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November 3, 2008

**VIA HAND DELIVERY**

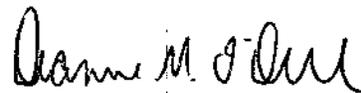
James McNulty  
Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg.  
2nd Fl., 400 North Street  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Extension of Comment Period for Energy Efficiency and  
Conservation Program and EDC Plans  
Docket No. M-2008-2069887

Dear Secretary McNulty:

On behalf of the Retail Energy Supply Association enclosed for filing please find an original and 15 copies of its Comments with regard to the above-referenced matter. Also enclosed is a disk containing the Comments in Word format.

Sincerely,



Deanne M. O'Dell  
For WolfBlock LLP

DMO/lww  
Enclosure

cc: Chairman Cawley w/enc.  
Vice Chairman Christy w/enc.  
Commissioner Powelson w/enc.  
Commissioner Pizzingrill w/enc.  
Commissioner Gardner w/enc.

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Karen Oill Moury, Director of Operations w/enc.  
Robert F. Wilson, Director, FUS, w/enc.  
Paul Diskin, Manager, FUS w/enc.  
Mitchell A. Miller, Director Bureau of Consumer Services w/enc.  
Bohdan Pankiw, Chief Counsel, w/enc.  
Louise Fink Smith, Assistant Counsel, w/enc.  
Wayne L. Williams, Director CEEP, w/enc.  
Cal Birge, CEEP, w/enc.  
June Perry, Director Legislative Affairs, w/enc.  
Tom Charles, Manager, Office of Communications, w/enc.  
Veronica Smith, Chief Administrative Law Judge, w/enc.  
Hon. David Salapa, w/enc.  
Cheryl Walker Davis, Director, Office of Special Assistants, w/enc.  
Parties Listed on Service List of Docket No. M-00061984, w/enc.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**RETAIL ENERGY SUPPLY ASSOCIATION'S COMMENTS**

**I. INTRODUCTION**

The Retail Energy Supply Association (“RESA”)<sup>1</sup> submits these comments in response to the Pennsylvania Public Utility Commission’s (“Commission”) Request for Comments on the energy efficiency and conservation (“EE&C”) program required pursuant to Act 129 of 2008.<sup>2</sup> On October 15, 2008, Governor Rendell signed H.B. 2200 into law as Act 129 of 2008 with an effective date of November 14, 2008. Among other things, the Act requires the Commission to adopt an Energy Efficiency and Conservation Program by January 15, 2009. The purpose of the Program is to enable the Electric Distribution Companies (“EDCs”) to adopt and implement energy efficiency and conservation programs to reduce energy demand and consumption within their service territories. The Act sets forth eleven specific components that the Commission must include in the Program and the Commission is requesting input on: (a) the likely procedural, technical, interpretative, and implementation issues, (b) measurement of EDC

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<sup>1</sup> RESA’s members include Commerce Energy, Inc; Consolidated Edison Solutions, Inc; Direct Energy Services, LLC; Gexa Energy; Hess Corporation; Integrys Energy Services, Inc.; Liberty Power Corp.; Reliant Energy Retail Services, LLC; Sempra Energy Solutions; SUEZ Energy Resources NA, Inc. and US Energy Savings Corp. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

<sup>2</sup> See Secretarial Letter issued October 21, 2008. 66 Pa. C.S. § 2806.1(a) as amended by Act 129 of 2008.

compliance, and (c) the level of detail required to provide EDCs adequate direction in their planning.

As detailed further below, RESA recommends that the Commission issue guidance to the EDCs to ensure that the conservation service providers (“CSP”) are selected through a competitive bidding process that includes a pre-bid understanding of the services available and broadly drafted Requests for Proposals (“RFPs”). Further, RESA recommends that the Commission adopt an action plan to ensure that all customers in an EDC’s service territory can avail themselves of Act 129 plan regardless of whether or not they receive their generation service from the EDC. Finally and in consideration of the upcoming holiday season, RESA urges the Commission to convene its working group shortly after release of the draft proposal so that there is ample time for all interested stakeholders to offer their input on this process.

## II. SPECIFIC COMMENTS

### A. The Commission Should Issue Guidance To Ensure A Competitive Bidding Process

To accomplish Act 129’s goal of promoting efficiency and conservation, EDCs are required to develop energy efficiency and conservation plans and to contract with unaffiliated CSPs to implement them.<sup>3</sup> The contracts with the CSP must be competitively bid and the CSP cannot be affiliated with the EDC.<sup>4</sup> The Commission is required to enforce these requirements both in the direction provided to the EDCs before they submit their plans and in the Commission’s authority to review all the proposed contracts prior to their execution.<sup>5</sup>

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<sup>3</sup> 66 Pa.C.S. § 2806.1(B)(1)(I)(E).

<sup>4</sup> *Id.* at §§ 2806.1(A)(7) and (M).

<sup>5</sup> *Id.* at § 2806.1A(8).

To ensure that CSP contracts are competitively procured, the Commission should require EDCs to detail how they became educated about the CSP services available in their service territories, to explain how they developed their RFPs, how they plan to provide notice of the RFP, and to identify the measures they will implement to ensure the maximum amount of bidders. EDCs should be required to engage potential CSPs prior to developing their RFPs so that the EDCs have a comprehensive understanding about all the services and offerings of CSPs in their service territory. With this knowledge, EDCs can tailor broad RFPs to give all the potential CSPs a fair and full opportunity to place bids for the contracts. RFPs narrowly tailored so that only one or a few specific CSPs can bid does not meet the goal of competitive procurement. For example, an RFP with respect to 100 MW of supply would only invite bidders from larger CSPs that have the ability to service that load. On the other hand, a contract broken into smaller components would enable smaller bidders to participate. By requiring EDCs to work with CSPs prior to the development of their RFPs and to provide details to the Commission about how their RFPs are developed, the Commission can ensure that the EDC plans comply with the competitive bidding requirements of Act 129. By taking steps to ensure a fair competitive process, a greater variety of CSPs will be able to participate in these programs bringing more innovation and diverse options to fulfill the goals of Act 129.

**B. EDC Programs Must Not Be Conditioned On Taking Default Service From The EDC**

A policy goal of the Commonwealth is to develop a functioning competitive energy market that enables consumers to receive electricity generation from alternative suppliers (“EGSs”). To accomplish this goal, the Commission needs to ensure that programs implemented by EDCs are competitively neutral, i.e. they are available to both

EDC and EGS customers. In this case, all customers in a service territory should be permitted to avail themselves of the conservation services or energy efficiency grants contemplated by Act 129. If customers who select alternate suppliers are not permitted to avail themselves of these programs because they have chosen to shop, then the Commission will be discouraging customers from seeking competitive alternatives. Creating barriers to a customer's ability to receive service from a competitive supplier is counterproductive to the goal of establishing a functioning competitive market and must be avoided. To ensure competitive neutrality in the implementation of Act 129, the Commission should adopt an action plan which includes, at a minimum, the following:

- In the plans submitted by the EDCs, the Commission should require them to provide details about how competitive neutrality will be ensured in their proposals.
- All contracts between the EDC and the CSP must include an affirmative statement that the proposed programs will not be conditioned on the customer taking default service from the EDC.
- Any consumer education materials produced by the Commission, the EDC or the CSP should emphasize that participation in a conservation or energy efficiency program will not be conditioned on the customer taking default service from the EDC.

**C. The Commission Should Convene Working Group As Soon As Possible After Release Of Draft Staff Proposal**

In its Secretarial Letter, the Commission indicates that it will release a draft staff proposal in late November and convene a working group in mid-December for the purpose of receiving additional stakeholder input prior to finalization of the program.

RESA supports the Commission's overall approach to provide stakeholders with continued opportunities for review and input. As a practical matter, however, RESA suggests that the working group meeting be convened as early in December as possible (shortly after release of the staff proposal) to ensure that there are ample opportunities for discussion among staff and interested stakeholders about the draft proposal. RESA anticipates that the two major holidays between mid-December and January 15, 2009 will impact the availability of Commission staff as well as interested stakeholders to engage in meaningful dialogue about the draft proposal. Therefore, if the parties are able to start the discussions sooner rather than later, then they will have more time to attempt to reach consensus on issues and will be able to present more well-developed suggestions and ideas for the Commission's consideration.

### III. CONCLUSION

RESA appreciates this opportunity to provide comments regarding the Commission's implementation of Act 129 and looks forward to a continued role in the process.

Respectfully submitted,



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Date: November 3, 2008

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