

**BEFORE THE**  
**PUBLIC UTILITY COMMISSION**

Energy Efficiency and Conservation  
Program and EDC Plans

: Docket No. M-2008-2069887

**Reply Comments of ClearChoice Energy regarding the November 26, 2008 draft  
staff proposal**

ClearChoice Energy appreciates the opportunity to file reply comments on the staff's draft proposal on the first phase of the Act 129 of 2008 implementation plan.

**Introduction**

ClearChoice Energy is a privately-owned, certified woman-owned business headquartered in western Pennsylvania, providing energy management services including conservation services under PJM's demand response programs. We are registered as a Curtailment Service Provider as a member of the PJM Interconnection and serve on the PJM Demand Response Steering Committee. We are currently working with retail electric customers including school districts and municipalities to enroll them in PJM demand response programs for the upcoming PJM planning year that begins June 1, 2009. We also work with partner companies that provide energy efficiency services, including newer technologies, to commercial, industrial and institutional customers.

ClearChoice Energy's management has twenty years of experience in deregulated energy markets, including the management of both wholesale and competitive retail

power supply operations throughout North America. We have provided energy management services to commercial, industrial and institutional electric customers since 2003.

### Market Structure

The staff's proposal has focused on many procedural issues and implementation details, but fails to address what we believe to be THE major policy issue before the Commission. The broad, higher level issue to be addressed is: What is the optimum market structure for demand-side resources contributing to the supply of electricity in the Commonwealth and broader PJM region?

Having listened to, and participated in the debates over the past few years on the state's energy policy, there is no doubt the legislature, Rendell administration and community leaders across the state, have focused on two issues: the rising and volatile cost of electric prices and the need for job creation and economic growth. The policy statements in Act 129 are clear on the intent of this legislation.

We believe the Commission should endorse and implement a competitive market structure – similar to state policy for generation resources and similar to federal policy. We urge the Commission to address this directly and not simply leave it up to the EDCs to define for them. The livelihood and economic welfare of tens of thousands of Pennsylvanians are at stake with the outcome of this decision.

Some EDCs and Commission staff have suggested that EDC contracts be issued to large, utility scale conservation service providers. This approach will devastate what is now a competitive market for demand-side services. It forces smaller, Pennsylvania

conservation service providers out of business. It relegates Pennsylvania residents and businesses to the roles of low paid employees and subcontractors, and results in a massive transfer of wealth from Pennsylvanians to the shareholders of out-of-state national energy service providers.

Energy service companies are the distribution channels for many of Pennsylvania's "green manufacturers." If this Commission allows a centralized approach, or permits EDCs to consolidate the market to a few "winners," those few winners will have an oligopoly. This structure could undermine the state's economic development strategy on green manufacturing, as margins would be squeezed by near monopoly powers just as the state's green manufacturers are getting off the ground. It will be like putting Wal-Mart in between the manufacturers and their customers.

A monopolistic or oligopolistic structure to the demand side resource market will not help to reduce power prices. If the Commission decides to leave this key market structure issue up to the EDCs to decide, it puts the control of demand side resources into the hands of the same entities that control supply side (power generation) resources. Consolidating control over resources into the hands of organizations that earn profits from *higher* electric prices will not help to *reduce* electric prices.

We urge the Commission to implement a market structure that allows small, Pennsylvania conservation service providers to participate in fair and efficient markets. Many studies have shown that locally based businesses produce more, better paying jobs, and recirculate three times as much money in the local economy as the same contract with national firms. Local businesses also contribute more dollars to local charities.

Now more than ever, Pennsylvania needs and deserves energy regulations that drive economic growth **here**.

### Measurement of Results

With \$20 million of penalties per EDC at risk, there has been much debate over how to measure results. We need a cost-effective and efficient market. We can get there by combining incentives from all programs, then measuring the net result. The EDCs should get credit for whatever megawatt hours or megawatt reductions happen in their service territory. It shouldn't matter if the reduction happened due to incentives from an Energy Star or PJM program versus the EDC program. If we get reductions, that's what is important.

Having said that, the reductions need to be real. There need to be adjustments for economic growth or decline, as well as weather. This shouldn't be difficult as utilities have been making these adjustments in their resource plans and load forecasts for decades. Whatever the EDCs submit to the Commission for review should be the same as they use in their operations.

The EDCs should not get credit for registered capacity to reduce. Having the potential to reduce in an emergency situation which happens for short periods of time in rare instances is not the same as actually reducing consumption or demand in the top 100 hours.<sup>1</sup> Capacity charges in the Duquesne Light service territory amount to approximately eight percent of the retail customer's total monthly bill for a commercial

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<sup>1</sup> Grid operators must maintain transmission reliability based on NERC standards of downtime of not more than one day in ten years. They must maintain capacity and reserves in order to meet these standards. PJM's capacity requirement is 15% of their forecasted load.

account, and nineteen percent in the PECO service territory.<sup>2</sup> Where rate caps are off, even a significant drop in capacity prices by 50% only reduces the customer bill by four percent. If the Commission's goal is to reduce wholesale energy prices (and consequently retail prices), a conservation program must affect significant reductions in PJM's real-time, day-ahead and long-term *energy* markets, not simply in capacity prices. Act 129 is clear in that it focuses on load forecasts and consumption, not on capacity.

We thank the Commission for their time and attention, and respectfully request they consider our comments.

Carolyn Pengidore  
President/CEO  
ClearChoice Energy

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<sup>2</sup> Once rate caps are lifted, we expect this percentage will drop to or below what it is in the Duquesne Light service territory.