

PENNSYLVANIA UTILITY LAW PROJECT

118 LOCUST STREET
HARRISBURG, PA 17101-1414

PHONE: (717) 236-9486, EXT. 201

PHONE: (717) 236-9486, EXT. 201

FAX: (717) 233-4088

MOBILE: (717) 576-2588

JOHN C. GERHARD, ESQ.
JGERHARDPULP@PALEGALAID.NET

November 26, 2008

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Hand Delivered

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd floor
Harrisburg, PA 17120

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

Dear Secretary McNulty:

Enclosed, please find for filing the original (unbound) and fifteen (15) copies of the Comments of the Pennsylvania Utility Law Project's comments in the above-captioned proceeding.

If you have any questions about this filing, please feel free to contact me directly.

Very truly yours,



John C. Gerhard, Esq.
Staff Attorney

Enclosure

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

**Implementation of Act 129 of 2008
Phase 2 – Registry of Conservation
Service Providers**

Docket No. M-2008-2074154

**COMMENTS OF THE
PENNSYLVANIA UTILITY LAW PROJECT**

John C. Gerhard
Staff Attorney
PA Attorney I.D. # 94809
E-mail: jgerhardpulp@palegalaid.net

Harry S. Geller
Executive Director
PA Attorney I.D. # 22415
E-mail: hgellerpulp@palegalaid.net

RECEIVED
2008 NOV 26 AM 10:14
PA PUC
SECRETARY'S OFFICE

Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101-1414
Phone: (717) 236-9486 ext 205
Fax: (717) 233-4088

Dated: November 26, 2008

INTRODUCTION

On October 15, 2008, Governor Edward Rendell signed HB 2200 into law as Act 129 of 2008, with an effective date of November 14, 2008. Act 129 expands the oversight responsibilities of the Pennsylvania Public Utility Commission (“Commission”) and imposes new requirements on electric distribution companies (“EDCs”) to reduce electricity consumption within their respective service territories. Act 129 also makes the Commission responsible for establishing a registry of conservation service providers. 66 Pa.C.S. § 2806.2. Each EDC is required to use one or more of these conservation service providers to implement all or part of its Energy & Efficiency Conservation Plan. 66 Pa.C.S. § 2806.1(b)(1)(E).

On November 14, 2008, the Commission issued a Secretarial Letter requesting comments on the experience and qualifications the Commission must establish for conservation service providers. The Pennsylvania Utility Law Project (“PULP”) respectfully submits these comments pursuant to this request. PULP is part of the Pennsylvania Legal Aid Network, a non-profit network of legal service providers that represent the interests of low income people in Pennsylvania. In particular, PULP provides statewide representation, advice, and support in energy and utility matters related to low income, residential utility consumers. PULP thanks the Commission for this opportunity to submit these comments and be heard on this issue.

COMMENTS

The Commission provided sixteen specific questions for which it requested comment, and PULP’s answers to questions from that list are provided below. As a precursor to answering specific questions, PULP notes that Act 129 of 2008 highlights low income residential customers

for special treatment, and this means attention must be given to ensuring there are sufficient conservation service providers (“CSPs”) that can provide this special treatment.

Act 129 requires that EDC plans must include specific energy efficiency measures targeted to households at or below 150% of the Federal poverty income guidelines and that these measures must work in coordination with other low income programs administered by the Commission or other state or federal agencies. 66 Pa. C.S. § 2806.1(b)(1)(G). These measures must be proportionate to the low income households’ share of the total energy usage in each EDC’s service territory, and expenditures by the EDC for these measures must be in addition to those expenditures already occurring pursuant to 52 Pa. Code, Chapter 58 - Residential Low Income Usage Reduction Programs (LIURP). 66 Pa. C.S. § 2806.1(b)(1)(G). Act 129 makes clear that Energy Efficiency & Conservation programs (“EE&C programs”) must work in coordination with LIURP but also provide services in addition to LIURP. This means EDCs will not be able to rely on existing program resources presently incorporated within LIURP operations to fulfill their obligations under Act 129 but must provide additional, expanded conservation and energy efficiency services targeted specifically to low income residential customers.

Question #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)?

PULP respectfully recommends that the past provision of satisfactory services as part of an EDC LIURP program or as part of the Department of Community and Economic Development’s Weatherization program be accepted as fulfilling whatever minimum qualification standards are adopted by the Commission.

While the Commission does not have an exactly comparable registry of qualified LIURP providers, EDCs have been operating LIURP programs successfully within the Commonwealth for years.¹ LIURP programs have been subject to rigorous evaluation by the Commission, by EDCs, and by external, independent consultants. These evaluations have identified and verified conservation measures and practices that generate significant energy conservation outcomes for low income families, reducing the amount of energy and the cost of energy consumed. The contractors and community-based organizations providing LIURP services have benefited from this learning process and have amassed invaluable expertise and experience in providing these weatherization and conservation services. As a result, there is an existing pool of community-based organizations and contractors that has the appropriate experience and abilities to work with EDCs on the EE&C programs and that should be included on the Act 129 CSP registry.

In addition, the Department of Community and Economic Development (“DCED”) has administered the Department of Energy’s Low-Income Weatherization programs for decades. During this time lessons have been learned and experience amassed. The agencies and community based organizations providing these weatherization services should likewise be included on the Act 129 CSP registry.

The Commission should keep these providers in mind when creating standards for the Act 129 CSP registry and should be careful not to set standards that would inadvertently exclude from registration any group that has been already providing satisfactory LIURP or Weatherization services. PULP respectfully recommends that the Commission should automatically qualify for inclusion on the Act 129 CSP registry any community-based organization or contractor that has provided weatherization and conservation services through an

¹ See 52 Pa. Code § 58.1 *et seq.* for guidelines governing the operation of LIURP. See *Report on Universal Service Programs & Collections Performance 2007*, PUC Bureau of Consumer Services for the most recent report on LIURP performance.

EDC LIURP program or through a DCED Weatherization program, provided the Commission or DCED confirms that the services have been performed in a satisfactory and cost-effective manner. DCED confirms that the services have been performed in a satisfactory and cost-effective manner. If a provider does not meet the minimum Act 129 CSP registry standards, then that entity nonetheless should be placed onto the registry tentatively and permitted to provide weatherization and conservation services while being given a reasonable grace period during which to acquire the formal CSP credentials.

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

PULP respectfully recommends that the minimum standards should include technical training, professional experience, industry certifications, financial integrity, and/or history of lawful operations. PULP recommends that the Commission establish minimal qualifications that will ensure CSPs have the ability to begin helping customers reduce their electric consumption immediately, rather than having a learning curve over which contractors build experience.

In accord with PULP's recommendation for Question #1, PULP does request that the Commission make a special exception for LIURP providers and DCED Weatherization providers whereby these existing providers are automatically entered onto the registry and provided with a reasonable grace period during which to secure the CSP credentials, while still being permitted to provide weatherization service.

Question #3: Should qualification standards, application materials, application requirements, and a contractor/dealer agreement similar to those used by Pennsylvania's Keystone HELP program 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?

PULP supports the idea of using the Pennsylvania's Keystone HELP program as a model for the Commission's Act 129 CSP registry.

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

In accord with the answers to Questions #1 and #2, PULP supports the recognition by the Commission of the past experience and training of LIURP providers and DCED Weatherization providers as a substitute for some or all of the minimum experience requirements.

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

PULP has no comment on Question #5.

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

PULP has no comment on Question #6.

Question #7: Should insurance be required? If so, what type and what minimum amounts?

PULP has no comment on Question #7.

Question #8: Should background checks be performed? If so, what type?

PULP respectfully recommends that the Commission require some form of criminal background check for organizations and individuals seeking inclusion on the Act 129 CSP registry. In particular, PULP is concerned about any organization or individual that has been convicted of participating in any activity involving or associated with predatory lending or consumer fraud. Low income communities in particular have been targeted for exploitation by certain lenders and contractors involved in the practice of predatory lending. PULP respectfully recommends that any organization or individual that has been convicted of participating in a fraudulent activity, particularly those involving or associated with predatory lending, should be excluded from the Act 129 CSP registry.

Question #9: Should credit histories be required? If so, what should be disqualifying?

PULP has no comment on Question #9.

Question #10: Should customer or trade references be required? If so, what should be the minimum number of references?

PULP has no comment about whether customer or trade references should be required from applicants. However, PULP strongly encourages the Commission to have some form of appeal or complaint process in place so that customers have the opportunity to register their dissatisfaction with unsatisfactory CSP services. A process should be in place whereby a CSP can be removed from the Act 129 CSP registry if their service is unreasonable or of poor quality.

Question #11: Should satisfactory Better Business ratings be required?

PULP has no comment on Question #11

PULP has no comment on Question #11.

Question #12: What information should be included on an application form?

PULP has no comment on Question #12.

Question #13: What documents should be provided with an application?

PULP has no comment on Question #13.

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

PULP supports the Commission's charging a reasonable registration fee in association with being listed on the Act 129 CSP registry. A reasonable fee is one that enables the Commission to offset the cost of maintaining the registry.

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

PULP respectfully supports the Commission's inclusion of a re-qualification requirement. Part of the goal of investing in alternative energy and conservation measures is that the investment will spur further innovation in the field. As such, one can hope and expect that the field will be evolving constantly and quickly. CSPs should be required to keep up with the pace of advances in the field, and the Commission's imposition of a re-qualification procedure is a reasonable method for ensuring CSPs do so.

Question #16: What other criteria should the Commission require?

PULP respectfully submits that the Commission should permit LIURP providers and
PULP respectfully submits that the Commission should permit LIURP providers and
DCED Weatherization providers automatic inclusion on the Act 129 RSP registry subject to the
parameters PULP included for Question #1.

CONCLUSION

In conclusion, PULP thanks the Commission for the opportunity to submit these
comments on an issue that is important to the interests of low income, residential utility
consumers.

Respectfully submitted,



John C. Gerhard, Esq.
Staff Attorney
PA Attorney I.D. # 94809

Harry S. Geller, Esq.
Executive Director
PA Attorney I.D. # 22415

PA Utility Law Project
118 Locust Street
Harrisburg, PA 17101-1414
Phone: 717-232-2719
Fax: (717) 233-4088

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**Implementation of Act 129 of 2008 Phase
2 – Registry of Conservation Service
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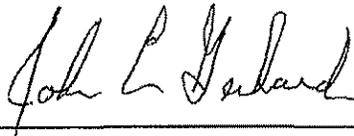
CERTIFICATE OF SERVICE

I hereby certify that I have today served a true copy of the foregoing document upon the parties of record in this proceeding listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd floor
Harrisburg, PA 17120

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SECRETARY'S BUREAU**



John C. Gerhard
PA Attorney I.D. # 94809

Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101-1414
Tel. 717-236-9486, ext. 201
E-mail: jgerhardpulp@palegalaid.net

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