders to provide input on the EDC Plan during the months leading up to July 1, 2009. A collaborative process that includes the statutory advocates, major customers, municipalities, community based organizations, and conservation service providers would allow for a better exchange of ideas and expertise as well as foster a better understanding of the issues being addressed in the Plan. While the EDC will remain responsible for the final Plan development, the input of key stakeholders into the process could reduce many unnecessary controversies regarding the final plans.

Given the time frame, the OCA has preliminarily sketched out a procedure that would allow for a collaborative process and achieve review of the program within the time frames called for by the Act. The OCA offers the following procedural schedule for consideration by the Commission:

- January/February 2009: Each EDC provides a comprehensive Technical Potential Study to the OCA, OSBA and interested stakeholders.<sup>3</sup>
- March/April/May 2009: each EDC should conduct a series of stakeholder, collaborative meetings that includes the OCA, OSBA and other interested stakeholders to review the Technical Potential Study and receive input on potential programs and program designs.
- June 2009: Each EDC should meet with the stakeholder collaborative to review and preview the final Plan.
- July 1, 2009: All filings with all materials set forth in the filing requirements, in-hand and electronically (or on disk) to the OCA, OSBA and all members of the stakeholder collaborative.
- July 1, 2009: Each EDC provides notice of its Plan and the review process through publication in newspapers in its service territory and through separate mailing with all notices having been pre-approved by the Commission staff.

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<sup>3</sup> The Commission may wish to assign staff to receive these materials and participate in the pre-filing discussions described here.

- July 2009: Technical Conferences on each EDC plan.
- August 21, 2009: Written Comments and Recommendations by OCA, OSBA and interested stakeholders.
- September 1-11: Public En Banc Hearings in Harrisburg before the Commissioners where the Commissioners can question commenters or receive further comment.
- September 25: Responsive Comments by the EDC to the recommendations of OCA, OSBA and stakeholders and any additional comment at the en banc hearings.
- October 28: Special Public Meeting to rule on the plans

The OCA would stress that while there may be many different approaches to meeting the 120 day requirement of Act 129, early collaboration and information sharing between the EDCs and the interested stakeholders will be essential to the development and design of programs that will meet the requirements of the Act in a cost-effective manner and bring the greatest potential benefits to consumers. The OCA strongly urges the Commission to require the EDC to hold such early collaborative processes so that those interested in participating can be better informed and provide assistance in the development of programs to achieve the goals of Act 129.

b. Section 2806.1(b): Filing Requirements For The EDC Plan

As noted above, after the Companies have made their filings, it will be impossible for the OCA and other interested stakeholders to conduct extensive discovery to get at the underlying facts and analyses of the Plans in a timely manner. While the OCA has proposed a process in Section B.1.a. above that calls for early participation and information sharing during the plan development process, a preview of the final plan, and technical conferences, it will still be essential that the plan filing be accompanied by detailed information and analyses, including

“live” versions of all spread sheets and models, so that an effective review can be conducted in the limited 120-day time frames allowed under Act 129.

The OCA submits that it is extraordinarily important that spread sheets and models be provided to the OCA, OSBA, and interested stakeholders in versions that are “live” and able to be used by the reviewing parties for the purposes of these proceedings. The OCA recognizes that an appropriate Protective Order will be necessary and that access to the models will be solely for the purposes of this proceeding. This issue, though, must be addressed up front. In the very short time frame for review of the EDC Plans, parties will not have time to argue over “proprietary” models, attempt to recreate Company models, or attempt to create their own models for the Company data. The OCA strongly urges the Commission as part of its Program to issue an Order stating that it will not allow EDCs to use models or spread sheets that cannot be accessed on a “live” basis by the Commission Staff, the OCA, the OSBA and other stakeholders for the purpose of reviewing and making recommendations regarding the EDC Plans. The Commission should also enter the necessary Protective Order as part of its January 15, 2009 Program so that early information sharing as part of the collaborative process can begin.

The OCA also recommends that the Commission establish detailed filing requirements that provide full information to the reviewing parties at the time of filing. The beginning point would be the elements specified in Section 2806.1(b)(1). In addition, the OCA submits that each EDC Plan should be accompanied by all workpapers and studies used to develop the plan. It is not sufficient, however, to simply provide print outs of workpapers or studies. The Commission should specifically require that workpapers, studies and analyses that

are electronically based also be provided in live electronic format with all formulas intact as discussed above.

2. Section 2806.1(a)(2): Evaluation Process

Section 2806.1(a)(2) requires that there be an evaluation process, including a process to monitor and verify data collection, quality assurance and results of each plan and the Commission Program. Measurement and verification protocols will be critical aspects of the evaluation that the Commission should clearly set forth in its Program. As with many of these issues, the Commission does not need to reinvent the wheel on measurement and verification. For example, the California Public Service Commission has done work in this area and maintains its protocols on its website.<sup>4</sup> Additionally, a library of such protocols can be found on the website of the Efficiency Valuation Organization (EVO).<sup>5</sup> Of particular note in this regard, as PJM works to integrate energy efficiency and demand response into its Reliability Pricing Model auctions, it is in the process of developing measurement and verification protocols for the PJM system. Working with PJM, and having a consistent set of measurement and verification protocols for the PJM EDCs, may be an appropriate direction for the Commission to proceed.

Additionally, the Commission should ensure that the EDC has an independent evaluator periodically perform an impact and process evaluation. The Missouri Public Service Commission requires both a process and impact evaluation of its demand side programs. Missouri Code of State Regulations, 4 CSR 240-22.050(9)(A) and (B). The Missouri regulations set forth specific questions that must be addressed by both the process and impact evaluations. Such questions for the process evaluations include a review of the primary market imperfections, whether target market segments should be further divided, whether the mix of measures is

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<sup>4</sup> <http://www.cpuc.ca.gov/PUC/energy/electric/Energy+Efficiency/EM+and+V/>

<sup>5</sup> [http://www.evo-world.org/index.php?option=com\\_content&task=view&id=230&Itemid=251](http://www.evo-world.org/index.php?option=com_content&task=view&id=230&Itemid=251)

appropriately diverse, whether communication channels are appropriate and whether there are actions that will provide more effective outcomes. For impact evaluations, the Missouri regulations look for comparisons to control groups and to pre- and post implementation loads for participants. The OCA recommends consideration of this form of evaluation, and these specific questions, as part of the evaluation process.

3. Section 2806.1(a)(3): Analysis of the Costs And Benefits

Please see Section II.A.4 of these comments for a discussion of the use of the total resource cost test to analyze costs and benefits.

4. Section 2806.1(a)(4): Analysis Of How The Plan Achieves Reductions

Section 2806.1(a)(4) requires an analysis of how the Commission's Program and the individual EDC plans will achieve or exceed the requirements of the Act. Fundamental to this analysis will be the estimate, or projection, of reductions that can be achieved by the individual measures and the EDC Plan as a whole. The Commission should ensure that each EDC files an estimate of expected reductions, with full technical or engineering support, as part of the Plan filing requirements.

5. Section 2806.1(a)(5): Development of Standards to Ensure Variety of Measures and Provisions of Measures Equitably to All Classes

Pursuant to Section 2806.1(a)(5), the Commission must ensure that there are a variety of energy efficiency and conservation measures and that the measures are provided equitably to all classes. As discussed in Section II.A.3. above, the OCA submits that a comprehensive Technical Potential Study will be necessary for the Commission to ensure that this requirement is met. Through a Technical Potential Study, the Commission can ensure that the reasonable and cost-effective measures are deployed for all classes of customers.

The OCA would note that while it is the intent of the Act that all classes fully participate, it is not necessary that the measures for each class be identical nor is it likely that the savings obtained from each class will be identical. It can often be the case that a measure may be cost-effective for one class, but an analysis of the measure for a class with different characteristics would show that it is not cost-effective. Similarly, based on class characteristics, it may be more or less costly to achieve a certain level of savings for a class.

The OCA anticipates that the Technical Potential Study will show the potential for cost-effective savings for the system as a whole and for each class. This Study should be used to ensure that the cost-effective measures are maximized for each class so that the Commission can ensure that measures are provided equitably to all classes.

In addition, the Commission may wish to develop a suggested list of potential measures for each customer class that have proven successful in other states. The OCA participated in the Commission's Investigation Into DSM and Energy Efficiency at Docket No. M-00061984 where a list of widely deployed measures that have been found to be cost-effective in other states was provided to Commission Staff. This list could provide a good starting point for determining the variety of measures that should be considered. This list may also be useful for the Commission in identifying measures that would have state-wide applicability and could realize efficiencies in program implementation if the measure were put in place by all EDCs. The OCA would caution, of course, that any preliminary list of potential measures should not be considered to be program limitations. It will be necessary for EDCs and other stakeholders to be innovative and creative to achieve the requirements of Act 129 in the most cost-effective manner.

6. Sections 2806.1(a)(6) and (b)(2), 2806.1(i) and 2806.1(b)(1) (II):  
Procedures To Make Recommendations As To Additional Measures That Will Enable The EDC  
To Exceed The Required Reductions.

In Subsection 2806.1(a)(6), Act 129 requires the Commission to establish procedures to make recommendations for additional measures that will enable an EDC to improve its plan and exceed the required reductions. The procedures that the Commission establishes for the initial 120 day review of the plan, which calls for recommendations by the OCA, OSBA and other interested parties, will be the first step in meeting the requirement of Section 2806.1(a)(6). The Commission may also wish to have its own technical Staff (and any outside consultants hired by the Commission) review the plans during this 120-day review period.

Additionally, the OCA submits that the requirement in Section 2806.1(a)(6) should be considered along with other requirements in the Act that call for a continuing review by the Commission of the cost-effectiveness of the Plans and possible modifications to the Plans. For example, there is a requirement in subsection 2806.1(b)(2) that the Commission require an EDC to modify or terminate any part of its plan if, after adequate period for implementation, the Commission determines that measures included within the plan will not achieve the required reductions in a cost-effective manner. Further, each EDC must file an Annual Report regarding its Plan.

The OCA submits that the Commission should establish a procedure for the periodic review of the approved Plans to consider implementation issues, determine whether the measures are cost-effective, and determine whether there are modifications to the Plan that would improve the Plan. The Commission could coordinate this process with the review

necessary for the cost recovery mechanism, as discussed more in Section II.C. below. The OCA recommends the following outline for a procedure:

- On date set by Commission, EDC files its Annual Report and updated cost recovery
- The Annual Report includes an analysis of the measures under the Plan and whether those measures are achieving, or on track to achieve, the projected level of reductions. If the measures are not achieving, or not on track to achieve, the projected level of reductions, the EDC should identify its proposed modifications, if any, to its Plan.
- The cost recovery filing includes all support to establish the reasonableness and prudence of the costs incurred in the historic period and the projection of costs for the future period.
- The Commission initiates a review of the proposed modifications or the need for modifications, and the cost recovery.
- The Commission initiates an on-the-record proceeding as necessary.

The procedure that the OCA has outlined would provide an opportunity for the Commission and interested stakeholders to periodically review the implementation of the Plans to ensure the continued cost-effectiveness of the measures and the reasonableness and prudence of the costs incurred.

7. Section 2806.1(a)(7): Procedures For Competitively Bidding Contracts For Conservation Service Providers

Section 2806.1(a)(7) requires that the Commission establish procedures for the EDC to competitively bid contracts with conservation service providers. The OCA recommends that the Commission establish these procedures, and consider establishing form contracts, as part of the Commission's Program to be filed on January 15, 2009. The Commission has several examples of such competitive bidding procedures its existing regulations. See, e.g., 52 Pa. Code

§ 57.34 (bidding for DSM and energy/capacity) and 52 Pa. Code 54.186(c)(default service implementation).

The OCA also urges the Commission to ensure that Community Based Organizations (CBOs) can effectively participate in the competitive bid procedures for the deployment of energy conservation and demand response measures. As the Commission is aware, many Community Based Organizations have been deploying essential weatherization and energy efficiency services to low income customers in Pennsylvania through the EDC's Low Income Usage Reduction Programs. These CBOs have the type of trained workforces that will be necessary to deploy the increased level of energy efficiency programs for low income programs called for by Act 129. This type of trained workforce will also be necessary to assist in the deployment of measures for all customers. Act 129 provides EDCs and the Commonwealth with the opportunity to fully utilize the employees of the CBOs who provide such services, which will enhance the ability to reach all low income customers, and all customers, in the most cost effective manner.

8. Section 2806.1(a)(8): Procedures To Review Contracts With Conservation Service Providers Before Execution

Section 2806.1(a)(8) requires the Commission to establish procedures for the review of contracts with conservation service providers prior to the execution of the contract. The OCA recommends that, upon completion of the competitive bid process and execution of the contract, the EDC be required to provide to the Commission Staff the necessary information for the Commission to conduct its review and provide approval of the contract. Such information could include the information regarding other bids and other bidders, any ranking or rating of the bids in accordance with the criteria for review of the bids, and the recommendations of the EDC

staff. The Commission should specify as part of its Program the time frame that it will use for its review. The OCA anticipates that the review of contracts with conservation service providers does not have to be accomplished in the same type of nearly instantaneous review as generation contracts for default service providers. Those generation contracts are typically subject to the vagaries of volatile wholesale markets, while the contracts at issue here will be for the longer term deployment of energy efficiency and demand side response measures. The OCA would urge the Commission to allow sufficient time for review of the contracts and for consideration of any necessary modifications before contract approval.

9. Section 2806.1(a)(9): Ensuring Compliance With The Requirements For Reductions

a. Procedures to Ensure Compliance

As discussed in Section II.A.2. above regarding load forecasts, the Commission must ensure compliance with the consumption reductions in Section 2806.1(c) by measuring the load of each EDC by May 31<sup>st</sup> of 2011 and 2013, on a weather normalized basis, against the weather normalized load forecast that the Commission developed for the June 1, 2009 through May 31, 2010 year for each EDC. The Commission will need to establish the various methodologies to ensure consistency in the measurement process for compliance purposes. These methodologies should be detailed in the Commission's Program. Similarly, the Commission will need to establish the baseline for measuring the peak demand reductions required under Section 2806.1(d). The peak demand baseline and the method of measuring compliance should also be set forth in the Commission's Program.

As to procedure, the Commission will need to require each EDC to make a filing shortly after May 31, 2011 and May 31, 2013 to report its total annual weather normalized

consumption so that the Commission can determine whether the consumption reduction requirements of Section 2806.1(c) have been met. Also in the filing in 2013, the Commission will need to require the EDC to report its peak demand reductions so the Commission can measure compliance with Section 2806.1(d). The OCA would also note that the Act contemplates a determination by the Commission by November 30, 2013 of whether additional incremental reductions should be required. This issue should also be addressed as part of the 2013 proceeding.

If the Commission determines that an EDC has failed to achieve the requirements of Act 129, the Act calls for the imposition of civil penalties within certain ranges. The OCA submits that upon determination that an EDC has not met the requirements of the Act, the Commission should open a proceeding for the consideration of the reasonable and appropriate civil penalty. Such a matter should be assigned to an Administrative Law Judge for the development of a record and the recommendation of the appropriate level of civil penalty.

b. Measurement Of Compliance

A technical issue regarding compliance concerns the measurement of 100 hours of highest peak demand to assess the demand reductions. The Commission should resolve this issue so that the Commission can measure compliance on an “apples to apples” basis when assessing the peak demand reductions required by the Act. It is the OCA’s reading of Section 2806.1(d) that an EDC must reduce its usage in the 100 hours of highest demand by 4.5% by 2013. Given that the 100 hours of highest demand will be different each year, and will not be known until after the year of measurement, the Commission will need to develop a method for establishing the baseline to measure against, and then measuring compliance in 2013.

One method that the Commission may wish to consider would be to calculate an average peak number from the 100 hours of highest demand for comparison purposes. Under this method, to establish the baseline, the Commission would sum the 100 hours of highest peak demand (on a weather normalized basis) for the period June 1, 2007 through May 31, 2008 and then divide that sum by 100.<sup>6</sup> This will provide the average peak demand over the 100 highest hours during the statutorily designated baseline period. To determine compliance, the Commission would sum the 100 hours of highest peak demand (on a weather normalized basis) for the period June 1, 2012 through May 31, 2013 and divide that sum by 100 for the average peak demand in the compliance period. The compliance period average peak demand would then be compared to the baseline average peak demand to see if at least a 4.5% reduction has been achieved.

In that there may be other interpretations of this provision and other suggested methods to measure compliance, the Commission should include the details of its measurement methodology in the Commission's Program to avoid uncertainty and confusion in the future.

10. Section 2806.1(a)(10): A Requirement For The Participation Of Conservation Service Providers in the Implementation Of All or Part of a Plan

Section 2806.1(a)(10) requires that conservation service providers participate in the implementation of the EDC Plans. As discussed in Section II.B.7 regarding competitive bids for conservation service providers, the OCA submits that the Commission should require that Community Based Organizations (CBO) be given a full opportunity to participate effectively as conservation service providers in the bidding and selection process. Given the work that CBOs have done in providing weatherization programs and assistance to low income customers in

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<sup>6</sup> The OCA would note that the Act calls for the use of weather normalized demand. As noted above, the Commission should set forth the weather normalization procedures and apply those procedures to both the baseline year and the compliance year.

Pennsylvania and the trained work force that many CBOs have for reaching the residential sector with energy efficiency measures, participation by CBOs could be vital to a cost-effective deployment of energy efficiency measures to customers.

C. Section 2806.1(a)(11): Cost Recovery

Under Act 129, an EDC is permitted to recover on a full and current basis, under a Section 1307 mechanism, the costs of the program. Section 2806.1(k). There is, however, a limitation on expenditures for the plan set at no more than 2% of the EDC's total annual revenue as of December 31, 2006. Section 2806.1(g). Additionally, the Commission is to ensure that cost recovery for specific program measures is only from the customer class that receives the direct energy and conservation benefits. Section 2806.1(a)(11). As part of its Program, the Commission should provide some guidance on cost recovery.

Initially, the Commission should require each EDC to provide its total annual revenues as of December 31, 2006. The OCA interprets "total annual revenue as of December 31, 2006" as used in subsection (g) to mean the total revenue for distribution, transmission and generation, as well as any other revenues that an EDC would receive and reflect for ratemaking purposes.<sup>7</sup> From this information, the EDC and the Commission can then determine the maximum level of spending on the Plan. It is important to note that spending on Low Income Usage Reduction Programs pursuant to 52 Pa. Code Chapter 58 is to be excluded from the determination of the Plan expenditures. Section 2806.1(g).

The cost recovery provisions allow for the recovery of all reasonable and prudent costs associated with the provision or management of the plan. This will require the

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<sup>7</sup> The Commission may need to address the situation where an EDC had substantial customer load served by alternative suppliers in 2006. The generation revenue of an EDC that had significant switching by 2006, such as Duquesne where most industrial load is served by EGSs, will be lower and will reduce the dollars available for the program, given the 2% cap on spending.

Commission to make a determination of the prudence and reasonableness of the costs at the time recovery is sought. The OCA would also note that under Section 2806.1(h), the Commission is to recover its own costs of implementing its Program from the EDCs. The OCA would view these Commission costs as part of the prudent and reasonable costs to be recovered by the EDCs from customers.

As noted, only prudent and reasonable costs are to be recovered by the EDC. The Commission must establish a procedure for periodic review that could be similar to the procedures that were formerly utilized in the consideration of the Energy Cost Rate (ECR) mechanisms. Under such a procedure, the EDC would make an annual filing detailing its costs and providing supporting documentation to establish the reasonableness and prudence of the cost incurrence. If a party filed a complaint within a specified period, the matter would be set for hearing. The OCA would recommend that this procedure be coordinated with the procedures the Commission initiates to consider the need for plan modifications under Section 2806.1(a)(6) and (b)(2).

As to the form of cost recovery mechanism, the Act provides for a reconcilable adjustment clause under Section 1307. The OCA would recommend that the adjustment clause be a non-bypassable mechanism that adjusts on an annual basis. The costs of these plans should be able to be determined in advance with some certainty as the measures will be the subject of budgets, competitive bids, and cost projections necessary for the evaluation process. Given this relative cost certainty, the OCA does not see the need for more frequent than annual adjustments to the mechanism. The mechanism must also be non-bypassable so that all customers fairly contribute to the cost of the Plan.

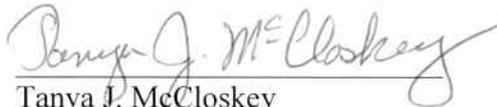
The OCA submits that the Commission should also clarify that to be considered as reasonable, costs must also be offset by the monetary benefits of the program. For example, if the implementation of a measure would qualify for alternative energy credits that could be used to meet an EDC's compliance requirements with the Alternative Energy Portfolio Standards Act, the EDC should pursue the AECs and properly reflect the value of the AECs for the benefit of its customers. Similarly, if an energy efficiency or demand response measure could receive revenue by participating in the PJM Reliability Pricing Model Auctions or otherwise receive credits through PJM programs, those benefits should be maximized and reflected in the cost recovery mechanism for the benefit of customers. There may be other benefits as well that should be captured for ratepayers from these EDC Plans.

Finally, the Commission should provide an interpretation of the type of "direct benefit" that would support cost recovery of program measures from a particular class. Wide spread implementation of energy efficiency and demand side response programs may well have the effect of lowering the wholesale price of energy and capacity in the PJM wholesale markets. Since nearly all customers of the PJM EDCs receive their generation from these markets, there may be benefits to all customers from the deployment of some programs under Act 129. To reduce controversy regarding cost recovery in the limited time frame for review of the programs, the Commission may wish to provide its interpretation of the "direct benefit" language at this stage of the proceeding.

### III. CONCLUSION

The OCA thanks the Commission for the opportunity to provide preliminary comment on the energy efficiency and demand response provisions of Act 129. The OCA looks forward to working with the Commission, the EDCs and interested stakeholders in the development of the Commission's Program and the EDC Plans.

Respectfully Submitted,



Tanya J. McCloskey  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 50044  
E-Mail: TMcCloskey@paoca.org

Counsel for:  
Irwin A. Popowsky  
Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152

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