



December 3, 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 Wal-Mart Stores 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 Wal-Mart’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 Wal-Mart’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. DeBross, 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 WAL-MART IN RESPONSE TO
TESTIMONY AND PRESENTATIONS THAT WERE FILED
IN THE PA PUC'S SPECIAL EN BANC HEARING**

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DATED: DECEMBER 2, 2008

**COUNSEL FOR WAL-MART STORES EAST, LP AND
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**COMMONWEALTH OF PENNSYLVANIA
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AND NOW COMES, **Wal-Mart Stores East LP and Sam's East, Inc.** (collectively "Wal-Mart"), by and through its counsel, **Scott H. DeBroff, Esquire** and **Alicia R. Petersen, Esquire** of Rhoads & Sinon LLP. In support of this docket, Wal-Mart avers the following:

1. On October 19, 2008 the Commission held an all day Special En Banc Hearing where several panels of experts presented their opinions on Alternative Energy, Energy Conservation and Efficiency, and Demand Side Response including Wal-Mart.

2. Parties to the proceeding were required to submit a copy of their testimony, presentations, and answers to questions that were proposed by The Pennsylvania Public Utility Commission and by CEEP.

3. Wal-Mart is a retailer of goods and services. Wal-Mart's principal office is at 2001 SE 10th Street, Bentonville, AR 72716-0550.

4. Wal-Mart has the privilege of providing its retail goods and services in the Commonwealth of Pennsylvania. It has 83 Supercenters, 41 Discount Stores, 23 Sam's Clubs and 4 Distribution Centers across the State of Pennsylvania and receives electric services from several EDCs in Pennsylvania. Throughout the United States, Wal-Mart has participated in energy efficiency, demand response, and advanced meter installations.. Wal-Mart has implemented measures in its facilities to enhance its energy efficiency capabilities. Based on its experience with energy efficiency throughout the United States, Wal-Mart has unique insight into many load reduction programs and the potential such programs can offer.

5. Wal-Mart's purpose for being a party to this proceeding is to contribute, participate and respond to the issues raised by the Commission or raised by other parties in this proceeding. Wal-Mart has participated as a party before this Commission, other state commissions, and the Federal Energy Regulatory Commission.

6. Wal-Mart has a direct, immediate, and substantial interest in the subject matter of this proceeding and can offer additional insights and perspectives regarding conservation, energy efficiency and demand response activities in Pennsylvania.

7. Wal-Mart's counsel and to whom all correspondence and pleadings in this docket should be directed to are:

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8. The following are the Reply Comments submitted by Wal-Mart in response to the presented testimony and/or exhibits included in the record at the En Banc Hearing on November 19, 2008.

REPLY COMMENTS OF WAL-MART STORES

DEP

1. Wal-Mart supports the DEP's position that there must be strict verification of utility energy efficiency efforts.

Curtailed Service Provider ("CSP") (pgs 2-6)

2. Wal-Mart supports DEP's position that utilities should collaborate when possible in using CSPs and that one of the top priorities should be the quality of service that is provided. (pg 2)
3. Wal-Mart also agrees with the DEP that CSPs should be defined broadly and the Electric Distribution Company ("EDC") should evaluate whether it is better to use a CSP or implement a particular measure on its own. We would agree that the needs of each customer class will also help to determine the minimum qualifications a CSP would need in order to be able to serve those customers. Wal-Mart also believes that relationships developed between CSPs and end use customers should be valuable and should be considered in the mix for requirements under the Act.

Measurement of Meeting Statutory Requirements (pg 6- 7)

4. We also support DEP's comments that request that the Commission should make standard data format and collection protocol for all customer consumption and price data to help determine what is causing the reduction. EDCs should only get credit for reduction that can be attributed to their programs.

Cost Recovery (pg 9)

5. Wal-Mart supports DEP's comments that the Commission should determine what is "prudent and reasonable" for the EDC to obtain cost recovery for its plan. The Commission should also look at how much the program is costing another EDC and also use other independent evaluation methods.

Program Design (pg 10)

6. Wal-Mart supports the DEP's contention that the Commission should look at which customers can obtain the most cost effective benefits from the programs. All EDC programs should be submitted at the same time so the Commission can assess the strengths and weakness of each program and also to see which programs could be implemented statewide. We agree that statewide implementation would help with costs and the ability to educate a greater number of customers.

Duquesne Light

7. With the transition period to a fully competitive market in Pennsylvania months away, we do not necessarily agree with Duquesne's perspective on how they are viewed in regard to the implementation of Energy Efficiency and Conservation programs. In the future, many customers in the Duquesne service territory could be served by Electric Generation

Suppliers, ("EGS"). The requisite fairness issue is really one that is yet to be decided, and as possible working groups may be established to address issues dealing with competitive service, we would contend that this issue would be an important one to deliberate.

8. With the transition approaching, we are not sure, as Duquesne seems to be, that because of both default service rate structures and the typical EGS price offerings there will be little incentive for any of the C&I customers to shift or reduce their load.

Questions

9. Wal-Mart agrees that it is premature to decide if EDCs should collaborate on programs. We think that such an issue should also be one that is included in discussions inside of a working group. We agree with Duquesne that CSPs should also be allowed to perform many responsibilities and that one of the only minimal requirements for a CSP should be licensing.
10. We would agree that programs should be made for all customer classes, however, the programs that are designed for each, will likely be representative of the needs and characteristics of those particular customers. The characteristics of the individual EDC service territories will also have an effect on the types of programs that are designed. Additionally, ratepayers who have established their own energy efficiency programs should be allowed to opt out of utility sponsored programs.

First Energy

11. We agree with First Energy that the Commission must adopt a flexible process to review Energy Efficiency and Conservation program plans. We also agree that consumer education will be a very important key to the future success of any programs. Perhaps the State Energy Office would be the appropriate entity to carry out this function since it is already pre-funded by taxpayers.

Questions

12. Wal-Mart does not agree with First Energy's position that they could use EGS requirements as a basis for decoding requirements for CSPs. We think that the licensing requirements for CSPs should be very simple and basic, and not rise to the level of sophistication that exists for EGS'. The Commission is required to create a "registry" of qualified CSPs, therefore, we believe that the licensing procedures should be simple and straightforward.
13. While there are many approaches that can be designed to capture the information to determine accurate load reductions, we disagree with First Energy's perspective that using the customer's metered data is inappropriate because, as they describe, one can not tell what caused the reduction. If the end use customer has an advanced meter and is connected to advanced back office capability, the meter can be a highly accurate tool to use to capture energy usage and savings data. While it would also be important to have other measurement means at your disposal, we believe that the meter is an integral part of an EDC's capabilities to measure appropriately and should be considered a necessary part of the program.

14. First Energy has a number of important programs and technology already in place, and we would contend that it is important to analyze the programs and technology and determine how best to integrate any further technologies and programming into future plans.

PECO Energy Company

15. We agree with PECO that Measurement and Verification (M&V) and Evaluation standards must be developed and agreed upon before starting any EDC programs.
16. They advocate several sources for M&V: Model Energy Efficiency Program Impact Evaluation Guide developed in the Action Plan for Energy Efficiency (Nov 2007), The Commission's Technical Reference Guide adopted in its AEPS DSM proceeding which has deemed savings values and measures for the amount of Alternative Energy Credits "AEC" associated with the measures. We would agree that such review should be done in the context of a working group effort with recommendations to the ALJ and Commission for adoption.
17. PECO describes that in other states, CSPs perform program management, program execution, and M&V roles. They believe that CSPs should also be allowed to do these roles in Pennsylvania. We would agree.
18. We also support their position that a TRC test should be used as a guideline for individual measures and strictly applied to the total portfolio of programs offered by the utility.

PPL Electric Utilities

CSPs (pgs 1-4)

19. PPL believes that there should not be a statewide effort where EDCs all contract with the same CSPs and we agree. We would also agree, in part, that if two or more EDCs feel that they can coordinate their programs with one CSP, then this could be an option.
20. Also, PPL contends that when the EDC's plan is being reviewed by the Commission, that is the appropriate time to decide what programs are best to be delivered by the EDC and which programs are best to be delivered by the CSP in a competitive bidding process. We generally support this theory and having been involved with relationships with both utilities and CSPs in other states, there is always a mix of provider programs, and based on what the EDC's plan is and what the Commission believes will be an effective plan, that usually determines the best mix of programs to approve and promote.

Measurement of Meeting Statutory Requirements (pgs 5-7)

21. PPL recommends a procedure to establish reduction targets for sales and for demand that tract the performance of individual measures. This would avoid having to track load growth. The only adjustment that would need to be done for the sales forecast for the base period to reflect normal weather in the forecast. PPL does not think that a meter can accurately measure the reduction that is done by the EDC programs because it can not separate out the

program from other external factors like consumer behavior. We would again suggest, as we have earlier in our Reply Comments, that the procedure for determining whether statutory requirements have been met should be one that is left to a working group effort. In addition, PPL comments on the lack of accuracy of a meter to measure the consumer reductions. As we have indicated previously, the ability for an advanced meter to do the kind of advanced measurements required of such an endeavor are possible, but as we also indicated, there needs to be a full airing of the programming and the methodology for doing such program evaluation. Additionally, Wal-Mart believes that weather variations are only one of the factors that need to be considered when establishing a baseline such as the time of year and the day of the week.

Evaluation (pg 8-9)

22. We would support PPL's position that the third party evaluator solicitation and contract should be submitted with the EDC plan.

Program Design (pg 10)

23. PPL believes that there could be a statewide catalogue of program ideas for each group but the implementation of these programs should be utility specific because of differences in service areas. There could also be a statewide media campaign to generically advertise the programs. Wal-Mart does not oppose advertisement of programs, however, we should keep in mind that the ratepayer will ultimately pay for the advertisement. Given the current economic condition of our country, any advertisement that is performed should be done in a way that ensures that no additional fees will be passed on to the ratepayer.

Existing Programs

24. PPL has programs that will expire in 2009. These programs include interruptible rates, TOU, demand free day feature, and an experimental price response rate for Large C&I customers, an off peak space heating and TOU features for small C&I, and off peak water heating, thermal storage and TOU for residential. They have started a pilot for on-peak and off-peak pricing during the summer to residential customers and day-ahead market prices to Large C&I customers. They are currently waiting approval for a pilot to residential customers that will offer on-peak and off peak year round.

Retail Energy Supply Association (RESA)

Competitive Retail Markets (pg 3-5)

25. RESA wants to encourage retail competition, which will bring many new products and services to help customers make choices about energy consumption. They also want a competitive market to help meet the Act 129 reduction goals. Some of the products competitive markets offer are new pricing options, green and clean products, and value added services. We support these RESA interests and encourage retail competition within the state.

CSP Competitive Bidding (pg 7-8)

26. RESA supports an Independent 3rd party who should solicit proposals to the EDC. Also, there should be stakeholder meetings with the EDC and the CSPs before the EDC creates and submits its plan. Wal-Mart supports these ideas but would also support allowing many providers to compete for the opportunity to provide energy efficiency programs on a competitive basis. This would ensure that energy efficiency programs would be executed in the most cost effective manner.

CEEP Questions

27. RESA supports the idea that EDCs should coordinate with CSPs. There should also be complete bidding for CSPs. They feel that the act contemplates that CSPs should be involved in implementing the EE&C programs. The language describing a CSP as providing “information and technical assistance” recognizes that CSPs are not limited to physically installing the measures. CSPs should be defined broadly as long as their product results in demand reduction. Wal-Mart supports these ideas.

Current Group

28. Current is supportive of the present activities to begin the process to determine what kinds of Energy Efficiency and Conservation programs need to be put in place in order to fulfill the requirements of Act 129 Of 2008. However, in their presentation from the hearing, they are promoting the institution of a rulemaking to support the requirements in the Energy Information and Security Act of 2007 (EISA), which requires all states to begin rulemakings to foster development of a Smart Grid.
29. They propose that a real Smart Grid will have two way communication and connect advanced meters, smart thermostats, smart appliances, load control devices and distributed renewable generation sources. They expressed all of the benefits Smart Meters and Smart Grids have and how these technologies will help Pennsylvania achieve its Energy Efficiency and Conservation goals. Wal-Mart believes that any discussion of Smart Grid technology should include a very extensive examination of the cost of such a system. Additionally, as in other states, Smart Grid discussions will likely be brought up outside of the context of this proceeding and will potentially reviewed as a stand-alone proceeding.

Office of Small Business Advocate (OSBA)

Procedure for Approving the EDC Plan (pg 2)

30. OSBA sees the EDC's plan as having to go through the normal adjudicatory process which creates a record and produces an Opinion and Order subject to appellate review. In addition, the Commission should have a standard plan, require answers to specific questions, and require the EDC to file and serve its direct testimony at the same time it files its plan. There should also be an ALJ overseeing the case and parties should submit all briefs directly to the Commission. While Wal-Mart understand the Commission will likely support some of the process that is advocated by the OSBA in approving the EDC plans, however, Wal-Mart has also been involved in a similar docket in New York State. In that docket, working groups were established in order to provide much of the background work and to help move the many substantive issues to conclusion in a more informal setting. We would encourage an examination of that process.

Cost Recovery (pg 6)

Office of Consumer Advocate (OCA)

31. OCA talks about the Utility meeting with their customers about the upcoming program additions. Wal-Mart supports that kind of outreach to customers from the start and throughout the process.
32. Wal-Mart agrees with OCA that several issues will be challenging for the Commission; first, whether the PUC has to do initial load forecast and second, what is meant by reductions compared to kilowatts or kilowatt hours?
33. OCA also believes that the EDCs should collaborate in contracting with EDCs. We would agree.

Direct Energy

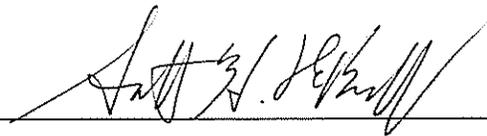
34. Direct speaks to several universal principles regarding Energy Efficiency program design that should be considered here in Pennsylvania. Direct supports clear program objectives, insuring simple administration, the ability to access federal and other funding in Pennsylvania. Direct wants allowances for competition in delivery of energy efficiency measures, provision of financial incentives, and using findings from energy audits to steer customers towards other equipment and demand response programs. Finally, they support broadly communicating the benefits of and opportunities for energy efficiency via cooperative advertising with big box retailers. Wal-Mart supports these principles and affirmatively states that it should not be assumed that utilities are the best entity to provide energy efficiency or DSM programs. There should be a competitive process in which companies capable of providing the service be allowed to bid for that program. This will ensure that the programs are implemented in the most cost effective manner possible and innovation and creativity will be enhanced.

Comverge Inc.

35. Comverge supports competitive bidding process for residential and small commercial customers for demand response programs. They do not think that EDCs need to collaborate on contracts with CSPs and they support the use of 3rd party “pay for performance” contracting which will have the CSPs take on the burden if they do not meet the performance levels that were contracted for. They also are supportive of provision of customer information for large C & I customers. Wal-Mart supports these concepts.

WHEREFORE, Wal-Mart respectfully requests that the Commission enter its Reply Comments in the above-captioned proceeding. We look forward to continuing our participation in this process going forward and contributing our experience and expertise. Thank you again for the opportunity to comment on this important matter.

Respectfully submitted,

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DATED: DECEMBER 3, 2008

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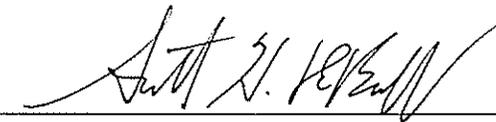
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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing "REPLY COMMENTS ON BEHALF OF WAL-MART 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).

Dated: December 3, 2008

By:



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