



November 26, 2008

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

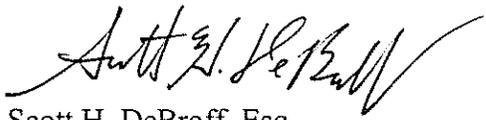
Dear Secretary McNulty:

Enclosed herewith for filing please find an original and fifteen (15) copies of the **“Comments on Behalf of CPower, Inc. in Response to Questions Proposed by the PA Public Utility Commission Regarding Phase 2 of the Implementation of Act 129 of 2008.”** Also enclosed are an additional two (2) copies for date-stamping and return. An electronic copy is also being forwarded.

Should you have any questions, please do not hesitate to contact me.

Best regards,

RHOADS & SINON LLP

By: 
Scott H. DeBroff, Esq.

Enclosures

cc: Conservation, Economics & Energy Planning
Bureau of Fixed Utility Services
Law Bureau

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**IMPLEMENTATION OF ACT 129 OF
2008; PHASE 2 – REGISTRY OF
CONSERVATION SERVICE
PROVIDERS**

Docket No. M-2008-2074154

**COMMENTS ON BEHALF OF CPOWER, INC. IN RESPONSE TO QUESTIONS
PROPOSED BY THE PA PUC REGARDING PHASE 2 OF THE
IMPLEMENTATION OF ACT 129 OF 2008**

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DATED: NOVEMBER 26, 2008

COUNSEL FOR CPOWER, INC.

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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AND NOW COMES, **CPower, Inc.** (“CPower”), by and through its counsel, **Scott H. DeBroff, Esquire** and **Alicia R. Petersen, Esquire** of Rhoads & Sinon LLP. In support of this docket, CPower avers the following:

1. CPower is one of the nation’s leading demand side management providers, with significant experience providing demand response, energy efficiency, and distributed generation services in New York, New England, California, the Mid-Atlantic, Texas, and increasingly in other regions. CPower maintains direct alignment with their clients’ incentives – they earn revenues only when they achieve energy savings for their clients: large and small end-users of all types.

2. As a full service strategic energy asset management firm and one of the largest providers of demand response solutions in the United States with more than 1200 MW’s under

management, CPower currently operates in the nation's largest energy markets including Illinois, New York, California, New England, and many others. CPower's clients include Fortune 1000 companies and some of the nation's largest commercial, residential, retail and institutional facilities. CPower has found particular success partnering with hotels, hospitals, large co-op residential apartment complexes, financial institutions, unions, and REIT's. CPower's clients include dozens of substantial users of energy nationwide.

3. CPower provides its clients with Demand Management, Curtailment Services and Strategic Energy Asset Management Services. These services include assumption of market risk, representation in all ISO/State programs, interval metering, web-based access to consumption of data, engineering qualification of curtailable load, financing to improve demand response capabilities, frequent optimization of biddable loads, comprehensive energy audits and analysis, identification of tax saving opportunities, design and project management of ECMs & PDRs, generator uploading, load switching and controls, retro-commissioning to improve energy efficiency, controls development, upgrades and optimization, incentive optimization and reporting, project financing, performance-based contracting and stream management and negotiations. As a result of these services, CPower is able to provide clients with cost saving mechanisms to reduce energy usage.

4. CPower's clients include more than 75 million square feet of commercial real estate and more than 110,000 residential units.

5. As a leading demand response solutions provider in the United States, CPower has started to pursue business interests in Pennsylvania that will be affected by the outcome of this

proceeding. CPower is currently engaged in providing conservation services to sites in Pennsylvania who wish to sell energy efficiency credits into Pennsylvania's renewable energy portfolio market.

6. On November 14, 2008, the Commission initiated Phase 2 of its implementation of Act 129 by requesting comments on the experience and qualification requirements the Commission must establish for conservation service providers.

7. Section 2806.2 of Act 129 states "[t]he Commission shall, by March 1, 2009, establish a registry of approved persons qualified to provide conservation services to all classes of customers." Section 2806.1(M) of Act 129 defines "conservation service provider" 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 electric distribution company."

8. Act 129 requires each electric distribution company to submit to the Commission an energy efficiency and conservation plan. Each energy efficiency and conservation plan must include a contract with one or more conservation service providers to implement the plan or a portion of the plan approved by the Commission.

9. CPower's attorneys and to whom all correspondence and pleadings in this docket should be directed to are:

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10. Following are CPower's responses to the PA PUC's questions on CSP Registry requirements.

CPOWER'S COMMENTS

1
2
3 Q 1. What are the minimum qualification standards that the Commission should
4 require to allow a person to be listed on the registry to be established under
5 Section 2806.2(a)?
6

7 A. CPower believes that the Commission should only include relevant contact
8 information and a very basic overview of the company and what its core
9 competencies are. A registry is simply a listing of potential suppliers of
10 services.
11

12 Q 2. Should the minimum qualification standards include factors such as:
13 technical training, professional experience, industry certifications, financial
14 integrity, and/or history of lawful operations?
15

16 A. CPower believes that minimum qualifications should be just that. The level
17 of technical expertise and professional experience are certainly relevant and
18 should be included. If there are certain industry certifications for specific
19 expertise, that may be better positioned as an optional listing. Regarding
20 financial integrity, we are unclear as to how the Commission would attempt
21 to qualify CSPs and confirm their financial capabilities, and to what extent
22 that is really an important factor. Some companies will be large and well
23 established and some will be small upstarts. To attempt to include a
24 financial threshold for allowing a CSP to be considered a part of a registry
25 may be unduly burdensome as a minimum qualification. Regarding history
26 of lawful operations, we see no reason as to a requirement of how long a
27 CSP has been in business and what service territories and states that
28 company operates in.
29

30 Q 3. Should qualification standards, application materials, application
31 requirements, and a contractor/dealer agreement similar to those used by
32 Pennsylvania's Keystone HELP program (www.keystonehelp.com) be
33 adopted, and if so, what revisions to the Keystone HELP program would be
34 needed?
35

36 A. We take no current position in attempting to compare and contrast the CSP
37 Registry requirements to the Keystone HELP program. The Keystone
38 Home Energy Loan Program is the Commonwealth's lower rate financing
39 program for ENERGY STAR rated and other high efficiency and
40 renewable energy improvements, while the CSP Registry is quite simply a
41 list. We do think that application materials/requirements should be
42 somewhat standardized if possible. We would be supportive of the
43 following list of items to include in an application to be included in the

Registry:

1. Name
2. Address
3. Year Founded
4. Products & Company Description
5. Company Management
6. Local & Regional Contacts
7. References – Optional
8. Trade & Professional Association Memberships – Optional

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

A. Training is certainly important, particularly experience in the specific market would be a plus. Whether certifications should be a substitute for some or all of the Commission determined minimum requirements is an issue that would best be resolved in a working group devoted to coming up with such minimum qualifications for a registry. We encourage such a collaborative in order to be sure that the Commission comes up with requirements that work.

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

A. CPower would support this idea but we do not believe that simply because a CSP has not worked in a specific jurisdiction or not, should in any way qualify or disqualify that company from operating in Pennsylvania. Approval of CSPs in other jurisdictions should be given some weight, subject to a discussion on just how much relevance other jurisdictions' qualification requirements have to Pennsylvania's programs.

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

A. No. We do not believe that a CSP needs to be bonded or provide a letter of credit in order to be considered for this Registry.

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

A. We would be interested in understanding why insurance is an issue and

1 what kind of insurance was the Commission considering when it asked this
2 question. At this time, we do not have enough information to make an
3 informed response.
4

5 Q 8. Should background checks be performed? If so, what type?
6

7 A. We do not understand why background checks on a company would be
8 critical issue. If a utility was attempting to work with a CSP, we would
9 expect that the utility would perform an adequate amount of due diligence
10 when it was exploring a relationship with that CSP.
11

12 Q 9. Should credit histories be required? If so, what should be disqualifying?
13

14 A. We do not understand why credit histories on a CSP company would be a
15 critical issue. Again, if a utility was attempting to work with a CSP, we
16 would expect that the utility would perform an adequate amount of due
17 diligence when it was exploring a relationship with that CSP and make an
18 informed determination as to whether that company was financially viable
19 to do business with them.
20

21
22 Q 10. Should customer or trade references be required? If so, what should be the
23 minimum number of references?
24

25 A. We would agree that customer or trade references would be a good addition
26 to any offering made by a CSP to a utility, but we do not believe that it
27 should be a requirement or that there be a required minimum number of
28 references. Again, we believe that the utility will do adequate due diligence
29 when it seeks out relationships with CSPs.
30

31 Q 11. Should satisfactory Better Business ratings be required?
32

33 A. We believe that satisfactory Better Business ratings could be an optional
34 representation made by a CSP but not a requirement.
35

36 Q 12. What information should be included on an application form?
37

38 A. As we indicated in our answer to Question No. 3 earlier, we believe that
39 only the most basic of background information should be included. We do
40 think that application requirements should be somewhat standardized if
41 possible. We would be supportive of the following list of items to be
42 include on an application form to be included in the Registry:
43

1. Name
2. Address
3. Year Founded
4. Products & Company Description
5. Company Management
6. Local & Regional Contacts
7. References – Optional
8. Trade & Professional Association Memberships – Optional

10
11 Q 13. What documents should be provided with an application?

12
13 A. We do not have an answer to this question.

14
15 Q 14. Should the Commission charge a registration fee? If so, what would be a
16 reasonable registration fee?

17
18 A. We do not have a substantial opinion on this, although the law indicates
19 that the Commission “may” charge a reasonable registration fee. If the
20 maintenance of the Registry can be accomplished in the normal course of
21 business of the Commission, and had a very basic minimum amount of
22 information that is being collected, such a task probably does not require
23 additional funding.

24
25 Q 15. Should there be a requirement for periodic re-qualification? If so, how
26 often and how extensive should it be?

27
28 A. This would be an issue that we would want to discuss in the context of a
29 working collaborative to come up with Registry best practices.

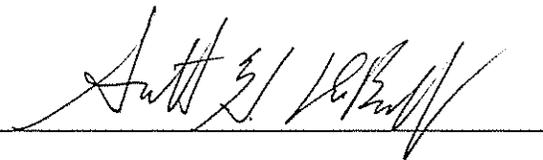
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31 Q 16. What other criteria should the Commission require?

32
33 A. CPower believes that the appropriate level of oversight for CSPs largely depends
34 on if the Commission opts to implement Act 129 through a ‘Pay for Performance’
35 approach or through traditional cost recovery mechanisms. We believe that the
36 lower level of oversight required is one of the advantages to a pay for
37 performance approach. If CSPs engage in energy efficiency projects at their own
38 risk, and may only earn revenue through delivery of verified energy savings,
39 ratepayers are not exposed to any financial risk that might be caused by CSP
40 underperformance.

41

WHEREFORE, CPower respectfully requests that the Pennsylvania Public Utility Commission grant it party status in the above captioned investigation. CPower also asks that the Commission enter its Comments in the above-captioned proceeding. We look forward to participating in the process going forward and contributing our experience and expertise. Thank you again for the opportunity to comment on this important matter.

Respectfully submitted,

By: 

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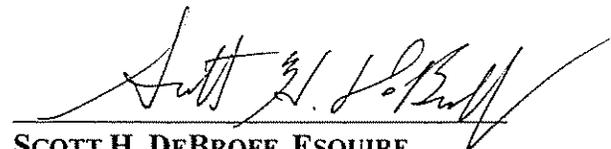
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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing “**COMMENTS ON BEHALF OF CPOWER, INC. IN RESPONSE TO QUESTIONS PROPOSED BY THE PA PUC REGARDING PHASE 2 OF THE IMPLEMENTATION OF ACT 129 OF 2008**” in hand and electronically to Mr. James J. McNulty, Commission Secretary, as well as the following: Commission’s Bureau of Fixed Utility Services (FUS), Bureau of Conservation, Economics and Energy Planning (CEEP) and the Law Bureau (Law).

Dated: **November 26 , 2008**

By:



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