

November 19, 2008

**Testimony on Alternative Energy, Energy Conservation
and Efficiency and Demand Side Response**

Thank you for the opportunity to present testimony on Act 129 of 2008 and other issues related to energy conservation.

Act 129 requires the Commission to adopt an energy efficiency and conservation program by January 15, 2009. Act 129 also requires the subsequent adoption and implementation of a cost-effective energy efficiency and conservation plan for each electric distribution company (“EDC”) with at least 100,000 customers.

On November 3, 2008, the Office of Small Business Advocate (“OSBA”) filed comments at Docket No. M-2008-2069887 on specified aspects of the energy efficiency and conservation program required under Act 129. The OSBA is pleased to submit testimony highlighting portions of those comments and responding to some of the questions posed by the Commission’s Bureau of Conservation, Economics and Energy Planning (“CEEP”).

Procedures for the approval of EDC plans

Act 129 requires that the process for approving an EDC's energy efficiency and conservation plan include a public hearing, the opportunity for the OSBA and other interested parties to make recommendations, and a 120-day limit on the review.

Implementing the statutory mandates to reduce peak and overall consumption could require small commercial and industrial ("Small C&I") customers to make significant changes in the way they currently operate. In addition to incurring the costs associated with these changes, Small C&I customers will also be required to reimburse the costs of their EDC's energy efficiency and conservation plan and to pay higher distribution rates in the future as a result of the EDC's decline in sales. Therefore, instead of reviewing each individual EDC's plan through a comment/reply comment/Tentative Order process, the Commission should follow the normal adjudicatory process which creates a record and produces an Opinion and Order subject to appellate review.

To facilitate review of each individual EDC's plan, the Commission should prescribe a standard format for the plans, require answers to specified directed questions (similar to what is required in rate case filings), and require the EDC to file and serve its direct testimony simultaneously with the filing of its plan. To afford adequate time for discovery and intervenor testimony, an Administrative Law Judge ("ALJ") should preside over the development of an evidentiary record. However, in view of the legislated time limit for the review, the parties should submit their briefs and reply briefs directly to the Commission.

Evaluation process

Act 129 requires each EDC to submit an annual report on the EDC's progress toward meeting the mandated reductions in consumption. Act 129 also requires an independent evaluation of the plan each year. To facilitate the required evaluations, these annual reports should quantify the reduction in consumption attributable to each program included in the EDC's plan and identify the costs associated with each such program.

CEEP's questions recognize the difficulty in isolating the reduced consumption caused by changes in the economy from the reduced consumption produced by conservation. The OSBA defers to other parties regarding how to quantify the reductions related to the economy. However, the OSBA does not agree with CEEP's implicit assumption that reduced consumption will count toward meeting the mandates of Act 129 only if the reduced consumption is the result of specific elements of the EDC's plan. The anticipated rate increases following the expiration of the rate caps should create a powerful market-based incentive for customers to conserve. In addition, the publicity surrounding the enactment and implementation of Act 129 and the information provided through the EDCs' approved consumer education plans should encourage reduced consumption. Nothing in Act 129 states that such reduced consumption is to be excluded from determining if the mandates have been met. However, to be safe, an EDC could reference its first post-rate cap default service program and its consumer education plan as specific elements of its energy efficiency and conservation plan.

Analysis of the costs and benefits of each EDC's plan

The Commission should analyze the costs and benefits of each individual EDC's plan from both the standpoint of ratepayers in the aggregate (who will bear the EDC's costs of the plan) and the standpoint of individual ratepayers (who may incur net costs in order to conserve).

It may be tempting to focus on identifying and implementing new ideas for energy efficiency and conservation. However, it is important to recognize that EDCs currently offer energy efficiency and conservation programs and have offered a variety of such programs in the past. Unfortunately, many of those programs have attracted few participants. It is likely that the generally modest response from Small C&I customers reflects both a lack of awareness of such programs and a calculation that the cost of participation (both in money and time) would outweigh the benefit of a lower bill for electricity. Therefore, before developing new programs, each EDC should meet with Small C&I customers within the EDC's service territory in an attempt to make existing (or previously discarded) programs more attractive.

The prospect of conserving electricity in order to mitigate the impact of the expiration of rate caps could make Small C&I customers more willing to invest their own time and money than they have been in the past. Furthermore, the availability of funding from the EDC and from the Commonwealth (under Special Session Act 1 of 2008 and other programs) could also change the cost/benefit equation for individual Small C&I customers. To achieve maximum effect, funding from the EDC and funding from the Commonwealth should be coordinated. For example, if a Small C&I customer needs financial assistance in order to make a physical plant change and that needed financial

assistance exceeds what is available from the EDC, the EDC should assist the customer in obtaining any funding available from the Commonwealth.

Reduction measures to be provided equitably to all classes

The statute mandates that energy efficiency and conservation programs must be equitably *available* to all customer classes. Significantly, however, the statute does not mandate that each class must produce approximately the same level of reduced consumption. The overriding purpose of Act 129 is to reduce overall and peak energy consumption, even if meeting the mandated reduction requires a relatively narrow focus on the customers (or customer classes) which consume the largest quantities of electricity or whose consumption can most readily be shifted off peak. For example, an effective strategy for achieving the mandated reductions would be to pay particular attention to space heating and air conditioning, regardless of how the potential savings might break down on a customer class basis. As a further example, achieving equal percentage reductions from each class will be handicapped by the fact that Small C&I customers frequently are tenants and, therefore, lack the legal authority, the incentive, or both, to make physical plant changes in order to reduce energy consumption.

Cost recovery

The OSBA strongly supports the requirement in Act 129 that an EDC recover the costs of an energy efficiency and conservation plan on a class basis and that recovery be limited to only “reasonable” and “prudent” costs.

CEEP questions whether the reasonableness and prudence of these costs should be determined up-front, with the reconciliation presumably limited essentially to an audit function. The OSBA recognizes that a wide-ranging after-the-fact prudence review might deter an EDC from aggressively pursuing energy efficiency and conservation possibilities which arise during the life of the plan. A possible solution would be to shield the EDC's costs for individual programs from the potential denial of recovery if those costs are incurred for programs itemized in the approved plan and if those costs, in the aggregate, do not exceed the overall cost estimate submitted by the EDC as part of the plan approval process.

I will be happy to answer any questions you may have.