

**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

**Implementation of Act 129's Energy
Efficiency and Conservation Program
and Electric Distribution Company
Plans**

Docket No. M-2008-2069887

**COMMENTS OF THE
PENNSYLVANIA UTILITY LAW PROJECT**

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INTRODUCTION

On October 15, 2008, Governor Edward Rendell signed HB 2200 into law as Act 129 of 2008, with an effective date of November 14, 2008. The Act expands the Pennsylvania Public Utility Commission's ("Commission") oversight responsibilities and imposes new requirements on electric distribution companies ("EDCs").

On October 21, 2008, the Commission issued a Secretarial Letter soliciting comments on each of the individual aspects of the energy efficiency and conservation (EE&C) program required under 66 Pa. C.S. §§ 2806.1(a)(1)-(11). These comments were to be submitted by interested parties by October 31, 2008. On October 28, 2008, the Commission issued a second Secretarial Letter extending the time by which comments were to be submitted. The new date by which comments were to be submitted was extended to November 3, 2008.

The Pennsylvania Utility Law Project ("PULP") respectfully submits these comments pursuant to the Commission's Second Secretarial Letter, dated October 28, 2008. PULP is part of the Pennsylvania Legal Aid Network, a non-profit network of legal service providers that represent the interests of low income individuals and families in Pennsylvania. In particular, PULP provides statewide representation, advice, and support in energy and utility matters related to low income, residential utility consumers. PULP thanks the Commission for this opportunity to submit these comments and be heard on this issue.

COMMENTS

The Commission requested that parties comment on the individual aspects of the energy efficiency and conservation (“EE&C”) program required under 66 Pa. C.S. §§ 2806.1(a)(1)-(11). Accordingly, listed below, PULP addresses some parts of Section 2806.1(a)(1)-(11) that have bearing on low income and other residential customers.

§2806.1 (A) - Program Administration:

PULP respectfully requests that the Commission consider two important aspects of program administration – the impact of the EE&C Program on low income, residential customers and the use of a third party program administrator.

(a) Impact Upon Low Income Customers:

PULP respectfully recommends that the Commission require as part of the EE&C Program a clear recognition of the unique position of low income households in this discussion of energy conservation, and, accordingly, that the Commission structure the EE&C Program process so that the needs and interests of low income households are specifically identified and addressed in each EDC plan.

PULP encourages the Commission and all parties to recognize that low income households are a unique constituency in the energy conservation discussions that are at the heart of implementing Act 129’s EE&C initiatives. The foundational premise of the EE&C program is that we can reduce the overall cost of electricity by reducing consumer consumption and consequent demand on the system. This, of course, presumes that consumers *can* reduce their

usage. While this basic premise is sound for most consumers, it may not be as true for low income consumers.

There are a variety of factors that go into why low income households may have a harder time reducing electric consumption or simply be unable to reduce their consumption. Unfortunately, although low income consumers tend to use less energy than other residential consumers, they bear a much higher energy burden than others.¹ Low income households tend to have older appliances and heating systems that use more energy, but these same households have fewer financial resources to repair or replace them.² Low income households tend to live in less energy efficient housing stock, whether owner or rented, and, again, have fewer financial resources with which to address associated problems due to age and disrepair.³ Each of these factors will reduce the ability of low income households to meaningfully participate in the EE&C Program, unless the Commission requires EDCs to create specially targeted programs fitted to their special needs and circumstances.

PULP respectfully recommends that the Commission ensure the EE&C Program developed in response to §§ 2806.1(a)(1)-(11) includes specific measures, in accord with §2806.1(B) (1) (G), to identify and meet these special needs of low income households.

(b) Third Party Administrator:

PULP respectfully recommends that the Commission employ the services of a third party to administer the EE&C Program in Pennsylvania rather than allow the EDCs to administer the

¹ Power, Meg PhD. Economic Opportunity Studies, "The Burden of Fiscal year 2008 Residential Energy Bills on Low-Income Consumers. FY 2006 Energy Bill Forecast: Impact on Low Income Consumers." (March 20, 2008) Charts 2 and 3 at p. 4. Retrieved from <http://www.opportunitystudies.org> on 10/30/08.

² Alexander, Barbara. "Smart Meters, Real Time Pricing, and Demand Response Programs: Implications for Low Income Electric Customers" at pp. 13-14. Retrieved from http://www.pulp.fc/Smart_Meters_Real_Time.pdf on 10/30/08.

³ Id.

program individually within their own service territories. This approach has been used successfully in other states, such as Efficiency Vermont in Vermont, NYSERDA in New York, and the Energy Trust of Oregon. There are a number of positive reasons why it is advantageous to employ a third party to administer the EE&C Program in Pennsylvania:

- Employing a third party will enable more uniformity and consistency of approach across service territories. This uniformity will enable contractors to build up expertise in core competencies because there will be similarity in approaches across service territories. This uniformity will provide equity to consumers across service territories because they will be able to access comparably proficient programs.
- Employing a third party will allow for coordination of energy efficiency programs across all utility sectors - natural gas, water, and electric distribution.
- Employing a third party will enable that entity to become a clearinghouse of best practices and instrumental in sharing these best practices through training and technical advice. Not only would this sharing occur between EDCs, but the third party could be a resource to private businesses, government, and residential customers.
- Employing a third party will enable the entity to build an expertise in data collection and program analysis specific to Pennsylvania. This expertise can then be used to help EDCs achieve even more significant reductions in consumption.
- Employing a third party will provide a single point of contact for information about the Commonwealth as a whole and how it is meeting the requirements of Act 129.

Correspondingly, there is one principal reason not to have the EE&C Program run through the individual EDCs: EDCs have a financial disincentive to reduce consumption

because EDC revenue is tied to consumption levels. Even with the best of EDC intentions and the threat of financial penalties for noncompliance built into Act 129 in Section 2806.1(F), utilities have insufficient self-interest in energy efficiency and conservation to make them apt candidates to self-administer these kinds of programs. Given that a third party will not have the same financial disincentives to reducing consumption, a third party is much more likely to quickly and expediently operate a successful EE&C Program.

§ 2806.1(A)(11) – Cost Recovery:

PULP respectfully recommends that the Commission acknowledge that low income customers will be unable to absorb additional costs in their electric bills as a result of rate increases associated with the implementation of the EE&C Program. Accordingly, PULP requests that low income customers be exempt from any costs associated with the introduction of the EE&C Program.

The introduction of program costs associated with the EE&C Program will impact low income families in a much more significant manner than they will impact other utility consumers. While it may be true that the eventual result of the EE&C Program is overall reduced costs for electricity, low income and other vulnerable customers simply can not afford the immediate increase in their bills that may be created by the introduction of the EE&C Program, even if those increases are short term. Already in Pennsylvania, the average energy burden of a low income household in 2005 ranged from 20.8% to 46% of the monthly budget as compared to only 4% of a median income household's budget.⁴ This means that low income customers have less room in their budgets to absorb additional costs. If there is any doubt about

⁴ *Policies to Mitigate Potential Electricity Price Increases*, Docket No. M-00061957 (Tentative Order entered February 13, 2007). At pp. 17-18.

the fragility of low income customers' budgets, one need only review the involuntary electric service terminations. Through September 2008, 147,523 households had electric service involuntarily terminated.⁵ Low income households make up a disturbing proportion of these terminated households. Even after reconnections are considered, 43,945 households are unaccounted. This level of service termination is astounding, and in its light the Commission must carefully consider how the most economically fragile households will fare with even modest increases in cost of service.

Because low income customers are already in such dire straits, PULP recommends that low income households be exempt from any costs associated with the introduction of the EE&C Program.

§ 2806.1(B)(1)(G) – Low Income Usage Reduction Program:

The Commission's Secretarial Letter also solicited comments on Section 2806.1(B) where it may have bearing on the development of the EE&C Program. Pursuant to this request, PULP respectfully recommends that the EE&C Program operate in close association with the only usage reduction program currently mandated for all EDCs by the Commission – the Low Income Usage Reduction Program ("LIURP").⁶

As its name suggests, LIURP is a service that helps low income consumers reduce their energy consumption through the installation and use of energy efficiency and conservation measures. The Commission requires EDCs (and natural gas distribution companies) to provide this service free of charge to residential customers in their service territory with household incomes at or below 150% of the Federal poverty guidelines. The program includes three parts:

⁵ *Terminations & Reconnections Year to Date Report for September 2008*, Bureau of Consumer Services.

⁶ See 52 Pa. Code § 58.1 *et seq.*

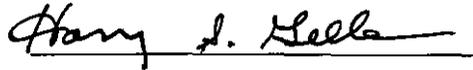
(a) an energy audit of the household, (b) the installation of energy conservation measures, and (c) the education of the household in energy conservation. The programs have been in operation for more than a decade and have been successful in helping low income households reduce their energy consumption and achieve more affordable energy bills.

Section 2806.1(B)(1)(G) explicitly requires that EDCs include specific activities targeted to households with income at or below 150% of the Federal poverty guidelines and that the expenditures for these activities must be in addition to those already required for LIURP. PULP respectfully recommends that the Commission require EDCs to build on these already successful LIURP programs by expanding them and by coordinating LIURP with the additional resources which will be provided through Act 129. The overarching goal should be to reach significantly more low income households each year and provide them with free weatherization services. Furthermore, PULP respectfully recommends that the Commission should implement as part of its EE&C Program state wide monitoring through a single coordinator for LIURP, as well as for the additional resources provided through Act 129, so that progress can be monitored in a uniform and reliable way.

CONCLUSION

In conclusion, PULP thanks the Commission for the opportunity to submit these comments on an issue that is important to the interests of low income, residential consumers. While we agree with the Commission that energy efficiency and conservation are critical issues, PULP encourages the Commission to consider carefully the fragile economic state in which many low income utility customers find themselves and to craft the EE&C Program in a manner that will shelter low income households from harm as a result of the EE&C Program's implementation.

Respectfully submitted,



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