

December 2, 2008

**VIA HAND DELIVERY**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

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

Dear Secretary McNulty:

As per the Secretarial Letter dated October 29, 2008, enclosed for filing are an original and eleven (11) copies of Reply Comments of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company (collectively, "FirstEnergy") in the above-referenced docket. Please date stamp the additional copy and return it to me. Also enclosed is a diskette containing a copy of this filing in electronic format.

As indicated on the Certificate of Service, copies have been served on the parties in the manner indicated.

Please contact me at the above phone number should you have any questions.

Sincerely,



Linda R. Evers, Esquire

dln  
Enclosures

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Investigation of Conservation, Energy</b>	<b>:</b>	
<b>Efficiency Activities, and DSR by Energy</b>	<b>:</b>	<b>Docket No. M-00061984</b>
<b>Utilities and Ratemaking Mechanisms to</b>	<b>:</b>	
<b>Promote Such Efforts</b>	<b>:</b>	

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**REPLY COMMENTS ON BEHALF OF METROPOLITAN EDISON COMPANY,  
PENNSYLVANIA ELECTRIC COMPANY AND PENNSYLVANIA POWER  
COMPANY**

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**TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:**

**I. INTRODUCTION**

By Secretarial letter of October 29, 2008, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) permitted the submission of Reply Comments in the above docket to Comments submitted on November 14, 2008 by participating parties. Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company (“FirstEnergy” or “Companies”) hereby submit their Reply Comments.

These Reply Comments address four issues: a) the appropriate determination of compliance with the Act 129’s energy usage and peak demand reductions; b) the appropriate measurement and verification of reductions; c) collaboration with state-funded programs; and d) other issues (whole-building approach and smart meters). The Companies look forward to continuing to work with the Commission and interested stakeholders through the stakeholder process to further develop a reasonable and effective Commission Energy Efficiency and Conservation Program.

On November 26, 2008, the Commission circulated a draft staff proposal in the form of a draft "Implementation Order" and a set of further questions relative to the Commission's first phase of implementing Act 129. Comments on the draft proposal and further questions are due on December 8, 2008. The Companies continue to review both of these and will submit their responses by the due date. Although there exists some overlap between the issues addressed in these Reply Comments and the draft Implementation Order, the Companies plan to address the specifics of the latter in their December 8 comments.

## **II. DETERMINATION OF ENERGY AND PEAK LOAD REDUCTION GOALS**

The determination of the energy and peak load reductions required by Act 129 was addressed by a number of parties. While most parties supported the concept of calculating kWh and kW target reduction goals against which "savings" achieved through the implementation of energy efficiency and conservation programs would be measured, the Reinvestment Fund ("TRF") contends that the Act requires an absolute reduction in energy and peak load. The Companies believe that TRF's contention is inconsistent with legislative intent as well as produces an uncertain and unknowable standard.

TRF argues that peak load in 2013 must be 4.5% less than the peak load was five years earlier (2007-08) and that energy usage for an electric distribution company ("EDC") in 2013 be 3% less than the energy usage in 2009-2010. This contention necessarily involves a projection of both peak load and energy usage for 2013 for an EDC to know the amount of reductions that the TRF approach would require. Appendix C to TRF's comments shows its calculation of what amounts to a capped kWh sales level for 2013. In calculating the amount of reduction needed, TRF then makes assumptions and projects what sales levels will be in 2013 without EDCs'

conservation measures. One critical error in this approach is that the EDC will never know until after May 31, 2013 how many kWhs the EDC will need to achieve with its measures because the amount is entirely dependent on the accuracy and correctness of the projected 2013 usage. Requiring EDCs to design programs to meet targets that are unknowable and then impose substantial penalties for not meeting such targets was clearly not the intent of the legislature. Importantly, Act 129 contains no language which addresses forecasts or projections of 2013 (or 2011) energy usage or peak load. The “savings” approach does not suffer from this basic infirmity and is fully consistent with Act 129’s wording.

The only logical interpretation of the Act’s language is that the amount of required reduction is the number of kWhs and kW’s calculated by multiplying the specified percentages times the usage during the designated periods; i.e., the forecasted energy use between June 2009 and June 2010 and actual peak load between June 2007 and June 2008. The amounts so derived are the certain and known reductions which the EDC’s measures should conserve by the deadlines set forth in the Act. The summation of the reduction credits from the implemented EDC program measures would then be compared to these calculated amounts of target reductions to determine compliance with the statutory requirements. The Companies agree with the testimony of the Department of Environmental Protection (“DEP”) that EDCs need to show “that they have conserved the requisite amount of electricity – not that they have achieved a net reduction in electricity sales.” (DEP Testimony, page 1.)

TRF’s contention of an absolute reduction in usage also flies in the face of one of the Act’s stated goals - to promote economic growth. An absolute reduction in energy use admittedly allows no load growth over a five-year period (TRF Comments, page 5), a position clearly adverse to economic growth. Other states which have adopted energy efficiency goals

have done so in the same manner as Pennsylvania, that is, set goals to reduce consumption to be less than it otherwise would have been, not in terms of absolute reductions. In fact, if TRF's citation (pages 12 and 17) to a 2002 study showing that energy use increases during recessions is accurate, then its position on absolute reductions becomes more adverse to the legislature's express goal to promote economic development because economic development presumably produces greater increases in usage.

In its November 19 testimony, Penn Future (page 2) suggests that annual mWh and MW goals be established by the Commission to ensure that progress towards the required reductions is being achieved. The Companies support and Act 129 mandates periodic Commission review of the EDCs' programs such as the annual review of cost-effectiveness provided for in Section 2806.1(b)(1)(I)(j). However, the short time period between Commission approval of the EDC plan and the first compliance date, May 31, 2011, makes an annual target 2010 largely meaningless. Adjustments to EDC plans and measures to ensure achievement of the 2011 savings requirements must occur on an ongoing basis throughout 2010 and early 2011 and any interim targets during this short period will only be a distraction with little, if any, meaning. If the Commission does set annual targets for the later 2013 compliance dates, it should do so in a manner that promotes cooperative achievement of the required reductions, not with the intent of imposing penalties for failure to make annual targets – penalties which are not provided in Act 129.

### **III. MEASUREMENT AND VERIFICATION OF REDUCTIONS**

Several commenters discussed how the energy and peak load reductions achieved should be calculated. The Companies support the use of the Commission's Technical Reference Manual

as the appropriate means to determine the amount of the energy and peak load reductions achieved by the implementation of an EDC's measures. This Manual should be supplemented as appropriate to include information on additional measures (particularly demand reductions), and additional information gained from actual program implementation and the experience in other states. Changes to the Manual should be adopted on a prospective basis and not be used to adjust the reductions determined from past implemented measures.

Some commenters (DEP & KEEA) have suggested processes that would amount to requiring the calculation of the actual amounts of energy conserved or peak load reduced from each measure. Such processes would not measurably improve the determination of the savings because of the number of variables, many of which are only within the control of the customer. The use of "deemed" savings on a prospective basis as provided in the Technical Reference Manual already adopted by the Commission accounts for this variability on an average, aggregate basis as determined by actual study and experience derived by many others. The suggestion that the EDC and the Commission should adopt a process that presumes to accurately determine on a retrospective basis how many kWhs a particular customer saved by buying 10 compact fluorescent lights is simply not possible nor economically feasible. Further, as indicated in PECO Energy Company's testimony (page 4), the use of standard kWh savings approach for prescriptive energy efficiency and conservation measures is a generally accepted method throughout the EE&C industry such as in New Jersey, Vermont, Connecticut, New York and Illinois. The use of experienced averages account for differences in hours used, how many are installed and customer behavior. Such averages provide an efficient and sufficiently accurate measurement of conserved energy attributable to a measure. This is not to say that these averages determined on an aggregate basis for some measures will not change or could be fine-

tuned as time goes on, but any proposed processes that seek to impose retrospective adjustments to savings add risk to program implementation and are neither cost effective nor appropriate.

#### **IV. COLLABORATION WITH STATE FUNDED PROGRAMS**

The Companies' November 19, 2008 comments in this docket (page 15) and in Docket No. M-2008-2069887 on November 3, 2008, (page 3) expressed a need for the energy efficiency programs of the EDCs to be coordinated with other existing state-funded energy efficiency programs. The DEP appeared to take the position in its oral remarks on November 19 that these state programs, including those funded under Act 1 of 2008 (Special Session HB 1) should be separate from EDC programs and that any energy savings from the state programs not count toward achieving the targeted reductions under Act 129. The Companies believe that close coordination and collaboration among EDCs and state, federal and other separately funded programs are in the best interests of the Commonwealth. For this to occur, full recognition for supporting the delivery of energy savings must be appropriately credited to EDC and state programs.

One of the overriding goals of Act 129 is to secure the benefits of energy conservation and peak load reductions for customers throughout Pennsylvania. The objective of this Commission (and DEP) should be to further this goal by creating a structure that makes the best and most cost-effective use of all resources, regardless of the source. Coordination between EDC programs and state-funded programs<sup>1</sup> will have substantial synergistic effect in maximizing the design and delivery of conservation measures which get them to the most appropriate

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<sup>1</sup> Although the Companies use the term, "state-funded programs," throughout this section, the same benefits of coordination and collaboration with EDC programs apply to energy efficiency programs funded by local and federal government entities as well as by private (profit or non-profit) entities.

customers, in the shortest reasonable time and at the most economical cost. In fact, Act 129 specifically requires the EDCs “coordinate” their low-income programs with other programs administered by state or federal agencies. (Section 2806.1(B)(1)(I)(g)) There is no reason why the same coordination should not also occur with programs that are not directed to low-income customers.

Additionally, Act 129 requires EDCs to provide a list of available state and federal funded energy efficiency programs and to place that list on their websites. (Section 2806.1(j)) Such a list was no doubt considered by the legislature as a means of assisting customers in accessing funding for energy efficiency improvements. The Industrials (Comments, page 2) recognize the benefits of coordinating with other energy efficiency programs because such coordination could lower the overall costs to customers associated with funding the programs. The Reinvestment Fund believes that the Commission should direct EDCs to “integrate” their programs with existing programs. (Reinvestment Fund, p. 26) The lowering of overall costs and integration of programs are only feasible if EDCs are permitted to take appropriate credit for the reductions achieved by those programs.

Act 129 defines “energy efficiency and conservation measures” as those that, inter alia, have costs that are “directly incurred in whole or in part by the electric distribution company.” (emphasis added) (Section 2806.1(m)) Coordination with state-funded programs could involve a rebate in addition to a state grant or loan, funding of a lower interest rate on a customer’s state loan, as well as customer education or marketing. EDC program collaboration could also be in the context of identifying specific customers or groups of customers who would benefit from particular state programs, contacting those customers and then assisting them with the application process. These types of EDC support “in part” can make the state programs much

more effective and lower the overall costs of achieving the goals of Act 129. The energy and or peak demand reductions achieved in this fashion should clearly count toward the EDC's achievement of the Act 129 goals.

A Commission or other state agency determination that EDCs may not take any reduction credits for their participation and support of state-funded energy efficiency programs could have a number of adverse consequences. First, there will be little or no incentive for EDCs to become or continue to be involved in state-funded programs. For example, the Companies' and other EDCs' support in subsidizing loans to low-income customers under the Treasury Department's Keystone HELP Loan Program, or supporting audits that lead to participation in state programs would probably be reconsidered by the EDCs if they receive no credit for the energy reductions achieved. Conservation Service Providers ("CSPs") who bid for and receive pay-for-performance contracts to implement measures under an EDC's energy efficiency approved program will not desire to spend time or resources on getting customers to enroll in state-funded programs because the CSP will not get credit for energy reductions achieved under those programs. In addition, a myriad of uncoordinated EDC and state-funded programs will create consumer confusion over eligibility requirements, incentives, application process, etc.<sup>2</sup> In such a situation, there will be duplicative advertising, implementation and verification expenses which will increase the overall costs of achieving energy efficiency for the state. The lack of coordination and collaboration between EDC programs and state-funded programs could create a detrimental competitive environment in which state agencies and EDCs seek to make their

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<sup>2</sup> The benefits of collaboration between the state and EDCs was indirectly recognized in Penn Future's testimony of November 19 (page 6): "Collaboration between EDCs in developing programs is beneficial in that it reduces program costs for energy efficiency through economies of scale, avoids unnecessary program overlap that may cause confusion among customers and contractors, improves transparency, and increases the effectiveness of marketing and branding." Such logic also applies to collaboration between EDCs and state-funded programs.

respective programs successful at the expense of the other's programs. Such a situation is not in the interest of customers, the Commonwealth or EDCs.

This potential conflict may be resolved by having state agencies and EDCs work together to make their programs mutually beneficial, coordinate reporting of savings for joint or collaborative initiatives, and address the manner and level of collaboration in the EDC program filings. Act 129 encompasses such a synergistic relationship in the way conservation measures are defined. Although Act 129 does not allow an EDC to take credit for reductions in which it did not incur some or all of the cost to achieve (Section 2806.1(m)), Act 129 expressly provides that incurring partial costs for a measure allows an EDC to count the savings as part of the required amount of reduction. In cases where an EDC's program provided funding in whole or in part as part of a collaborative effort with state, federal, or other separately funded programs, the EDC should be able to take credit for the energy and peak demand savings achieved. The EDC's program filing should propose its manner and level of involvement in state, federal or other separately-funded programs and the amount of energy or peak load savings expected to be achieved toward its Act 129 targeted reduction levels.

## **V. COST RECOVERY**

Act 129 expressly provides for the recovery of the costs of energy efficiency and conservation programs through a Section 1307 mechanism. (Section 2806.1(h)) The Commission's determination of "reasonable and prudent" as provided for in this section was addressed by a number of parties. The Companies agree with the OCA (OCA Testimony, Appendix, page 6) that the failure of an energy efficiency or demand response measure to provide the projected level of savings is not *per se* imprudent or unreasonable. The

implementation of the EDC's measures will no doubt be an iterative process in which all stakeholders will learn which programs and measures work better than others and how they should be adjusted based on actual experience, customer acceptance and external events. If an EDC implements and adjusts its approved plan in accord with Commission requirements, including the evaluations and expenditures, then it should fully recover its costs on a full and current basis. The suggestion by Keystone Energy Efficiency Alliance (Comments, page 6) that program costs are recoverable only *after* they have been expended and evaluated is clearly contrary to the express language of Section 1307. This section provides for the use of projected costs with later reconciliation to actual costs subject to Commission review for reasonableness. Each EDC plan will contain estimated expenditure levels and the proposed Section 1307 cost recovery rate level for Commission approval.

The testimony of DEP that "the success of utility plans should be verified as a prerequisite to finding expenditures to be reasonable and prudent" (DEP Testimony, page 9) is concerning. If "success" in this statement is meant to imply that the EDC must achieve the projected level of energy savings in terms of measures installed or actual reductions, then this statement is not in accord with Act 129 and also is contrary to OCA's position stated above. One measure may produce far less than the projected participation levels while another may greatly exceed projected participation levels – yet both measures could have been implemented and evaluated reasonably and prudently. Cost recovery should be allowed for both, not just the one which exceeded projections. If the statement is meant to require that the measurement and verification of program measures occurs as provided in the EDC's approved plan (as it may be modified), then the statement is a reasonable description of a component of cost recovery.

## VI. OTHER ISSUES

*Whole-Building Approach* - Several parties have promoted a “whole-building” approach to designing and implementing energy efficiency and peak load reduction measures. This approach has merit and should be an option available for tailoring to specific EDC territories or customers. However, it should not be mandated as a prerequisite for the installation of all energy efficiency measures because there are a number of issues with this approach. First, the timing of the initial energy savings of 1% by May 31, 2011, must be considered to ensure that delays in actual implementation of measures do not arise from adopting this approach. Cost-effective measures must be implemented as soon as practicable after plan approval if EDCs are to achieve the mandated savings by mid-2011. Following a comprehensive study of the customer’s building, a whole-building approach for a large commercial or industrial customers may involve the need to secure financing of capital improvements (privately or state-funded), requesting bids from contractors, procuring high energy efficient equipment and then installing and operating the measure. If this study, procurement and installation process for a number of customers extends beyond the compliance date, the EDC may not achieve the required reductions and then face penalties for non-compliance with the 2011 date in spite of the best efforts of all involved. The bottom line is that any whole-building approach must be structured to not jeopardize the achievement of the 2011 compliance date. This is best achieved by allowing the whole building approach to be included in EDCs’ plans but not mandating its inclusion.

The second issue with the whole-building approach is determining how savings in other energy sources attributable to installation of energy efficiency measures should be accounted for. For example, the whole-building approach may identify measures which not only produce electric energy savings but also substantial natural gas or heating oil savings. If the measure is

paid for by the EDC's program and recovered from electric customers via Act 129's Section 1307 recovery mechanism, it may be appropriate to convert these other fuel savings to an equivalent kWh savings, for example on a BTU basis.

Another potential issue relates to the negative effect that the whole-building approach may have on the overall market penetration of energy efficiency and conservation programs. If limited resources are expended on lengthy, more extensive projects, that will limit the number of customers who could benefit from achieving energy efficiency improvements. Balancing these various issues with achieving Act 129's goals will need to be considered in reviewing the respective EDC's plans.

*Smart Meters* - Several parties used this proceeding as an opportunity to promote their positions on the installation of smart meters and/or a smart grid. The Companies have not reviewed each of these in detail because such positions are not appropriate for consideration in this proceeding. Act 129 has specific requirements associated with smart meters, but not smart grid technology, that the Commission will address in a separate proceeding. This distinct proceeding can focus on the multitude of matters that surround either of these technologies. The timing of a smart meter technology plan under Act 129 is for EDCs to submit their smart meter plans within nine months of the effective date of the act or August 14, 2009. If an EDC determines that these technologies have a place in its energy efficiency and peak load reduction plan, then it may propose their inclusion to the extent desired and other parties will have the opportunity to express their views and suggestions on the specifics of their inclusion. The Commission will then determine the appropriateness of the technologies as contained in the EDC program measures. However, the Commission should refrain from any mandates associated with

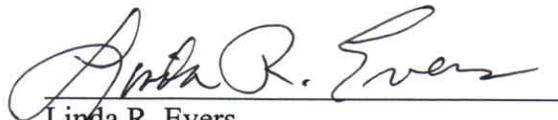
smart meters as part of its energy efficiency and conservation program decision of January 15, 2009.

**IV. CONCLUSION**

FirstEnergy appreciates the opportunity to provide this reply to the other parties' comments to the CEEP questions concerning the implementation of Act 129 of 2008. The Companies look forward to continued participation in the process.

Respectfully submitted,

Dated: December 2, 2008



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Investigation of Conservation, Energy</b>	:	
<b>Efficiency Activities &amp; DSR by Energy</b>	:	<b>Docket No. M-00061984</b>
<b>Utilities &amp; Ratemaking Mechanisms to</b>	:	
<b>Promote Such Efforts</b>	:	
	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by overnight United Parcel Service, as follows:

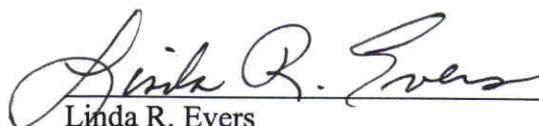
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Dated: December 2, 2008



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