



800 North Third Street, Suite 301 • Harrisburg, Pennsylvania 17102
Telephone (717) 901-0600 • Fax (717) 901-0611 • www.energypa.org

November 26, 2008

James J. McNulty, Esq., Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

**RE: COMMENTS of THE ENERGY ASSOCIATION of PENNSYLVANIA
on the IMPLEMENTATION OF ACT 129 OF 2008
PHASE 2 – REGISTRY OF CONSERVATION SERVICE PROVIDERS
DOCKET NO. M-2008-2074154**

Dear Secretary McNulty:

Enclosed for filing are an original and 15 copies of the Association's Comments on behalf of its electric distribution company members in the above-referenced docket

Sincerely,

A handwritten signature in black ink, appearing to read "Donna M. J. Clark", is written over a light blue horizontal line.

Donna M. J. Clark
Vice President and General Counsel

Enclosures

CC: James H. Cawley, Chairman (w/ enclosure, via hand-delivery)
Tyrone J. Christy, Vice Chairman (w/ enclosure, via hand-delivery)
Robert F. Powelson, Commissioner (w/ enclosure, via hand-delivery)
Kim Pizzingrilli, Commissioner (w/ enclosure, via hand-delivery)
Wayne E. Gardner, Commissioner (w/ enclosure, via hand-delivery)
Anthony Rametta, Energy Supervisor of the Bureau of Fixed Utility Services
(w/enclosure, via e-mail: arametta@state.pa.us)
Kriss Brown, Assistant Counsel, Law Bureau (w/ enclosure, via e-mail:
kribrown@state.pa.us)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Act 129 of 2008 : Docket No. M2008-2074154
Phase 2 – Registry of Conservation :
Service Providers : Phase 2

Comments of
The Energy Association of Pennsylvania

J. Michael Love
President and CEO
E-Mail: mlove@energypa.org

Donna M. J. Clark
Vice President and General Counsel
E-Mail: dclark@energypa.org

ENERGY ASSOCIATION OF PENNSYLVANIA
800 North Third Street, Suite 301 APC Building
Harrisburg, PA 17102
Phone: (717) 901.0600
Facsimile: (717) 901.0611

Date: November 26, 2008

**COMMENTS OF
THE ENERGY ASSOCIATION OF PENNSYLVANIA**

A. Introduction

The Energy Association of Pennsylvania^[1] (EAPA) on behalf of its electric member companies submits comments on the November 14, 2008 Secretarial Letter addressing the implementation of Act 129 of 2008 Phase 2 – Registry of Conservation Service Providers – Docket No. M-2008-2074154.

This past legislative session, House Bill 2200 was passed. This new addition to our energy policy heritage reinforces the policy preference for both increased energy efficiency and reductions in overall energy consumption.

This legislation, now embodied in the statutory framework as Act 129, places tremendous responsibility on both the Electric Distribution Companies (“EDCs”) and the Commission to roll out plans that are designed to achieve both reductions in electric consumption and peak demand of retail customers.

Under Act 129, the Commission has a herculean task to address essential processes, measures and goals in a very short timeframe.

With the November 14, 2008 Secretarial Letter, the Commission instituted 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 (“CSPs”).

^[1] Electric distribution company members supporting these comments include: West Penn Power Company, d/b/a Allegheny Power, Citizens’ Electric Company, Duquesne Light Company, Metropolitan Edison Company *A FirstEnergy Company*, PECO Energy Company, Pennsylvania Electric Company *A FirstEnergy Company*, Pennsylvania Power Company *A FirstEnergy Company*, Pike County Light and Power Company, PPL Electric Utilities, UGI Utilities, Inc. – Electric Division and Wellsboro Electric Company

Pursuant to Section 2806.2 of Act 129, the Commission has until March 1, 2009 to establish a CSP registry. Section 2806.1(M) of Act 129 provides a definition for conservation service providers.

B. General

Before turning to the Commission's specific questions, there has been some wisdom verbally offered at the November 19, 2008 En Banc hearing that bears repeating. As the Chairman commented in the En Banc hearing, "this is an historic approach to energy policy and the electric industry, the Commission and the CSPs all have a vested interest in the success of meeting the statutory targets."

As the OCA observed, "these are compelling reasons for working in a collaborative forum, so that the Commission has assistance in achieving its implementation of Act 129." The Small Business Advocate readily observed that "we have tight deadlines and we may not get everything right the first time." It is in this spirit of collaboration and the importance of our collective mission that the EAPA offers these comments.

C. Responses to Commission's 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)?**

CSP qualification standards should indeed be considered minimums with explicit allowance made by the Commission for electric distribution companies to impose additional requirements on individual CSPs that are warranted by the specific programs and services being contracted. The "definition of energy efficiency and conservation measures" contained in § 2806.1(M) contains a long list of measures, talents and experience. Such a broad list of differing knowledge and skill sets suggests a clearly defined registry list.

Some of the commentators the Commission heard from suggested using lists from other states. The Association contends that Act 129 has sufficient breadth as to limit the use of other states certification processes. Since EDCs will be proposing aggressive plans and unique plans that may employ new technology, their choice of CSPs that result from a competitive bidding process employing contract documents approved by the Commission, should be awarded registry status.

It is likely that EDCs will submit programs that will have newer technology and services than those listed in 2806.1(M). These additional newer technologies and service providers should be added to the registry so that experience can be gained as to their likelihood of success.

Due to the extremely short time frames to implement Act 129, the Commission should liberally borrow from its decisions and those of other Pennsylvania governmental agencies.

For example in establishing the Registry, the Association would encourage an approach nearly identical to the approach the Commission adopted to address the licensing of Electric Generation Suppliers (EGSs). As a reminder, the Commission did not ask for specific business elements, rather the Commission required the EGS to submit financial fitness information and then listed examples of acceptable documents. See 52. Pa. Code Section 54.33 (a) (6). These would include:

- Provide a company prospectus to include a balance sheet and cash flow statement not more than fifteen (15) months old.
- Provide the name, address, and the telephone number of the firm(s) that prepared the financial statements.

- Enclose banking references, including financial institution, address, contact person, telephone number, and specific information on a firm's credit that may be used to fund construction for large-scale projects.
- Enclose bonding references, including company name, address, contact person, telephone number and information on a firm's maximum bonding capability.
- Submit a copy of the firm's most recent annual report.

An area not covered by the EGS process is the acceptability of people going to consumers' homes. There will be all types of CSPs, from those who primarily educate consumers, to those that install outside equipment, to those who actually go into consumers' houses. This latter group requires additional scrutiny because of potential direct contact between CSP employees and the EDCs customers. EDCs, Natural Gas Distribution Companies ("NGDCs"), water and telecom personnel have established identification credentials for their workers who go onto a consumer's property. CSP personnel need some adequate identification and the public needs assurance that appropriate background checks have been performed.

There have been instances here in Pennsylvania where individuals with a criminal intent have attempted to portray themselves as utility personnel. One can presume, as utilization of CSPs increases, the opportunity for similar occurrences also increases as individuals have the opportunity to portray themselves as CSP workers.

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

All of these should be considered as part of the minimum standards.

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

Yes, these standards should be used for CSPs visiting consumer homes or businesses with two provisos, (1) the CSP employees should have undergone criminal background checks and (2) there should be an adequate CSP employee I.D. process established.

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

Until the requirements for certification are established, it is difficult to ascertain whether or to what extent the requirements can be modified or substituted. Therefore, this question should be held in abeyance.

If the Commission wishes to take action, certain certifications (e.g., BPI certification and/or accreditation) should suffice for services in existing homes, and Residential Energy Services Network (Resnet) certification should suffice for contractors supporting residential new construction. Contractors working under contract with utilities will have gone through a screening process as part of a competitive bid process and should include steps to assure that bidders have applicable experience for the services offered.

BPI is endeavoring to raise the bar in building performance contracting. Its Board of Directors approved a series of policies and procedures on May 17, 2006, effective July 1, 2006. Entities shall transition to the new requirements as prescribed by BPI in a transition plan available at www.bpi.org.

A similar home certification policy was adopted in California. The California group and BPI are endeavoring to standardize their policies as these comments are being filed.

Licenses for engineering, accounting or legal services need to be verified as well.

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

Pennsylvania has a very unique piece of legislation in Act 129. For example, the goals established for overall energy reduction and demand reduction and program expenditures are all significantly different than achieved elsewhere, including California. For example, as the California authorities have reported, San Diego Gas & Electric spent over 3% of their revenues to achieve a little over 1.5% energy savings. Therefore, Act 129 envisions even more professional, more dedicated, more accomplished CSPs than what sufficed in other jurisdictions.

Consequently, while acceptance elsewhere could be part of the application disclosures, qualification as a CSP in Pennsylvania should not be accorded simply on another state's qualification of the entity. Pennsylvania has its own unique interest in the success embodied in Act 129. The shareholders of Pennsylvania EDCs and consumers have a right to be protected from untrained, unskilled or novice CSPs.

The discussions contained later in these comments regarding the need for proper insurance, financial integrity and for CSPs to monitor and protect consumers from improper visitations by suspect workers are all legitimate Commonwealth concerns, not necessarily met elsewhere. To the extent that other jurisdictions material and data are requested for disclosure, then each such CSP applicant should be required to disclose any complaints filed at FERC or other State Commissions about that CSP.

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

There are lessons to be learned from the EGSs bonding requirements. There, the bonding requirement was set up only to provide sufficient dollars to return tax dollars to the state should an EGS service fail to deliver or remit amounts associated with service provided.

Such a limited bonding amount left both EDCs and their customers unprotected, despite good faith efforts by the OCA and the EDCs to institute additional bonding requirements. Bonding requirements should be EDC specific and task specific as set forth by the EDC in its competitive solicitation process for securing CSPs. CSPs may be engaged in multiple tasks and with different potential achievements based upon customer class. Therefore, the minimum amount required for a bond should be to protect both the EDC and its electric customers from harm in recognition of the full spectrum of risks.

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

The Association would suggest Commission-established minimum insurance requirements similar to those utilized for EGSs, including, but not limited to: Comprehensive General Liability (CGL) including Contractual Liability, and if any work is to be performed by Subcontractor, Contractors Protective Liability with minimum limits of \$2,000,000 per occurrence, combined single limit, for bodily injury and property damage.

- Comprehensive Auto Liability insurance including non-ownership and hired car endorsement for bodily injury and property damage.
- Workers' Compensation coverage in the statutory amounts under the worker's compensation act of Pennsylvania for the current period.
- Employer's Liability
- If applicable, Builder's Risk Insurance on a special cause of loss form in an amount not less than the total amount to be paid to Contractor under the specific agreement.

Again, individual EDCs will identify specific internal insurance requirements, where greater, through the competitive solicitation process. The Commission is asked to support this individual EDC approach.

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

Yes, CSP experience in other states should be verified. As noted earlier, where CSPs are entering consumer households, a criminal background check is absolutely necessary.

9. **Should credit histories be required? If so, what should be disqualifying?**

Yes, there should be credit histories required. Insurance and bonding requirements should also be required. Disqualification should be for fraud or criminal mischief.

10. **Should customer or trade references be required? If so, what should be the minimum number of references?**

There is a very tight deadline related to the Act 129 energy and demand goals. As was noted by multiple observers, price and usage are related. Since some of the EDCs will need to make tough targets after a relatively short time frame of consumers being exposed to market prices (FirstEnergy Comments, pages 19-20), the CSPs certification registry should not be a training ground for novice providers.

The number of references should be set at three or more, similar to the Satisfactory Customer Trade References required by Keystone Help Loan Program. As noted above, not requiring references is unacceptable given the magnitude of consequences related to non-compliance.

11. **Should satisfactory Better Business ratings be required?**

Given the nature of services to be provided here, the Better Business Bureau rating would not readily be considered to be a helpful requirement, although if a potential registrant has received the rating, it should be provided.

12. **What information should be included on an application form?**

As PPL reminded the Commission in the regulations governing EGS submissions, they were required to submit “evidence in providing the scope and nature of the applications proposed services.” Pa Code Section 54.33(a)(7) – a similar approach would be a responsible directive.

There may need to be refinements to the application process to reflect the specific role undertaken by the CSP. For example, there may be refinements to the application based on the magnitude of customers on usage or demand addressed by the CSP.

Any application would need to have a portion addressed to a disclosure regarding any affiliation with the EDC. Also contained in the application should be essential information such as key contacts, decision-makers and an attorney to be served, should problems arise.

Frank Juriska of PECO provided some well-thought out suggestions for what should appear in any CSP application. As Mr. Juriska noted, CSP bids would be evaluated based upon a number of factors including, but not limited to: (a) experience; (b) past performance; (c) price; (d) insurance and; (e) performance bonding. (PECO, page 6).

The Association would offer three other factors for inclusion in the application. The first is the success the applying CSP has had with energy efficiency and/or reducing energy consumption, either in Pennsylvania or elsewhere.

The second addition would be a limited portion of the application reserved for those CSPs hired for program execution or verification where their responsibilities include visitation to consumer's houses. As was noted earlier in these comments, there needs to be a vetting process for home visitations. Criminal history screening, at the very least, should be adopted.

The third factor for the application should be familiarity with other state conservation programs. As John Paganie of First Energy noted, that coordination with other state conservation programs will be more synergistic and make both the state agency and the EDCs be more effective (FirstEnergy, page 15).

As the Commission is aware, there are multiple existing programs geared towards energy efficiency, conservation and demand response. (FirstEnergy comments, pages 16-18).

Familiarity with other demand and conservation offerings by state agencies will also lead to cost synergies and better results.

Guidance from the PUC website on EGS requirements may be helpful. The following information should be provided in the application:

- Hold-harmless provision for state and any/all utilities
- Completed PA state tax certification statement
- Liability insurance and workers compensation insurance with a specified minimum amount of coverage (see response to Question 7 for suggested minimum amounts)

- Bonding
- Financial fitness

Technical fitness (include officers, staffing and employee training, business plan(s), etc.

- Affidavit
- Licenses or certifications
- Name, address, phone number, fax number and email address of attorney representing the provider
- Addresses, phone numbers, fax numbers and email address for key contact at each office location
- Affiliates and/or predecessors in PA
- Proposed services provided to PA EDCs, businesses, residents (include check off boxes)
- Customers to be served (include check off boxes such as government, municipal, residential, commercial, industrial)
- Service territories or geographic areas served
- Examples of recent sales literature and/or advertising
- Identification of any pending FERC, Pennsylvania Public Utility Commission, or other State Utility Commission complaints

13. **What documents should be provided with an application?**

Refer to response in question 12 above. These elements should be supplemented by references to professional licenses, training experience, success in other jurisdictions or coordination efforts with Pennsylvania EDCs.

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

The Commission faces a list of new responsibilities in overseeing CSPs. Since criminal background checks, professional license verification, and evaluatory results, will be new costs for the Commission, some level of a fee should be charged to cover the Commission's processing costs, such as \$250 to \$350.

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

The renewal process should be streamlined to an initial registration fee, with annual renewal. Re-registration should be \$100 per year for each contractor to partially offset the cost of maintaining the registry and the PUC's website listing of CSPs. This renewal schedule would not apply to those companies removed for cause from the registry list

16. What other criteria should the commission require?

At this juncture, the Association has no additional criteria to offer.

D. Conclusion.

There are some basic concerns that the Association wishes to convey to the Commission. First is that the concept of a well-defined, well-trained and well-financed and insured group of CSPs, on a registry, is a protection for both customers and EDCs alike. Neither EDCs, nor customers, are served by a registry that allows easy entry of non-qualified technical or financial skilled firms to be interacting with customers on behalf of EDCs. Moreover, the Commission should explicitly authorize EDCs to employ more stringent requirements than those required by the registry, when such requirements are warranted by the nature of the program measures being provided by the CSP. The reasonableness of those more stringent requirements can be reviewed as part of the Commission's contract review process.

Second, due to the difficulty achieving these targets, EDCs will need to undertake complex and diverse programs and employ new technology. As a consequence, a registry must be flexible enough to permit unique projects by unique vendors to address unique circumstances.

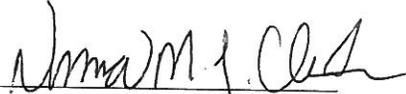
Third, the financial failure of some EGSs highlights the need for the Commission to support stringent EDC specific requirements regarding financial qualifications and insurance.

Finally, the registry requirements need to address the CSPs ability to deliver the services promised as part of the EDC plan. Factors like technical expertise verification, criminal background checks, reference checks, financial strength and insurance are responsible for ensuring that the CSP can deliver projected energy savings. These same factors, together with taxation, affiliation and Pennsylvania experience, all argue against automatic acceptance of other state approved CSPs.

Respectfully Submitted,



J. Michael Love
President & CEO
mlove@energypa.org



Donna M. J. Clark
Vice President & General Counsel
dclark@energypa.org

Energy Association of Pennsylvania
800 North Third Street, Suite 301
Harrisburg, PA 17102

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