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June 5, 2009

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

RE: Implementation of Act 129 of 2008 – Total Resource Cost Test, Docket No. M-2009-2108601; Implementation of Energy Efficiency and Conservation Program, Docket No. M-2008-2069887; **COMMENTS OF THE SUSTAINABLE ENERGY FUND OF CENTRAL EASTERN PENNSYLVANIA**

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and five (5) copies of the Comments of the Sustainable Energy Fund of Central Eastern Pennsylvania in the above-captioned matter.

If you have any questions, please feel free to contact me.

Very truly yours,

Craig R. Burgraff
*Counsel for The Sustainable Energy Fund
of Central Eastern Pennsylvania*

CRB/bks
Enclosures

cc: Commission's Act 129 (via email @ ra-Act129@state.pa.us)
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Act 129 of 2008 - :
Total Resource Cost Test : Docket No. M-2009-2108601

Implementation of Energy Efficiency :
and Conservation Program : Docket No. M-2008-2069887

**COMMENTS OF THE SUSTAINABLE
ENERGY FUND OF CENTRAL
EASTERN PENNSYLVANIA**

The Sustainable Energy Fund of Central Eastern Pennsylvania (“SEF”), by and through its attorneys in this proceeding, Hawke McKeon & Sniscak LLP, submits the following Comments to the proposed Pennsylvania – specific total resource cost (“TRC”) test to be used to evaluate Electric Distribution Company (“EDC”) energy efficiency and conservation (“EE&C”) programs. This TRC test proposal is attached to the Public Utility Commission’s (“Commission”) May 21, 2009 Secretarial Letter in the above-captioned dockets in the format of a strawman Commission order. SEF comments as follows:

1. Introduction

As the May 21 Secretarial Letter notes, Act 129 of 2008, 66 Pa. C.S. §§ 2806.1, *et seq.*, requires an EDC with 100,000 or more customers to adopt an EE&C plan, subject to approval by the Commission. This current process will develop the TRC test to be used to evaluate the EDCs

performance under their EE&C plans. This test will be a critical measuring tool in determining the cost effectiveness of the EDC's EE&C plans.

2. Further Pennsylvania Specific Modifications to the TRC Test

The proposed order attached to the May 21 Secretarial Letter identifies several open issues in determining how best to structure the TRC test for use in Pennsylvania pursuant to Act 129.¹ SEF generally supports the Commission's positions on the proposed TRC. However, SEF believes that a modification to the suggested treatment for one of the open issues is appropriate. This open issue is the treatment in the TRC test of incentive payments from outside sources.

The strawman proposed order notes that, consistent with the California Manual, tax credits will be considered a reduction to costs for the TRC test. However, the strawman proposed order also recognizes that, in Pennsylvania, it is possible that some customers may participate in Act 1 programs² and in Act 129 programs. This situation creates the possibility that an end-use customer could be a recipient of an incentive/rebate from both programs. As the strawman proposed order notes, the amount of incentives that Pennsylvania customers can receive for energy efficiency and conservation measures have expanded and will likely continue to expand as new programs develop from the implementation of Act 1 and from dollars received through the American Recovery and Reinvestment Act of 2009.³

Given this situation, the strawman proposed order states the following:

In our view, incentive payments from sources outside of the Act 129 programs are a benefit that decrease costs to customers participating in programs and should be accounted for in the TRC calculations. These incentives, whether they are rebates or tax

¹ *Implementation of Act 129 of 2008 – Total Resource Cost Test*, Docket No. M-2009-2108601, Proposed Order at 5. (“Proposed Order”)

² *The Alternative Energy Investment Act*, 64 Pa. C.S. § 1515, *et seq.*, Act 1 of 2008. (“Act 1”). Act 1 provides incentives for energy efficiency measures, energy conservation measures and alternative energy generators and is administered by four Pennsylvania agencies.

³ Proposed Order at 8-9.

credits will reduce the participating customers' costs which should be reflected in lower program costs, and they will, therefore, be factored into an EDC's TRC test.⁴

SEF agrees with this position and treatment but suggests that it does not go far enough. In particular, SEF recommends that the Commission specifically include payments related to environmental attributes including Alternative Energy Credits ("AECs") and Carbon Financial Instruments ("CFI") in its proposed treatment of incentive payments from outside sources.

As the Commission stated in its Implementation Order, it will not use the Societal Test as part of the TRC since Act 129 provides that only monetary benefits and costs are to be factored into the TRC test.⁵

AECs and CFIs meet Act 129's requirements for inclusion in the TRC test. The Commission's regulations administering the Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.8, at 52 Pa. Code § 75.1 expressly defines an Alternative Energy Credit as a tradable instrument. The Chicago Climate Exchange regulated by the Financial Industry Regulatory Authority maintains a commodity market for CFI contracts. Thus, both are tradable commodities and, as such, both AECs and CFIs represent a monetary benefit to the owner of the environmental attribute.

SEF recommends, therefore, that the proposed strawman language for incentive payments from outside sources be revised as follows:

In our view, inactive payments from sources outside of the Act 129 programs are a benefit that decreases costs to customers participating in programs and should be accounted for in the TRC calculations. These incentives, whether they are rebates, tax incentives, environmental attribute payments or alternative energy credits will reduce the participating customers' costs which should be reflected in lower program costs, and they will, therefore be

⁴ Proposed Order at 9.

⁵ Proposed Order at 4.

factored into an EDC's TRC test. (Additional language underlined.).

3. Conclusion

The Sustainable Energy Fund of Central Eastern Pennsylvania generally supports the Commission's position on the TRC but recommends that the language regarding incentive payments from outside sources be amended as proposed.

Respectfully submitted,



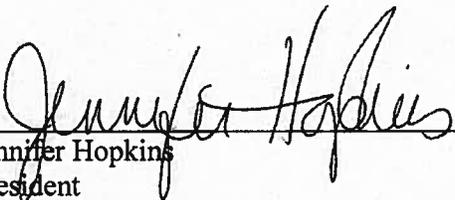
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Counsel for The Sustainable Energy Fund of
Central Eastern Pennsylvania

DATED: June 5, 2009

VERIFICATION

I, Jennifer Hopkins, on behalf of the Sustainable Energy Fund of Central Eastern Pennsylvania verify that the facts contained in the foregoing Comments are true and correct to the best of my knowledge, information and belief. This Verification is made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.



Jennifer Hopkins
President
Sustainable Energy Fund of Central
Eastern Pennsylvania

Dated: June 5, 2009