

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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IRWINA. POPOWSKY  
Consumer Advocate

August 30, 2012

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17101

Re: Act 129 Energy Efficiency and  
Conservation Programs, Phase Two  
Docket Nos. M-2012-2289411  
M-2008-2069887

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Answer to the Petition of the FirstEnergy Companies for Reconsideration and Clarification in the above-captioned proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,

A handwritten signature in cursive script, reading "Jennedy S. Johnson".

Jennedy S. Johnson  
Assistant Consumer Advocate  
PA. Attorney ID# 203098

Enclosures

cc: Office of Administrative Law Judge  
Kriss E. Brown, Law Bureau  
Office of Special Assistants  
160196

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Act 129 Energy Efficiency and Conservation Programs, Phase Two	:	Docket Nos. M-2012-2289411 M-2008-2069887
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ANSWER OF THE OFFICE OF CONSUMER ADVOCATE  
TO THE PETITION OF THE FIRSTENERGY COMPANIES FOR  
RECONSIDERATION AND CLARIFICATION

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I. INTRODUCTION

On August 3, 2012, the Pennsylvania Public Utility Commission (Commission) entered its Implementation Order (Order) for Phase II of Act 129 Energy Efficiency and Conservation (EE&C) Programs. In that Order, the Commission determined that the Phase I Energy Efficiency programs were cost effective and set forth a number of guidelines related to the design and implementation of Phase II plans. On August 20, 2012, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, FirstEnergy or Companies) filed a Petition for Reconsideration and Clarification (Petition) of the August 3<sup>rd</sup> Order.

II. ANSWER

Through its Petition, FirstEnergy states that it seeks clarification as to the nature of the Order. Petition at 3. Specifically, FirstEnergy states that the Commission did not adhere to the formalities required to adopt a Regulation, and, accordingly, the Order does not have the “force of law.” Id. Therefore, FirstEnergy states that the Order is merely a policy statement with which the Companies should “strive to comply.” Id. The Companies also state that, as a result,

the Commission lacks authority to establish or enforce any penalties under 66 Pa.C.S. Section 3301(a). Id.

At the same time that the Petition was filed, and pursuant to the Commission's August 3<sup>rd</sup> Order, the Companies also filed a Petition for an Evidentiary Hearing on the consumption reduction requirements that were established in the Order. In its Petition for Reconsideration, the Companies request that the Commission consolidate any hearings on the Energy Efficiency benchmarks with the evidentiary hearings that will determine the sufficiency of the Companies' Phase II plans. Petition at 5-6.

The OCA has preliminarily reviewed the Companies' Petition and provides the following response. The OCA disagrees with the Companies' claim that the August 3<sup>rd</sup> Order is merely a policy statement without the force of law. Act 129 clearly mandates that the Commission conduct a cost-benefit analysis of measures that will reduce energy consumption, and, if the benefits exceed costs, the Commission "shall" adopt incremental consumption reduction goals. 66 Pa.C.S. § 2806.1(c)(3). Act 129 states:

(3) By November 30, 2013, and every five years thereafter, the commission shall evaluate the costs and benefits of the program established under subsection (a) and of approved energy efficiency and conservation plans submitted to the program. The evaluation shall be consistent with a total resource cost test or a cost-benefit analysis determined by the commission. If the commission determines that the benefits of the program exceed the costs, *the commission shall adopt additional required incremental reductions in consumption.*

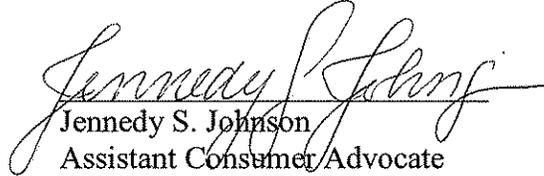
Id. (emphasis added). The Commission's actions, as set forth in the August 3<sup>rd</sup> Order, are statutorily mandated and, therefore, do have the full force and effect of law. To the extent the Commission finds that the Act 129 plans are cost effective, the Commission has a statutory mandate to establish incremental reduction goals on a going forward basis. These new goals are

subject to the same statutory conditions as the Phase I goals under Section 2806.1. Accordingly, the OCA submits that the Companies' argument for reconsideration on this issue is without merit.

The OCA also opposes the Companies' request that the Commission consolidate any hearings on the Energy Efficiency benchmarks with the evidentiary hearings that will determine the sufficiency of the Companies' Phase II plans. These two evidentiary hearings cannot be collapsed into one as the Companies must know in advance what the consumption reduction targets actually are in order to appropriately design their Phase II plans. Consolidating the two proceedings would result in the illogical scenario where the Company would design a Plan to meet unknown targets.

For the foregoing reasons, the OCA does not support the relief requested in the FirstEnergy Companies' Petition for Reconsideration.

Respectfully Submitted,



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Dated: August 30, 2012  
160147

CERTIFICATE OF SERVICE

Re: Act 129 Energy Efficiency and Conservation Programs, Phase Two (FirstEnergy)  
Docket Nos. M-2012-2289411; M-2008-2069887

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Answer to the Petition of the FirstEnergy Companies for Reconsideration and Clarification, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 30th day of August 2012.

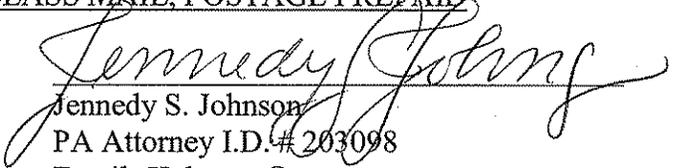
SERVICE BY E-MAIL & INTER-OFFICE MAIL

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