

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF PECO ENERGY COMPANY  
ON THE COMMISSION’S TENTATIVE ORDER**

Pursuant to Ordering Paragraph 4 of the Commission’s December 18, 2008 Tentative Order, providing that comments on the Tentative Order may be filed within 10 days of entry of the order,<sup>1</sup> PECO Energy Company (“PECO”) hereby submits its comments on the Tentative Order.

**INTRODUCTION**

PECO commends the Commission for crafting a clear, concise and thorough Tentative Order establishing both the minimum experience and qualification requirements for Conservation Service Providers (“CSPs”) and the CSP registry application process. By and large, the Tentative Order balances the need to approve qualified and financially sound CSPs with the goal to have broad and transparent participation in the Commission’s CSP registry. Nonetheless, PECO respectfully submits that the Commission could more fully strike this balance by making three modifications to the Tentative Order.

*First*, the Commission should make it clear in its Final Order that a CSP that is an affiliate of an electric distribution company (“EDC”) may provide services to non-affiliate EDCs and, therefore, may be listed on the CSP registry. *Second*, the Commission should require approved CSPs to re-qualify for listing on the registry every two years, instead of every three years as set forth in the Tentative Order. *Third*, the Commission should make not only the CSP

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<sup>1</sup> The Tentative Order was entered on December 22, 2008.

application available on the Commission's web site, but also the CSP registry. PECO discusses these proposed modifications in further detail below.

## COMMENTS

### **I. The Commission's Final Order should allow an EDC affiliate that is a CSP to provide CSP services to non-affiliate EDCs.**

In its parallel *Energy Efficiency and Conservation Program* docket, the Commission has contemplated that allowing an EDC affiliate to serve as a CSP to non-affiliate EDCs may be consistent with Act 129.<sup>2</sup> However, the Tentative Order provides that a CSP applying for listing in the Commission's registry must provide information so that the Commission and the EDCs can "confirm that it [the CSP] is not owned, partnered or affiliated with an EDC."<sup>3</sup> Moreover, the draft CSP application states that "[a]n entity that is directly or indirectly owned, partnered *or in any way* affiliated with an [EDC] is not eligible for the registry."<sup>4</sup>

While this language appears to be derived from Section 2806.1(m) of the Act, it is a settled presumption of statutory construction in Pennsylvania that "[i]n ascertaining the intention of the General Assembly in the enactment of a statute . . . the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable."<sup>5</sup> The Tentative Order's unnecessarily strict construction of Section 2806.1(m), evidenced by the language in the draft application, would violate this presumption. Indeed, the Commission's query in the *Energy Efficiency and Conservation Program* docket on this issue was on the right track, and allowing a

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<sup>2</sup> See *Energy Efficiency and Conservation Program and EDC Plans*, Docket No. M-2008-2069887, November 26, 2008 Secretarial Letter, Attachment "A", Question 7(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?").

<sup>3</sup> Tentative Order at 5.

<sup>4</sup> Draft application at 2, para. 2 (emphasis added).

<sup>5</sup> 1 Pa.C.S. § 1922 (1).

CSP affiliated with an EDC to provide services to non-affiliate EDCs is the more reasonable and prudent interpretation of Act 129. The following examples show this to be the case.

Act 129 requires EDCs and CSPs to enter into contracts for a CSP to provide conservation services for all or some of the EDC's energy efficiency and conservation plan.<sup>6</sup> As currently drafted, the broad language of the Tentative Order and the draft application would require a CSP to report this affiliation and presumably could bar a CSP under contract with an EDC from providing services to other EDCs.<sup>7</sup> Similarly, the language of the Tentative Order and draft application could sweep into their scope a CSP that is "directly or indirectly owned, partnered or in any way affiliated" with an out-of-state electric company, barring that CSP from providing services in Pennsylvania. Indeed, even if the language of the Tentative Order and draft application were construed to exempt CSPs affiliated with out-of-state electric companies from this bar, it would be incongruent to allow a CSP owned or affiliated with an out-of-state electric company to provide conservation services in Pennsylvania and not to allow a CSP affiliated with a Pennsylvania EDC to provide services to non-affiliated EDCs. All of these results are, at best, unreasonable and cannot be what the General Assembly contemplated when enacting Act 129.

A more reasonable interpretation of Section 2806.1(m) of the Act, which, as noted above, has already been considered by the Commission, is that the Act meant to bar EDCs from using *their own affiliates* to provide CSP services for their *own* energy efficiency and conservation plans. Accordingly, the Commission's Final Order should make it clear that an EDC affiliate that is a CSP can provide CSP services to non-affiliate EDCs and can be listed on the registry.

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<sup>6</sup> See 66 Pa.C.S. § 2806.1(b)(1)(e) (requiring an EDC's energy efficiency and conservation plan to include "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.").

<sup>7</sup> See, e.g., draft application at 2, para.2 (stating that a CSP that is "*in any way* affiliated with an [EDC] is not eligible for the registry") (emphasis added).

Likewise, the second paragraph on page 2 of the draft application stating that “[a]n entity that is directly or indirectly owned, partnered or in any way affiliated with an electric distribution company (‘EDC’) is not eligible for the registry” should be removed from the application form.<sup>8</sup>

By making these changes to the Tentative Order and draft application, the Commission will be permitting broad participation in the registry approval process by qualified CSPs. As a result, the Commission will be providing a large pool from which EDCs can solicit competitive bids for CSP services – something that is clearly consistent with the Act.

**II. The Commission’s Final Order should require approved CSPs to re-qualify for listing on the registry every two years.**

The Tentative Order also states that “in order to maintain a relatively current registry, the Commission will require all registered CSPs to re-qualify every three years.”<sup>9</sup> PECO recommends that this provision be changed to two years in the Commission’s Final Order, which is a compromise on PECO’s original position that re-qualification should occur annually.<sup>10</sup>

The reason for PECO’s recommendation here is simple: having a “relatively current” registry is not sufficient, given that listing on the registry is an indication that the Commission has found the listed CSPs to be technically qualified, financially viable, and to have passed the Commission’s review of criminal and civil background information provided with the application. Given the significance of Commission approval for listing on the registry, and the fact that the Tentative Order’s re-qualification fee is only \$25, a biennial re-qualification should

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<sup>8</sup> Indeed, the language at the bottom of page 4 of the draft application seems to contemplate the result that PECO is advocating here and that the Commission considered in Docket No. M-2008-2069887. That language asks the applicant to list “[a]ffiliate(s) of the Applicant doing business in Pennsylvania as a CSP or an electric distribution company.” This information would be unnecessary if the EDC affiliate was barred from applying for registry listing in the first place.

<sup>9</sup> Tentative Order at 4.

<sup>10</sup> See Comments of PECO Energy, Docket No. M-2008-2074154, at 10.

not impose undue hardship on the CSPs. Moreover, it would inure to the benefit of EDCs and other energy efficiency plan stakeholders who will be relying on the accuracy of the registry.

**III. The Commission should post the CSP registry on its web site.**

Page 3 of the Tentative Order states that “the [CSP] application form will . . . be made available on the Commission’s internet web site.” PECO believes that doing so is appropriate, as it makes the application form readily available for CSPs interested in applying for listing on the registry. However, the Commission’s final registry should also be posted on the Commission’s web site, so that EDCs and other energy efficiency plan stakeholders will have easy access to the most current list of approved CSPs. The Tentative Order does not appear to contemplate posting the registry on the Commission’s web site. The Final Order should make it clear that the registry will be posted thereon.

**CONCLUSION**

PECO again commends the Commission for crafting a concise and well-reasoned Tentative Order on CSP qualification requirements and the CSP registry application process. PECO urges the Commission to implement the proposed modifications set forth above in its Final Order, so as to more fully address and balance the needs of all stakeholders in Act 129’s energy efficiency and conservation plan requirements.

Respectfully submitted,

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