



December 2, 2008

VIA HAND DELIVERY

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

Re: Docket No. M-00061984; Investigation of Conservation, Energy Efficiency Activities, & Demand Side Response by Energy Utilities & Ratemaking Mechanisms to Promote Such Efforts

Dear Mr. McNulty:

Enclosed please find an original and ten (10) copies of the “**Reply Comments on Behalf of CPower in Response to Testimony and Presentations that were filed in the PA PUC’s Special En Banc Hearing**”. Also enclosed, please find a disc containing CPower’s Reply Comments. Please enter this into the docket and time-stamp the additional two (2) hard copies and return to us. Electronic copies of CPower’s Reply Comments will be sent to ALJ Salapa and Tom Charles in the Office of Communications by email.

If you have any questions regarding this filing, please do not hesitate to call us at (717) 233-5731.

Best regards,

RHOADS & SINON LLP

By: 
Scott H. DeBroff, Esquire

SHD/msi
cc: ALJ Salapa
Tom Charles – Office of Communications

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**INVESTIGATION OF
CONSERVATION, ENERGY
EFFICIENCY ACTIVITIES &
DEMAND SIDE RESPONSE BY
ENERGY UTILITIES &
RATEMAKING MECHANISMS TO
PROMOTE SUCH EFFORTS**

Docket No. M-00061984

**REPLY COMMENTS ON BEHALF OF CPOWER, INC. IN RESPONSE TO
TESTIMONY AND PRESENTATIONS THAT WERE FILED IN THE
PA PUC'S SPECIAL EN BANC HEARING**

**SCOTT H. DEBROFF, ESQUIRE
ALICIA R. PETERSEN, ESQUIRE
RHOADS & SINON LLP
ONE SOUTH MARKET SQUARE
P.O. BOX 1146
HARRISBURG, PA 17108-1146**

TEL: (717) 233-5731

FAX: (717) 231-6626

EMAIL: SDEBROFF@RHOADS-SINON.COM

APETERSEN@RHOADS-SINON.COM

DATED: DECEMBER 2, 2008

COUNSEL FOR CPOWER, INC.

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AND NOW COMES, **CPower, Inc.** ("CPower"), by and through its counsel, **Scott H. DeBross**, **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. CPower's attorneys and to whom all correspondence and pleadings in this docket should be directed to are:

SCOTT H. DEBROFF, ESQUIRE
RHOADS & SINON LLP
ONE SOUTH MARKET SQUARE
P.O. BOX 1146
HARRISBURG, PA 17108-1146

TEL: (717) 233-5731
FAX: (717) 231-6626
EMAIL: SDEBROFF@RHOADS-SINON.COM

MARK NOYES
CPower
282 BLUE RIDGE ROAD
NORTH ANDOVER, MA 01845

EMAIL: MARK.NOYES@CPOWERED.COM

TOM RUTIGLIANO
CPower
17 STATE STREET, 19TH FLOOR
NEW YORK, NY 10004

EMAIL:
TOM.RUTIGLIANO@CPOWERED.COM

ALICIA R. PETERSEN, ESQUIRE
RHOADS & SINON LLP
ONE SOUTH MARKET SQUARE
P.O. BOX 1146
HARRISBURG, PA 17108-1146

TEL: (717) 233-5731
FAX: (717) 231-6626
EMAIL: APETERSEN@RHOADS-SINON.COM

JANETTE DUDLEY
CPower
17 STATE STREET, 19TH FLOOR
NEW YORK, NY 10004

EMAIL: JANETTE.DUDLEY@CPOWERED.COM

7. Following are CPower's reply comments to the testimony that was filed in the above-captioned investigation docket and in preparation for the Special En Banc Hearing.

**CPOWER, INC.'S COMMENTS IN RESPONSE TO THE TESTIMONY THAT WAS
FILED IN THE SPECIAL EN BANC HEARING**

1. CPower disagrees with PECO, PPL, Duquesne Light, and First Energy that it is too early for the PUC to implement statewide programs. As explained in its filing, programs like CPower's white certificate program would best reach the reduction goals of the Act if they are implemented state-wide. CPower believes that the Commission should institute a single white certificate market using a statewide standard set of qualification, measurement, and verification rules. In addition, these certificates should be "geographically neutral" and the EDC should not be under an obligation to meet its white certificate obligation by purchasing any generation in a particular location. In addition, CPower believes that the EDCs should be able to enroll participants outside of their retail electric service areas.

2. CPower also disagrees with PECO, PPL, Duquesne Light, and First Energy in regards to cost recovery. These EDCs stated in their comments that any utility plan that is approved should be understood to be "prudent and reasonable" and thus entitled them to cost recovery. In regards, to its white certificate program, CPower believes in a different approach to cost recovery. As stated in its filing, CPower thinks that only any mandated EDC purchase of white certificates should be fully recoverable through retail electric rates subject to section 2806.1 (a) (11) (cost recovery to ensure that measures approved are financed by the same customer class that will receive the direct energy and conservation benefits.) However, CPower believes that any activity the EDCs engage in to create white certificates should be on equal competitive terms with the other market participants and the only opportunity for cost recovery should be sale of the created white certificates in an open and transparent market. In CPower's plan, before the

certificates are placed on the market, the Program Administrator has subjected the program that creates these certificates to a qualification, measurement and verification standards test. This will help to ensure that any recoverable cost from the purchasing of white certificates represent real, verified energy efficiency projects.

3. CPower acknowledges Duquense's concerns regarding loads served by EGSs. CPower agrees that it would be inequitable for utilities to be required to provide energy efficiency reductions from a baseline that includes loads served by other suppliers. We suggest that this issue could be addressed within the context of a white certificates approach by requiring both utilities and EGSs to purchase certificates proportionately to their load served. We note that while economies of scale may make it impractical for EGSs to sponsor energy efficiency programs, a white certificates approach will allow EGSs to meet energy efficiency requirements at the same cost per kW as any other market participant. We also note that a white certificates approach leaves EGSs with the freedom to institute their own energy efficiency programs if they believe that their own programs would be more cost effective than other providers of energy efficiency.

4. Several parties including the Office of Consumer Advocate, PPL, and First Energy suggested looking at guidelines of the Keystone HELP program or similar guidelines to decide qualifications for CSPs to be registered under Act 129. CPower believes that using the determining factors in Keystone Help to shape the qualifying factors for a CSP is inappropriate. The stringent factors such as insurance criteria, credit history, and mandatory references are not necessary because the CSP is not contracting directly with the homeowner. Instead, all that should be required of a CSP is the most basic of information including: name, address, business

locations, and any special licensing that is required for the job. The other information that is included in the guidelines should be collected by the EDC when it does its own due diligence and background research on the CSP.

5. CPower agrees with Converge's suggestion to implement "pay for performance." CSPs should be willing to enter into a contractual obligation which would hold them responsible to the EDC for a portion of any penalties in Act 129 that the EDC has to incur if the program they helped to create fails to meet the promised reduction amount.

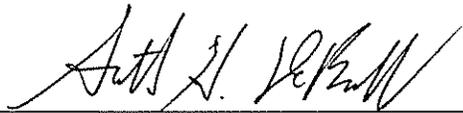
6. CPower notes the wide variety of potential energy efficiency approaches and technologies presented during panels 5, 6, and 7. CPower feels that this underscores the difficulty in picking a winning technology or program design. We respectfully submit that neither the PUC nor any other body is capable of determining ahead of time which of these approaches will be the most successful or cost-effective. We believe that so long as market participants are willing to undertake energy efficiency projects at their own risk, with no recourse to rate recovery, the PUC may allow the widest possible participation.

7. CPower joins the Commission in applauding Wal-Mart on their successful energy efficiency efforts. We submit that Wal-Mart's success is an example of the opportunities presented by allowing innovative private sector participants to flexibly implement energy efficiency solutions. We also note that the flexibility to match energy efficiency efforts to specific circumstances is a major component of Wal-Mart's success, and believe that it would be difficult to design proscriptive utility programs that are as capable of capturing the full gamut of energy efficiency opportunities.

8. In addition, while none of the parties specifically discussed our program design of white certificates we would like to take a moment and comment on our program. The EDCs should be mandated to purchase white certificates in sufficient quantity to meet the annual electrical consumption load reduction targets set forth in section 2806.1(c)(1) and 2806.1(c)(2). The cost effectiveness criteria for this program are met by the Commission setting a cap price for the phantom white certificates. Projects that can deliver white certificates below the cap price set by the Commission are cost effective. If EDCs are mandated to purchase their required amount of white certificates on an open and competitive market, it will ensure that they are obtaining their energy efficiency from the most cost effective of sources available to them.

WHEREFORE, CPower respectfully requests that the Commission enter its Comments in the above-captioned proceeding. We look forward to continuing to participate 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: _____

SCOTT H. DEBROFF, ESQUIRE
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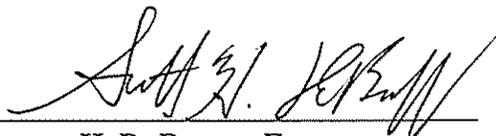
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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **“COMMENTS ON BEHALF OF CPOWER, INC. IN RESPONSE TO TESTIMONY AND PRESENTATIONS THAT WERE FILED IN THE PA PUC’S SPECIAL EN BANC HEARING”** 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) and ALJ David Salapa.

Dated: **December 2 , 2008**

By: _____



**SCOTT H. DEBROFF, ESQUIRE
ALICIA R. PETERSEN, ESQUIRE
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P.O. BOX 1146
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