

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF THE
OFFICE OF SMALL BUSINESS ADVOCATE
ON THE DRAFT IMPLEMENTATION ORDER**

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”) submitted comments on November 3, 2008, in response to the Commission’s invitation.

By Secretarial Letter dated October 29, 2008, the Commission announced a special *en banc* hearing on alternative energy, energy conservation and efficiency, and demand side response to be held on November 19, 2008. The OSBA presented testimony at that hearing.

By Secretarial Letter dated November 26, 2008, the Commission invited parties to provide comments on a Draft Implementation Order (“Order”) and to respond to certain questions. The OSBA submits the following in response to the Commission’s invitation. The OSBA is limiting its comments to those aspects of the Order which the OSBA recommends should be clarified or changed. The OSBA is responding explicitly to only one question, which relates to an issue raised in the OSBA’s testimony of November 19, 2008. However, the OSBA notes that some of its comments on the Order address issues raised in the Commission’s questions.

Comments on Order

(1) Plan Approval Process

Section 2806.1(e) requires that the process for approving the energy efficiency and conservation plan of an EDC 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, because of the potentially significant financial impact on Small C&I customers, the Commission should follow the normal adjudicatory process.

The Order, at 8-9, does provide for “evidentiary hearings on any material issues of designated facts.” However, the OSBA recommends that the Order be clarified and expanded to address several concerns. First, the Order should expressly provide for discovery as a tool to assist parties in framing their comments and recommendations. Second, the Order should expressly state how it will be decided if there are “material issues of disputed facts.” Third, the Order should make clear that parties may submit briefs following hearings. Fourth, even when there are no “material issues of disputed facts,” the Order should provide for testimony and briefing if there are disputed legal or policy issues. For example, an EDC plan which proposes mandatory hourly pricing for Small C&I customers would have a significant financial impact on those customers and, therefore, would warrant the development of a record, the submission of briefs, and the entry of an appealable order, even if there were no dispute over the facts.

(2) Total Resource Cost Test

The Order, at 11, defines “Total Resource Cost” (“TRC”) to include “program costs paid by the utility *and the participants.*” (emphasis added) “Participants” are those ratepayers who take part in one of the EDC’s programs. The definition embraced by the Order assumes that the General Assembly intended “net present value of the monetary cost of energy efficiency conservation measures” to cover costs, regardless of whether they were incurred by the EDC or by the ratepayers. *See* the definition of “Total Resource Cost Test” in Section 2806.1(m).

The OSBA agrees that costs which Small C&I customers would be obligated to incur should be included in the TRC. That will be especially important if an EDC’s plan

proposes something like *mandatory* hourly pricing for Small C&I customers. However, the OSBA does acknowledge that estimating ratepayers' costs will be difficult.

In the case of programs in which ratepayer participation is voluntary, *e.g.*, *optional* hourly pricing, the difficulty in estimating customer costs would be compounded by the difficulty in estimating how many ratepayers would volunteer. Therefore, when participation would be voluntary, including the participants' costs in the TRC might not be necessary, in that it could be assumed that a ratepayer would not participate unless the ratepayer expected net savings rather than net costs.

(3) Measurement of the Savings

The Order, at 15, indicates that an EDC's plan will be reviewed after-the-fact to "ensure . . . that the savings are the result of the . . . plan." This language is consistent with the language in the Order, at 11, which provides that benefits under the Total Resource Cost Test exclude "changes in energy use that would have happened in the absence of the program." In essence, the Order assumes that Act 129 clearly requires that reduced consumption count toward the statutory mandates only if the reduced consumption can be proven to have resulted solely from the EDC's plan.

However, contrary to the assumption in the Order about the legislature's intent, Act 129 actually is ambiguous regarding how to measure reduced consumption for the purpose of determining if an EDC has met its mandated reductions. For example, Section 2806.1(c), states that "[t]he [EDCs'] plans . . . shall reduce electric consumption [by specified percentages]." In contrast, Section 2806.1(f)(2) provides that penalties "apply to an electric distribution company that fails to achieve the reductions in consumption

required under subsection (c) or (d).” Significantly, an EDC can escape those penalties under Section 2806.1(f)(2) as long as the mandated reduction in consumption is achieved, regardless of whether it can be proven that the plan itself is responsible for all of the requisite reduction.

To further complicate matters, the Order, at 22, indicates that reduced consumption by shopping customers will count toward meeting the reductions mandated by Section 2806.1(c) and (d). In other words, the Order assumes that the General Assembly intended to hold an EDC responsible for reducing consumption by customers who buy their electricity from electric generation suppliers (“EGSs”). It is unclear how an EDC will be able to cause shopping customers to conserve without interfering with the relationship between the shopping customers and their EGSs. If an EDC is not able to cause shopping customers to conserve, non-shopping customers will have to reduce their consumption by an even greater amount so that the EDC will be able to achieve the statutory mandates.

The anticipated rate increases following the expiration of the rate caps should create a powerful market-based incentive for all customers, *i.e.*, both shopping and non-shopping, to conserve. In addition, the publicity surrounding the enactment and implementation of Act 129 and the information provided through the EDC’s approved consumer education plan should encourage reduced consumption by both shopping and non-shopping customers. Furthermore, the end of demand charges and of declining blocks as components of default service rates should provide a meaningful price signal for non-shopping customers to reduce consumption.

In view of the ambiguity in Act 129, the OSBA does not agree that reduced consumption can be counted toward meeting the mandates of Act 129 only if the reduced consumption is the result of specific elements of the EDC's plan. However, if the Commission concludes that Act 129 is clear on this point, then the OSBA recommends that each EDC reference its first post-rate cap default service program and its consumer education plan as specific elements of its energy efficiency and conservation plan. In that way, reduced consumption resulting from market price signals and from publicity about the need for conservation can be counted.

Answer to Question

2(c): Harmonization of Act 129 with Other Programs

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 (*e.g.*, under Special Session Act 1 of 2008) could also change the cost/benefit equation for individual Small C&I customers.

To achieve maximum effect, funding from the EDC and funding from the Commonwealth should be coordinated. For example, if a Small C&I customer needs financial assistance in order to make a physical plant change and that necessary financial assistance exceeds what is available from the EDC, the EDC should assist the customer in obtaining any funding available from the Commonwealth.

For example, the Department of Environmental Protection can provide grants, loans, and rebates to Small C&I customers for projects involving solar energy, energy conservation, and high performance buildings. Similarly, some of the economic development programs administered by the Department of Community and Economic Development are potential sources of funding to help Small C&I customers finance conservation projects. Finally, the Commonwealth Financing Authority is a potential source of loans to Small C&I customers for solar, geothermal, wind, and other clean energy projects.

Conclusion

In view of the foregoing, the OSBA respectfully requests that the Commission revise the Draft Order in accordance with the OSBA's comments.

Respectfully submitted,

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