

BEFORE THE
PUBLIC UTILITY COMMISSION

Investigation of Conservation, Energy
Efficiency Activities, & DSR by Energy : Dockets No. M-00061984
Utilities & Ratemaking Mechanisms & No. M-2008-2069887
to Promote Such Efforts

**Comments of ClearChoice Energy regarding the implementation of HB 2200 and
questions posed for presentors at the En Banc Hearing on November 19, 2008**

ClearChoice Energy appreciates the opportunity to file comments on the questions posed regarding the Implementation of Act 129 of 2008 on the development of Energy Efficiency and Conservation Programs by Electric Distribution Companies in connection with the November 19, 2008 En Banc Hearing.

Introduction

ClearChoice Energy is a privately-owned, certified woman-owned business headquartered in western Pennsylvania, providing energy management services including conservation services under PJM's demand response programs. We are registered as a Curtailment Service Provider as a member of the PJM Interconnection and serve on the PJM Demand Response Steering Committee. We are currently working with retail electric customers including school districts and municipalities to enroll them in PJM demand response programs for the upcoming PJM planning year that begins June 1, 2009. We also work with partner companies that provide energy efficiency services, including newer technologies, to commercial, industrial and institutional customers.

ClearChoice Energy's management has twenty years of experience in deregulated energy markets, including the management of both wholesale and competitive retail

power supply operations throughout North America. We have provided energy management services to commercial, industrial and institutional electric customers since 2003.

Comments

We appreciate the opportunity to respond to the following questions:

1. Conservation Service Providers
 - a. Should the EDC's collaborate/coordinate on contracting with conservation service providers? We believe it is in the best interest of the parties to have a Stakeholder Working Group whereby Conservation Service Providers and EDC's discuss various technical issues such as metering, measurement and verification and procedures for obtaining historical usage data that should be considered in development of the EE&C plans. Any discussions should specifically avoid discussion of individual conservation service providers, pricing or other contracting issues that could violate antitrust laws.
 - b. Are there enough common programs for the conservation service providers to provide effective measures across Pennsylvania? Yes, we believe "effective measures" within Pennsylvania include a wide range of conservation services commonly available. Such services include energy audits, installation of energy efficient lighting, and air conditioning, and RTO/ISO demand response programs, among others.

With respect to demand response programs, it is important to note that each of Pennsylvania's EDC's are members of RTOs/ISOs and operate in organized wholesale markets with common measures, including the PJM

Interconnection, LLC (PJM), the Midwest Independent Transmission System Operator, Inc. (MISO), and the New York Independent System Operator (NYISO). Federal Energy Regulatory Commission Order 719, issued October 17, 2008, will expand the common measures available to electric consumers throughout the Commonwealth. Order 719 requires each RTO/ISO operating within the Commonwealth to reform its operations to improve and expand its demand response programs, and modify its tariffs to, among other things: (1) accept bids from demand response resources in RTO/ISO markets for certain ancillary services on a basis comparable to other resources; (2) permit an aggregator of retail customers (ARC) to bid demand response on behalf of retail customers directly into organized electric markets; and study whether further reforms are necessary to eliminate barriers to demand response in organized markets.¹

While Order 719 stops short of mandating strict uniformity of technical requirements across all RTO/ISO demand response programs for ancillary services, FERC does “require RTOs and ISOs to coordinate with each other in the development of such technical requirements, and provide the Commission with a technical and factual basis for any necessary regional variations.”² We believe implementation of Order 719 will increase commonality across demand response measures within the Commonwealth.

c. Does the provision providing for competitive bidding for all contracts with CSPs require the utility to competitively bid all energy efficiency and

¹ 125 FERC ¶ 61,071, 18 CFR Part 35

² Order 719, ¶ 59 at P 33.

conservation services? If not, what energy efficiency and demand services should not be competitively bid?

The provision provides for “all contracts” for energy efficiency and conservation services to be an open process with competitive bidding. We do not believe that all aspects of the EE&C programs must actually be contracted. For example, financial incentives in the form of rebates may be offered directly to customers or to their conservation service provider for the purchase and installation of certain equipment, such as energy efficient lighting, or smart meters. These incentives should be open to all qualified parties performing the service or to the end use customer who applies for the incentive and can demonstrate that it purchased and installed the equipment. In most cases, we believe it is unnecessary for EDCs to contract with any specific conservation service provider(s).

Those energy efficiency and conservation services that are to be contracted should be subject to competitive bidding under a process that is competitively neutral. We believe the EDCs should have to justify why certain services should be subject to bilateral contracts as opposed to offering a market-based program open to all qualified conservation service providers.

d. Under definitions, a CSP is an unaffiliated entity providing information and technical assistance. Under 2806.1(A), however, a CSP is said to provide conservation services. How should the Commission interpret this apparent inconsistency?

We do not believe these sections are inconsistent. The sale and delivery of conservation services requires providing information and education to the end use customer, as well as providing technical assistance in the form of engineering, project management, and the tracking, evaluation, interpretation and understanding of wholesale and retail market structures, programs, and rules.

Further, we believe the definition of “conservation service provider” contained in the final version of HB 2200 was carefully crafted by the Legislature to exclude EDCs and their affiliated entities from using their ratepayer funded monopoly power and brand names to compete with independent third parties in the provision of energy efficiency and other conservation services. Earlier versions of HB 2200 permitted the EDCs to participate in the provision of energy efficiency and demand-side resource programs.³ The final version of HB 2200 that was enacted into law as Act 129 went through extensive modification in final hours of debate by Senate Republicans in caucus on September 23, 2008. This was partially in response to letters and meetings by ourselves and others who expressed concerns over the detrimental effect on our business if, as privately funded demand side service providers, we were forced to compete with ratepayer funded utilities. The provisions in the earlier version of HB 2200 which allowed EDCs to provide energy efficiency and demand-side resource programs were deleted from the final version of HB 2200.

³ See HB 2200, printer’s no. 3233, as amended on third consideration in the House of Representatives February 12, 2008. HB 2200, printer’s no. 3233 provided in section 2806.1 (g) for EDC’s not seeking to be third party entities providing energy efficiency and demand side services to cooperate with the program administrator in competitively procuring the services of other third party entities. Section 2806.1(h) provided “Energy efficiency and demand-side resource programs shall be deemed to be a new service offered for the first time under section 2804(4)(vi) (relating to standards for restructuring of electric industry).” These provisions were deleted from the final version of HB 2200.

The intentional definition of a “conservation service provider” to exclude EDCs and their affiliates from using their ratepayer subsidized monopoly power and brand names to enter the business of providing energy efficiency and other demand-side conservation services, including demand response, is consistent with the pro-competition policy laid out by the General Assembly in Title 66, Section 2802.(5) whereby it states “competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.”⁴

From the standpoint of the electric grid operator, demand-side resources provide a means of supply and capacity, similar to power generation. In fact, federal energy policy now provides for the integration of demand-side resources, resulting from both energy efficiency and demand response programs, into organized, competitive wholesale markets on a basis *comparable to other resources*,⁵ specifically power generation. We believe state policy should complement federal policy by developing EE&C programs which allow the integration of demand side resources as resources able to compete with power generation in the market.

Our experience in selling demand response services is being negatively impacted by EDC demand response programs that are priced significantly below those offered in the competitive market. We recently have had the experience of selling curtailment services to a local school district. To date, we have had seven meetings with school district officials. Throughout our sales process, we have been educating the officials on the various PJM demand response programs,

⁴ 66 Pa. C.S.A. §2802(5)

⁵ FERC Order 719, ¶ 14, at P. 7

obtained historical usage data for their various electric accounts, performed extensive load analysis on the data, reviewed their options and costs for installing interval meters, and have run tests on school facilities. Those tests included arranging for licensed electricians, at our expense, using data loggers on the main lines to measure the effect of various curtailment measures on the schools' electric usage. These tests were run to quantify the schools' curtailment capability and to ensure the schools' ability to curtail within the notification periods proscribed by the PJM programs.

In addition to providing a solid basis for the schools expected performance in the PJM demand response program, our load analysis and data monitoring discovered demand spikes from poorly performing air handling equipment. Our analysis showed these demand spikes were adding an additional 17.5 percent to the schools' monthly bills. The school district was previously unaware of this problem. Not only did we discover, quantify, and evaluate the problem in the school's equipment, we provided them with solutions to address the problem and eliminate this unnecessary cost.

Despite this extensive amount of work, performed at our expense during the sales process, when it came to contracting for curtailment services, one of the school district officials believed it necessary to obtain quotes from competitors prior to asking for school board approval. Our competitors include other curtailment service providers as well as the local EDC. While the other curtailment service providers charged rates similar to, or even higher than ours, the local EDC, which bears NONE of the sales and marketing expense and

provides less service, offered to register the schools in the same PJM program, for a price significantly below our quoted price for services. The school district official insisted that if we wanted to obtain school board approval, we had to drop our price to match that offered by their EDC.

After hearing this from the school district official, we called the EDC and asked about their services and what they believed differentiated them from other curtailment service providers. The response from the EDC representative was that their point of differentiation was simply they charged lower fees than other curtailment service providers.

If we are forced to meet below marketing pricing offered by the EDC, as an independent provider of services, we cannot cover our sales and marketing costs and earn a profit on risk capital

We urge the Commission to carefully think through the impact that EDC demand response or energy efficiency offerings will have on the competitive marketplace. As a privately funded service provider, we have no problem competing with other independent, conservation service providers. However, allowing the EDC's to provide demand response and other services at below market prices will have the affect of consolidating what is today a fully competitive marketplace for demand side services.⁶ This will stifle innovation and drive privately funded conservation service providers out of the business. We unfortunately do not get ratepayer funding to cover sales and marketing costs, nor

⁶ There are eighteen energy services companies (a.k.a. ESCOs) registered with the state's General Services Administration to provide energy efficiency services under the state's guaranteed savings program. PJM, our regional electric grid operator, has sixty entities registered to provide demand response services. Fifty-one of the sixty service providers, are private sector, for profit entities that are not utilities.

do we have the local “brand” name that was developed over decades of providing ratepayer funded services.

We see the decision that is before the Commission as one of whether to support a competitive marketplace for demand side services or force industry consolidation by regulatory fiat. This situation is analogous to the issue faced by competitive power marketers or Electric Generation Suppliers (ESGs) in the Commonwealth. One need look no further to understand this issue than to determine whether competitive supply options are available to end use customers in service territories where utility rates are below competitive prices determined by wholesale market forces. In Pennsylvania and in other states with retail deregulation, customers move away from utility supply and choose competitive supply options when utility rates are higher than competitive rates. At times when utility rates are lower than current competitive rates, as they are within EDC service territories where generation supply is still under rate caps, no competitive options exist.

We believe the Commission should endorse the legislative intent to have a competitive demand side services market for conservation services including both energy efficiency and demand response by excluding the EDCs and their affiliates from providing these services. Conservation service providers will grow and prosper if they are not forced into unfair competition with ratepayer funded EDCs or their affiliates.

Robust competition among conservation service providers will drive cost effective services and innovation more rapidly than EDC programs. One need

only look at the recently opened Penn Power service territory to understand the rapid pace at which competitive providers will educate customers on savings opportunities. Rate caps in the Penn Power service territory expired January 1, 2007. In just six months, by July 1, 2007, 44 percent of the customer load (MW served) had moved to alternative suppliers.⁷ If left to market forces over the next two years, rising electric rates from the expiration of rate caps, coupled with savings opportunities from energy efficiency and demand response programs in what will be the fourth largest competitive electric market in the United States, will drive extensive competition and product innovation within the Commonwealth's retail electric market. The education of customers need not be done with ratepayer funds when competitive market forces will provide services financed by private risk capital.

Not only will independent providers of demand side services stimulate innovation in product development and educate customers on savings opportunities, they also provide an objective voice in representing the consumer. As a curtailment service provider, we actively support making capacity payments to energy efficiency projects as part of PJM's reliability pricing model. We see capacity payments, for the life of the resource, as comparable treatment for demand side resources and a means to finance energy efficiency just as these same payments help to finance power generation. The majority of Pennsylvania's investor owned utilities have taken the opposite position in the PJM stakeholder process. They have tried to limit capacity payments to customers for energy efficiency since it displaces capacity payments made to their affiliated generation

⁷ Pennsylvania Electric Shopping Statistics as of July 1, 2007. Office of the Consumer Advocate.

units, and lowers capacity prices overall. Without independent and objective curtailment service providers in the marketplace, consumers may not realize the full benefit of RTO/ISO demand response programs. Competitive markets for demand side services need to be enabled by not allowing EDCs or their affiliates to compete with independent conservation service providers.

e. Under 2806.2, the Commission must establish a registry of approved CSPs. What basic business elements (better business bureau rating, bonding, for example,) should be required to be registered?

We believe these elements vary depending upon the type of conservation service offered. We see individuals providing energy audits requiring different elements than energy efficiency or providers of demand response services. We believe there should be a basic registration listing the service provider's name, contact information, and scope of service offerings. Service providers should also state their professional qualifications that support those service offerings. Those professional qualifications should include having management personnel with experience in the business, partnering with another organization with the requisite experience, or for newer conservation service providers, completing basic training relative to their service offerings.

f. What experience and qualifications should be required of registered CSPs? This varies depending upon the type of services offered and the risks inherent in providing those services. We disagree with the parties providing comments on this matter who have suggested rigorous capital requirements, credit tests, audited financial statements, or two years' experience in providing certain

services. Other parties have suggested utilities be guided to develop “pay for performance contracts” with large, well capitalized CSPs providing demand response services.

When it comes to guiding utilities to larger, better capitalized CSPs and pay for performance contracts, we urge the Commission to question what risks are being addressed through such agreements. Capital should only be required in proportion to risk. In our view, there are two different kinds of risks, both of which can be more cost effectively addressed through open market type programs than through a contracting process that will inherently create market barriers to newer, less capitalized entrants.

The first risk to be addressed in “pay for performance” type arrangements is the risk of performance by demand side resources in the curtailment service provider’s portfolio. Given the penalties inherent in failing to meet the 4.5 percent demand reduction in the top 100 hours requirement under Act 129, we understand the EDCs are best served if they know the demand side resources involved in demand response programs in their service territory are guaranteed to perform. We believe this risk can be addressed in the **most cost effective manner** through market-based financial incentives passed through a CSP to the demand-side resource, under a program open to all qualified participants. Demand side resources will respond when the financial benefits from performing are greater than the cost. Certain demand side resources, such as schools or office buildings, can easily perform when given relatively low financial incentives because their cost of performing is very low. These types of resources perform

through reducing lighting and making relatively minor adjustments to thermostat settings. Such curtailment measures have very minimal impact on their operations, while saving significant amounts of electricity. Other demand resources, such as manufacturers, have higher costs associated with performance because of the impact performance can have on their production schedules. Manufacturers have to consider the lost revenues and margins when curtailing electric usage also curtails production. Certain manufacturers, such as alumina smelters, have even higher costs associated with performance, as they must not only make up lost revenues and margins, but also have extensive costs associated with restarting their operations. The cost structure of the particular demand side resource will drive the amount of financial incentive required to cause that resource to perform. Ratepayer funds are most cost effectively used by a program designed to provide financial incentives for the lowest cost demand side resources to perform. We believe the “guarantee of performance” of demand side resources within the curtailment service provider’s portfolio has *very much* to do with the amount of the financial incentives offered, relative to the type and cost structures of the demand side resources, and *very little* to do with the balance sheet of the curtailment service provider registering them into an EDC program. We urge the Commission to guide the EDCs to structure financial incentives in a manner to drive performance by the lowest cost demand side resources. *This means that market pricing signals in the form of financial incentives must be passed through to the demand side resource to guarantee price elasticity of supply from those demand side resources.* Requiring financial guarantees from the curtailment

service provider in the form of minimum capital requirements, letters of credit, or other forms of collateralization not only adds unnecessary costs, but also frustrates the intent of demand response programs which are meant to provide market price signals which generate additional supply from demand side resources into the wholesale market for energy and capacity.

An open market program can be structured to be complementary to the PJM economic program which many of Pennsylvania's EDCs already have experience with. The EDC's could make an additional incentive payment in certain hours or months, depending upon how the top 100 hours are defined for purposes of this program. This would be administratively easy as the majority of Pennsylvania's EDCs are already receiving meter data from PJM's economic program and could use that same data for settlement purposes. A demand side resource participating in PJM's economic program gets paid the locational marginal price (LMP) less the customer's retail rate for generation and transmission for the hours it participates. Last year PJM had an additional incentive payment in the economic demand response program so that a demand response resource was paid the full LMP. This additional incentive was instrumental in growing participation in PJM's economic program 280% between 2006 and 2007.⁸ Since PJM removed the incentive payment, participation in PJM's economic program within the service territories of Pennsylvania's EDCs

⁸ Total MWh in PJM's economic program grew from 217,056 in 2006 to 608,745 in 2007. Statistics from Introduction to PJM Demand Response, presentation by Paul Sotkiewicz, Ph.D. Senior Economist, Markets to the Indiana Utility Regulatory Commission Workshop. October 20, 2008.

has actually declined slightly year over year.⁹ Pennsylvania EDC's could make up the incentive that PJM took away in 2008, and for certain periods, make a payment equal to the customer's retail rate for generation and transmission. In essence, a demand response resource would get paid full LMP for certain periods. The EDC would simply make an additional payment over and above the payment made under the PJM program, just as they did in 2007. Market participants in the PJM economic program within the service territories of Pennsylvania's EDCs would be incentivized to bid in during the highest load and highest price hours based upon day ahead or real time prices.

The second risk to be addressed is the ability of the curtailment service provider to find, educate and register demand side resources into the program. We believe this risk is best addressed through open market programs where all curtailment service providers can participate. This risk can be reduced by requiring EDCs to install interval metering, and provide historical usage and other data in a timely manner at no additional cost to the end user or the curtailment service provider. We doubt that the EDC's are charging themselves to obtain historical usage data - data which they obtained using ratepayer funding. Why should we, as competitive curtailment service providers, be charged to obtain that data necessary to offer these services to customers? We believe open, competitive market programs are the most cost effective means to mitigate risks associated with non performance by demand side resources. These programs should be designed in a manner that is competitively neutral.

⁹ Total year-to-date MWh within Pennsylvania in PJM's economic program were 278,439 as of September 30, 2007, and totaled 272,194 through September 30, 2008. Data taken from PJM's DSR Activity reports as of September 2007 and 2008.

We urge the Commission to also consider the broader, economic impact of requiring conservation service providers to be large, highly capitalized entities. Utilities in other states have moved in the direction of contracting with large, national energy service providers for both energy efficiency and other conservation services. These contracts often have multiple year terms. Such contracts create market barriers for smaller, locally-based service providers because the financial incentives provided under these contracts allow the larger energy service providers to pass along higher payments or greater savings to end use customers. Within Pennsylvania there are many small, locally-based conservation service providers. These providers include individuals performing energy efficiency audits, community based non profits, small curtailment service providers, and many small lighting and HVAC contractors. In total, these individuals or entities comprise tens of thousands of small business owners and their employees. If there is a contract between an EDC and a large, national energy service provider, who is actually going to perform the work? The chances are pretty good the work will still be performed by the same people who would have done the work under the existing market construct. The only difference will be those people will work as employees or subcontractors to the large national energy service provider. Why does this matter? It matters because it forces industry consolidation, and the loss of jobs by small, Pennsylvania based businesses. Pennsylvania residents will now perform the same work for lower pay because of an intermediary party that has been able to obtain a large, multi-year contract. This market construct, if approved by the Commission, will result

in a massive transfer of wealth from Pennsylvania residents to shareholders of large, national energy service providers headquartered outside of Pennsylvania.

We ask the Commission to consider these questions: When has creating barriers to competitive markets created economic growth? When has forcing industry consolidation resulted in job growth? From our experience, having witnessed the decline of the steel industry and others in the Pittsburgh area, creating barriers to competitive markets drives industry consolidation, stifles innovation, forces layoffs and eliminates high paying professional and managerial jobs.

We have no comments on questions 2, 3, 4, 5, 6, 7 or 8.

We thank the Commission for their time and attention to these issues and respectfully request the Commission to consider our comments.

Respectfully submitted,

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