

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

Implementation of Act 129 of 2008 : Docket No. M-2008-2074154  
Phase 2 – Registry of Conservation  
Service Providers

**Comments of ClearChoice Energy regarding the Registry of Conservation Service  
Providers**

ClearChoice Energy appreciates the opportunity to file comments regarding the Implementation of Act 129 of 2008 on the registration of Conservation Service Providers.

**Introduction**

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

ClearChoice Energy’s management has twenty years of experience in deregulated energy markets, including the management of both wholesale and competitive retail power supply operations throughout North America. We have provided energy

management services to commercial, industrial and institutional electric customers since 2003.

### **Comments**

As a preface to answering the questions posed, we urge the Commission to not view the registration process as a “seal of approval” of all conservation service providers on the registry. We do not believe it is possible or reasonable for the Commission to attempt to understand and regulate the many professional, experiential, and financial requirements of the broad range of services which could fall under “conservation services” as it is loosely defined in the Act. Rather, registration should be viewed as an attempt to gather and provide information to the public regarding the providers of conservation services that are doing business within the Commonwealth.

As discussed in our previous comments on the implementation of Act 129, the provision of conservation services is a highly competitive business within Pennsylvania. Conservation services are currently provided by many small businesses employing tens of thousands of workers throughout the state. This industry is also the focus of the Commonwealth’s economic development strategy which seeks to stimulate the development of new start-up companies and the creation of new jobs in “green manufacturing” and “clean energy technology.” Overly burdensome regulations in terms of years of experience and unnecessary financial requirements could put a stranglehold on start up and business expansion activities within the state. The buyers of conservation services currently evaluate the service providers based upon their own criteria. We do not see the need for the Commission to qualify service providers beyond assuring compliance with general business practices such as abiding by state business registration

and tax regulations, or conforming to licensing, bonding and insurance requirements set forth by other state regulatory agencies for specific types of services (e.g. engineering or electrical work), or for providing services to certain classes of customers (e.g. in-home contractors).

We appreciate the opportunity to respond to the following questions:

1. What are the minimum qualification standards that the Commission should require to allow a person to be listed on the registry to be established under Section 2806.2(a)?

We suggest the Commission set forth rules for a standard registration that would apply to either a person or business entity, similar to that used in Texas under Chapter 25, Subchapter E, §25.111.<sup>1</sup> Based on that approach, a standard registration would include the following elements:

- (A) Legal name(s) of the registering party, as well as any trade or commercial names under which the registering party currently does or intends to do business within Pennsylvania;
- (B) Pennsylvania business address and principal place of business of the registering party;
- (C) The name, title, business address, and phone number of each of the registering party's directors, officers, or partners;

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<sup>1</sup> Detailed requirements can be found on the Public Utility Commission of Texas website at <http://www.puc.state.tx.us/electric/business/agg/agg.cfm>

- (D) Name, physical business address, telephone number, fax number, and e-mail address for a Pennsylvania regulatory contact and for an agent for service of process, if a different person;
- (E) The types of services the registering party intends to provide;
- (F) The customer class the registering party intends to serve;
- (G) Disclosure of delinquency with taxing authorities in Pennsylvania;
- (H) A description of prior experience, if any, of the registering party or one or more of the registering party's principals or employees in the services, or business for which the party is registering;
- (I) Applicable information on file with the Pennsylvania Secretary of State regarding its business registration;
- (J) The names of any subsidiaries or affiliates, if any, that provide services covered under the Act;
- (K) A list of other states, if any, in which the registering party and registering party's affiliates and subsidiaries currently conduct or previously conducted services covered under the Act;
- (L) Disclosure of the history of bankruptcy or liquidation proceedings of the registering party or any predecessors in interest in the three calendar years immediately preceding the registration request;
- (M) Disclosure of whether the registering party, a predecessor, an officer, director or principal has been convicted or found liable for fraud, theft or larceny, deceit or violations of consumer protection or deceptive trade laws in any state;

- (N) A statement indicating whether the registering party is currently under investigation, either in Pennsylvania or in another state or jurisdiction for violation of any consumer protection law or regulation;
- (O) Information regarding the registering party's complaint history during the three years preceding the application. This should also include the registering party's affiliates, subsidiaries, and any predecessors in interest that provide conservation services as defined under the Act. Relevant information would include the number of complaints, type of complaint, status of complaint, resolution of complaint and number of customers in each state where complaints occurred.

2. Should the minimum qualification standards include factors such as: technical training, professional experience, industry certifications, financial integrity, and/or history of lawful operations?

We believe "registration" required under the Act should not be confused with "licensing." Generally speaking, registration typically imposes a duty to provide information, while licensing is a grant of permission by authorities to carry out a specific activity. We believe it would be very difficult to impose qualifications around technical training, professional experience, industry certifications and financial integrity since these items are specific to individual service areas. Many providers (e.g. engineers, electricians) already meet licensing requirements under various areas of professional or trade expertise.

Financial requirements would also vary depending upon the service provided. The range of services covered under this Act is very broad and could include: electrical work, mechanical and HVAC system design and installation, implementation of building control systems, solar panel installation, curtailment services in wholesale electric markets, etc. As a curtailment service provider, we are subject to credit review and requirements as a member of PJM and as a condition of participating PJM's wholesale electric markets. Compliance with the RTO or ISO's credit requirements and federal tariff in which a curtailment service provider is doing business should be all that is required.

3. Should qualification standards, application materials, application requirements, and a contractor/dealer agreement similar to those used by Pennsylvania's Keystone HELP program be adopted, and if so, what revisions to the Keystone Help program would be needed?

Keystone Help appears to be oriented to providers of home services. This does not appear to be applicable to conservation service providers working with commercial and industrial customers. The requirement to have been in business for three years or other minimum experience requirements would negatively impact the state's economic development strategy to start to new businesses in the emerging "green manufacturing" and "clean energy technology" areas. Registration for services to be provided to residential customers should require compliance with the state's recently passed Home Improvement Consumer Protection Act. The Home Improvement Consumer Protection Act specifically covers the registration of

contractors providing conservation services such as installation of solar energy systems, as well as heating and air conditioning systems and windows.

4. Should certain training or certifications be permitted to substitute for some or all minimum experience requirements?

We do not believe the Commission should attempt to set licensing, certification, minimum experience or training requirements given the broad scope of conservation services that could fall under the Act.

5. What effect, if any, should be given to entities approved as conservation service providers in other jurisdictions?

This information should be provided on the registration application and provided as publicly accessible information on the PUC website.

6. Should bonding or a letter of credit be required? If so, what should be the minimum amount?

We do not believe broad financial requirements should be applied to all conservation service providers. A person or entity that registers who intends to take deposits or other advance payments from customers for conservation services should be required to demonstrate financial resources necessary to protect customers from the loss of deposits or other advance payments through fraud, business failure or other causes. These financial requirements could be met through cash, a certificate of deposit, a letter of credit, or a guaranty.

7. Should insurance be required? If so, what type and what minimum amounts?

This is very difficult to define as it depends upon the type of activities being performed. We do not believe it is necessary to include insurance as a requirement of registration except if required under regulations specific to that particular type of service activity such as in home contractors which are required under the Home Improvement Consumer Protection Act to maintain at least \$50,000 of liability insurance to cover personal injury and property damage.

8. Should background checks be performed? If so, what type?

No, simply providing the information necessary for registration should be enough. This is not a licensing process.

9. Should credit histories be required? If so, what should be disqualifying? See answer to question number one.

10. Should customer or trade references be required? If so, what should be the minimum number of references? These should not be required. Registration is not a “stamp of approval” by the Commission. Requirements for customer or trade references could be a barrier to market entry by new firms or firms expanding their business activities into new service areas. This would be in conflict with the state’s economic development strategy.

11. Should satisfactory Better Business ratings be required? No.
12. What information should be provided with an application? See answer to question number one.
13. What documents should be provided with an application? See answer to item number one. An affidavit attesting to the accuracy and truthfulness of the information provided should be included.
14. Should the Commission charge a registration fee? If so, what would be a reasonable registration fee? A fee should only be charged if one is required to cover administrative costs for posting the information on the Commission website.
15. Should there be a requirement for periodic re-qualification? If so, how often and how extensive should it be? There should be a duty imposed on the registrant to update the information in their registration annually as a condition of receiving remuneration under EDC programs.
16. What other criteria should the Commission require? See answer to question number one.

Finally, we believe the Commission should also define the consequences of not registering as a conservation service provider. For instance, does not registering or registering but not being “accepted” onto the registry make the provision of certain conservation services unlawful for that person or entity to perform in the Commonwealth? Does the failure to register or be listed on the registry mean the conservation service provider cannot participate in EDC programs? Can participate in certain aspects, such as training, but cannot receive remuneration?

We thank the Commission for their time and attention to these issues and respectfully request the Commission consider and adopt as appropriate the above comments.

Respectfully submitted,

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President/CEO  
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