

COMMONWEALTH OF PENNSYLVANIA



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November 3, 2008

HAND DELIVERED

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

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PA PUC
SECRETARY'S BUREAU

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

Dear Secretary McNulty:

I am delivering for filing today the original plus fifteen copies of the Comments of the Office of Small Business Advocate on Energy Efficiency and Conservation Program and EDC Plans. I have also delivered hard copies and electronic copies of these Comments to the Commission's Bureau of Fixed Utility Services (FUS), Bureau of Conservation, Economics, and Energy Planning (CEEP), and Law Bureau (Law).

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink that reads "William R. Lloyd, Jr." in a cursive style.

William R. Lloyd, Jr.
Small Business Advocate
Attorney ID No. 16452

Enclosure

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**COMMENTS ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

Background

Section 2 of the act of October 15, 2008 (P.L. ____, No. 129), added Section 2806.1 and Section 2806.2 to the Public Utility Code, 66 Pa. C.S. §§2806.1 and 2806.2. Section 2806.1 requires the Pennsylvania Public Utility Commission (“Commission”) to adopt an energy efficiency and conservation program, including the adoption and implementation of a cost-effective plan for each electric distribution company (“EDC”) with at least 100,000 customers.

By Secretarial Letter dated October 20, 2008, the Commission invited parties to provide comments on each of the individual aspects of the energy efficiency and conservation program required under Section 2806.1(a)(1)-(11). The Office of Small Business Advocate (“OSBA”) submits the following in response to the Commission’s invitation.

Comments on Individual Aspects

(1) Procedures for the approval of EDC plans

Section 2806.1(e) requires that the process for approving an EDC’s energy efficiency and conservation plan include a public hearing, the opportunity for the OSBA and other interested parties to make recommendations, and a 120-day limit on the review.

Implementing the statutory mandates to reduce peak and overall consumption could require small commercial and industrial (“Small C&I”) customers to make significant changes in the way they currently operate. In addition to incurring the costs associated with these changes, Small C&I customers will also be required to reimburse the costs of their EDC’s energy efficiency and conservation plan and to pay higher distribution rates in the future as a result of the EDC’s decline in sales. Therefore, instead of reviewing each individual EDC’s plan through a comment/reply comment/Tentative Order process, the Commission should follow the normal adjudicatory process which creates a record and produces an Opinion and Order subject to appellate review.

To facilitate review of each individual EDC’s plans, the Commission should prescribe a standard format for the plans, require answers to specified directed questions (similar to what is required in rate case filings), and require the EDC to file and serve its direct testimony simultaneously with the filing of its plan. To afford adequate time for discovery and intervenor testimony, an Administrative Law Judge (“ALJ”) should preside over the development of an evidentiary record. However, in view of the legislated time limit for the review, the parties should submit their briefs and reply briefs directly to the Commission.

(2) Evaluation process

Section 2806.1(i)(1) requires each EDC to submit an annual report on the EDC’s progress toward meeting the mandated reductions in consumption. Section 2806.1(b)(I)(j) requires an independent evaluation of the plan each year. To facilitate the

required evaluations, these annual reports should quantify the reduction in consumption attributable to each program included in the EDC's plan and identify the costs associated with each such program.

Sections 2806.1(b)(1)(I)(j) and 2806.1(b)(1)(II) require each EDC to file a new plan every five years. As contemplated by Section 2806.1(b)(1)(I)(j), review and approval of the new plan will provide the ultimate opportunity to evaluate the programs in the expiring plan and to determine if they should be continued under the new plan.

(3) An analysis of the cost and benefit of each EDC's plan

The Commission should analyze the costs and benefits of each individual EDC's plan from both the standpoint of ratepayers in the aggregate (who will bear the EDC's costs of the plan) and the standpoint of individual ratepayers (who may incur net costs in order to conserve).

It may be tempting to focus on identifying and implementing new ideas for energy efficiency and conservation. However, it is important to recognize that EDCs currently offer energy efficiency and conservation programs and have offered a variety of such programs in the past. Unfortunately, many of those programs have attracted few participants. It is likely that the generally modest response from Small C&I customers reflects both a lack of awareness of such programs and a calculation that the cost of participation (both in money and time) would outweigh the benefit of a lower bill for electricity. Therefore, before developing new programs, each EDC should meet with Small C&I customers within the EDC's service territory in an attempt to make existing (or previously discarded) programs more attractive.

The prospect of conserving electricity in order to mitigate the impact of the expiration of rate caps could make Small C&I customers more willing to invest their own time and money than they have been in the past. Furthermore, the availability of funding from the EDC and from the Commonwealth (under Special Session Act 1 of July 9, 2008) could also change the cost/benefit equation for individual Small C&I customers.

(4) Analysis of how the required reduction in consumption will be met or exceeded

The Commission will need to ask at least two separate questions. First, if the EDC's projected participation is achieved, will the proposed programs yield the EDC's projected level of reduced consumption? Second, is the EDC's projected participation in each proposed program realistic?

(5) Reduction measures to be provided equitably to all classes

The statute mandates that energy efficiency and conservation programs must be equitably *available* to all customer classes. Significantly, however, the statute does not mandate that each class must produce approximately the same level of reduced consumption. The overriding purpose of new Section 2806.1 is to reduce overall and peak energy consumption, even if meeting the mandated reduction requires a relatively narrow focus on the customers (or customer classes) which consume the largest quantities of electricity or whose consumption can most readily be shifted off peak. For example, an effective strategy for achieving the reductions mandated by Section 2806.1(c) and (d) would be to pay particular attention to space heating and air conditioning, regardless of how the potential savings might break down on a customer class basis.

(6) Exceeding required reductions in consumption

Through annual reports, the Commission should be able to identify those programs of each EDC which are most successful and those which are least successful. To exceed its required level of reduced consumption, an EDC could be required to supplement its plan by implementing programs with which other EDCs have had success.

(7) Competitive bidding of contracts with Conservation Service Providers

Section 2806.2 requires the Commission to approve and register Conservation Service Providers. As part of that approval process, the Commission will presumably recognize specialties and prescribe the minimum qualifications (including experience) for each specialty. An approved Conservation Service Provider presumably will then be eligible to bid on contracts only within its own specialty or specialties. Therefore, the success of the competitive bidding process will depend on registering an adequate number of Conservation Service Providers in each specialty.

(8) Review of Conservation Service Provider contracts

To facilitate review of contracts, the Commission should adopt a standard contract format. To guarantee maximum performance by each Conservation Service Provider, contracts should include penalties for failing to produce a specified reduction in consumption and rewards for exceeding that specified reduction.

(9) Compliance with required reductions in consumption

The annual reports required by Section 2806.1(i)(1) will provide the data for determining if the EDC is achieving the required reduction in consumption. Section 2806.1(b)(2) authorizes the Commission to direct an EDC to modify or terminate any part of an energy efficiency and conservation plan which is not achieving the required reduction in a cost-effective way. As with the process for review and approval of the plan in the first instance, a modification or termination of any aspect of the plan should be based on an evidentiary record and an adjudication subject to appellate review.

(10) Participation of Conservation Service Providers

The General Assembly has made clear its preference that conservation services be provided by third-party entities which are not affiliated with an EDC. *See, e.g.*, Section 2806.1(b)(1)(I)(e) and Section 2806.1(m). This preference presumably is based on the concern that an EDC might lack the necessary incentive to promote a decline in consumption since such a decline will reduce the EDC's distribution revenue. Nevertheless, despite this preference, the General Assembly also added Section 2807(f) of the Public Utility Code, 66 Pa. C.S. §2807(f). Section 2807(f) requires the *EDC* to install "smart meters" and to offer voluntary time-of-use rates and real-time price plans. Furthermore, Section 2807(g)(3) expressly recognizes that a "smart meter" must enable the automatic control of the customer's consumption by the customer or by the *EDC* and not just by a third-party entity, *i.e.*, a Conservation Service Provider.

(11) Cost recovery on a class basis

The OSBA strongly supports the requirement that an EDC recover the costs of an energy efficiency and conservation plan on a class basis.

Section 2806.1(k) provides the other parameters for recovery. Specifically, recovery shall be limited to only “reasonable” and “prudent” costs and shall be pursuant to a reconcilable adjustment clause under Section 1307 of the Public Utility Code. Furthermore, an EDC may not recover lost revenues associated with reduced consumption but may reflect reduced consumption in the revenue and sales data used to calculate proposed rates in a distribution base rates proceeding.

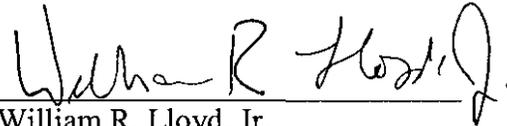
In addition to the parameters set by Section 2806.1(k), Section 2806.1(g) caps an EDC’s cost recovery at 2% of its total annual revenue as of December 31, 2006.

Because post-rate cap default service rates are to be adjusted on a quarterly basis, it would be efficient to adjust the recovery of energy efficiency and conservation plan costs on the same schedule. However, because Section 2806.1(k)(1) requires the use of the Section 1307 reconciliation process, the Commission must provide the opportunity for an on-the-record reconciliation proceeding. Therefore, the Commission should permit quarterly adjustments with annual reconciliation and should stagger its review such that not all EDCs are scheduled for annual reconciliation in the same time frame.

Conclusion

In view of the foregoing, the OSBA respectfully requests that the Commission adopt an energy efficiency and conservation program in accordance with the OSBA's comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William R. Lloyd, Jr.", written over a horizontal line.

William R. Lloyd, Jr.
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Small Business Advocate

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