

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY COMMENTS OF PECO ENERGY COMPANY  
ON THE NOVEMBER 26, 2008  
DRAFT IMPLEMENTATION ORDER**

**I. INTRODUCTION**

On December 8, 2008, PECO Energy Company (“PECO”) filed written comments on the Draft Implementation Order issued November 26, 2008 at the above-captioned docket (the “Draft Order”), as well as on certain further questions posed by the Commission’s Staff regarding the preparation, review and implementation of energy efficiency and conservation (“EE&C”) plans under Act 129. Based on its review of the comments submitted by other parties and the exchange of views at the December 10, 2008 stakeholder meeting convened by the Commission, PECO believes that there is broad agreement over the interpretation and application of many of Act 129’s key provisions. At the same time, and as discussed in greater detail hereinafter, several important issues still need to be resolved, and resolved promptly, in order for electric distribution companies (“EDCs”) to develop the programs they will need to put in place to achieve the statutorily mandated reductions in energy consumption and peak demand.

As an aid to the Commission, PECO has prepared, and has attached hereto as Appendices A and B, respectively, clean and black-lined versions of the Draft Order, incorporating changes that PECO proposes be made to eliminate confusion and to facilitate the timely filing and approval of the individual utility EE&C plans. In the balance of these Reply Comments, PECO

discusses the more significant changes it is recommending and explains why it believes the public interest would best be served by their adoption.

## **II. OVERVIEW OF PROPOSED CHANGES TO THE DRAFT ORDER**

In order to develop its proposed EE&C plan, an EDC, at a minimum, will need to have a firm grasp of (1) its energy consumption savings and peak demand reduction targets; (2) the manner by which annual kWh savings will be calculated for individual energy efficiency measures and programs; (3) the manner in which the costs and benefits of such measures and programs are to be evaluated; (4) the means by which the Commission will determine whether the EDC achieved its statutorily mandated energy consumption savings and peak demand reductions; and (5) the amount of money that the EDC may spend - - and recover from its customers- - on the programs in question. The Draft Order provides considerable guidance with regard to each of these issues, but, in PECO's view, can be further clarified and strengthened in the following ways:

### **A. Energy Conservation And Peak Demand Reduction Targets**

Until it knows how many kilowatthours and peak period kilowatts must be saved within the timeframes prescribed by Act 129, an EDC will be hard-pressed to formulate a coherent and comprehensive plan to achieve those savings. For that reason, it is critically important that an EDC's energy consumption savings and peak demand reduction targets be resolved well in advance of the July 1, 2009 filing deadline for EE&C plans.

With that in mind, PECO proposes that EDCs be required to submit their June 1, 2009 – May 31, 2010 load forecasts, as well as extensive supporting data, to the Commission by February 1, 2009. The statutory advocates (i.e., OTS, OCA and OSBA) and other interested parties would have until March 1, 2009 to review and comment upon the load forecast; the EDC

would have until March 10, 2009 to respond to any concerns that are raised; and the Commission would issue an Order by April 1, 2009, either approving the as-filed forecast or directing that revisions be made to the forecast. This would enable the EDC over the ensuing several months (i.e., April – June) to develop specific programs to be included in its EE&C plan based on a full understanding of its statutory obligations. The necessary language to establish this process has been inserted in Section A of the Draft Order (“Plan Approval Process”) under a new sub-heading entitled “1. Pre-EE&C Plan Filing Activities.”<sup>1</sup>

PECO also proposes certain revisions to Section H of the Draft Order to clarify how the energy consumption and peak demand reduction targets are to be quantified. First, PECO notes that the load forecasts that the EDCs will present to the Commission will have been prepared on a weather-normalized basis. Consequently, it will not be necessary for the Commission to adjust the forecasted loads to reflect normal weather. Rather, the task for the Commission will be to confirm that the weather normalization methodology utilized by the EDC is reasonable.<sup>2</sup> PECO further notes that, by adopting the “savings” and not the “absolute reduction” approach to measuring compliance with the Act (see discussion, *infra*), the Commission need not concern itself with the concept of “extraordinary loads”. Accordingly, that language has been deleted.

As to the peak demand reduction targets, PECO agrees with the Commission that the focus should be on the summer peak period (Draft Order, p. 22). However, and as indicated in PECO’s December 8, 2008 Comments (p. 3), the summer period should be defined to include the

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<sup>1</sup> As discussed *infra*, the new subsection similarly creates a process for the advanced review and approval of the procedures to be utilized by EDCs to solicit and retain conservation service providers (“CSPs”).

<sup>2</sup> PECO urges the Commission not to mandate the use of “a 30 year norm” (Draft Order, p. 21) or, for that matter, any other specific normalization methodology. Instead, EDCs should be permitted to adhere to the methods and procedures that they rely upon for planning purposes, provided, of course, that the EDCs demonstrate to the Commission’s satisfaction that such methods and procedures are reasonable.

four months from June through September. Conforming language changes have therefore been made to the Draft Order.

**B. Calculation Of Energy Savings For Individual Energy Efficiency Measures And Programs**

Once the EDC knows how many kilowatthours and kilowatts must be saved, it can proceed to review and evaluate the options available to it to generate those savings. But, that process requires an understanding upfront of how such savings are to be quantified for individual energy efficiency measures and programs.

At page 10 of the Draft Order, the Commission states its intention to utilize the Technical Reference Manual (“TRM”) first adopted in the AEPS proceedings at Docket No. M-00051865 and now in the process of being updated. PECO agrees with this approach and encourages the Commission to complete its updating of the TRM by no later than March 1, 2009. PECO further notes that it is reasonable to assume that the TRM will be a “living” document that will continue to be updated and expanded over time. Accordingly, language has been added in Section B of the Draft Order to reflect that expectation. PECO also proposes that the prospective use of other standard measurement and evaluation protocols (e.g., the International Performance and Measurement Verification Protocol, the ISO New England Protocol, the DOE Energy Star Portfolio Manager) be explicitly recognized in Section D.

**C. Measurement Of Costs And Benefits**

The selection of specific energy efficiency measures and programs to be implemented will depend, in large part, on an assessment of their relative costs and benefits. To that end, PECO recommends that the Commission state unequivocally in Section C of the Draft Order that it is adopting, without modification, the Total Resource Cost (“TRC”) test set forth in the October 2001 edition of the *California Standard Practice Manual – Economic Analysis of*

*Demand-Side Programs and Projects* (the “California Manual”).<sup>3</sup> Moreover, PECO proposes that language be added at the conclusion of Section C indicating that the net present value of costs and benefits is to be quantified by application of the individual EDC’s after-tax weighted cost of capital.

**D. Measurement Of Achieved Energy And Peak Demand Savings**

Based on views expressed at the December 10, 2008 stakeholder meeting, PECO believes there is now virtual unanimity regarding use of the “savings” approach when it comes to calculating the energy consumption savings and peak load reductions actually achieved by an EDC. As pointed out in PECO’s December 8, 2008 Comments (pp. 3-4), this makes abundantly good sense and is entirely consistent with both the language of the Act and the Act’s stated goal of promoting economic development. In addition, there appears to be a consensus that, where possible, the reduction in energy usage should be measured on the basis of “deemed” savings. In the attached mark-up, PECO proposes certain editorial revisions to Section D of the Draft Order, which are primarily intended to eliminate inconsistencies and thereby clarify the Commission’s intent to adopt the “savings” approach.

With respect to peak demand savings, PECO urges the Commission not to adopt an approach that would put EDCs in the position of mandating load reductions simply to meet a regulatory target if, in fact, prevailing temperature and climatic conditions do not warrant such action. In this regard, PECO notes that its system peaks during the 100 highest hours of 2007 ranged from a high of 8549 Mw to a low of 7534 Mw, and averaged 7899 Mw. This is important because the need to shed load, and the potential price reductive effects of doing so, are markedly

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<sup>3</sup> The Draft Order refers to a July 2002 edition of the California Manual. PECO notes, however, that the edition posted on the California Public Utilities Commission’s website is dated October 2001.

different at the 8500 Mw level than at the 7500 Mw level. Indeed, recent studies suggest that the majority of benefits delivered by demand response programs are likely to be realized only during the top 25-50 hours of the year when demand is high and market prices are as well. *See, e.g., Quantifying Demand Response Benefits In PJM*, (The Brattle Group, 2007); *Harnessing the Power of Demand* (ISO/RTO Council 2007).

Taking these factors into account, PECO submits that, for purposes of determining compliance with Act 129's peak demand provisions, the appropriate focus should be on whether the EDC had the capability to achieve a 4.5% reduction in peak load during the statutory measurement period (i.e., the twelve months ending May 31, 2013) **and** whether it actually required customers to shed load during those hours when there was a meaningful benefit to doing so. Accordingly, PECO has revised Section D of the Draft Order to require an EDC to activate its Callable Demand Reduction Resources (i.e., requests to curtail load) whenever its loads are projected to equal or exceed a Trigger Point, defined as the EDC's 2007 peak demand less its Demand Reduction Target.<sup>4</sup> In addition, the EDC will be deemed in compliance if it demonstrates that the total of its Coincident Demand Reduction Resources (those resulting from implemented measures that have both an energy savings and demand reduction component) and Callable Demand Reduction Resources equals or exceeds its Demand Reduction Target.

Additional changes have been proposed to footnotes 8 and 9 on pages 13 and 14 of the Draft Order, respectively, to correctly state the maximum penalty for non-compliance (\$20 million, not \$5 million) and to indicate that the assessment of penalties is not mandatory, but rather a matter left to the Commission's sound discretion.

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<sup>4</sup> The Demand Reduction Target, as set forth in Section 2806.1(d) of the Act, is calculated by multiplying the average of the weather-adjusted 100 highest hours during the summer of 2007 by 0.045 (4.5%).

### **E. Spending Limits**

In order to select energy efficiency programs, an EDC will need to know how much money it may spend on them. During the December 10, 2008 stakeholder meeting, it was suggested that Act 129 could be construed as capping the total dollars to be spent over the life of the EE&C plan to 2% of the EDC's 2006 revenues. PECO implores the Commission to reject this interpretation because it would subject the EDCs to almost certain failure. Put bluntly, there is absolutely no way that PECO could achieve the energy consumption savings and peak load reductions demanded by the Act if it could only spend **in aggregate** between \$80 and \$90 million.<sup>5</sup> For that reason, PECO has revised Section J of the Draft Order to make clear that the two percent limitation applies on an annual basis to each plan year.

### **F. Miscellaneous Proposed Revisions**

**Conservation Service Providers (CSPs).** The Draft Order properly notes that it is incumbent upon the Commission to establish procedures for (1) the competitive bidding through Requests for Proposals ("RFPs") for work to be performed by CSPs and (2) the review of proposed contracts with CSPs (p. 18). The Draft Order further anticipates that an "approved" contract with one or more CSPs and a description of the competitive bidding process used to select CSPs will be provided as part of the EE&C plan (p. 8).

PECO respectfully submits that requiring an "approved" contract with a CSP to be filed with the EE&C plan is to put the "cart before the horse." Indeed, it would be counterproductive for an EDC to execute an agreement with a CSP before the Commission has had the opportunity to evaluate and approve the specific programs to be implemented. That said, there is no need to wait until July 1, 2009 to begin the review of RFP bidding procedures or standard form contracts

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<sup>5</sup> The precise amount would depend upon a determination of the EDC's "total annual revenues" for purposes of calculating the spending cap.

to be utilized with CSPs. To the contrary, and as set forth in the attached mark-up of Sections A and G of the Draft Order, this process should be initiated no later than March 1, 2009, and completed in sufficient time for EDCs to include pre-approved bidding procedures and form contracts in their EE&C plans. The actual execution and Commission review of specific agreements with CSPs would then occur after such plans were approved.

**Proportionate Funding.** As discussed in PECO's December 8, 2008 Comments (p. 19), Act 129 does not specify or require proportionate funding levels for either low-income customer programs or government programs. Accordingly, the language at page 16 of the Draft Order that suggests to the contrary has been revised.

**"After-the Fact Scrutiny".** As also explained in PECO's Comments (pp. 19-20), the Draft Order misconstrues PECO's position regarding "after-the-fact scrutiny" of EE&C plans. In short, PECO does not dispute that the Commission may direct EDCs to modify or terminate such plans under certain specified circumstances. However, any mid-course adjustments should have prospective effect only – it would be inappropriate to penalize an EDC by, for example, denying the recovery of costs incurred in accordance with the implementation and pursuit of a Commission-approved plan. Clarifying language to Section E of the Draft Order is provided herewith.

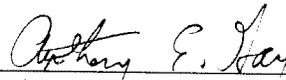
**Cost of Service Study.** PECO proposes that references to the filing of a comprehensive "class cost-of-service study" (Draft Order, p. 28) be deleted for the reasons set forth in PECO's December 8, 2008 Comments (pp. 20-21). Notably, the OCA concurs that such a study is not needed (OCA Comments, p. 15).

**Technical Potential Studies.** In its comments and later at the December 10, 2008 stakeholder meeting, the OCA encouraged EDCs to perform Technical Potential Studies to assess the maximum possible savings to be derived from specific energy efficiency and conservation measures. PECO intends to conduct such a study as part of its EE&C planning process and will share the results of the study with interested parties upon its completion.

### III. CONCLUSION

PECO commends the Staff for pulling together the Draft Order on such short notice and for convening interested parties to discuss critical issues. PECO believes that the Draft Order, as revised herein, will serve its intended purpose of establishing a blueprint for the successful implementation of the programs required to achieve Act 129's EE&C goals and objectives.

Respectfully submitted,



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Dated: December 19, 2008

## Appendix A

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA. 17105-3265**

Public Meeting held \_\_\_\_\_

Commissioners Present:

James H. Cawley, Chairman  
Tyrone J. Christy, Vice Chairman  
Robert F. Powelson  
Kim Pizzingrilli  
Wayne E. Gardner

Energy Efficiency and Conservation Program

Docket No. M-2008-2069887

**IMPLEMENTATION ORDER**

**BY THE COMMISSION:**

The Commission has been charged by the Pennsylvania General Assembly (“General Assembly”) with establishing an energy efficiency and conservation program. The energy efficiency and conservation program requires each electric distribution company (“EDC”) with at least 100,000 customers to adopt a plan to reduce energy demand and consumption within its service territory. 66 Pa. C.S. § 2806.1. In order to fulfill this obligation, the Commission has commenced a stakeholder process with interested parties invited to address relevant issues. This Implementation Order will establish the standards each plan must meet and provide guidance on the procedures to be followed for submittal, review and approval of the EDC plans.

## **BACKGROUND AND HISTORY OF THIS PROCEEDING**

Governor Edward Rendell signed Act 129 of 2008 (“the Act”) into law on October 15, 2008. The Act took effect 30 days thereafter on November 14, 2008. Among other things, the Act created an energy efficiency and conservation program, codified in the Pennsylvania Public Utility Code at Sections 2806.1 and 2806.2, 66 Pa. C.S. §§ 2806.1 and 2806.2. This program requires an EDC with at least 100,000 customers to adopt a plan, approved by the Commission, to reduce electric consumption by at least one percent (1%) of its expected load for June 1, 2009 through May 31, 2010, adjusted for weather and extraordinary loads. This one percent (1%) reduction is to be accomplished by May 31, 2011. By May 31, 2013, the total annual weather-normalized consumption is to be reduced by a minimum of three percent (3%). Also, by May 31, 2013, peak demand is to be reduced by a minimum of four-and-a-half percent (4.5%) of the EDC’s annual system peak demand in the 100 hours of highest demand, measured against the EDC’s peak demand from June 1, 2007 through May 31, 2008. By November 30, 2013, the Commission is to assess the cost effectiveness of the program and set additional incremental reductions in electric consumption if the benefits of the program exceed its costs.

The Act requires the Commission to develop and adopt an Energy Efficiency and Conservation Program (“EE&C Program”) by January 15, 2009, and sets out specific issues the EE&C Program must address. 66 Pa. C.S. § 2806.1(a). The Commission’s EE&C Program is to include the following:

- (1) A procedure for approving plans.
- (2) A process to evaluate and verify the results of each plan and the program as a whole.
- (3) A process to analyze the costs and benefits of each plan in accordance with a total resource cost test.

- (4) A process to analyze how the program as a whole and each plan will enable the EDCs to meet or exceed the consumption reduction requirements.
- (5) Standards to ensure that each plan uses a variety of measures that are applied equitably to all customer classes.
- (6) A process through which recommendations can be made for the employment of additional consumption reduction measures.
- (7) A procedure to require and approve the competitive bidding of all contracts with conservation service providers (“CSP”).
- (8) A procedure through which the Commission will review and modify, if necessary, all contracts with conservation service providers prior to execution.
- (9) A procedure to ensure compliance with the requirements of Sections 2806.1(c) & (d).
- (10) A requirement for the participation of conservation service providers in the implementation of all or part of a plan.
- (11) A cost recovery mechanism to ensure that measures approved are financed by the customer class that directly receives the energy and conservation benefits.

On October 21, 2008, the Commission issued a Secretarial Letter seeking comments on each of the individual aspects of the EE&C Program outlined in Sections 2806.1(a)(1)-(11). 66 Pa. C.S. §§ 2806.1(a)(1)-(11). The Secretarial Letter was sent to all EDCs and the members of the DSR Working Group<sup>1</sup> at Docket No. M-00061984. Pursuant to an October 29, 2008 Secretarial Letter at Docket No. M-00061984, the comments were due November 3, 2008. The October 29<sup>th</sup> Secretarial Letter announced a special *en banc* hearing on alternative energy, energy conservation

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<sup>1</sup> Demand Side Response.

and efficiency, and demand side response to be held on November 19, 2008. Presenters at this *en banc* hearing provided comments related to the EE&C Program. Comments in reply to those expressed at the November 19<sup>th</sup> *en banc* hearing were due no later than December 1, 2008.

The parties who filed comments in response to the October 21, 2008 Secretarial Letter were: The Industrial Users Groups (“IUG”)<sup>2</sup>; Department of Environmental Protection (“DEP”); Duquesne Light Company (“Duquesne”); Office of Consumer Advocate (“OCA”); Office of Small Business Advocate (“OSBA”); Pennsylvania Utility Law Project (“PULP”); Citizens for Pennsylvania’s Future (“PennFuture”); PECO Energy Company (“PECO”); PPL Electric Utilities Corporation (“PPL”); West Penn Power Company, d/b/a Allegheny Power (“Allegheny”); Pennsylvania Gas Association (“PGA”); Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), and Pennsylvania Power Company (“Penn Power”), (collectively, “FirstEnergy”); UGI Utilities Inc. – Electric Division (“UGI”); Energy Association of Pennsylvania (“EAP”); Reliant Energy, Inc., (“Reliant”); Retail Energy Supply Association (“RESA”); Augusta Systems, Inc. (“Augusta”); ClearChoice Energy (“ClearChoice”); Comverge, Inc. (“Comverge”); EnergyConnect, Inc. (“EnergyConnect”); Elster Integrated Solution (“Elster”); The E Cubed Company, LLC (“E Cubed”); eMeter Strategic Consulting (“eMeter”); Keystone Energy Efficiency Alliance (“KEEA”); The Reinvestment Fund (“TRF”); and Sensus Metering Systems (“Sensus”).

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<sup>2</sup> Industrial Energy Consumers of PA, Duquesne Industrial Intervenors, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, Philadelphia Area Industrial energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors.

The parties that participated at the November 19, 2008 *en banc* hearing were: Rep. Camille Bud George (D-Clearfield), Chairman, House Environmental Resources & Energy Committee; Acting Secretary John Hanger, DEP; Frank Jiruska, Director of Energy & Marketing Services, PECO; Nancy Krajovic, Major Commercial and Industrial Accounts Manager, Duquesne; Doug Krall, Manager, Regulatory Strategy, PPL; John Paganie, Vice President of Energy Efficiency, FirstEnergy; Paul H. Raab, Principal, energytools llc; Ron Edelstein, Director of Regulatory and Government Relations, Gas Technology Institute; Ritchie Hudson, Pennsylvania Chairman, RESA; Chris Kallaher, Director, Government and Regulatory Affairs, Direct Energy; Arthur Pearson, Director of Operations, E Cubed, on behalf of Joint Supporters; Arthur Pearson, on behalf of Donald D. Gilligan, President, National Association of Energy Service Companies; Greg Thomas, President, Performance System Development, on behalf of PA Home Energy; Edward V. Johnstonbaugh, Extension Educator, Renewable Energy, Penn State University, Westmoreland County Cooperative Extension; Jay Birnbaum, Senior Vice President and General Counsel, Current Group LLC; Robert Chiste, Chairman and CEO, Comverge; Carolyn Pengidore, President/CEO, ClearChoice; Tom Rutigliano, Program Manager, Mid-Atlantic Region, CPower Inc.; Ed Gray, Vice President of Regulatory Affairs, Elster; Glenn Garland, President, CLEAResult Consulting Inc.; Jeremy Kirsch, Vice President, Client Solutions, Positive Energy Inc.; Helen E. Perrine, Executive Director, Affordable Comfort Inc.; Doug Bloom, CEO, RealWinWin Inc.; Clif Payne, Executive Vice President, CMC Energy Services; Pamela C. Polacek, Counsel, McNees Wallace & Nurick LLC, on behalf of Industrial Energy Consumers of Pennsylvania (IECPA); William Lloyd Jr., State Small Business Advocate; Sonny Popowsky, State Consumer Advocate; Scott H. DeBroff, Chair, Energy & Telecommunications Practice Group, Rhoads & Sinon, on behalf of Wal-Mart Stores; Courtney Lane, Policy Analyst, PennFuture; Roger Clark, Manager for Technology and Policy, TRF; Liz Robinson, Executive Director, Energy Coordinating Agency.

Those who provided reply comments were: \_\_\_\_\_

An EE&C Program stakeholder meeting was held on December 10, 2008. Those in attendance were: \_\_\_\_\_

## DISCUSSION

In this section the Commission will outline its EE&C Program by addressing the issues delineated in Section 2806.1(a) of the Act. This EE&C Program becomes effective with the entry of this order.

### A. Plan Approval Process

The Act requires the Commission to establish procedures for approving plans submitted by EDCs. 66 Pa. C.S. § 2806.1(a)(1). The Act further dictates that by July 1, 2009, all EDCs with at least 100,000 customers must develop and file an EE&C plan with the Commission for approval. 66 Pa. C.S. §§ 2806.1(b)(1) and 2806.1(l). The Commission is to conduct a public hearing on each plan that allows for submission of recommendations by the statutory advocates and the public regarding how the plan could be improved. 66 Pa. C.S. § 2806.1(e)(1). The Commission is to rule on each plan within 120 days of submission. 66 Pa. C.S. § 2806.1(e)(2). If the Commission disapproves a plan, it must describe in detail its reasons after which the EDC has 60 days to submit a revised plan. 66 Pa. C.S. § 2806.1(e)(2). The Commission then has 60 days to rule on the revised plan. *Id.*

Below is a description of the Commission's process for receipt, review and ruling on individual EDC EE&C plans. To begin with, the Commission notes that the plan approval process being established balances the desire to provide all interested parties an

opportunity to be heard with the need to complete the process within the statutory time constraints. In addition, the Commission notes that these plans are evolutionary in nature as the Act provides for modification of plans after approval. See 66 Pa. C.S. §§ 2806.1(a)(6), 2806.1(b)(2) and 2806.1(b)(3). Finally, the Commission notes that while the process outlined below establishes a formal approval process, the Commission directs all covered EDCs to offer informal discussions with the statutory advocates and interested stakeholders during the pre-filing development of the plans.

All EDCs with at least 100,000 customers are required to file their plans by July 1, 2009.<sup>3</sup> The plans are to be served on OCA, OSBA and the Commission's Office of Trial Staff (OTS).

### **1. Pre-EE&C Plan Filing Activities**

To enable EDCs to prepare their EE&C plans in a timely manner and to facilitate Commission review of those plans within the 120 day window prescribed by the Act, we believe that all parties would benefit if certain key issues were addressed and, to the extent possible, resolved prior to the July 1, 2009 filing deadline.

**Load Forecasts.** In order for an EDC to develop specific consumption reduction programs, there must be agreement as to the scope of its obligations (i.e., the number of kWhs it must save on an annual basis by May 31, 2011 and May 31, 2013). As discussed in greater detail later in this Implementation Order, each EDC's baseline for purposes of calculating its required consumption savings will be a Commission-approved load forecast for the June 1, 2009 - May 31, 2010 period. We conclude that an advanced review of each EDC's load forecast would be in the public interest and, therefore, direct each EDC subject to the Act to file with the Commission, on or before February 1, 2009, its load forecast for the June 1, 2009 - May 31, 2010 period.

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<sup>3</sup> This list only includes those EDCs with at least 100,000 customers that must comply with Act 129. See 66 Pa. C.S. § 2806.1(l). The Commission will not accept voluntary plans proposed by other EDCs at this time due to the compressed time constraints of the approval process.

Such filings shall include projected loads per customer class; a listing of principal assumptions employed in developing the forecasted loads; a narrative description of the weather normalization methodology utilized by the EDC in its load forecast; and weather-normalized loads, by customer class, for each of the five years 2004-2008. Copies of the load forecast filings will be served upon the Commission's Bureau of Fixed Utility Services, the Office of Trial Staff, the Office of Consumer Advocate, the Office of Small Business Advocate, and other interested parties. All parties, including the statutory advocates and other interested parties, should advise the Commission of any concerns they have with the EDC's load forecast by filing comments with the Commission by no later than March 1, 2009. The EDC shall have the opportunity to respond to any such concerns by submitting reply comments on or before March 10, 2009 and the Commission shall issue an Order by no later than April 1, 2009 either approving the EDC's load forecast as-filed or directing the EDC to make specific revisions to its as-filed load forecast for purposes of developing its EE&C plan.

It is our expectation that this process will resolve any differences between the EDC and the parties regarding the EDC's load forecast and will provide the EDC with an understanding of its consumption reduction targets so that it may better utilize the time between April 1, 2009 and July 1, 2009 to develop the programs needed to achieve the required kWh savings.

**CSP Bidding Procedures and Standard Form Contract.** The Act also requires that the Commission establish procedures for EDCs to competitively bid contracts with conservation service providers (CSPs) and for the Commission to review and approve proposed contracts between EDCs and CSPs. In subsequent sections of this Implementation Order, we set forth certain criteria that we intend to apply in reviewing proposed CSP bidding procedures and contracts submitted by EDCs. This, however, is another area where we believe substantial progress can be made in advance of the July 1, 2009 EE&C plan filing deadline. We therefore direct the EDCs subject to this Act to file with the Commission and interested parties, on or before March 1, 2009, proposed RFP procedures and a standard form CSP contract to be utilized with successful bidders.

Interested parties should advise the Commission of any concerns they have with the EDC's proposed RFP process and/or CSP standard form contract by filing comments with the Commission by no later than April 1, 2009. The EDC shall have the opportunity to respond to any such concerns by submitting reply comments on or before April 10, 2009 and the Commission shall issue an Order by no later than May 1, 2009 either approving the EDC's proposed RFP process and CSP contract as-filed or directing the EDC to make specific revisions to its as-filed documents for purposes of developing its EE&C plan.

As discussed *infra*, the Commission-approved RFP process and standard form contract will be submitted as part of the EE&C plan. We note, in this regard, that the Act provides that an EDC shall include in its plan "a contract with one or more conservation service providers selected by competitive bid to implement the plan or a portion of the plan as approved by the Commission." 66 Pa. C.S. § 2806.1(b)(1)(e). We conclude, however, that it would be unrealistic to expect an EDC to conduct an RFP process and to actually execute a contract with a CSP prior to the review of its EE&C plan and the issuance of a final Commission determination approving the implementation of specific energy efficiency and peak demand reduction programs. For that reason, we interpret the Act to require only the filing with the EE&C plan of the previously approved standard form contract. We expect the EDC to launch its RFP process for selecting CSPs and to submit executed agreements for our approval promptly after we approve the EDC's EE&C plan.

## **2. EE&C Plan Filing Requirements**

Each EDC filing must contain the following:

1. A detailed plan addressing each of the requirements in 66 Pa. C.S. § 2806.1(b)(1)(i).<sup>4</sup>

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<sup>4</sup> In addition to meeting the requirements laid out in 66 Pa. C.S. §§ 2806.1(a), 2806.1(c) & 2806.1(d), and this Implementation Order, the plans must include the following:

2. Sufficient supporting documentation and verified statements or testimony or both.
3. The previously approved contract(s) to be executed with one or more CSPs and description of the competitive bidding process used to select the CSPs.<sup>5</sup>
4. Description of the work and measures being performed by CSPs and by the EDC along with a justification for the allocation.
5. A budget showing total planned expenditures by program and customer class.
6. Tariffs and a Section 1307 cost recovery mechanism.
7. The previously approved load forecast for the period of June 1, 2009 through May 31, 2010.

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- a) Specific proposals to implement EE&C measures to at least achieve the required consumption reductions.
  - b) Specific proposals to obtain 10% of required consumption reductions from units of federal, state and local governments, to include municipalities, school districts, institutions of higher education and nonprofit entities.
  - c) An explanation of how quality assurance and performance will be measured, verified and evaluated.
  - d) A statement delineating the manner in which the plan will achieve the requirements of the program under 66 Pa. C.S. §§ 2806.1(a), 2806.1(c) & 2806.1(d).
  - e) Contract(s) with one or more CSPs selected by competitive bid to implement all or part of the plan as approved by the Commission.
  - f) Estimates of the cost of implementing the EE&C measures.
  - g) Specific measures for households at or below 150% of the federal poverty income guidelines, the number of which shall be proportionate to those households' share of the total energy usage in the service territory.
  - h) A proposed cost-recovery mechanism, in accordance with Section 1307, 66 Pa. C.S. § 1307, to fund the EE&C measures, to include administrative costs.
  - i) A demonstration that the plan is cost-effective through a total resource cost test approved by the Commission and that provides a diverse cross-section of measures for customers of all rate classes.
  - j) A statement delineating how an annual independent evaluation of cost-effectiveness will be accomplished, as well as a full review of the results of each five-year plan. Furthermore, to the extent practical, provide a description of how the plan will be adjusted as a result of these evaluations.
  - k) An analysis of the EDC's administrative costs associated with the implementation of the plan.

<sup>5</sup> A CSP is defined in the Act at 66 Pa. C.S. § 2806.1(m) as an "entity that provides information and technical assistance on measures to enable a person to increase energy efficiency or reduce energy consumption and that has no direct or indirect ownership, partnership or other affiliated interest with an EDC."

8. A description of the weather normalization methodology and all principal assumptions utilized in developing the load forecast.
9. An average of the EDC's 100 highest peak hours during the period of June 1, 2007 through September 30, 2007.
10. A description of the EDC's method for monitoring and verifying plan results.

The Commission will publish a notice of each proposed plan in the *Pennsylvania Bulletin* within 20 days of its filing. In addition, the Commission will post each proposed plan on its website. An answer along with comments and recommendations are to be filed within 20 days of the publication of the notice in the *Pennsylvania Bulletin*. Each plan will be referred to an Administrative Law Judge ("ALJ"), who will hold a public input hearing(s) in the EDC's service territory and, if necessary, evidentiary hearings on any material issues of disputed facts. Such hearings are to be held on or before the 70<sup>th</sup> day after a plan is filed, after which, the ALJ will certify the record. The EDC will have 15 days following the last hearing to submit a revised plan or reply comments or both.

The Commission will approve or reject a plan at public meeting within 120 days of the EDC's filing. The Commission will provide a detailed rationale for all rejected plans. Thereafter, the EDC will have 60 days from the entry date of the order to file a revised plan that addresses the identified deficiencies. This revised plan is to be served on OCA, OSBA and OTS, who, along with other interested parties, will have ten days to file comments on the revised plan, with reply comments due ten days thereafter. The Commission will approve or reject a revised plan at a public meeting within 60 days of the EDC's revised plan filing. This process will be repeated until a plan receives Commission approval.

## **B. Plan Effectiveness Evaluation Process**

The Act requires the Commission to establish an evaluation process that monitors and verifies data collection, quality assurance and the results of each EDC plan and the program as a whole. 66 Pa. C.S. § 2806.1(a)(2). While Section 2806.1(b)(1)(i)(C) requires each EDC plan to explain how quality assurance and performance will be measured, verified and evaluated, it is apparent that Section 2806.1(a)(2) requires the Commission to monitor and verify this data. This evaluation process is to be conducted every year, as each EDC is to submit an annual report documenting the effectiveness of its plan, energy savings measurement and verification, an evaluation of the cost-effectiveness of expenditures and any other information the Commission requires. 66 Pa. C.S. § 2806.1(i)(1).

Below is a description of the Commission's evaluation process to monitor and verify data collection, quality assurance and results. Specifically, the Commission will utilize the Technical Reference Manual ("TRM") to fulfill the evaluation process requirements contained in the Act. The TRM was supported by participants and previously adopted by the Commission in the Alternative Energy Portfolio Standards Act ("AEPS") proceedings at Docket No. M-00051865 (order entered October 3, 2005). The TRM is in the process of being updated and expanded through a separate Secretarial Letter process to fulfill the requirements of the Act. Through this process, which is anticipated to be completed by March 1, 2009, the Commission will expand the TRM to provide for additional energy efficient technologies, peak load reduction, conservation projects and rates/pricing designs. We note, however, that this is an evolutionary process and we expect that additional technologies and measures, not initially included in the expanded TRM, will be proposed and approved during our review of individual EDC EE&C plans and that, as a consequence, the TRM will be further expanded from time to time.

The Commission also believes that a standardized format for the reporting of data is important. However, given that the EDCs will not be required to file their annual reports until 2010, we will address the annual report filing requirements in a subsequent order.

### C. Cost – Benefit Analysis Approval Process

The Act requires that an analysis of the cost and benefit of each plan, in accordance with a total resource cost test (“TRC test”), be approved by the Commission. 66 Pa. C.S. § 2806.1(a)(3). The Act also requires an EDC to demonstrate that its plan is cost-effective using a total resource cost test approved by the Commission, and that it provides a diverse cross section of alternatives for customers of all rate classes. 66 Pa. C.S. § 2806.1(b)(1)(i)(I). The Act defines “total resource cost test” as “a standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures.” 66 Pa. C.S. § 2806.1(m).

The Commission hereby adopts, without modification, the TRC test set forth in the October 2001 edition of the *California Standard Practice Manual-Economic Analysis of Demand-Side Programs and Projects* (the “California Manual”).<sup>6</sup> The Commission also directs that EDCs evaluate the cost effectiveness of each of their energy efficiency or demand reduction programs using the TRC test set forth in the California Manual, which takes into account the combined effects of a program on both participating and non-participating customers based on the costs incurred by the EDC and **participating customers**. The benefits calculated in the TRC test are the avoided supply costs, which shall include the reduction in transmission, distribution, generation and capacity costs

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<sup>6</sup> The California Manual may be found at:  
<http://ftp.cpuc.ca.gov/puc/energy/electric/energy+efficiency/em+and+v/std+practice+manual.doc>

valued at marginal cost for the periods when there is a load reduction. The avoided supply costs should be calculated using net program savings, savings net of changes in energy use that would have happened in the absence of the program. The persistence of savings over time must also be considered in the net savings.

The costs calculated in this test are the program costs paid by the utility and the participants, plus the increase in supply costs for the periods in which load is increased. Thus, all equipment, installation, operation and maintenance costs, cost of removal (less salvage value), and administrative costs, regardless of who pays for them, are included. Any tax credits should be considered a reduction to costs. For fuel substitution programs, the costs also include the increase in supply costs for the entity providing the fuel that is chosen as a result of the program.

The results of the TRC test can be expressed as either a net present value (“NPV”) or a benefit-cost ratio (“B/C ratio”). The NPV is the discounted value of the net benefits of this test over a specified period of time. The NPV is a measure of the change in the total resource costs due to the program. An NPV above zero indicates that the program is a less expensive resource than the supply option upon which the marginal costs are based. The B/C ratio is the ratio of the discounted total benefits of the program to the discounted total costs over some specific time period. The B/C gives an indication of the rate of return of this program to the utility and its ratepayers. A B/C ratio above one indicates that the program is beneficial to the utility and its ratepayers on a total resource cost basis. The methodology to calculate either the NPV or B/C ratio of the TRC is found in the *California Manual* at page 18.

For purposes of calculating the NPV of a particular measure or program under the TRC test, each EDC shall utilize its after-tax weighted cost of capital as the applicable discount rate.

**D. Process to Analyze How the Program and Each Plan will Enable EDCs to Meet Reduction Requirements**

The Act requires the Commission to conduct an analysis of how the program, as a whole, and how the EDC's individual plan, in particular, will enable an EDC to meet or exceed the required consumption (66 Pa. C.S. § 28061(c)) and peak demand reductions (66 Pa. C.S. § 2806.1(d)); 66 Pa. C.S. § 2806.1(a)(4). Each EDC plan must include specific proposals to implement measures to achieve or exceed the required reductions. 66 Pa. C.S. § 2806.1(b)(1)(i)(A). Each plan must also state the manner in which it will achieve or exceed the required consumption reductions. 66 Pa. C.S. § 2806.1(b)(1)(i)(D).

For purposes of determining whether an EDC achieved its required energy consumption reductions, the Commission intends to use the savings approach. Therefore, to be in compliance with the Act, an EDC must demonstrate that the total savings in energy consumption during the twelve months ended May 31, 2011 and May 31, 2013 from the measures included in the EDC's approved EE&C plan equal or exceed 1.0% and 3.0%, respectively, of the EDC's Commission-approved forecasted load for the June 1, 2009 – May 31, 2010 period.<sup>7</sup>

On or before November 30, 2013, and every five years thereafter, the Commission shall evaluate the costs and benefits of an EDC's EE&C plan using the TRC test. If the Commission determines that benefits exceed the costs, the Commission will adopt new incremental consumption reduction requirements.

In implementing Act 129's peak demand provisions, we similarly intend to use the savings approach. We also need to balance the interest of customers in reducing the cost of electricity during peak demand periods with their desire for safe, reliable and

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<sup>7</sup> The failure to meet these reduction mandates may subject the EDC to a civil penalty of between one million and twenty million dollars that cannot be recovered in rates (66 Pa. C.S. § 2806.1(e)(2)(i)), and the Commission may engage a CSP, at the EDC's expense, to achieve the mandated reductions (66 Pa. C.S. § 2806.1(e)(2)(i)).

reasonably continuous service. In this regard, experience shows that wholesale electric prices can be very sensitive to changes in demand during extreme weather conditions (i.e., perhaps the hottest 25 hours of the year). During such periods, it is conceivable that substantial cost savings can be realized by reducing peak demands. The corollary, of course, is that peak shaving may have an immaterial price impact during the remaining hours of the year. As to these hours, we do not believe that it would be in the public interest if EDCs were forced to shed load simply to meet a regulatory target.<sup>8</sup>

Section 2806.1(d) of the Act requires an EDC to demonstrate that during the twelve months ending May 31, 2013, it reduced its peak demand by 4.5% of its baseline peak demand.<sup>9</sup> This represents the EDC's Demand Reduction Target and can be satisfied through the utilization of Coincident Demand Reduction Resources (those resulting from implemented measures that have both an energy saving and demand reduction component) and Callable Demand Reduction Resources (i.e., requests to curtail load).

Once an EDC's Demand Reduction Target has been established, it is necessary to designate a Trigger Point and a Call Mechanism that actually results in load reductions during times of highest demand. The Trigger Point is the EDC's peak demand for the summer 2007 period less its Demand Reduction Target. Whenever an EDC anticipates that its demands will equal or exceed the Trigger Point, the EDC must activate its Callable Reduction Resources for the duration of the hours that are expected to equal or exceed the Trigger Point. An EDC will be deemed in compliance with Act 129's peak

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<sup>8</sup> The response of prices to changes in demands becomes important for purposes of this proceeding when it is recognized that the highest 100 peak hours for an EDC can and frequently will encompass markedly different operating conditions. For example, PECO's highest hour in 2007 (8549 Mw) was more than 1000 Mw greater than its 100th highest hour (7534 Mw). In addition, the average of its 100 highest hours (7899 Mw) was approximately 600 Mw less than the top of the range.

<sup>9</sup> The EDC's baseline peak demand will be determined by averaging, on a weather-normalized basis, the 100 hours of highest demand experienced during the June 1, 2007 – September 30, 2007 period.

demand provisions if it demonstrates that the total of its Coincident and Callable Demand Reductions equal or exceed the Target.<sup>10</sup>

Finally, we note that EDCs should take the necessary steps to ensure that their demand response programs, including measurement and verification methodologies, properly align with the demand response programs of their respective ISO/RTO.

On or before November 30, 2013, the Commission shall evaluate the peak demand aspects of an EDC's EE&C plan by comparing the cost of an EDC's EE&C plan to the retail savings in energy and capacity benefits of an EDC's EE&C plan relative to peak demand or by other means chosen by the Commission. If the Commission determines that benefits exceed the costs, the Commission will adopt new incremental requirements for reductions in peak demand for the highest 100 hours or otherwise as may determined by the Commission. The new reductions shall be achieved by May 31, 2017, as measured against the EDC's peak demand for June 1, 2011, through May 31, 2012.

As indicated previously, the Commission agrees with PECO, PPL, and DEP that the statute targets are intended to reflect energy and demand savings, as opposed to absolute reductions in consumption.<sup>11</sup> Indeed, we believe that the absolute reduction approach would, in effect, penalize an EDC for economic growth in terms on new customers and business in its service territory. Accordingly, each plan will be evaluated as to whether the consumption savings and peak demand reduction goals in the Act will be achieved based on the use of a TRM and other standard measurement and evaluation protocols (e.g., the International Performance and Measurement Verification Protocol, the ISO New England Protocol, the DOE Energy Star Portfolio Manager).

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<sup>10</sup> The failure to meet these reduction mandates may subject the EDC to a civil penalty of between one million and twenty million dollars that cannot be recovered in rates (66 Pa. C.S. § 2806.1(e)(2)(i)), and the Commission may engage a CSP, at the EDC's expense, to achieve the mandated reductions (66 Pa. C.S. § 2806.1(e)(2)(ii)).

<sup>11</sup> See PECO Comments at 6; PPL Comments at 4 at this docket; and DEP En Banc Comments at transcript page \_\_\_ on November 19, 2008, at Docket M-0061984.

After-the-fact measurement and verification remain critical to ensure that an EDC has properly implemented its EE&C plan and that the projected savings metrics remain accurate. The Commission will analyze an EDC plan's effectiveness in meeting or exceeding the Act's mandatory savings through the plan approval process as described in Section A above. In addition, the Commission will also assess the individual EDC's plan effectiveness during the annual report review process described in Section F below.

**E. Standards to Ensure that a Variety of Measures are Applied Equitably to all Customer Classes**

The Act requires the Commission to establish standards to ensure that each plan includes a variety of measures and that each plan will provide the measures equitably to all customer classes. 66 Pa. C.S. § 2806.1(a)(5).<sup>12</sup> The Act defines “energy efficiency and conservation measures” at 66 Pa. C.S. § 2806.1(m).

There are clear requirements in the Act regarding proportionate measures for low-income customers (within a residential customer class). In addition, the Act requires that a minimum of 10% of the required reductions in consumption be obtained from units of governments, schools, etc. (within a commercial customer class). Beyond those requirements, we believe that EDCs should develop plans to achieve the most energy savings per expenditure. The driving principle should be the most cost effective use of resources so that benefits can accrue to all customers, even if only by virtue of more reasonable provider of last resort contracts.

We agree that “equitable” does not mean “pro rata,” especially when “cost-effective” is factored into the process. EDCs must offer a well-reasoned and balanced set of measures that are tailored to usage and to the potential for savings and reductions for

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<sup>12</sup> The program must include “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.”

each customer class. We believe that the overall limitation on cost recovery and the specific limitation tying costs to benefited class (discussed in Section J, below) will ensure that offerings will not be skewed toward any particular class or away from any particular class. There is no single set of measures that will fit all EDCs and the myriad mix of customer classes. It is entirely possible that the most cost effective EE and DR programs may not come proportionally from each customer class.

Most commenters agree that all classes of customers will, however, benefit the most from a general approach because it has the best potential to impact future energy prices. Further, there is no consensus as to what denominator (per capita, usage, revenue, potential for savings, etc.) to use if one were to attempt to require a proportionate distribution.

While we do not require a proportionate distribution of measures among customer classes, we shall require that each customer class be offered at least one EE and one DR program, but we will leave the initial mix and proportion of programs to the EDCs. The burden is on an EDC to explain and justify its distribution of measures among its customer classes if such distribution is challenged.

#### **F. Process to Make Recommendations for Additional Measures**

The Act requires the Commission to establish procedures through which recommendations can be made as to additional measures that will enable an EDC to improve its plan. 66 Pa. C.S. § 2806.1(a)(6). Furthermore, the Act permits the Commission to direct an EDC to modify or terminate any part of an approved plan if, after an adequate period for implementation, the Commission determines that a measure included in the plan will not achieve the required consumption reductions in a cost-effective manner. 66 Pa. C.S. § 2806.1(b)(2).

Below is the Commission's procedure for recommending additional measures that enable an EDC to improve its plan. Initially it must be noted that interested parties will have an opportunity to make recommendations during the initial plan approval process described above in Section A of this Implementation Order.

Regarding approved plans, the Commission will permit EDCs and other interested stakeholders, as well as the statutory advocates, to propose plan changes in conjunction with the EDC's annual report filing required by the Act at 66 Pa. C.S. § 2806.1(i)(1). The Commission will establish a deadline for the filing of annual reports by the EDCs following the approval of the EDCs' plans in 2009. These annual reports are to be served on OCA, OSBA and OTS. The Commission and any interested party can make a recommendation for plan improvement or object to an EDC's proposed plan revision within 30 days of the annual report filing. EDCs will have 20 days to file replies, after which the Commission will determine whether to rule on the recommended changes or refer the matter to an ALJ for hearings and a recommended decision. The Commission notes that, in addition to the above-described process, the Commission retains its statutory authority to conduct investigations and initiate statutory and regulatory compliance proceedings against jurisdictional utilities.

**G. Procedures to Require Competitive Bidding and Approval of Contracts with CSPs**

The Act requires the Commission to establish procedures to require EDCs to competitively bid all contracts with conservation service providers. 66 Pa. C.S. § 2806.1(a)(7). The Act further requires the Commission to establish procedures to review all proposed contracts with conservation service providers prior to execution of the contract. 66 Pa. C.S. § 2806.1(a)(8). The Act gives the Commission power to order the modification of proposed contracts to ensure that plans meet consumption reduction requirements. *Id.* The Act also requires each EDC to include in its plan a proposed contract for execution with one or more CSPs selected by competitive bid to implement

all or part of the plan as approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(E). This section of the Act establishes that CSPs can perform some or all functions of an EE&C plan, to include management of the entire plan.<sup>13</sup>

Below is the Commission’s procedure for reviewing and approving proposed CSP bidding process. These are the minimum criteria:

- Develop list of PUC-approved and -registered CSPs.
- Require EDCs to issue requests for proposal (“RFPs”) only to CSPs approved and registered by the PUC.
- Encourage efforts to acquire bids from CSP-registered “disadvantaged businesses” (*i.e.*, minority-owned, women-owned, persons-with-disability-owned, small companies, companies located in Enterprise Zones, and similar entities) consistent with the Commission’s Policy Statements at 52 Pa. Code §§ 69.804, 69.807 and 69.808.
- Encourage the use of pay-for-performance contracts with CSPs.
- Encourage the acquisition of at least three bids, where practicable.
- Require submission of selection criteria to PUC for review and approval, to include:
  - Designation of and weighting of factors for the selection criteria.
  - Selection of overall best bid/proposal (*i.e.*, no requirement to select the lowest qualified bid) that consider:
    - Quality of prior performance,
    - Timeliness of performance,
    - Quality of the proposed work plan or approach,
    - Knowledge, background, and experience of the personnel to be utilized,
    - and

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<sup>13</sup> As delineated in Section A above, an EDC must provide detailed justifications for why it did or did not use a CSP to perform EE&C plan functions.

- Other factors as deemed relevant.

Below is the Commission's procedure for reviewing and approving proposed CSP contracts prior to execution. These are the minimum criteria:

- Review for satisfactory form and content, including:
  - Nature and type of services to be provided,
  - Assurance that the CSP's work product in the EDC's plan will meet the requirement for reduction in demand and consumption,
  - Legal issues, enforceability, and protection of ratepayer funds for poor performance or non-compliance and similar issues,
  - Adequate provisions and procedures for monitoring CSP and EDC performance quality and rate of progress, and
  - Certification that the proposed CSP is not an affiliate of the EDC submitting the contract..

As previously discussed, EDCs must submit proposed RFP procedures and a standard form CSP contract to be utilized with successful bidders by no later than March 1, 2009. By no later than May 1, 2009, the Commission will issue an Order either accepting the proposed procedures and contract or directing the EDC to make specific revisions to its as-filed documents for purposes of developing its EE&C plan.

#### **H. Procedures to Ensure Compliance with Consumption Reduction Requirements**

The Act requires the Commission to establish procedures to ensure compliance with the consumption reduction requirements of the Act. 66 Pa. C.S. § 2806.1(a)(9). The consumption reduction requirements are outlined in the Act at Sections 2806.1(c) and (d). 66 Pa. C.S. §§ 2806.1(c) and (d). Both the one percent load reduction to be met during the twelve months ending May 31, 2011, and the three percent load reduction to be met

during the twelve months ending May 31, 2013, are to be calculated on the basis of the EDC's Commission-approved load forecast for June 1, 2009, through May 31, 2010. The four-and-a-half percent reduction of annual system peak demand in the 100 hours of highest demand to be met during the twelve months ending May 31, 2013, is to be calculated on the basis of the EDC's peak demand for June 1, 2007, through May 31, 2008. 66 Pa. C.S. § 2806.1(d)(1). Furthermore, and as noted previously, the Act requires that a minimum of ten percent of all consumption reduction requirements are to come from units of the federal, state and local governments, including municipalities, school districts, institutions of higher education and nonprofit entities. 66 Pa. C.S. § 2806.1(b)(1)(i)(B).

There are four main issues that the Commission must address to ensure compliance with the Act's consumption reduction requirements. First, the Commission must establish a baseline forecast for expected EDC consumption levels from June 1, 2009 through May 31, 2010. To accomplish this, the Commission is directing each covered EDC to provide a proposed expected load forecast, as well as certain critical back-up information, for the Commission's review by no later than February 1, 2009. The Commission believes this is the appropriate procedure as each EDC has the data, expertise and experience to make such projections regarding its customers and their usage patterns.

Second, the Commission must confirm the reasonableness of the weather normalization methodology utilized by the EDC to develop its June 1, 2009 through May 31, 2010 load figures. Again, the Commission directs each covered EDC to submit with its load forecast a detailed narrative description of its weather normalization procedures.

Third, the Commission must establish a procedure for determining the 100 hours of highest peak demand in an annual period. As noted previously, the Commission will take a weather normalized average of the 100 highest peak hours during the summer

months of June, July, August and September in 2007. The Commission believes that focusing the EE&C program efforts on the summer peak period will provide the greatest benefit and be more cost effective.

Lastly, the Commission must determine whether the term retail customer includes all customers or just those in the EDC's default service plan. The Commission defines retail customer as all customers who receive an EDC's distribution service regardless of their electric supply source. The Commission believes that it was the intent of the General Assembly that all customers contribute to the reduction of load.

#### **I. Participation of Conservation Service Providers**

The Act establishes a requirement for the participation of conservation service providers in the implementation of all or part of a plan. 66 Pa. C.S. § 2806.1(a)(10). The Act requires the Commission to establish, by March 1, 2009, a registry of approved persons qualified to provide conservation services to all classes of customers, that meet experience and other qualifying criteria established by the Commission. 66 Pa. C.S. § 2806.2(a). The Act further requires the Commission to develop a conservation service provider application and permits the Commission to charge a reasonable registration fee. 66 Pa. C.S. § 2806.2(b).

The Commission initiated a separate stakeholder process to establish the qualification requirements CSPs must meet to be included in a Commission registry of CSPs under Docket Number M-2008-2074154. The Commission chose to institute a separate proceeding due to the requirement that the CSP registry is to be in place by March 1, 2009.

## **J. EDC Cost Recovery**

The Act directs the Commission to establish a cost recovery mechanism that ensures that approved measures are financed by the customer class that receives the direct energy and conservation benefit of the measure. 66 Pa. C.S. § 2806.1(a)(11). All EDC plans must include cost estimates for implementation of all measures. 66 Pa. C.S. § 2806.1(b)(1)(i)(F). Each plan must also include a proposed cost-recovery tariff mechanism, in accordance with Section 1307 (relating to sliding scale or rates; adjustments), to fund all measures and to ensure full and current recovery of prudent and reasonable costs, including administrative costs, as approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(H). In addition, each plan must include an analysis of administrative costs. 66 Pa. C.S. § 2806.1(b)(1)(i)(K). The Act dictates that the total cost of any plan must not exceed two percent of the EDC's total annual revenue as of December 31, 2006, excluding Low-Income Usage Reduction Programs established under 52 Pa. Code § 58 (relating to residential Low Income Usage Reduction Programs). 66 Pa. C.S. § 2806.1(g). We interpret the two percent limitation to apply to each plan year and not to the entire life of the plan. We do so based on our belief that it would be extremely difficult, and most likely impossible, for EDCs to achieve their mandated consumption and peak load reductions if the total costs that they were permitted to incur in support of such efforts were limited to just two percent of their 2006 revenues.

Finally, all EDCs, including those subject to generation or other rate caps, must recover on a full and current basis from customers, through a reconcilable adjustment clause under Section 1307, all reasonable and prudent costs incurred in the provision or management of its plan. 66 Pa. C.S. § 2806.1(k). We view the matter of cost recovery as consisting of three main issues as set forth in the relevant provisions of Act 129. These issues are:

- 1) Determination of allowable costs,

- 2) Allocation of costs to customer classes, and
- 3) Cost recovery tariff mechanism.

Before delineating our requirements and procedures for the review and approval of the EDCs' cost recovery mechanisms, we will first discuss the comments of the various parties in light of these three issues.

### **1. Determination of Allowable Costs**

The Act allows an EDC to recover all prudent and reasonable costs relating to the provision or management of its EE&C plan, but limits such costs to an amount not to exceed two percent of the EDC's total annual revenue as of December 31, 2006, excluding Low-Income Usage Reduction Programs established under 52 Pa. Code § 58.

In order to determine the level of costs that an EDC will be permitted to recover in implementing its EE&C program, it will first be necessary to ascertain the amount of the EDC's total annual revenues as of December 31, 2006. Accordingly, we will require all subject EDCs to provide this information in their EE&C plans. Pursuant to the Act, total annual revenues shall be defined as "[a]mounts paid to the electric distribution company for generation, transmission, distribution and surcharges by retail customers." 66 Pa. C.S. § 2806.1(m). We will then require each EDC to include a calculation of the total annual amount of EE&C costs it will be permitted to recover (exclusive of expenditures on Low-Income Usage Reduction Programs established under 52 Pa. Code § 58) based on the two percent limitation as set forth in the Act. This will represent the maximum level of spending on EE&C measures that will be recoverable under the EDC's plan.

We will next require each EDC to provide a careful estimate of the costs relating to all EE&C programs and measures as set forth in its plan. Such costs will include both capital and expense items relating to all program elements, equipment and facilities, as

well as an analysis of all related administrative costs. More specifically, these costs would include, but not be limited to, capital expenditures for any equipment and facilities that may be required to implement the EE&C programs, as well as depreciation, operating and maintenance expenses, marketing and program awareness costs, a return component based on the EDC's weighted cost of capital, and taxes. Administrative costs would include, but not be limited to, costs relating to plan and program development and implementation, cost-benefit analysis, measurement and verification, and reporting. The EDC must also provide ample support to demonstrate that all such costs are reasonable and prudent in light of its plan and the goals of the Act, keeping in mind that the total annual level of these costs must not exceed the two percent limitation as previously determined.

We agree generally with PPL that the EDC should be permitted to recover both the ongoing costs of its plan, as well as costs incurred to design, create, and obtain Commission approval of the plan. However, all costs submitted for recovery in an EDC's plan will be subject to review by the Commission to determine whether the costs are prudent and reasonable, and are directly related to the development and implementation of the plan. Costs that are incurred pursuant to a Commission-approved EE&C plan shall not be subject to after-the-fact scrutiny. We note, however, that the Act provides that:

The Commission shall direct an [EDC] to modify or terminate any part of a plan approved under this section if, after an adequate period for implementation, the Commission determines that an energy efficiency or conservation measure included in the plan will not achieve the required reductions in consumption in a cost-effective manner under [66 Pa. C.S. §§ 2806.1(c) & (d)].

66 Pa. C.S. § 2806.1(b)(2). Thus, plan measures and their associated costs that may be tentatively approved, will, in fact, be subject to ongoing review and possible modification

or termination if it is determined that such measures are not or have not been cost effective.

As noted previously, we agree with PPL that the Act's two percent limitation should be interpreted as an annual amount, rather than an amount for the full five-year period. Since the limitation is computed based on annual revenues as of December 31, 2006, we believe it is reasonable to require that the resulting allowable cost figure be applied on an annual basis as well.

As to Duquesne's concern regarding the application of the two percent spending limitation to an EDC with customers on its system that have substantial load being served by EGSs, we recognize that such an EDC may be unfairly restricted in the amount of costs it is permitted to recover if it cannot consider the generation revenues of those customers in the application of the two percent limitation. However, the language of Act 129 specifically limits the total cost of a plan to two percent (2%) of the EDC's total annual revenue. See 66 Pa. C.S. § 2806.1(g). EDC total annual revenue is further defined in Act 129 as "[a]mounts paid to the [EDC] for generation, transmission, distribution and surcharges by retail customers." 66 Pa. C.S. § 2806.1(m) (emphasis added). While the Commission recognizes Duquesne's concern, the Commission must follow the language of the Act.

Finally, with respect to the recovery of revenues lost due to reduced energy consumption or changes in demand, we note that the Act clearly states that such revenue losses shall not be a recoverable cost under a reconcilable automatic adjustment clause. 66 Pa. C.S. § 2806.1(k)(2). The Act does provide, however, that "[d]ecreased revenue and reduced energy consumption may be reflected in revenue and sales data used to calculate rates in a distribution-base rate proceeding filed by an electric distribution company under [66 Pa. C.S. § 1308] (relating to voluntary changes in rates)." 66 Pa. C.S. § 2806.1(k)(3).

## **2. Allocation of Costs to Customer Classes**

The Act requires that all approved EE&C measures be financed by the customer class that receives the direct energy and conservation benefit of such measures. Several of the parties filed comments addressing the issue of how to allocate the total allowable EE&C costs in order to ensure that this provision is met.

In order to ensure that all approved EE&C measures are financed by the customer classes that receive the benefit of such measures, it will be necessary to first assign the costs relating to each measure to those classes to whom it is targeted. Therefore, once the EDC has developed an estimate of its total EE&C costs as directed above, we will require it to allocate those costs to each of its customer classes that will benefit from the measures to which the costs relate. Those costs that can be clearly demonstrated to relate exclusively to measures that have been dedicated to a specific customer class should be assigned solely to that class. Those costs that relate to measures that are applicable to more than one class must be allocated among the classes using generally acceptable cost of service principles as are commonly utilized in base rate proceedings. Administrative costs should also be allocated using reasonable and generally acceptable cost-of-service principles.

With regard to the assignment of EE&C costs to low-income customers, the Act requires EE&C measures to be financed by the same customer class that will receive the direct energy and conservation benefits from them. 66 Pa. C.S. § 2806.1(a)(11). The Act does not provide for the exclusion of low-income customers from EE&C cost recovery as recommended by PULP, and in any event, it would be difficult to determine a way to exclude such customers from the allocation of EE&C costs within their particular customer class. Although we have great concern for the difficulties experienced by low-income customers in paying their energy bills, we do not believe that exempting such

customers from contributing toward the recovery of fairly allocated EE&C costs is the appropriate way to address this concern. We point out that low-income customers will stand to benefit financially from well-designed EE&C measures implemented by the EDCs. Moreover, such customers can take advantage of the many programs currently available to help low-income and payment-troubled customers pay their energy bills.

### **3. Cost Recovery Tariff Mechanism**

As noted above, the Act allows all EDCs, including those subject to generation or other rate caps, to recover on a full and current basis from customers, through a reconcilable adjustment clause under 66 Pa. C.S. § 1307, all reasonable and prudent costs incurred in the provision or management of its plan. The Act also requires that each EDC's plan include a proposed cost-recovery tariff mechanism, in accordance with 66 Pa. C.S. § 1307 (relating to sliding scale of rates; adjustments), to fund all measures and to ensure full and current recovery of prudent and reasonable costs, including administrative costs, as approved by the Commission

We will require each subject EDC to develop a reconcilable adjustment clause tariff mechanism in accordance with 66 Pa. C.S. § 1307 and include this mechanism in its EE&C plan. Such a mechanism shall be designed to recover, on a full and current basis from each customer class, all prudent and reasonable EE&C costs that have been assigned to each class as directed above. The mechanism shall be non-bypassable and shall be set forth in the EDC's tariff, accompanied by a full and clear explanation as to its operation and applicability to each customer class. We agree with OCA that there should be no need to adjust the mechanism more frequently than on an annual basis. Therefore, the tariff mechanism will be subject to an annual review and reconciliation in accordance with 66 Pa. C.S. § 1307(e). The annual review and reconciliation for each EDC's cost recovery mechanism will occur pursuant to a public hearing, if required due to petitions

filed by interveners, and will include an evaluation of the reasonableness of all program costs and their allocation to the applicable customer classes. Such annual review and reconciliation will be scheduled to coincide with our review of the annual report on the EDC's plan submitted in accordance with 66 Pa. C.S. § 2806.1(i), and all calculations and supporting cost documentation shall be provided at the time that report is filed.

**K. Conclusion**

**THEREFORE,**

**IT IS ORDERED:**

1. That electric distribution companies with at least 100,000 customers will adhere to the schedule for submission of plans identified in this Implementation Order.
  
2. That this Implementation Order be published in the Pennsylvania Bulletin and served on the Office of Consumer Advocate, Office of Small Business Advocate, Office of Trial Staff, and all jurisdictional electric distribution companies.

**BY THE COMMISSION**

James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: \_\_\_\_\_

ORDER ENTERED: \_\_\_\_\_

## Appendix B

[COMMONWEALTH OF PENNSYLVANIA]  
[PENNSYLVANIA PUBLIC UTILITY COMMISSION]  
[P.O. BOX 3265, HARRISBURG, PA 17105-3265]

[IN REPLY PLEASE  
REFER TO OUR FILE  
M-2008-2069887]

[November 26, 2008]

[TO ALL INTERESTED PARTIES: \_\_\_\_\_]

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

[The Pennsylvania Public Utility Commission (PUC) hereby circulates the November 26, 2008 draft staff proposal and further questions relative to the first phase of the Act 129 of 2008 implementation plan. Comments on the draft proposal and the enclosed questions are due by **December 8, 2008.**<sup>†</sup>][in anticipation of the working group meeting being held on December 10, 2009.—]

[The November 26, 2008 draft staff proposal reflects the stakeholder comments submitted on November 3, 2008, regarding the individual aspects of the energy efficiency and conservation (EE&C) program required under Act 129 of 2008 at Sections 2806.1(a)(1)-(11). By soliciting comments on the draft staff proposal and the further questions, the Commission continues to seek stakeholder input before finalizing the Act 129 phase one implementation plan that must be adopted by January 15, 2009.]

[An original and fifteen copies of any written comments refereneing the docket number M-2008-2069887 shall be submitted to the Pennsylvania Public Utility Commission, Attn.: Secretary, P.O. Box 3265, Harrisburg, Pa. 17105. In addition, we ask that an electronic copy of all comments be sent to the Commission's Act 129 e-mail account at [ra-Act129@state.pa.us](mailto:ra-Act129@state.pa.us).]

[Regarding the December 10, 2008 stakeholder meeting we would like to invite any interested parties or stakeholders to attend in person or by telephone. We ask that anyone planning to attend to notify the Commission at [ra-Act129@state.pa.us](mailto:ra-Act129@state.pa.us), indicating whether you are attending in person or telephone, no later than December 8, 2008.]

[If there are any questions regarding the draft staff proposal or the further questions, please contact Kriss Brown, [kribrown@state.pa.us](mailto:kribrown@state.pa.us), 717-787-4518, or Louise Fink Smith, [finksmith@state.pa.us](mailto:finksmith@state.pa.us), 717-787-8866, in the Commission's Law Bureau. Questions regarding the working group meeting should be directed to Tom Charles, [thcharles@state.pa.us](mailto:thcharles@state.pa.us), 717-787-9504.]

[Very truly yours,]

[James J. McNulty]  
[Secretary]

[Attachment A: \_\_\_\_\_ Further questions]

<sup>†</sup>—The mail box rule does not apply.—]

[Attachment B: November 26, 2008 draft staff proposal]

[cc: ~~Chairman's Office~~]

[~~Vice Chairman's Office~~]

[~~Commissioners' Offices~~]

[~~Karen Oill Moury, Director of Operations~~]

[~~Robert F. Wilson, Director, Fixed Utility Services~~]

[~~Paul Diskin, Manager, Energy, Fixed Utility Services~~]

[~~Mitchell A. Miller, Director, Bureau of Consumer Services~~]

[~~Bohdan R. Pankiw, Chief Counsel~~]

[~~Robert F. Young, Deputy Chief Counsel~~]

[~~Kriss Brown, Assistant Counsel~~]

[~~Louise Fink Smith, Assistant Counsel~~]

[~~Wayne L. Williams, Director, Conservation, Economics, and Energy Planning~~]

[~~Cal Birge, Conservation, Economics, and Energy Planning~~]

[~~June Perry, Director, Legislative Affairs~~]

[~~Tom Charles, Manager, Office of Communications~~]

[~~Veronica Smith, Chief Administrative Law Judge~~]

[~~Cheryl Walker Davis, Director, Office of Special Assistants~~]

[~~All parties that provided comments at Docket No. M-2008-2069887~~]

[~~Docket No. M-00061984, *Investigation of Conservation, Energy Efficiency Activities, & DSR by Energy Utilities & Ratemaking Mechanisms to Promote Such Efforts*~~]

# ~~[ATTACHMENT A]~~

~~[Additional Questions Related to the Commission's]~~

~~[Energy Efficiency and Conservation Program at Docket No. M-2008-2069887]~~

~~[1. Efficiency targets/Goals:]~~

- ~~[a) Should the Commission use the average usage during the 100 highest peak hours during the entire reference year, or the average usage during the 100 highest summer peak hours when calculating the peak demand reduction targets for each EDC?]~~
- ~~[b) Does Act 129 require reductions down to a fixed level, or require a fixed amount of decrease? How should this be calculated? Should the consumption reduction requirements contained in Section 2806.1(e) be treated the same as the demand reduction requirements contained in Section 2806.1(d)?]~~

~~[2. Program Design:]~~

- ~~[a) Statewide vs. EDC specific: Should the Commission encourage, by policy, a statewide approach to some programs that are likely to be effective across Pennsylvania? For example, should rebate programs be harmonized across the state? Should specific programs, such as Energy Audits, PJM load reduction programs, Home Performance With Energy Star, and Energy Star Homes be consistently available in all EDC service territories? If so, what programs should the EDCs implement consistently across the state?]~~
- ~~[b) Can Act 129 programs have negative impacts on existing cost effective energy efficiency and demand side programs by 3<sup>rd</sup> parties? If so, how can this Commission avoid damaging existing 3<sup>rd</sup> party efforts when socializing Act 129 energy efficiency and demand side programs through non-bypassable charges to all customers, while increasing customer participation in these services?]~~
- ~~[e) Should the Commission seek to harmonize Act 129 programs with other Federal, State, local, RTO or other group programs? If so, what specific programs should this Commission encourage EDCs to replicate, incorporate, or leverage as part of their compliance filings? How can this best be achieved?]~~

~~[3. Total Resource Test]~~

- ~~[a) How can the Total Resource Cost Test that must be approved by the Commission under Sections 2806.1(a)(3) and 2806.1(b)(1)(i)(I) be simplified?]~~
- ~~[b)-~~

The Act defines "Total Resource Cost Test" (TRC test) as "a standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures." Under this definition, may the Commission limit consideration of monetary costs to the costs incurred by the EDC?  
]

~~[e) Can the TRC test include avoided environmental costs or other avoided societal costs?]~~

~~[d) If the Commission limits costs considered under the TRC test to those incurred by the EDC, should the Commission exclude costs not incurred by the EDC from the test?]~~

~~[e) If participant costs that are not paid by the EDC are included, should these costs be reduced by tax credits or credits under the AEPS Act received by the participants?]~~

~~[f) What elements of the "avoided monetary cost of supplying electricity" should be included in the TRC test?]~~

~~[g) Should these costs be valued at the "marginal costs for the periods when there is a load reduction" as required by the draft Implementation Order? What does this mean precisely?]~~

~~[h) Should the methodology for calculating the Net Present Value (NPV) and B/C ratio set forth in *The California Standard Practice Manual—Economic Analysis of Demand Side Programs and Projects* (July 2002) be used, or is there a better alternative?]~~

~~[i) What discount rate should be used in the calculation of NPV? How frequently should it be reevaluated? Should it be established for each EDC service territory, or for the Commonwealth as a whole?]~~

~~[j) Should the elements used in the calculation of an EDC's total annual revenue be the same elements used to calculate the "avoided monetary cost of supplying electricity" under the TRC test?]~~

~~[k) The gas industry raised some interesting points on the net impact of displacing natural gas heating equipment (space and water) with electricity heating equipment. Should the TRC test include parameters to capture the consequences of net energy gains or losses in delivering alternative fuels to consumers?]~~

[

**~~4. Evaluation, Measurement and Verification:]~~**

- ~~[a] Should the Commission use a statewide, independent evaluator hired by the Commission to review EDC compliance with Act 129, pursuant to 2806.1(b)(1)(i)(J)? What would be the advantages and disadvantages of consolidating this review process?]~~
- ~~[b] What programs lend themselves to a “deemed savings” approach, and what programs require more rigorous pre- and post-verification processes? How often should savings estimates be reviewed and how?]~~
- ~~[c] The Commission has a revised draft update to the 2005 Technical Reference Manual (TRM) that provides energy savings calculations for standard measures. The draft update is ready to be reviewed by interested parties. Should the Commission use a Secretarial Letter process to seek comments on this and subsequent updates to the TRM in the future? What timetable would be optimal for periodically updating the TRM?]~~
- ~~[d] In addition to the TRM for standard measures, should the Commission adopt a standard measure and evaluation protocol for determining the energy savings from the installation or adoption of non-standard or custom measures not addressed in the TRM? If so, what protocols should be adopted? Comments to date have included the following protocols: 1) International Performance and Measurement Verification Protocol; 2) ISO New England Protocol; and 3) DOE Energy Star Portfolio Manager.]~~
- ~~[e] How might the Commission simplify and streamline the monitoring and verification of data so as to maximize resources for program measures but enable a thorough evaluation of program results consistent with Act 129 requirements?]~~
- ~~[f] Should the Commission adopt standard data collection formats and data bases for the evaluation of program benefits and results that would be used across all EDC service territories?]~~

**~~5. Revenue Requirement:]~~**

- ~~[a] The Act defines “Electric Distribution Company Total Annual Revenue” as amounts paid to the EDC for “generation, transmission, distribution and surcharges” by retail customers. What “surcharges” should be included in the calculation of an EDC’s total annual revenue?]~~

**~~6. Cost Recovery Issues:]~~**

~~[a) Can one class of customers have EE&C charges in excess of 2% of class revenues, due to an abundance of cost effective opportunities relative to other customer classes, while overall EE&C charges remain below 2% of revenues for the utility as a whole?]~~

~~[7. CSP Issues:]~~

~~[a) Does the definition of "Conservation Service Provider" (CSP) in the Act prohibit an affiliated company of an EDC from serving as a CSP to an EDC other than its affiliate?]~~

~~[b) Are there existing barriers to CSP market development that the Commission should address in the context of Act 129? For example, what data access, meter access or other barriers should the Commission accelerate resolution of in order to enhance Act 129 goal achievement?]~~

~~[c) How should the Commission ensure that EDC self-supplied EE&C programs are more cost effective than similar services offered by CSPs? Should this Commission require EDCs to demonstrate in their implementation filing that their self-supplied program is more cost effective than similar CSP provided services?]~~

**[~~ATTA~~  
~~CHME~~  
~~NT B~~]**

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**  
Harrisburg, PA. 17105-3265

Public Meeting held \_\_\_\_\_

Commissioners Present:

James H. Cawley, Chairman  
Tyrone J. Christy, Vice Chairman  
Robert F. Powelson  
Kim Pizzingrilli  
Wayne E. Gardner

Energy Efficiency and Conservation Program

Docket No. M-2008-2069887

**IMPLEMENTATION ORDER**

**BY THE COMMISSION:**

The Commission has been charged by the Pennsylvania General Assembly (“General Assembly”) with establishing an energy efficiency and conservation program. The energy efficiency and conservation program requires each electric distribution company (“EDC”) with at least 100,000 customers to adopt a plan to reduce energy demand and consumption within its service territory. 66 Pa. C.S. § 2806.1. In order to fulfill this obligation, the Commission has commenced a stakeholder process with interested parties invited to address relevant issues. This Implementation Order will establish the standards each plan must meet and provide guidance on the procedures to be followed for submittal, review and approval of the EDC plans.

## BACKGROUND AND HISTORY OF THIS PROCEEDING

Governor Edward Rendell signed Act 129 of 2008 (“the Act”) into law on October 15, 2008. The Act took effect 30 days thereafter on November 14, 2008. Among other things, the Act created an energy efficiency and conservation program, codified in the Pennsylvania Public Utility Code at Sections 2806.1 and 2806.2, 66 Pa. C.S. §§ 2806.1 and 2806.2. This program requires an EDC with at least 100,000 customers to adopt a plan, approved by the Commission, to reduce electric consumption by at least one percent (1%) of its expected load for June 1, 2009 through May 31, 2010, adjusted for weather and extraordinary loads. This one percent (1%) reduction is to be accomplished by May 31, 2011. By May 31, 2013, the total annual weather-normalized consumption is to be reduced by a minimum of three percent (3%). Also, by May 31, 2013, peak demand is to be reduced by a minimum of four-and-a-half percent (4.5%) of the EDC’s annual system peak demand in the 100 hours of highest demand, measured against the EDC’s peak demand from June 1, 2007 through May 31, 2008. By November 30, 2013, the Commission is to assess the cost effectiveness of the program and set additional incremental reductions in electric consumption if the benefits of the program exceed its costs.

The Act requires the Commission to develop and adopt an Energy Efficiency and Conservation Program (“EE&C Program”) by January 15, 2009, and sets out specific issues the EE&C Program must address. 66 Pa. C.S. § 2806.1(a). The Commission’s EE&C Program is to include the following:

- (1) A procedure for approving plans.
- (2) A process to evaluate and verify the results of each plan and the program as a whole.
- (3) A process to analyze the costs and benefits of each plan in accordance with a total resource cost test.

- (4) A process to analyze how the program as a whole and each plan will enable the EDCs to meet or exceed the consumption reduction requirements.
- (5) Standards to ensure that each plan uses a variety of measures that are applied equitably to all customer classes.
- (6) A process through which recommendations can be made for the employment of additional consumption reduction measures.
- (7) A procedure to require and approve the competitive bidding of all contracts with conservation service providers (“CSP”).
- (8) A procedure through which the Commission will review and modify, if necessary, all contracts with conservation service providers prior to execution.
- (9) A procedure to ensure compliance with the requirements of Sections 2806.1(c) & (d).
- (10) A requirement for the participation of conservation service providers in the implementation of all or part of a plan.
- (11) A cost recovery mechanism to ensure that measures approved are financed by the customer class that directly receives the energy and conservation benefits.

On October 21, 2008, the Commission issued a Secretarial Letter seeking comments on each of the individual aspects of the EE&C Program outlined in Sections 2806.1(a)(1)-(11). 66 Pa. C.S. §§ 2806.1(a)(1)-(11). The Secretarial Letter was sent to all EDCs and the members of the DSR Working Group<sup>[2]1</sup> at Docket No. M-00061984. Pursuant to an October 29, 2008 Secretarial Letter at Docket No. M-00061984, the comments were due November 3, 2008. The October 29<sup>th</sup> Secretarial Letter announced a special *en banc* hearing on alternative energy, energy conservation

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<sup>[2]1</sup> Demand Side Response.

and efficiency, and demand side response to be held on November 19, 2008. Presenters at this *en banc* hearing provided comments related to the EE&C Program. Comments in reply to those expressed at the November 19<sup>th</sup> *en banc* hearing were due no later than December 1, 2008.

The parties who filed comments in response to the October 21, 2008 Secretarial Letter were: The Industrial Users Groups (“IUG”)<sup>[3]2</sup>; Department of Environmental Protection (“DEP”); Duquesne Light Company (“Duquesne”); Office of Consumer Advocate (“OCA”); Office of Small Business Advocate (“OSBA”); Pennsylvania Utility Law Project (“PULP”); Citizens for Pennsylvania’s Future (“PennFuture”); PECO Energy Company (“PECO”); PPL Electric Utilities Corporation (“PPL”); West Penn Power Company, d/b/a Allegheny Power (“Allegheny”); Pennsylvania Gas Association (“PGA”); Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), and Pennsylvania Power Company (“Penn Power”), (collectively, “FirstEnergy”); UGI Utilities Inc. – Electric Division (“UGI”); Energy Association of Pennsylvania (“EAP”); Reliant Energy, Inc., (“Reliant”); Retail Energy Supply Association (“RESA”); Augusta Systems, Inc. (“Augusta”); ClearChoice Energy (“ClearChoice”); Comverge, Inc. (“Comverge”); EnergyConnect, Inc. (“EnergyConnect”); Elster Integrated Solution (“Elster”); The E Cubed Company, LLC (“E Cubed”); eMeter Strategic Consulting (“eMeter”); Keystone Energy Efficiency Alliance (“KEEA”); The Reinvestment Fund (“TRF”); and Sensus Metering Systems (“Sensus”).

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<sup>[3]2</sup> Industrial Energy Consumers of PA, Duquesne Industrial Intervenors, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, Philadelphia Area Industrial energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors.

The parties that participated at the November 19, 2008 *en banc* hearing were: Rep. Camille Bud George (D-Clearfield), Chairman, House Environmental Resources & Energy Committee; Acting Secretary John Hanger, DEP; Frank Jiruska, Director of Energy & Marketing Services, PECO; Nancy Krajovic, Major Commercial and Industrial Accounts Manager, Duquesne; Doug Krall, Manager, Regulatory Strategy, PPL; John Paganie, Vice President of Energy Efficiency, FirstEnergy; Paul H. Raab, Principal, energytools llc; Ron Edelstein, Director of Regulatory and Government Relations, Gas Technology Institute; Ritchie Hudson, Pennsylvania Chairman, RESA; Chris Kallaher, Director, Government and Regulatory Affairs, Direct Energy; Arthur Pearson, Director of Operations, E Cubed, on behalf of Joint Supporters; Arthur Pearson, on behalf of Donald D. Gilligan, President, National Association of Energy Service Companies; Greg Thomas, President, Performance System Development, on behalf of PA Home Energy; Edward V. Johnstonbaugh, Extension Educator, Renewable Energy, Penn State University, Westmoreland County Cooperative Extension; Jay Birnbaum, Senior Vice President and General Counsel, Current Group LLC; Robert Chiste, Chairman and CEO, Comverge; Carolyn Pengidore, President/CEO, ClearChoice; Tom Rutigliano, Program Manager, Mid-Atlantic Region, CPower Inc.; Ed Gray, Vice President of Regulatory Affairs, Elster; Glenn Garland, President, CLEAResult Consulting Inc.; Jeremy Kirsch, Vice President, Client Solutions, Positive Energy Inc.; Helen E. Perrine, Executive Director, Affordable Comfort Inc.; Doug Bloom, CEO, RealWinWin Inc.; Clif Payne, Executive Vice President, CMC Energy Services; Pamela C. Polacek, Counsel, McNees Wallace & Nurick LLC, on behalf of Industrial Energy Consumers of Pennsylvania (IECPA); William Lloyd Jr., State Small Business Advocate; Sonny Popowsky, State Consumer Advocate; Scott H. DeBroff, Chair, Energy & Telecommunications Practice Group, Rhoads & Sinon, on behalf of Wal-Mart Stores; Courtney Lane, Policy Analyst, PennFuture; Roger Clark, Manager for Technology and Policy, TRF; Liz Robinson, Executive Director, Energy Coordinating Agency.

Those who provided reply comments were: \_\_\_\_\_

An EE&C Program stakeholder meeting was held on December 10, 2008. Those in attendance were: \_\_\_\_\_

## DISCUSSION

In this section the Commission will outline its EE&C Program by addressing the issues delineated in Section 2806.1(a) of the Act. This EE&C Program becomes effective with the entry of this order.

### A. Plan Approval Process

The Act requires the Commission to establish procedures for approving plans submitted by EDCs. 66 Pa. C.S. § 2806.1(a)(1). The Act further dictates that by July 1, 2009, all EDCs with at least 100,000 customers must develop and file an EE&C plan with the Commission for approval. 66 Pa. C.S. §§ 2806.1(b)(1) and 2806.1(l). The Commission is to conduct a public hearing on each plan that allows for submission of recommendations by the statutory advocates and the public regarding how the plan could be improved. 66 Pa. C.S. § 2806.1(e)(1). The Commission is to rule on each plan within 120 days of submission. 66 Pa. C.S. § 2806.1(e)(2). If the Commission disapproves a plan, it must describe in detail its reasons after which the EDC has 60 days to submit a revised plan. 66 Pa. C.S. § 2806.1(e)(2). The Commission then has 60 days to rule on the revised plan. *Id.*

Below is a description of the Commission's process for receipt, review and ruling on individual EDC EE&C plans. To begin with, the Commission notes that the plan approval process being established balances the desire to provide all interested parties an

opportunity to be heard with the need to complete the process within the statutory time constraints. In addition, the Commission notes that these plans are evolutionary in nature as the Act provides for modification of plans after approval. See 66 Pa. C.S. §§ 2806.1(a)(6), 2806.1(b)(2) and 2806.1(b)(3). Finally, the Commission notes that while the process outlined below establishes a formal approval process, the Commission directs all covered EDCs to offer informal discussions with the statutory advocates and interested stakeholders during the pre-filing development of the plans.

All EDCs with at least 100,000 customers are required to file their plans by July 1, 2009.<sup>[4]3</sup> The plans are to be served on OCA, OSBA and the Commission's Office of Trial Staff (OTS).

#### **1. Pre-EE&C Plan Filing Activities**

**To enable EDCs to prepare their EE&C plans in a timely manner and to facilitate Commission review of those plans within the 120 day window prescribed by the Act, we believe that all parties would benefit if certain key issues were addressed and, to the extent possible, resolved prior to the July 1, 2009 filing deadline.**

**Load Forecasts. In order for an EDC to develop specific consumption reduction programs, there must be agreement as to the scope of its obligations (i.e., the number of kWhs it must save on an annual basis by May 31, 2011 and May 31, 2013). As discussed in greater detail later in this Implementation Order, each EDC's baseline for purposes of calculating its required consumption savings will be a Commission-approved load forecast for the June 1, 2009 - May 31, 2010 period. We conclude that an advanced review of each EDC's load forecast would be in the public interest and, therefore, direct each EDC subject to the Act to file with the**

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<sup>[4]3</sup> This list only includes those EDCs with at least 100,000 customers that must comply with Act 129. See 66 Pa. C.S. § 2806.1(1). The Commission will not accept voluntary plans proposed by other EDCs at this time due to the compressed time constraints of the approval process.

Commission, on or before February 1, 2009, its load forecast for the June 1, 2009 - May 31, 2010 period.

Such filings shall include projected loads per customer class; a listing of principal assumptions employed in developing the forecasted loads; a narrative description of the weather normalization methodology utilized by the EDC in its load forecast; and weather-normalized loads, by customer class, for each of the five years 2004-2008. Copies of the load forecast filings will be served upon the Commission's Bureau of Fixed Utility Services, the Office of Trial Staff, the Office of Consumer Advocate, the Office of Small Business Advocate, and other interested parties. All parties, including the statutory advocates and other interested parties, should advise the Commission of any concerns they have with the EDC's load forecast by filing comments with the Commission by no later than March 1, 2009. The EDC shall have the opportunity to respond to any such concerns by submitting reply comments on or before March 10, 2009 and the Commission shall issue an Order by no later than April 1, 2009 either approving the EDC's load forecast as-filed or directing the EDC to make specific revisions to its as-filed load forecast for purposes of developing its EE&C plan.

It is our expectation that this process will resolve any differences between the EDC and the parties regarding the EDC's load forecast and will provide the EDC with an understanding of its consumption reduction targets so that it may better utilize the time between April 1, 2009 and July 1, 2009 to develop the programs needed to achieve the required kWh savings.

CSP Bidding Procedures and Standard Form Contract. The Act also requires that the Commission establish procedures for EDCs to competitively bid contracts with conservation service providers (CSPs) and for the Commission to review and approve proposed contracts between EDCs and CSPs. In subsequent sections of this Implementation Order, we set forth certain criteria that we intend to apply in reviewing proposed CSP bidding procedures and contracts submitted by EDCs. This, however, is another area where we believe substantial progress can be

made in advance of the July 1, 2009 EE&C plan filing deadline. We therefore direct the EDCs subject to this Act to file with the Commission and interested parties, on or before March 1, 2009, proposed RFP procedures and a standard form CSP contract to be utilized with successful bidders.

Interested parties should advise the Commission of any concerns they have with the EDC's proposed RFP process and/or CSP standard form contract by filing comments with the Commission by no later than April 1, 2009. The EDC shall have the opportunity to respond to any such concerns by submitting reply comments on or before April 10, 2009 and the Commission shall issue an Order by no later than May 1, 2009 either approving the EDC's proposed RFP process and CSP contract as-filed or directing the EDC to make specific revisions to its as-filed documents for purposes of developing its EE&C plan.

As discussed *infra*, the Commission-approved RFP process and standard form contract will be submitted as part of the EE&C plan. We note, in this regard, that the Act provides that an EDC shall include in its plan "a contract with one or more conservation service providers selected by competitive bid to implement the plan or a portion of the plan as approved by the Commission." 66 Pa. C.S. § 2806.1(b)(1)(e). We conclude, however, that it would be unrealistic to expect an EDC to conduct an RFP process and to actually execute a contract with a CSP prior to the review of its EE&C plan and the issuance of a final Commission determination approving the implementation of specific energy efficiency and peak demand reduction programs. For that reason, we interpret the Act to require only the filing with the EE&C plan of the previously approved standard form contract. We expect the EDC to launch its RFP process for selecting CSPs and to submit executed agreements for our approval promptly after we approve the EDC's EE&C plan.

## 2. EE&C Plan Filing Requirements

Each EDC filing must contain the following:

1. A detailed plan addressing each of the requirements in 66 Pa. C.S. § 2806.1(b)(1)(i).<sup>[5]4</sup>
2. Sufficient supporting documentation and verified statements or testimony or both.
3. [~~Approved~~]**The previously approved** contract(s) **to be executed** with one or more CSPs and [~~a~~]description of the competitive [~~bidding~~]**bidding** process used to select the CSPs.<sup>[6]5</sup>
4. Description of the work and measures being performed by CSPs and by the EDC along with a justification for the allocation.

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<sup>[5]4</sup> In addition to meeting the requirements laid out in 66 Pa. C.S. §§ 2806.1(a), 2806.1(c) & 2806.1(d), and this Implementation Order, the plans must include the following:

- a) Specific proposals to implement EE&C measures to at least achieve the required consumption reductions.
- b) Specific proposals to obtain 10% of required consumption reductions from units of federal, state and local governments, to include municipalities, school districts, institutions of higher education and nonprofit entities.
- c) An explanation of how quality assurance and performance will be measured, verified and evaluated.
- d) A statement delineating the manner in which the plan will achieve the requirements of the program under 66 Pa. C.S. §§ 2806.1(a), 2806.1(c) & 2806.1(d).
- e) Contract(s) with one or more CSPs selected by competitive bid to implement all or part of the plan as approved by the Commission.
- f) Estimates of the cost of implementing the EE&C measures.
- g) Specific measures for households at or below 150% of the federal poverty income guidelines, the number of which shall be proportionate to those households' share of the total energy usage in the service territory.
- h) A proposed cost-recovery mechanism, in accordance with Section 1307, 66 Pa. C.S. § 1307, to fund the EE&C measures, to include administrative costs.
- i) A demonstration that the plan is cost-effective through a total resource cost test approved by the Commission and that provides a diverse cross-section of measures for customers of all rate classes.
- j) A statement delineating how an annual independent evaluation of cost-effectiveness will be accomplished, as well as a full review of the results of each five-year plan. Furthermore, to the extent practical, provide a description of how the plan will be adjusted as a result of these evaluations.
- k) An analysis of the EDC's administrative costs associated with the implementation of the plan.

<sup>[6]5</sup> A CSP is defined in the Act at 66 Pa. C.S. § 2806.1(m) as an "entity that provides information and technical assistance on measures to enable a person to increase energy efficiency or reduce energy consumption and that has no direct or indirect ownership, partnership or other affiliated interest with an EDC."

5. A budget showing total planned expenditures by program and customer class.
6. Tariffs and a Section 1307 cost recovery mechanism.
7. ~~[A]~~**The previously approved load** forecast~~[-load]~~ for the period of June 1, 2009 through May 31, 2010.
8. A ~~[weather adjustment calculation that meets the requirements outlined in Section H of this Implementation Order.]~~**description of the weather normalization methodology and all principal assumptions utilized in developing the load forecast.**
9. An average of the **EDC's** 100 highest peak hours during the period of June 1, 2007 through ~~[May 31, 2008.]~~**September 30, 2007.**
10. A description of the EDC's method for monitoring and verifying plan results.

The Commission will publish a notice of each proposed plan in the *Pennsylvania Bulletin* within 20 days of its filing. In addition, the Commission will post each proposed plan on its website. An answer along with comments and recommendations are to be filed within 20 days of the publication of the notice in the *Pennsylvania Bulletin*. Each plan will be referred to an Administrative Law Judge ("ALJ"), who will hold a public input hearing(s) in the EDC's service territory and, if necessary, evidentiary hearings on any material issues of disputed facts. Such hearings are to be held on or before the 70<sup>th</sup> day after a plan is filed, after which, the ALJ will certify the record. The EDC will have 15 days following the last hearing to submit a revised plan or reply comments or both.

The Commission will approve or reject a plan at public meeting within 120 days of the EDC's filing. The Commission will provide a detailed ~~[rational]~~**rationale** for all rejected plans. Thereafter, the EDC will have 60 days from the entry date of the order to file a revised plan that addresses the identified deficiencies. This revised plan is to be served on OCA, OSBA and OTS, who, along with other interested parties, **will** have ten

days to file comments on the revised plan, with reply comments due ten days thereafter. The Commission will approve or reject a revised plan at a public meeting within 60 days of the EDC's revised plan filing. This process will be repeated until a plan receives Commission approval.

## **B. Plan Effectiveness Evaluation Process**

The Act requires the Commission to establish an evaluation process that monitors and verifies data collection, quality assurance and the results of each EDC plan and the program as a whole. 66 Pa. C.S. § 2806.1(a)(2). While Section 2806.1(b)(1)(i)(C) requires each EDC plan to explain how quality assurance and performance will be measured, verified and evaluated, it is apparent that Section 2806.1(a)(2) requires the Commission to monitor and verify this data. This evaluation process is to be conducted every year, as each EDC is to submit an annual report documenting the effectiveness of its plan, energy savings measurement and verification, an evaluation of the cost-effectiveness of expenditures and any other information the Commission requires. 66 Pa. C.S. § 2806.1(i)(1).

Below is a description of the Commission's evaluation process to monitor and verify data collection, quality assurance and results. Specifically, the Commission will utilize the Technical Reference Manual ("TRM") to fulfill the evaluation process requirements contained in the Act. The TRM was supported by participants and previously adopted by the Commission in the Alternative Energy Portfolio Standards Act ("AEPS") proceedings at Docket No. M-[0051865]00051865 (order entered October 3, 2005). The TRM [~~will, however, need to be~~ is in the process of being updated and expanded through a separate Secretarial Letter process to fulfill the requirements of the Act. [~~As such,~~ Through this process, which is anticipated to be completed by March 1, 2009, the Commission will expand the TRM to provide for additional energy efficient technologies, peak load reduction, conservation projects and rates/pricing

designs. We note, however, that this is an evolutionary process and we expect that additional technologies and measures, not initially included in the expanded TRM, will be proposed and approved during our review of individual EDC EE&C plans and that, as a consequence, the TRM will be further expanded from time to time.

The Commission also believes that a standardized format for the reporting of data is important. However, given that the EDCs will not be required to file their annual reports until 2010, we will address the annual report filing requirements in a subsequent order.

### C. Cost – Benefit Analysis Approval Process

The Act requires that an analysis of the cost and benefit of each plan, in accordance with a total resource cost test (“TRC test”), be approved by the Commission. 66 Pa. C.S. § 2806.1(a)(3). The Act also requires an EDC to demonstrate that its plan is cost-effective using a total resource cost test approved by the Commission, and that it provides a diverse cross section of alternatives for customers of all rate classes. 66 Pa. C.S. § 2806.1(b)(1)(i)(I). The Act defines “total resource cost test” as “a standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures.” 66 Pa. C.S. § 2806.1(m).

The Commission hereby adopts, without modification, the TRC test set forth in the October 2001 edition of the *California Standard Practice Manual-Economic Analysis of Demand-Side Programs and Projects* (the “*California Manual*”).<sup>6</sup> The Commission also directs that EDCs [~~shall~~] evaluate the cost effectiveness of each of

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<sup>6</sup> The California Manual may be found at:  
<ftp://ftp.cpuc.ca.gov/puc/energy/electric/energy+efficiency/em+and+v/std+practice+manual.doc>

their energy efficiency or demand reduction programs using the TRC test [~~which represents the combination of the~~] **set forth in the California Manual, which takes into account the combined** effects of a program on both participating and non-**participating customers based on the costs incurred by the EDC and participating customers**. The benefits calculated in the TRC test are the avoided supply costs, which shall include the reduction in transmission, distribution, generation and capacity costs valued at marginal cost for the periods when there is a load reduction. The avoided supply costs should be calculated using net program savings, savings net of changes in energy use that would have happened in the absence of the program. The persistence of savings over time must also be considered in the net savings.

The costs calculated in this test are the program costs paid by the utility and the participants, plus the increase in supply costs for the periods in which load is increased. Thus, all equipment, installation, operation and maintenance costs, cost of removal (less salvage value), and administrative costs, regardless of who pays for them, are included. Any tax credits should be considered a reduction to costs. [~~The Commission is soliciting comments on what additional costs and benefits should be included in the TRC~~] **For fuel substitution programs, the costs also include the increase in supply costs for the entity providing the fuel that is chosen as a result of the program.**

The results of the TRC test can be expressed as either a net present value (“NPV”) or a benefit-cost ratio (“B/C ratio”). The NPV is the discounted value of the net benefits of this test over a specified period of time. The NPV is a measure of the change in the total resource costs due to the program. An NPV above zero indicates that the program is a less expensive resource than the supply option upon which the marginal costs are based. The B/C ratio is the ratio of the discounted total benefits of the program to the discounted total costs over some specific time period. The B/C gives an indication of the rate of [

]return of this program to the utility and its ratepayers. A B/C ratio above one indicates that the program is beneficial to the utility and its ratepayers on a total resource cost basis. The methodology to calculate either the NPV or B/C ratio of the TRC is found in ~~[The]~~the California [Standard Practice Manual—Economic Analysis of Demand Side Programs and Projects, July, 2002, page 18.<sup>7</sup>]~~[The Commission is adopting this California Standard Practice Manual and will modify it as necessary to meet this Commonwealth's particular needs.]~~Manual at page 18.

~~[—A discount rate must be established to calculate the net present value. The Commission is soliciting comments on what the discount rate should be. Specifically, the Commission would like comments related to what the rate should be based on, how frequently it should be re-evaluated, and whether it should be established for each EDC service territory or for the Commonwealth as a whole.]~~

For purposes of calculating the NPV of a particular measure or program under the TRC test, each EDC shall utilize its after-tax weighted cost of capital as the applicable discount rate.

**D. Process to Analyze How the Program and Each Plan will Enable EDCs to Meet Reduction Requirements**

The Act requires the Commission to conduct an analysis of how the program, as a whole, and how the EDC's individual plan, in particular, will enable an EDC to meet or exceed the required consumption (66 Pa. C.S. § 28061(c)) and peak demand reductions (66 [24][a]Pa. C.S. § 2806.1(d))~~[-]~~; 66 Pa. C.S. § 2806.1(a)(4). Each EDC plan must include specific proposals to implement measures to achieve or exceed the required reductions. 66 Pa. C.S. § 2806.1(b)(1)(i)(A). Each plan must also state the manner in which it will achieve or exceed the required consumption reductions. 66 Pa. C.S. §

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<sup>7</sup> This manual can be found at [http://www.clarkstrategicpartners.net/files/calif\\_standard\\_practice\\_manual.pdf](http://www.clarkstrategicpartners.net/files/calif_standard_practice_manual.pdf).

2806.1(b)(1)(i)(D).~~[Specifically, the Commission will conduct the evaluations using a savings approach reduction approach.]~~

~~[Consumption is addressed at 66 Pa. C.S. § 2806.1(e), which requires the Commission to forecast each EDC's expected load for the period June 1, 2009, through May 31, 2010. In order to make this forecast, the Commission will need input from the EDCs and other interested parties. The Commission intends to complete these forecasts by \_\_\_\_\_. As such, the EDCs are to petition the Commission and serve the statutory advocates and interested stakeholders for such a forecast at least six months prior to the Commission's forecast completion date. The EDCs must include in the pleading all relevant information upon which the Commission will base the forecast.]~~

~~[Thereafter, within 45 days after May 31, 2011, and after May 31, 2013, the EDCs are to file with the Commission (at the forecast petition docket, and serving the parties to that docket) information documenting their consumption for June 1, 2010, through May 31, 2011, and for June 1, 2012, through May 31, 2013, respectively. To be in compliance with the Act, an EDC's 2010-2011 consumption must be at least 1% less than the forecasted 2009-2010 load; the 2012-2013 consumption must be at least 3% lower than the forecasted 2009-2010 load.<sup>8</sup>][To the extent that an EDC alleges the need for weather normalization or extraordinary load adjustments, such factors are to be fully explained in the consumption filings.]~~

**For purposes of determining whether an EDC achieved its required energy consumption reductions, the Commission intends to use the savings approach. Therefore, to be in compliance with the Act, an EDC must demonstrate that the total savings in energy consumption during the twelve months ended May 31, 2011 and May 31, 2013 from the measures included in the EDC's approved EE&C plan**

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<sup>8</sup> ~~The failure to meet these reduction mandates will subject the EDC to a civil penalty of between one million and five million dollars that cannot be recovered in rates (66 Pa. C.S. § 2806.1(e)(2)(i)), and the Commission will engage a CSP, at the EDC's expense, to achieve the mandated reductions (66 Pa. C.S. § 2806.1(e)(2)(ii)).~~<sup>1</sup>

equal or exceed 1.0% and 3.0%, respectively, of the EDC's Commission-approved forecasted load for the June 1, 2009 – May 31, 2010 period.<sup>7</sup>

On or before November 30, 2013, and every five years thereafter, the Commission shall evaluate the costs and benefits of an EDC's EE&C plan [~~relative to annual consumption~~] using [a] the TRC test [~~or cost-benefit analysis as determined by the Commission~~]. If the Commission determines that benefits exceed the costs, the Commission will adopt new incremental consumption reduction requirements.

[~~Peak demand is addressed at 66 Pa. C.S. § 2806.1(d), which mandates that the 100 hours of highest demand for the period from June 1, 2007, to May 31, 2008, be calculated. This amount is the 2007-2008 peak demand. To be in compliance the EDC's 100 hours of highest demand, weather normalized, for the period June 1, 2012, through May 31, 2013, must be 4.5% less than the 2007-2008 peak demand.~~<sup>4</sup>] In implementing Act 129's peak demand provisions, we similarly intend to use the savings approach. We also need to balance the interest of customers in reducing the cost of electricity during peak demand periods with their desire for safe, reliable and reasonably continuous service. In this regard, experience shows that wholesale electric prices can be very sensitive to changes in demand during extreme weather conditions (i.e., perhaps the hottest 25 hours of the year). During such periods, it is conceivable that substantial cost savings can be realized by reducing peak demands. The corollary, of course, is that peak shaving may have an immaterial price impact during the remaining hours of the year. As to these hours, we do not believe that it would be in

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<sup>7</sup> The failure to meet these reduction mandates may subject the EDC to a civil penalty of between one million and twenty million dollars that cannot be recovered in rates (66 Pa. C.S. § 2806.1(e)(2)(i)), and the Commission may engage a CSP, at the EDC's expense, to achieve the mandated reductions (66 Pa. C.S. § 2806.1(e)(2)(i)).

the public interest if EDCs were forced to shed load simply to meet a regulatory target.<sup>8</sup>

Section 2806.1(d) of the Act requires an EDC to demonstrate that during the twelve months ending May 31, 2013, it reduced its peak demand by 4.5% of its baseline peak demand.<sup>9</sup> This represents the EDC's Demand Reduction Target and can be satisfied through the utilization of Coincident Demand Reduction Resources (those resulting from implemented measures that have both an energy saving and demand reduction component) and Callable Demand Reduction Resources (i.e., requests to curtail load).

Once an EDC's Demand Reduction Target has been established, it is necessary to designate a Trigger Point and a Call Mechanism that actually results in load reductions during times of highest demand. The Trigger Point is the EDC's peak demand for the summer 2007 period less its Demand Reduction Target. Whenever an EDC anticipates that its demands will equal or exceed the Trigger Point, the EDC must activate its Callable Reduction Resources for the duration of the hours that are expected to equal or exceed the Trigger Point. An EDC will be deemed in compliance with Act 129's peak demand provisions if it demonstrates that the total of its Coincident and Callable Demand Reductions equal or exceed the Target.<sup>10</sup>

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<sup>8</sup> The response of prices to changes in demands becomes important for purposes of this proceeding when it is recognized that the highest 100 peak hours for an EDC can and frequently will encompass markedly different operating conditions. For example, PECO's highest hour in 2007 (8549 Mw) was more than 1000 Mw greater than its 100th highest hour (7534 Mw). In addition, the average of its 100 highest hours (7899 Mw) was approximately 600 Mw less than the top of the range.

<sup>9</sup> The [failure to meet this reduction mandates will subject the EDC to a civil penalty of between one million and five million dollars that cannot be recovered in rates (66 Pa. C.S. § 2806.1(e)(2)(i)), and the Commission will engage a CSP, at the EDC's expense, to achieve the mandated reductions (66 Pa. C.S. § 2806.1(e)(2)(ii)).] EDC's baseline peak demand will be determined by averaging, on a weather-normalized basis, the 100 hours of highest demand experienced during the June 1, 2007 – September 30, 2007 period.

<sup>10</sup> The failure to meet these reduction mandates may subject the EDC to a civil penalty of between one million and twenty million dollars that cannot be recovered in rates (66 Pa. C.S. § 2806.1(e)(2)(i)), and the

**Finally, we note that EDCs should take the necessary steps to ensure that their demand response programs, including measurement and verification methodologies, properly align with the demand response programs of their respective ISO/RTO.**

On or before November 30, 2013, the Commission shall evaluate the peak demand aspects of an EDC's EE&C plan by comparing the cost of [the]an EDC's EE&C plan to the retail savings in energy and capacity benefits of an EDC's EE&C plan relative to peak demand or by other means chosen by the Commission. If the Commission determines that benefits exceed the costs, the Commission will adopt new incremental requirements for reductions in peak demand for the highest 100 hours or otherwise as may determined by the Commission. The new reductions shall be achieved by May 31, 2017, as measured against the EDC's peak demand for June 1, 2011, through May 31, 2012.

~~[There are two possible measurement interpretations for this subsection. For consumption, for example, stated as simply as possible, if an EDC's forecasted load for June 1, 2009, through May 31, 2010, is 100 MWh, by May 31, 2011, that EDC must demonstrate that its plan conserved 1MWh of electricity.]~~

~~[— TRF comments relative to measuring the performance in terms of savings or reductions generally support a reductions approach. With the reduction method, the EDCs are responsible for implementing EE&C measures that result in future sales (consumption and peak) being less than an earlier set of sales. TRF asserts that the goal of the Act is to reduce sales, not merely to slow down the increases in retail sales. Under a savings approach, TRF claims that the EDCs could "meet" the targets even while~~

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**Commission may engage a CSP, at the EDC's expense, to achieve the mandated reductions (66 Pa. C.S. § 2806.1(e)(2)(ii)).**

~~seeing energy consumption and peak demand grow.][DEP, PECO, and PPL believe that the correct interpretation is that the EDCs must demonstrate that the plan conserved 1 MWh of electricity. The]~~**As indicated previously, the** Commission agrees with PECO, PPL, and DEP that the statute targets are intended to reflect energy and demand savings, as opposed to absolute reductions in consumption.<sup>[49]</sup>~~[The]~~**Indeed, we believe that the** absolute reduction approach~~[ advocated by TRF] would, in effect, [as even TRF acknowledges.]~~penalize an EDC for economic growth in terms on new customers and business in its service territory.<sup>[41]</sup> Accordingly, each plan will be evaluated as to whether the consumption **savings and peak** demand reduction goals in the Act will be achieved based on the use of a TRM and other ~~[metrics resources to measure the effect of various energy efficiency and conservation measures. —]~~**standard measurement and evaluation protocols (e.g., the International Performance and Measurement Verification Protocol, the ISO New England Protocol, the DOE Energy Star Portfolio Manager).**

~~[However, after]~~**After**-the-fact measurement and verification remain critical to ensure that an EDC has properly implemented its EE&C plan~~[.]~~ **and** that the projected savings metrics remain accurate~~[, that non-controllable factors such as economic growth and weather have not skewed results, and that the savings are the result of the EE&C plan].~~ The Commission will analyze ~~[the program as a whole and individual]~~**an** EDC plan's effectiveness in meeting or ~~[exceed]~~**exceeding** the Act's mandatory savings through the ~~[initial review]~~**plan approval** process as described in Section A above. In addition, the Commission will **also** assess the ~~[program and]~~ individual **EDC's** plan effectiveness during the annual report review process described in Section F below.

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<sup>[40]</sup>**11** See PECO Comments at 6; PPL Comments at 4 at this docket; and DEP En Banc Comments at transcript page \_\_ on November 19, 2008, at Docket M-0061984.

<sup>[41]</sup> TRF Comments at 11-12.]

**E. Standards to Ensure that a Variety of Measures are Applied Equitably to all Customer Classes**

The Act requires the Commission to establish standards to ensure that each plan includes a variety of measures and that each plan will provide the measures equitably to all customer classes. 66 Pa. C.S. § 2806.1(a)(5).<sup>12</sup> The Act defines “energy efficiency and conservation measures” at 66 Pa. C.S. § 2806.1(m).

There are clear requirements in the Act regarding [~~proportions of funding~~]proportionate measures for low-income customers (within a residential customer class)[~~-as well as for~~]. In addition, the Act requires that a minimum of 10% of the required reductions in consumption be obtained from units of governments, schools, etc. (within a commercial customer class). Beyond those requirements, we believe that EDCs should develop plans to achieve the most energy savings per expenditure. The driving principle should be the most cost effective use of resources so that benefits can accrue to all customers, even if only by virtue of more reasonable provider of last resort contracts.

We agree that “equitable” does not mean “pro rata,” especially when “cost-effective” is factored into the process. EDCs must offer a well-reasoned and balanced set of measures that are tailored to usage and to the potential for savings and reductions for each customer class. We believe that the overall limitation on cost recovery and the specific limitation tying costs to benefited class (discussed in Section J, below) will ensure that offerings will not be skewed toward any particular class or away from any particular class. There is no single set of measures that will fit all EDCs and the myriad mix of customer classes. It is entirely possible that the most cost effective EE and DR programs may not come proportionally from each customer class.

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<sup>12</sup> The program must include “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.”

Most commenters agree that all classes of customers will, however, benefit the most from a general approach because it has the best potential to impact future energy prices. Further, there is no consensus as to what denominator (per capita, usage, revenue, potential for savings, etc.) to use if one were to attempt to require a proportionate distribution.

While we do not require a proportionate distribution of measures among customer classes, we shall require that each customer class be offered at least one EE and one DR program, but we will leave the initial mix and proportion of programs to the EDCs. The burden is on an EDC to explain and justify its distribution of measures among its customer classes if such distribution is challenged.

#### **F. Process to Make Recommendations for Additional Measures**

The Act requires the Commission to establish procedures through which recommendations can be made as to additional measures that will enable an EDC to improve its plan. 66 Pa. C.S. § 2806.1(a)(6). Furthermore, the Act permits the Commission to direct an EDC to modify or terminate any part of an approved plan if, after an adequate period for implementation, the Commission determines that a measure included in the plan will not achieve the required consumption reductions in a cost-effective manner. 66 Pa. C.S. § 2806.1(b)(2).

Below is the Commission's procedure for recommending additional measures that enable an EDC to improve its plan. Initially it must be noted that interested parties will have an opportunity to make recommendations during the initial plan approval process described above in Section A of this Implementation Order.

Regarding approved plans, the Commission will permit EDCs and other interested stakeholders, as well as the statutory advocates, to propose plan changes in conjunction with the EDC's annual report filing required by the Act at 66 Pa. C.S. § 2806.1(i)(1).

The Commission will establish a deadline for the filing of annual reports by the EDCs following the approval of the EDCs' plans in 2009. These annual reports are to be served on OCA, OSBA and OTS. The Commission and any interested party can make a recommendation for plan improvement or object to an EDC's proposed plan revision within 30 days of the annual report filing. EDCs will have 20 days to file replies, after which the Commission will determine whether to rule on the recommended changes or refer the matter to an ALJ for hearings and a recommended decision. The Commission notes that, in addition to the above-described process, the Commission retains its statutory authority to conduct investigations and initiate statutory and regulatory compliance proceedings against jurisdictional utilities.

**G. Procedures to Require Competitive Bidding and Approval of Contracts with CSPs**

The Act requires the Commission to establish procedures to require EDCs to competitively bid all contracts with conservation service providers. 66 Pa. C.S. § 2806.1(a)(7). The Act further requires the Commission to establish procedures to review all proposed contracts with conservation service providers prior to execution of the contract. 66 Pa. C.S. § 2806.1(a)(8). The Act gives the Commission power to order the modification of proposed contracts to ensure that plans meet consumption reduction requirements. *Id.* The Act also requires each EDC to include in its plan a proposed contract for execution with one or more CSPs selected by competitive bid to implement all or part of the plan as approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(E). This section of the Act establishes that CSPs can perform some or all functions of an EE&C plan, to include management of the entire plan.<sup>13</sup>

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<sup>13</sup> As delineated in Section A above, an EDC must provide detailed justifications for why it did or did not use a CSP to perform EE&C plan functions.

Below is the Commission's procedure for reviewing and approving proposed CSP bidding process. These are the minimum criteria:

- Develop list of PUC-approved and -registered CSPs.
- Require EDCs to issue requests for proposal (“RFPs”) only to CSPs approved and registered by the PUC.
- Encourage efforts to acquire bids from CSP-registered “disadvantaged businesses” (*i.e.*, minority-owned, women-owned, persons-with-disability-owned, small companies, companies located in Enterprise Zones, and similar entities) consistent with the Commission's Policy Statements at 52 Pa. Code §§ 69.804, 69.807 and 69.808.
- Encourage the use of pay-for-performance contracts with CSPs.
- [~~Require~~]Encourage the acquisition of at least three bids, where practicable.
- Require submission of selection criteria to PUC for review and approval, to include:
  - Designation of and weighting of factors for the selection criteria.
  - Selection of overall best bid/proposal (*i.e.*, no requirement to select the lowest qualified bid) that consider:
    - Quality of prior performance,
    - Timeliness of performance,
    - Quality of the proposed work plan or approach,
    - Knowledge, background, and experience of the personnel to be utilized, and
    - Other factors as deemed relevant.

~~———— If the Commission has not commented upon or disapproved the proposed RFP process within 15 days of it being submitted to the Commission for review, then the EDC is permitted to proceed with the RFP process without modification. ]~~

Below is the Commission's procedure for reviewing and approving proposed CSP contracts prior to execution. These are the minimum criteria:

- Review for satisfactory form and content, including:
  - Nature and type of services to be provided,
  - Assurance that the CSP's work product in the EDC's plan will meet the requirement for reduction in demand and consumption,
  - Legal issues, enforceability, and protection of ratepayer funds for poor performance or non-compliance and similar issues,
  - Adequate provisions and procedures for monitoring CSP and EDC performance quality and rate of progress, and
  - Certification that the proposed CSP is not an ~~[EDC]~~ affiliate **of the EDC submitting the contract.**

~~———— If the Commission has not commented upon or disapproved the proposed contract within 45 days of it being submitted to the Commission for review, then the EDC is permitted to proceed with the contract without modification. ]~~

**As previously discussed, EDCs must submit proposed RFP procedures and a standard form CSP contract to be utilized with successful bidders by no later than March 1, 2009. By no later than May 1, 2009, the Commission will issue an Order either accepting the proposed procedures and contract or directing the EDC to make specific revisions to its as-filed documents for purposes of developing its EE&C plan.**

#### **H. Procedures to Ensure Compliance with Consumption Reduction Requirements**

The Act requires the Commission to establish procedures to ensure compliance with the consumption reduction requirements of the Act. 66 Pa. C.S. § 2806.1(a)(9). The consumption reduction requirements are outlined in the Act at Sections 2806.1(c) and (d). 66 Pa. C.S. §§ 2806.1(c) and (d). Both the one percent load reduction to be met ~~[by]~~**during the twelve months ending** May [31, 2011, and the three percent load reduction to be met ~~[by]~~**during the twelve months ending** May 31, 2013, are to be ~~[measured against]~~**calculated on the basis of** the EDC's ~~[expected load as forecasted by the]~~Commission**-approved load forecast** for June 1, 2009, through May 31, ~~[2010, with provisions made for weather adjustments and extraordinary loads the EDC must serve. 66 Pa. C.S. § 2806.1(e)(1)-]~~**2010**. The four-and-a-half percent reduction of annual system peak demand in the 100 hours of highest demand to be met ~~[by]~~**during the twelve months ending** May 31, 2013, is to be ~~[measured against]~~**calculated on the basis of** the EDC's peak demand for June 1, 2007, through May 31, 2008. 66 Pa. C.S. § 2806.1(d)(1). Furthermore, **and as noted previously**, the Act requires that a minimum of ten percent of all consumption reduction requirements are to come from units of the federal, state and local governments, including municipalities, school districts, institutions of higher education and nonprofit entities. 66 Pa. C.S. § 2806.1(b)(1)(i)(B).

~~[Below are the Commission's procedures for ensuring compliance with the consumption reduction requirements of the Act. There are five]~~**There are four** main issues that the Commission must address to ensure compliance with the Act's **consumption reduction** requirements. First, the Commission must establish a ~~[procedure for properly forecasting the-]~~baseline **forecast** for expected EDC consumption levels from June 1, 2009 through May 31, 2010. To accomplish this, the Commission is directing each covered EDC to provide a proposed expected load forecast~~[with its plan for Commission approval.]~~, **as well as certain critical back-up information, for the Commission's review by no later than February 1, 2009**. The Commission believes

this is the appropriate procedure as each EDC has the data, expertise and experience to make such projections regarding its customers and their usage patterns.

Second, the Commission must ~~[establish a procedure to determine weather adjustments to the]~~ **confirm the reasonableness of the weather normalization methodology utilized by the EDC to develop its** June 1, 2009 through May 31, 2010 load figures. Again, the Commission directs each covered EDC to ~~[propose, with its plan, a weather adjustment calculation based on the EDC's most recent rate proceeding where weather was an issue. However, any such proposal shall use a 30-year norm for the weather normalization calculation, consistent with the Commission's weather normalization allowances in recent history.]~~<sup>14</sup> **submit with its load forecast a detailed narrative description of its weather normalization procedures.**

Third, ~~[the Commission must define what would qualify as an extraordinary load. The Commission defines an extraordinary load to include loads that result from dramatic shifts in the economy or economic development in the EDCs service territory, to include both extraordinary reductions, as well as increases. Examples of such extraordinary loads are technological innovation that increases electric demand (e.g., plug-in electric hybrid cars), regulation or legislation mandating changes in the use of electricity to serve a particular load, load resulting from discontinued self-generation that the EDC is required to serve, and any other load the Commission credits as being extraordinary and beyond the EDCs control.]~~ ~~[-Fourth,-]~~ the Commission must establish a procedure for determining the 100 hours of highest peak demand in an annual period. ~~[To determine this]~~ **As noted previously**, the Commission will take a weather~~[-]~~ normalized average of the 100 highest peak hours during the summer months of June, July, ~~[and]~~ August ~~[in 2007 and compare that to a weather-normalized average of the 100 highest peak hours during the same months in 2013.]~~ **and September in 2007.** The Commission believes that focusing the

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<sup>14</sup> (Cite to recent cases.)

EE&C program efforts on the summer peak period will provide the greatest benefit and be more cost effective.

Lastly, the Commission must determine whether the term retail customer includes all customers or just those in the EDC's default service plan. The Commission defines retail customer as all customers who receive an EDC's distribution service regardless of their electric supply source. The Commission believes that it was the intent of the General Assembly that all customers contribute to the reduction of load.

## **I. Participation of Conservation Service Providers**

The Act establishes a requirement for the participation of conservation service providers in the implementation of all or part of a plan. 66 Pa. C.S. § 2806.1(a)(10). The Act requires the Commission to establish, by March 1, 2009, a registry of approved persons qualified to provide conservation services to all classes of customers, that meet experience and other qualifying criteria established by the Commission. 66 Pa. C.S. § 2806.2(a). The Act further requires the Commission to develop a conservation service provider application and permits the Commission to charge a reasonable registration fee. 66 Pa. C.S. § 2806.2(b).

The Commission initiated a separate stakeholder process to establish the qualification requirements CSPs must meet to be included in a Commission registry of CSPs under Docket Number M-2008-2074154. The Commission chose to institute a separate proceeding due to the requirement that the CSP registry is to be in place by March 1, 2009.

## J. EDC Cost Recovery

The Act directs the Commission to establish a cost recovery mechanism that ensures that approved measures are financed by the customer class that receives the direct energy and conservation benefit of the measure. 66 Pa. C.S. § 2806.1(a)(11). All EDC plans must include cost estimates for implementation of all measures. 66 Pa. C.S. § 2806.1(b)(1)(i)(F). Each plan must also include a proposed cost-recovery tariff mechanism, in accordance with Section 1307 (relating to sliding scale or rates; adjustments), to fund all measures and to ensure full and current recovery of prudent and reasonable costs, including administrative costs, as approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(H). In addition, each plan must include an analysis of administrative costs. 66 Pa. C.S. § 2806.1(b)(1)(i)(K). The Act dictates that the total cost of any plan must not exceed two percent of the EDC's total annual revenue as of December 31, 2006, excluding Low-Income Usage Reduction Programs established under 52 Pa. Code § 58 (relating to residential Low Income Usage Reduction Programs). 66 Pa. C.S. § 2806.1(g). **We interpret the two percent limitation to apply to each plan year and not to the entire life of the plan. We do so based on our belief that it would be extremely difficult, and most likely impossible, for EDCs to achieve their mandated consumption and peak load reductions if the total costs that they were permitted to incur in support of such efforts were limited to just two percent of their 2006 revenues.**

Finally, all EDCs, including those subject to generation or other rate caps, must recover on a full and current basis from customers, through a reconcilable adjustment clause under Section 1307, all reasonable and prudent costs incurred in the provision or management of its plan. 66 Pa. C.S. § 2806.1(k). We view the matter of cost recovery as consisting of three main issues as set forth in the relevant provisions of Act 129. These issues are:

- 1) Determination of allowable costs,
- 2) Allocation of costs to customer classes, and
- 3) Cost recovery tariff mechanism.

Before delineating our requirements and procedures for the review and approval of the EDCs' cost recovery mechanisms, we will first discuss the comments of the various parties in light of these three issues.

### 1. Determination of Allowable Costs

The Act allows an EDC to recover all prudent and reasonable costs relating to the provision or management of its EE&C plan, but limits such costs to an amount not to exceed two percent of the EDC's total annual revenue as of December 31, 2006, excluding Low-Income Usage Reduction Programs established under 52 Pa. Code § 58.

In order to determine the level of costs that an EDC will be permitted to recover in implementing its EE&C program, it will first be necessary to ascertain the amount of the EDC's total annual revenues as of December 31, 2006. Accordingly, we will require all subject EDCs to ~~confirm~~ **provide** this information in their EE&C plans.<sup>[+5]</sup> Pursuant to the Act, total annual revenues shall be defined as "[a]mounts paid to the electric

<sup>[+5]</sup> The records on file with the Commission indicate the following total annual revenues as of December 31, 2006:<sup>1</sup>

[Company]	[2006 Total Revenue]
[Duquesne Light Company]	[\$723,299,451]
[Metropolitan Edison Company]	[\$1,243,344,716]
[PECO Energy Company]	[\$4,371,215,020]
[Pennsylvania Electric Company]	[\$1,148,737,096]
[Pennsylvania Power Company]	[\$332,989,436]
[PPL Electric Utilities Corporation]	[\$3,402,953,852]
[West Penn Power Company]	[\$1,130,243,686]

distribution company for generation, transmission, distribution and surcharges by retail customers.” 66 Pa. C.S. § 2806.1(m). We will then require each EDC to include a calculation of the total annual amount of EE&C costs it will be permitted to recover (exclusive of expenditures on Low-Income Usage Reduction Programs established under 52 Pa. Code § 58) based on the two percent limitation as set forth in the Act. This will represent the maximum level of spending on EE&C measures that will be recoverable under the EDC’s plan.

We will next require each EDC to provide a careful estimate of the costs relating to all EE&C programs and measures as set forth in its plan. Such costs will include both capital and expense items relating to all program elements, equipment and facilities, as well as an analysis of all related administrative costs. More specifically, these costs would include, but not be limited to, capital expenditures for any equipment and facilities that may be required to implement the EE&C programs, as well as depreciation, operating and maintenance expenses, marketing and program awareness costs, a return component based on the EDC’s weighted cost of capital, and taxes. Administrative costs would include, but not be limited to, costs relating to plan and program development and implementation, cost-benefit analysis, measurement and verification, and reporting. The EDC must also provide ample support to demonstrate that all such costs are reasonable and prudent in light of its plan and the goals of the Act, keeping in mind that the total annual level of these costs must not exceed the two percent limitation as previously determined.

We agree generally with PPL that the EDC should be permitted to recover both the ongoing costs of its plan, as well as costs incurred to design, create, and obtain Commission approval of the plan. However, all costs submitted for recovery in an EDC’s plan will be subject to review by the Commission to determine whether the costs are prudent and reasonable, and are directly related to the development and implementation of the plan. [~~Furthermore, we do not agree with PECO and Duquesne~~

that ~~EE&C measures and associated costs that are approved by the~~ Costs that are incurred pursuant to a Commission[-should]-approved EE&C plan shall not be subject to after-the-fact scrutiny. [~~In this regard, we~~] We note, however, that the Act provides that:

The Commission shall direct an [EDC] to modify or terminate any part of a plan approved under this section if, after an adequate period for implementation, the Commission determines that an energy efficiency or conservation measure included in the plan will not achieve the required reductions in consumption in a cost-effective manner under [66 Pa. C.S. §§ 2806.1(c) & (d)].

66 Pa. C.S. § 2806.1(b)(2). Thus, plan measures and their associated costs that may be tentatively approved, will, in fact, be subject to ongoing review and possible modification or termination if it is determined that such measures are not or have not been cost effective.

[~~With regard to the two percent limitation provision of the Act~~] As noted previously, we agree with PPL that [~~this~~] the Act's two percent limitation should be interpreted as an annual amount, rather than an amount for the full five-year period. Since the limitation is computed based on annual revenues as of December 31, 2006, we believe it is reasonable to require that the resulting allowable cost figure be applied on an annual basis as well.

As to Duquesne's concern regarding the application of the two percent spending limitation to an EDC with customers on its system that have substantial load being served by EGSs, we recognize that such an EDC may be unfairly restricted in the amount of costs it is permitted to recover if it cannot consider the generation revenues of those customers in the application of the two percent limitation. However, the language of Act 129 specifically limits the total cost of a plan to two percent (2%) of the EDC's total annual revenue. See 66 Pa. C.S. § 2806.1(g). EDC total annual revenue is further

defined in Act 129 as “[a]mounts paid *to* the [EDC] for generation, transmission, distribution and surcharges by retail customers.” 66 Pa. C.S. § 2806.1(m) (emphasis added). While the Commission recognizes Duquesne’s concern, the Commission must follow the language of the Act.

Finally, with respect to the recovery of revenues lost due to reduced energy consumption or changes in demand, we note that the Act clearly states that such revenue losses shall not be a recoverable cost under a reconcilable automatic adjustment clause. 66 Pa. C.S. § 2806.1(k)(2). The Act does provide, however, that “[d]ecreased revenue and reduced energy consumption may be reflected in revenue and sales data used to calculate rates in a distribution-base rate proceeding filed by an electric distribution company under [66 Pa. C.S. § 1308] (relating to voluntary changes in rates).” 66 Pa. C.S. § 2806.1(k)(3).

## **2. Allocation of Costs to Customer Classes**

The Act requires that all approved EE&C measures be financed by the customer class that receives the direct energy and conservation benefit of such measures. Several of the parties filed comments addressing the issue of how to allocate the total allowable EE&C costs in order to ensure that this provision is met.

In order to ensure that all approved EE&C measures are financed by the customer classes that receive the benefit of such measures, it will be necessary to first assign the costs relating to each measure to those classes to whom it is targeted. Therefore, once the EDC has developed an estimate of its total EE&C costs as directed above, we will require it to allocate those costs to each of its customer classes that will benefit from the measures to which the costs relate. Those costs that can be clearly demonstrated to relate exclusively to measures that have been dedicated to a specific customer class should be assigned solely to that class. Those costs that relate to measures that are applicable to

more than one class~~[- or that can be shown to provide system-wide benefits,]~~ must be allocated **among the classes** using generally acceptable cost of service principles as are commonly utilized in base rate proceedings. Administrative costs should also be allocated using reasonable and generally acceptable cost-of-service principles. ~~[In this regard, the EDC will be required to include in its plan a class cost of service study for the limited purpose of allocating all costs expected to be incurred in the implementation of its EE&C plan.]~~

With regard to the assignment of EE&C costs to low-income customers, the Act requires EE&C measures to be financed by the same customer class that will receive the direct energy and conservation benefits from them. 66 Pa. C.S. § 2806.1(a)(11). The Act does not provide for the exclusion of low-income customers from EE&C cost recovery as recommended by PULP, and in any event, it would be difficult to determine a way to exclude such customers from the allocation of EE&C costs within their particular customer class. Although we have great concern for the difficulties experienced by low-income customers in paying their energy bills, we do not believe that exempting such customers from contributing toward the recovery of fairly allocated EE&C costs is the appropriate way to address this concern. We point out that low-income customers will stand to benefit financially from well-designed EE&C measures implemented by the EDCs. Moreover, such customers can take advantage of the many programs currently available to help low-income and payment-troubled customers pay their energy bills.

### **3. Cost Recovery Tariff Mechanism**

As noted above, the Act allows all EDCs, including those subject to generation or other rate caps, to recover on a full and current basis from customers, through a reconcilable adjustment clause under 66 Pa. C.S. § 1307, all reasonable and prudent costs incurred in the provision or management of its plan. The Act also requires that each EDC's plan include a proposed cost-recovery tariff mechanism, in accordance with 66 Pa.

C.S. § 1307 (relating to sliding scale of rates; adjustments), to fund all measures and to ensure full and current recovery of prudent and reasonable costs, including administrative costs, as approved by the Commission

We will require each subject EDC to develop a reconcilable adjustment clause tariff mechanism in accordance with 66 Pa. C.S. § 1307 and include this mechanism in its EE&C plan. Such a mechanism shall be designed to recover, on a full and current basis from each customer class, all prudent and reasonable EE&C costs that have been assigned to each class as directed above. The mechanism shall be non-bypassable and shall be set forth in the EDC's tariff, accompanied by a full and clear explanation as to its operation and applicability to each customer class. We agree with OCA that there should be no need to adjust the mechanism more frequently than on an annual basis. Therefore, the tariff mechanism will be subject to an annual review and reconciliation in accordance with 66 Pa. C.S. § 1307(e). The annual review and reconciliation for each EDC's cost recovery mechanism will occur pursuant to a public hearing, if required due to petitions filed by interveners, and will include an evaluation of the reasonableness of all program costs and their allocation to the applicable customer classes. Such annual review and

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Reconciliation will be scheduled to coincide with our review of the annual report on the EDC's plan submitted in accordance with 66 Pa. C.S. § 2806.1(i), and all calculations and supporting cost documentation shall be provided at the time that report is filed.

**K. Conclusion**

**THEREFORE,**

**IT IS ORDERED:**

1. That electric distribution companies with at least 100,000 customers will adhere to the schedule for submission of plans identified in this Implementation Order.
2. That this Implementation Order be published in the Pennsylvania Bulletin and served on the Office of Consumer Advocate, Office of Small Business Advocate, Office of Trial Staff, and all jurisdictional electric distribution companies.

**BY THE COMMISSION**

James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: \_\_\_\_\_

ORDER ENTERED: \_\_\_\_\_