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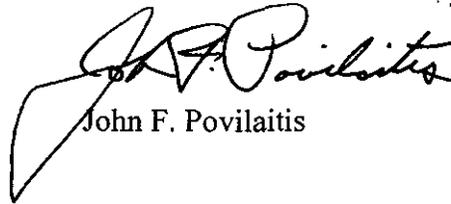
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
400 North Street – 2nd Floor
Commonwealth Keystone Building
Harrisburg, Pennsylvania 17120

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

Dear Secretary McNulty:

Enclosed are an original, nine (9) copies and an electronic Word version on disk of the Comments of West Penn Power Company, d/b/a Allegheny Power in the above-referenced proceeding. An original and nine copies of this filing is being provided to the Commission and copies are being served as indicated in the attached Certificate of Service.

Very truly yours,



John F. Povilaitis

JLM/ck
Enclosures

c. Certificate of Service

The Honorable James H. Cawley, Chairman
The Honorable Tyrone J. Christy, Vice-Chairman
The Honorable Robert F. Powelson, Commissioner
The Honorable Kim Pizzingrilli, Commissioner

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The Honorable Wayne E. Gardner, Commissioner

The Honorable Veronica Smith, Chief Administrative Law Judge
The Honorable David Salapa, Administrative Law Judge

Cheryl Walker Davis, Director, Office of Special Assistants

Karen O. Moury, Director of Operations

Robert F. Wilson, Director, Fixed Utility Services, (w/disk)

Paul Diskin, Manager, Energy, Fixed Utility Services

Mitchell A. Miller, Director, Bureau of Consumer Services

Bohdan R. Pankiw, Chief Counsel, (w/disk)

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Louise F. Smith, Assistant Counsel

Wayne L. Williams, Director, CEEP (w/disk)

Cal Birge, Conservation, Economics and Energy Planning

June Perry, Director, Legislative Affairs

Tom Charles, Manager, Office of Communications

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Energy Efficiency and Conservation
Program and EDC Plans

: Docket No. M-2008-206988

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COMMENTS OF WEST PENN POWER COMPANY
d/b/a ALLEGHENY POWER

In its Secretarial Letter dated October 20, 2008 the Pennsylvania Public Utility Commission ("Commission") invited comments concerning the energy efficiency and conservation provisions of Act 129 of 2008 amending provisions of the Pennsylvania Public Utility Code. West Penn Power Company d/b/a Allegheny Power ("Allegheny" or "the Company") provides the following comments.

I. SECTION 2806.1(A) (1) through (11)

Section 2806.1(a) provides that by January 15, 2009, the Commission shall adopt an energy efficiency and conservation program to require electric distribution companies ("EDC") to adopt and implement cost-effective energy efficiency and conservation plans to reduce energy demand and consumption within the service territory of each electric distribution company. Subsections 2806.1(a)(1) through (11) provide eleven considerations that must be part of the Commission's program. Allegheny provides comments on each of the eleven items.

2806.1(a)(1): Procedures For The Approval Of Plans Submitted Under Subsection (B).

A later section of Act 129 -- Section 2806.1(e) -- contains fairly specific procedures for the submission, review, approval or disapproval, and resubmission of plans in the event of

disapproval. The most conspicuous and difficult element of the statutory framework is that the Commission must approve or disapprove each plan within 120 days of the submission of the plan by the EDC. Four months clearly does not allow time for a traditional litigation schedule of written direct testimony, rebuttal, surrebuttal, discovery, hearings, briefs, reply briefs, and exceptions. The procedures for approval of EDC plans must, therefore, significantly abbreviate and alter the litigation schedule and employ a collaborative process.

A reasonable format for submission of plans, public notice, and public participation may be as follows:

- 1) Filings should be complete and contain information to meet requirements of 2806.1(B) (1) (a) through (k). Electric distribution companies may, but are not required to submit written testimony in support of the plan. The filing would include:
 - a) Work papers;
 - b) Description of work to be performed by Conservation Service Providers;
 - c) Form of contracts for CSPs;
 - d) Description of competitive bid process for retaining CSPs;
 - e) Tariff sheets for all tariff changes and Section 1307 cost Recovery mechanism;
 - f) Office of Consumer Advocate and Office of Small Business Advocate should be copied on the initial filing.
- 2) Publication of the Plan in the Pennsylvania Bulletin within 20 Days of filing, giving the date for the public hearing that will take place.
- 3) Parties, including but not limited to OCA and OSBA, may intervene and submit comments on EDC filed plans within 30 days of receiving the EDCs' filing. EDCs should have 20 days to respond in writing to other parties' comments, with statements of fact supported by affidavit or pre-filed testimony.
- 4) A hearing before an ALJ on material issues of disputed fact should be held within 20 days after EDC responses are filed and the record certified to the Commission.
- 5) Initial and reply briefs would be submitted directly to the Commission.
- 6) Based on the plans and recommendations submitted, the Commission will approve or reject the EDC's plan within 120 days.

Allegheny further suggests that EDCs should be permitted to initiate optional roundtables or working groups in advance of their filings or during the review process to narrow issues or disputes with statutory parties and other customer groups.

2806.1(a)(2): An Evaluation Process, Including A Process To Monitor And Verify Data Collection, Quality Assurance And Results Of Each Plan And The Program.

Allegheny believes that monitoring and verification (“M&V”) expenditures should focus on verifying the installation of high-efficiency devices and reasonably estimating energy savings, not to drive a precise accumulation of metered energy savings over time. M&V can be very expensive and should only be used to the extent necessary to reasonably verify program effectiveness.

The approach to M&V depends on the confidence level required and the practicality of physical performance measurement. This will range from physical inspection and verification of nameplate data to short-term metering. The level of certainty required for verifying measure energy savings will vary from measure to measure. Not all measures should expect to achieve the same level of M&V uncertainty since uncertainty is proportional to the complexity of the measure and the variations in operations before and after retrofit or replacement. The cost of determining energy savings depends on many factors such as:

- Number of measures and the complexity;
- Sample sizes used for metering representative equipment;
- Number and complexity of independent variables;
- Duration of the reporting period; and
- Accuracy requirements.

M&V cost should be limited to the minimum amount needed to provide adequate certainty and verifiability in the estimated savings, relative to the magnitude of the estimated savings and the utility cost. A balance should be struck between actual measurements and estimates to minimize costs within an acceptable risk tolerance. The appropriate level of confidence in estimating savings is a function of the cost-effectiveness of increasing the confidence in savings. Typically, average annual M&V costs are less than 10% of the average annual savings being estimated. The quantity of savings at stake, therefore, places a limit on the M&V expense, which in turn determines the degree of uncertainty that is acceptable. Thus, low-value measures cannot typically be afforded much M&V expense, based on the 10%-of-savings guideline, especially if there is little variation in the application.

Demand and energy savings, in all cases, should be based on “deemed” savings, as described in the Technical Reference Manual. A stakeholder group should be formed to review the energy savings for the devices listed, develop demand savings for the devices listed and propose additions to the devices listed.

2806.1(a)(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.

Allegheny supports the use of the TRC test, as defined in the California Standard Practices Manual in assessing the cost-effectiveness of a measure, program or plan. The TRC test is the broadest in scope without including externalities. The TRC test includes the participants’ cost, the program administrator costs and the avoided supply costs and thus provides a basis of comparing both supply-side and demand-side options.

Evaluations should be conducted on a measure basis. EDCs should endeavor to deploy the most cost-effective measures to meet the reduction targets. However, the EDCs should be permitted to deploy measures with TRCs less than 1.0, as necessary to reach the target reductions. In accordance with the California Standard Practices Manual, general awareness programs should not be subject to the TRC test. Further, Allegheny has not traditionally screened public benefits programs, as these programs are undertaken with desired outcomes other than cost-effectiveness.

2806.1(a)(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).

The Company anticipates that the Commission will develop a framework for evaluating individual plans to achieve the usage reduction requirements. Allegheny emphasizes that each EDC has different customer attributes and the Commission framework should allow, in particular, for variations in customer usage elasticity due to variations in customer rates among EDCs.

2806.1(a)(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.

Allegheny understands the intent of the legislation to provide a diverse portfolio of EE&C programs presenting opportunities for all customers to participate. Residential programs should include most of the major energy consuming devices in the home, thus increasing the opportunity for each and every residential customer to participate in one or multiple programs.

Likewise, the commercial and industrial programs should encompass the core energy consuming devices for the types of customers in these sectors. In addition, as industrial and commercial customer are less homogeneous than residential customers, a custom applications program which addresses unique or specialized processes or applications is a necessary inclusion in the EDC plan.

2806.1(a)(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).

Allegheny plans to conduct an annual review of its programs to assure that participation benefits from lessons learned as well as participant and non-participant feedback. Based on this and other feedback, programs may be modified to maximize participation. Based on actual participation and actual costs, programs may be augmented, diminished or replaced as the evaluation assumptions prove out.

The Commission should develop guidelines of permissible program changes that may be implemented with only notice to the Commission. This will provide the EDC's with the opportunity to continuously improve program effectiveness, without a lengthy approval process.

2806.1(a)(7): Procedures To Require That Electric Distribution Companies Competitively Bid All Contracts With Conservation Service Providers.

EDCs should be permitted to use either an RFP or auction process to competitively bid for demand and energy reductions and/or services. The legislation requires the Commission to publish a list of certified CSPs by March 1, 2009. Allegheny suggests that this date prohibits securing CSP services for plan development for the June 1, 2009 plan filing. The Commission should publish a list of certified CSPs at the earliest possible date, so as not to delay work on the

plans. Further, Allegheny suggests that a stakeholder group be formed to develop a framework for CSP certification.

2806.1(a)(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).

To the extent that the EDCs utilize CSPs to develop or deliver programs, the Commission should develop standard contracts to be used. The review process established by the Commission should consider the short timeframe to achieve the targeted reductions. To prevent delays in program roll-out and to facilitate achievement of the targeted reductions, the Commission should consider a process to approve contracts for CSP services prior to approval of the full plan. That is, the Commission should allow acceleration of approval of a portion of an EDC's plan concerning contracts.

2806.1(a)(9): Procedures To Ensure Compliance With Requirements For Reduction In Consumption Under Subsections (C) And (D).

Allegheny proposes that the Commission adopt a "deemed-saving" approach to determining progress toward the targeted reductions. Based on the Technical Resource Manual (as modified and amended for this purpose), the energy and demand savings related to specific measures should be prescribed, such that the savings achieved from each measure is simply the number of installations multiplied by the prescribed savings.

A deemed-savings approach is conducive to reducing measurement and verification costs, allowing resources to be focused on proliferation of efficient devices, not capturing the

nuances in the owner's operation of the device. Further, agreed-upon, deemed savings for each measure simplifies the evaluation process, eliminates inconsistencies with respect to program savings among EDCs and reduces ambiguity in forecasting the required reductions.

By using a Technical Reference Manual, the evaluator and/or the Commission can calculate the "deemed" energy savings for each program established under the EDC plan, review implementation by the EDC, obtain cost information and then compare the potential consumption and/or peak demand reduction with the mandated reduction which each EDC must achieve under Sections 2806.1 (c) and (d). Such an approach to evaluation could establish standards applicable across the state to measure potential plan success. Moreover, use of a Technical Reference Manual would ensure objective standards and avoid the impossible task of determining in the context of plan approval, whether individual consumers would actually use proposed energy efficient and conservation measures.

The Technical Reference Manual should be updated for changes such as new minimum efficiency standards.

2806.1(a)(10): A Requirement For The Participation Of Conservation Service Providers In The Implementation Of All Or Part Of A Plan.

Each EDC will have the best understanding of the capabilities of CSPs in its service territory. Therefore, EDCs should not be required to contract with CSPs for a minimum level of services or dollar amount to implement programs. The EDC should have the option of outsourcing its plan to any extent that it chooses, provided it meets the plain language of the statute, which again, does not require a minimum level of services that must be contracted, but rather states that some level must be contracted.

2806.1(a)(11): Cost Recovery To Ensure That Measures Approved Are Financed By The Same Customer Class That Will Receive The Direct Energy And Conservation Benefits.

Allegheny proposes to allocate the costs of EE&C programs to each rate schedule. This approach should be considered consistent with the statutory language that measures are "financed by the same customer class" for the following reasons. The residential EE&C program allocation is straightforward since Allegheny has only one residential rate schedule. However, the commercial and industrial EE&C program cost allocation is not as straightforward since Allegheny does not have rate schedules dedicated specifically to commercial or industrial customers, so the allocation issue is not as simple as determining whether a given rate schedule is "commercial" or "industrial." To align cost allocation with cost causation, the allocation of the commercial and industrial EE&C programs should be based on the target market for each program or measure.

Not all customers taking service under each rate schedule will participate in each and every program. Therefore the allocation methodology should attempt to attribute programs to each of the various rate schedules to the extent the customers taking service under that rate schedule are most likely to have an application that permits them to participate in the program. Allocating costs by rate schedule in this manner does not mean that customers on a rate schedule are not eligible to participate in a program where the costs of that program have not been allocated to that rate schedule. Rather, it would mean that the number of participating customers taking service under rate schedules that have not been allocated costs is assumed to be insignificant. Should it be determined that the number of customers participating in a given program that has not been allocated costs becomes significant, the program cost allocation should be modified and reconciled to include such rate schedule.

II. ADDITIONAL ISSUES

2806.1(b)(1)(B): A MINIMUM OF 10% OF THE REQUIRED REDUCTIONS IN CONSUMPTION UNDER SUBSECTIONS (C) AND (D) SHALL BE OBTAINED FROM UNITS OF FEDERAL, STATE AND LOCAL GOVERNMENT, INCLUDING MUNICIPALITIES, SCHOOL DISTRICTS, INSTITUTIONS OF HIGH EDUCATION AND NONPROFIT ENTITIES.

The legislation does not require mandatory participation by federal, state and local government entities. While EDCs should endeavor to comply with this provision, should an EDC be unable to achieve the 10% reduction from government entities, the EDCs should not be required to curtail more successful programs by shifting expenditures, nor should they be penalized for lower participation from this group. The Commission should give guidance as to whether it expects that the EDCs provide the same program offerings to government entities as other similarly situated customers or that the program offerings to government customers perhaps should be more lucrative for the specific purpose of assuring compliance with this provision.

2806.1(b)(1)(G): THE PLAN SHALL INCLUDE SPECIFIC ENERGY EFFICIENCY MEASURES FOR HOUSEHOLDS AT OR BELOW 150 % OF THE FEDERAL POVERTY INCOME GUIDELINES. THE NUMBER OF MEASURES SHALL BE PROPORTIONATE TO THOSE HOUSEHOLDS' SHARE OF THE TOTAL ENERGY USAGE IN THE SERVICE TERRITORY.

The legislation does not require mandatory participation by low income customers. While EDCs should endeavor to comply with this provision, should an EDC be unable to achieve a proportional reduction from low income customers, the EDCs should not be required to curtail more successful programs by shifting programs, nor should they be penalized for lower participation from this group. The Commission should give guidance as to whether it expects

that the EDCs provide the same program offerings to low income entities as other similarly situated customers or that the program offerings to low income customers should be as lucrative as necessary, perhaps including give-away programs, for the specific purpose of assuring compliance with this provision.

Section 2806.1(b)(I)(J): Plans evaluated annually by independent evaluator

If it appears that the statutory reductions will not be met, the plan can be modified by the Commission, the CSP and/or the EDC. The legislation anticipates that each EDC will obtain an annual independent evaluation to determine cost-effectiveness and subsequently a full review of each five-year plan. The legislation requires, “to the extent practical,” that the EDC adjust its plan “on a going-forward basis as a result of the evaluation.” The EDC’s obligation to conduct an evaluation using an independent third party to suggest interim modifications to an EDC plan shows the legislative intent to promote flexibility to achieve the Act’s goals. The approval and modification process should be streamlined so as to allow maximum opportunity for success within the tight procedural schedules. The approval and modification process should not become mired in disputes about choices of conservation measures, or projections of savings.

2806.1(c)(3): IF THE COMMISSION DETERMINES THAT THE BENEFITS OF THE PROGRAM EXCEED THE COSTS, THE COMMISSION SHALL ADOPT ADDITIONAL REQUIRED INCREMENTAL REDUCTIONS IN CONSUMPTION.

Many factors other than simply the comparison of benefits and costs must be considered before extending or requiring further reductions under an existing program. Factors such as market saturation, availability of new technologies and free-ridership are important determinants

as to whether a program will be as effective in the future as it is currently. Further, the logical progression is to first focus on the deployment of more efficient equipment and then shift the focus to the manner in which it is operated. The continuum moves from passive customer participation to interactive customer participation, while the program offerings moving from targeting equipment efficiency to targeting more efficient equipment operation. Program offerings should be designed and replaced commensurate with market transformation occurring across this continuum.

Allegheny also submits that maximizing the benefits from EDC dollars toward improving energy efficiency in the Commonwealth require a joint effort among industry, utilities and the Commonwealth of Pennsylvania. Pennsylvania needs to address more stringent building codes, appliance standards and targets for energy intensities for industry. Industry needs to place energy-efficiency investment on the same priority as investments in productivity and quality improvements. Retailers need to track and report the sale of energy-efficient devices so that the market transformation may be assessed.

Section 2806.1(c): Weather Normalization

This term is used to modify both the peak target and the overall usage target. Yet weather normalized is not defined. As a PJM member, Allegheny would prefer that PJM certification of DR/ILR resources be considered sufficient demonstration of “deemed” achievement.

Allegheny proposes that EDCs should be able to claim curtailment credits from 3rd party Curtailment Service Providers.

Allegheny proposes that demand and energy reductions should be reported at the generator level, including losses. Allegheny specifically submits that the Commission should recognize that EDCs may report distribution system loss improvements.

Section 2806.1(d): Peak 100 hours of highest demand.

Allegheny requests that the top 100 hours to be limited to the summer period. Given the dual-peaking nature of Allegheny's load it would be very costly to deploy both an air conditioning and a water heater control program to reduce both summer and winter peak hours. Further, winter DR produces no PLC benefit.

2806.1(f): Penalty Provisions

Allegheny fully concurs with the comments of the Energy Association concerning the penalty provisions of Act 129. The Commission should determine that the imposition of a financial penalty under section 2806.1(F)(2) of the Act is directory rather than mandatory. In determining whether any penalty is warranted under this section, the Commission should consider factors that include, among others, whether the electric distribution company properly implemented the Commission-approved plan and whether meeting the consumption reduction objectives were within the company's control.

Paragraph (2) of subsection (F), which states that an electric distribution company "shall be subject" to a subparagraph (I) civil penalty of not less than \$1 million, nor more than \$20 million, establishes no direct beneficiary of this financial penalty for failure to achieve subsection (C) or (D) consumption reductions. Rather, the essence of a Commission finding that the subsection (C) and (D) consumption reductions were not met is that responsibility to achieve

the reductions “shall be transferred” to the Commission under paragraph (2), subparagraph (II), and the Commission must then implement a plan to achieve the required reductions under subparagraph (A).

Paragraph (2) which establishes a \$1 to \$20 million penalty for failing to achieve specified electric consumption reduction objectives indicates the electric distribution company “shall be subject” to this penalty and does not, explicitly, distinguish between companies that followed the Commission-approved plan, and those that did not. But the only energy efficiency plans that should be approved by the Commission are those that are expected to meet the consumption reduction requirements of subsections (C) and (D). 66 Pa. C.S. § 2806.1(B)(1). When the Commission reviews proposed contracts with conservation service providers, it can order the modification of those contracts “to *ensure* that the plan meets the requirements for reduction in demand and consumption under subsections (C) and (D).” 66 Pa.C.S. §2806.1(A)(8). Moreover the Commission “shall direct an electric distribution company to modify or terminate any part of an approved plan if it determines an efficiency or conservation measure will not achieve the required consumption reductions. 66 P.A. § 2806.1(B)(2). The Commission is also authorized to correct any deficiencies in plans proposed by the electric distribution company. 66 Pa. C.S. § 28806.1(E)(2). Therefore the Commission has direct responsibility to ensure that a plan, if implemented, in fact will achieve the intended consumption reductions.

Although the penalty specified by subsection (F), paragraph (2) uses the word “shall” and although the general rule of statutory construction indicates a mandatory, not directory requirement, nevertheless there are exceptions to this rule. Whether a provision is mandatory or directory depends on the intent of the General Assembly, as ascertained from a consideration of

the entire Act, its nature; its object and the consequences that would result from how it is construed. Thus, the controlling question in determining whether a provision is mandatory or directory is what the legislature intended when drafting the statute, which includes considering the consequences of interpreting "shall" one way or the other.

An interpretation of the Act that finds the imposition of the penalty mandatory, rather than directory amounts to what is essentially a strict liability standard. Such a consequence is unconstitutional. If the Commission interprets subsection (F), paragraph (2), subparagraph (I) to require the imposition of a penalty that ranges from \$1 million to \$20 million, even where the electric distribution utility followed the plan approved, or as modified and approved by the Commission, the imposition of such a significant cost penalty that is non-recoverable from ratepayers is so arbitrary and fundamentally unfair that it violates substantive due process. Due process problems are evident by, *inter alia*, the fact that the fine would be imposed, even though the utility followed a Commission-approved plan, and by the fact that the targeted energy reductions require a modification of customer behavior that is largely beyond the control of the utility.

Also, "shall" may be construed to mean "may" when no right or benefit to anyone depends on its imperative use; when no advantage is lost, when no right is destroyed, no benefit is sacrificed, either to the public or to any individual, by giving it that construction. Here, no right or benefit to anyone is lost if the Commission refrains from imposing a penalty where the electric distribution company and the Commission made their best efforts to implement a plan that was expected to meet the consumption reduction goals of the Act, but did not in fact reach the objective. Regardless of the amount of penalty imposed, \$1 million, \$20 million or no penalty at all, if the consumption reduction goals are not met, the Commission is still required to

assume responsibility to achieve the reduction, implement a plan that will achieve the reductions and contract with service providers to implement any portion of the plan. Moreover, in contrast to the penalty provision of subsection (F)(1), where low income customers benefit from an imposed penalty, no party directly benefits from a penalty imposed by the Commission under subsection (F)(2).

An additional constitutional problem could arise if a penalty of sufficient magnitude was imposed on an electric distribution company that jeopardized its financial condition under the Hope Doctrine to the point where its property could be considered confiscated or its ability to provide service was jeopardized.

An interpretation that the (F)(2) penalty provision was directory would not defeat any purpose of the Act and would avoid the absurd result of a company being fined without any unreasonable or unlawful conduct being established, as well as avoiding constitutionality issues. The Commission should indicate in its order on program requirements that the (F)(2) penalty is directory and not mandatory.

If the Commission determines (F)(2) is directory, it requires a standard to determine if any penalty is warranted. And, even if the Commission decides the (F)(2) penalty is mandatory, which the Energy Association argues against, it still needs a standard to determine where in the range of authorized penalties a penalty should be set. Allegheny concurs with the Energy Association that the following factors should be adopted to determine whether a penalty under (F)(2) is warranted and if so, at what level the penalty should be set within the authorized range of penalties:

1. Was physical or economic force majeure involved in the failure to achieve the consumption reduction objective and whether failure to meet the consumption reduction goals was within the control of the electric distribution company?

2. Did the electric distribution company follow the Commission-approved plan?
3. Did the electric distribution company adequately monitor their plan and propose appropriate modifications for the Commission's review and approval?
4. Does evidence exist that similarly situated companies were able to achieve equivalent consumption reduction objectives?
5. To what extent was the consumption reduction goal not met?
6. The harm that arose due to failure to achieve the consumption reduction objective.
7. Other factors relevant to the penalty issue.

The Commission should determine that the (F)(2) penalty is directory rather than mandatory, and adopt the foregoing standard to decide the issue of whether, and to what extent, a penalty pursuant to (F)(2) should be set.

2806.1(k)(2): DECREASED REVENUES OF AN ELECTRIC DISTRIBUTION COMPANY DUE TO REDUCED ENERGY CONSUMPTION OR CHANGES IN ENERGY DEMAND SHALL NOT BE A RECOVERABLE COST UNDER A RECONCILABLE AUTOMATIC ADJUSTMENT CLAUSE.

Loss of revenue is a valid cost-recovery consideration for EDCs and the Commission should use all ratemaking mechanisms at its disposal to alleviate the adverse rate and rate-making burdens on EDCs that may result from this section.

2806.1(m)(II)(2): ENERGY EFFICIENCY AND CONSERVATION MEASURES SHALL INCLUDE SOLAR OR SOLAR PHOTOVOLTAIC PANELS, ENERGY EFFICIENT WINDOWS AND DOORS, ENERGY EFFICIENT LIGHTING, INCLUDING EXIT SIGN RETROFIT, HIGH BAY FLUORESCENT RETROFIT AND

PEDESTRIAN AND TRAFFIC SIGNAL CONVERSION, GEOTHERMAL HEATING, INSULATION, AIR SEALING, REFLECTIVE ROOF COATINGS, ENERGY EFFICIENT HEATING AND COOLING EQUIPMENT OR SYSTEMS AND ENERGY EFFICIENT APPLIANCES AND OTHER TECHNOLOGIES, PRACTICES OR MEASURES APPROVED BY THE COMMISSION.

Allegheny reads Section 2806.1(m)(III)(2) to offer examples of measures that should be considered in the development on an EDC's plan, but are not mandatory inclusions in the EDC's plan. The Commission should give guidance as to whether it expects that the EDCs plans will include all of the energy efficiency measures identified in this section. Further, it is not clear whether these measures are subject to the TRC test requirement or simply require Commission approval for inclusion in the plan.

2806.1(m)(III)(2): "QUALITY ASSURANCE." ALL OF THE FOLLOWING: (1) THE AUDITING OF BUILDINGS, EQUIPMENT AND PROCESSES TO DETERMINE THE COST-EFFECTIVENESS OF ENERGY EFFICIENCY AND CONSERVATION MEASURES USING NATIONALLY RECOGNIZED TOOLS AND CERTIFICATION PROGRAMS.

Allegheny does not agree that an audit of each facility is required to determine energy savings potential, nor should an audit be a prerequisite to participate in an EDC program. Residential customers are the most homogeneous customer class. Residential programs can be designed very prescriptively to target the major energy consuming systems in the home, which are HVAC, appliances and lighting. Regarding commercial and industrial customers, the focus should be to address the major energy consuming devices which are HVAC, office equipment, lighting and process load. There are instances where prescriptive programs are effective for similar commercial and industrial customers, such as convenience stores and retail space, and there are those applications that are highly specific, such as large central plant operations or

metal sintering. Prescriptive programs can sufficiently address the needs of the more homogeneous customers without a facilities audit. However, for custom applications, as in the case of industrial process, a custom audit is likely required. Because of the expensive of facilities audits, audits should only be employed where prescriptive programs do not adequately address the customer's systems or operations.

2806.1(m)(III)(2): "QUALITY ASSURANCE." ALL OF THE FOLLOWING: (2) INDEPENDENT INSPECTION OF COMPLETED ENERGY EFFICIENCY AND CONSERVATION MEASURES COMPLETED BY THIRD-PARTY ENTITIES TO EVALUATE THE QUALITY OF THE COMPLETED MEASURE.

Allegheny believes that some evaluation, measurement and verification of program effectiveness is required to assure the sufficiency of the programs and to enable continuous improvement of the program offerings. However, it is unnecessary to measure, inspect and/or verify each and every installation. EM&V can be very expensive and should only be used to the extent necessary to reasonably verify program effectiveness. Instead, statistically valid samples should be used to verify and evaluate customer installations. Lastly, with respect to contractor quality, EDCs should not be required to train or certify contractors.

2807(f): SMART METER TECHNOLOGY AND TIME OF USE RATES (7)THIS PARAGRAPH INCLUDES ANNUAL DEPRECIATION AND CAPITAL COSTS OVER THE LIFE OF THE SMART METER TECHNOLOGY AND THE COST OF ANY SYSTEM UPGRADES THAT THE ELECTRIC DISTRIBUTION COMPANY MAY REQUIRE TO ENABLE THE USE. . . .

Allegheny proposes that the definition of smart meter cost include the follow items and categories:

1. In-home Devices (IHD) and Home Area Network (HAN)

- Displays
 - Thermostats
 - Load control switches
 - HAN router/extender
 - HAN gateway
 - Installation
2. Smart Meters
- Meter
 - Service switch
 - Communication options (HAN, LAN and WAN)
 - Installation
3. Smart Grid
- Fault Current Interrupters
 - Capacitor Bank
 - Recloser
 - Feeder meter
 - Transformer meter
4. Advanced Meter Infrastructure (AMI) Communications
- Local Area Network (LAN)
 - RF LAN design and site survey
 - Neighborhood Collector
 - Collector WAN option board
 - Collector installation
 - Wide Area Network (WAN)
 - WAN installation
 - WAN circuit provisioning
 - WAN monitoring
 - 5. AMI IT
 - Hardware
 - Metering System Application Server (prod, test, QC)
 - Metering System Communications Server (prod, test, QC)
 - Metering System Database Server (prod, test, QC)
 - Software
 - Metering System Application
 - Metering System Database
 - Meter Data Management System
6. AMI Integration

- Enterprise Service Bus Installation
 - CIS Interface
 - Collections Interface
 - PJM Load Settlement Interface
 - Capacity Management Interface
 - Work Management Interface
 - Outage Management Interface
 - Asset Management Interface
 - SCADA Interface
7. Legacy Upgrades to support AMI
 8. Tariff development
 - Demand Management program
 - Time Of Use rates
 - Critical Peak Pricing rates
 9. Communications and Marketing
 - Consumer demand management programs
 10. Other
 - Depreciation
 - Financing Cost
 - Cost of removal of existing metering equipment and systems
 - Undepreciated costs of existing metering equipment and systems

2807(f)(7): (I) THROUGH BASE RATES, INCLUDING A DEFERRAL FOR FUTURE BASE RATE RECOVERY OF CURRENT BASIS WITH CARRYING CHARGE AS DETERMINED BY THE COMMISSION; OR (II) ON A FULL AND CURRENT BASIS THROUGH A RECONCILABLE AUTOMATIC ADJUSTMENT CLAUSE UNDER SECTION 1307.

Allegheny reads the intent of legislation, concerning cost recovery of smart meter costs, to be that costs may be recovered through base rates or a surcharge simultaneously, such that a surcharge will be used to recover costs on a full and current basis in the interim between base rate cases. At the time of a base rate case, smart meter costs recovered under the surcharge

would be moved to base rates and the surcharge reset to zero. As additional smart meter costs are incurred the surcharge would again be incremented to recover those new costs on a full and current basis.

III. CONCLUSION

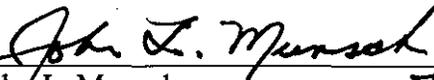
Allegheny requests that the Commission incorporate Allegheny's suggestions in developing guidelines or policies implementing Act 129. Allegheny submits that a primary point is that there is an inherent unfairness, and legal due process issues, in imposing penalties on a company for its compliance with a state-approved course of action. An EDC should not be subject to penalties for following a Commission-approved energy efficiency plan.

Respectfully submitted,

West Penn Power Company
d/ba Allegheny Power

Date: November 3, 2008

By:


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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing documents in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

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