

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION**
Harrisburg, PA. 17105-3265

Public Meeting held January 15, 2009

Commissioners Present:

James H. Cawley, Chairman, Joint Statement Attached
Tyrone J. Christy, Vice Chairman, Statement Attached
Robert F. Powelson
Kim Pizzingrilli
Wayne E. Gardner, Joint Statement Attached

Energy Efficiency and Conservation Program

Docket No. M-2008-2069887

IMPLEMENTATION ORDER

BY THE COMMISSION:

The Commission has been charged by the Pennsylvania General Assembly (“General Assembly”) with establishing an energy efficiency and conservation program. The energy efficiency and conservation program requires each electric distribution company (“EDC”) with at least 100,000 customers to adopt a plan to reduce energy demand and consumption within its service territory. 66 Pa. C.S. § 2806.1. In order to fulfill this obligation, the Commission commenced a stakeholder process with interested parties. This Implementation Order will establish the standards each plan must meet and provide guidance on the procedures to be followed for submittal, review and approval of all aspects of EDC plans.

BACKGROUND AND HISTORY OF THIS PROCEEDING

Governor Edward Rendell signed Act 129 of 2008 (“the Act” or “Act 129”) into law on October 15, 2008. The Act took effect 30 days thereafter on November 14, 2008. Among other things, the Act created an energy efficiency and conservation program, codified in the Pennsylvania Public Utility Code at Sections 2806.1 and 2806.2, 66 Pa. C.S. §§ 2806.1 and 2806.2. This program requires an EDC with at least 100,000 customers to adopt a plan, approved by the Commission, to reduce electric consumption by at least one percent (1%) of its expected consumption for June 1, 2009 through May 31, 2010, adjusted for weather and extraordinary loads. This one percent (1%) reduction is to be accomplished by May 31, 2011. By May 31, 2013, the total annual weather-normalized consumption is to be reduced by a minimum of three percent (3%). Also, by May 31, 2013, peak demand is to be reduced by a minimum of four-and-a-half percent (4.5%) of the EDC’s annual system peak demand in the 100 hours of highest demand, measured against the EDC’s peak demand during the period of June 1, 2007 through May 31, 2008. By November 30, 2013, the Commission is to assess the cost effectiveness of the program and set additional incremental reductions in electric consumption if the benefits of the program exceed its costs.

The Act requires the Commission to develop and adopt an Energy Efficiency and Conservation Program (“EE&C Program”) by January 15, 2009, and sets out specific issues the EE&C Program must address. 66 Pa. C.S. § 2806.1(a). The Commission’s EE&C Program is to include the following:

- (1) A procedure for approving plans.
- (2) A process to evaluate and verify the results of each plan and the program as a whole.
- (3) A process to analyze the costs and benefits of each plan in accordance with a total resource cost test.

- (4) A process to analyze how the program as a whole and each plan will enable the EDCs to meet or exceed the consumption reduction requirements.
- (5) Standards to ensure that each plan uses a variety of measures that are applied equitably to all customer classes.
- (6) A process through which recommendations can be made for the employment of additional consumption reduction measures.
- (7) A procedure to require and approve the competitive bidding of all contracts with conservation service providers (“CSP”).
- (8) A procedure through which the Commission will review and modify, if necessary, all contracts with conservation service providers prior to execution.
- (9) A procedure to ensure compliance with the requirements of Sections 2806.1(c) & (d).
- (10) A requirement for the participation of conservation service providers in the implementation of all or part of a plan.
- (11) A cost recovery mechanism to ensure that measures approved are financed by the customer class that directly receives the energy and conservation benefits.

On October 21, 2008, the Commission issued a Secretarial Letter seeking comments on each of the individual aspects of the EE&C Program outlined in Sections 2806.1(a)(1)-(11). 66 Pa. C.S. §§ 2806.1(a)(1)-(11). This Secretarial Letter was sent to all EDCs and the members of the DSR¹ Working Group at Docket No. M-00061984. Pursuant to an October 29, 2008 Secretarial Letter at Docket No. M-00061984, the comments were due November 3, 2008. The October 29th Secretarial Letter announced a special *en banc* hearing on alternative energy, energy conservation

¹ Demand Side Response.

and efficiency, and demand side response to be held on November 19, 2008. Presenters at this *en banc* hearing provided comments related to the EE&C Program. Comments in reply to those expressed at the November 19th *en banc* hearing were due no later than December 1, 2008.

The parties who filed comments in response to the October 21, 2008 Secretarial Letter were: The Industrial Users Groups (“IUG”)²; Department of Environmental Protection (“DEP”); Duquesne Light Company (“Duquesne”); Office of Consumer Advocate (“OCA”); Office of Small Business Advocate (“OSBA”); Pennsylvania Utility Law Project (“PULP”); Citizens for Pennsylvania’s Future (“PennFuture”); PECO Energy Company (“PECO”); PPL Electric Utilities Corporation (“PPL”); West Penn Power Company, d/b/a Allegheny Power (“Allegheny”); Pennsylvania Gas Association (“PGA”); Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), and Pennsylvania Power Company (“Penn Power”), (collectively, “FirstEnergy”); UGI Utilities Inc. – Electric Division (“UGI”); Energy Association of Pennsylvania (“EAP”); Reliant Energy, Inc., (“Reliant”); Retail Energy Supply Association (“RESA”); Augusta Systems, Inc. (“Augusta”); ClearChoice Energy (“ClearChoice”); Comverge, Inc. (“Comverge”); EnergyConnect, Inc. (“EnergyConnect”); Elster Integrated Solution (“Elster”); The E Cubed Company, LLC (“E Cubed”); eMeter Strategic Consulting (“eMeter”); Keystone Energy Efficiency Alliance (“KEEA”); The Reinvestment Fund (“TRF”); and Sensus Metering Systems (“Sensus”).

² Industrial Energy Consumers of PA, Duquesne Industrial Intervenors, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors.

The parties that participated at the November 19, 2008 *en banc* hearing were: Rep. Camille Bud George (D-Clearfield), Chairman, House Environmental Resources & Energy Committee; Acting Secretary John Hanger, DEP; Frank Jiruska, Director of Energy & Marketing Services, PECO; Nancy Krajovic, Major Commercial and Industrial Accounts Manager, Duquesne; Doug Krall, Manager, Regulatory Strategy, PPL; John Paganie, Vice President of Energy Efficiency, FirstEnergy; Paul H. Raab, Principal, Energytools LLC; Ron Edelstein, Director of Regulatory and Government Relations, Gas Technology Institute; Ritchie Hudson, Pennsylvania Chairman, RESA; Chris Kallaher, Director, Government and Regulatory Affairs, Direct Energy; Arthur Pearson, Director of Operations, E Cubed, on behalf of Joint Supporters; Arthur Pearson, on behalf of Donald D. Gilligan, President, National Association of Energy Service Companies; Greg Thomas, President, Performance System Development, on behalf of PA Home Energy; Edward V. Johnstonbaugh, Extension Educator, Renewable Energy, Penn State University, Westmoreland County Cooperative Extension; Jay Birnbaum, Senior Vice President and General Counsel, Current Group LLC; Robert Chiste, Chairman and CEO, Comverge; Carolyn Pengidore, President/CEO, ClearChoice; Tom Rutigliano, Program Manager, Mid-Atlantic Region, CPower Inc.; Ed Gray, Vice President of Regulatory Affairs, Elster; Glenn Garland, President, CLEAResult Consulting Inc.; Jeremy Kirsch, Vice President, Client Solutions, Positive Energy Inc.; Helen E. Perrine, Executive Director, Affordable Comfort Inc.; Doug Bloom, CEO, RealWinWin Inc.; A. Clifton Payne, Jr., Executive Vice President, CMC Energy Services; Pamela C. Polacek, Counsel, McNees Wallace & Nurick LLC, on behalf of Industrial Energy Consumers of Pennsylvania (“IECPA”); William Lloyd Jr., State Small Business Advocate; Sonny Popowsky, State Consumer Advocate; Scott H. DeBroff, Chair, Energy & Telecommunications Practice Group, Rhoads & Sinon, on behalf of Wal-Mart Stores; Courtney Lane, Policy Analyst, PennFuture; Roger Clark, Manager for Technology and Policy, TRF; Liz Robinson, Executive Director, Energy Coordinating Agency.

On November 26, 2008, the Commission circulated a draft staff proposal and further questions relative to the Act 129 implementation plan. The draft staff proposal and further questions were served on all participants and posted on the Commission's website in order to solicit stakeholder input. Comments on the draft proposal were due December 8, 2008, in anticipation of a working group meeting on December 10, 2008.

Those who provided comments to the November 26, 2008 draft staff proposal and questions include: ClearChoice Energy; OCA; E Cubed Company, LLC, UGI Corporation; National Fuel Gas; Industrial Energy Consumers of PA; Allegheny Power; PPL Electric Utilities; FirstEnergy Companies; US Steel Corporation; Department of Environmental Protection; Reliant Energy; Performance Systems Development; OSBA; PennFuture; National Association of Energy Service Cos.; The Reinvestment Fund; Positive Energy; Duquesne Light; Energy Association of PA; Keystone Energy Efficiency Alliance; PECO Energy Company.

An EE&C Program stakeholder meeting held on December 10, 2008, offered parties an opportunity to be present in Harrisburg or to participate via telephone. Those entities who identified themselves as being present in Harrisburg, by signing-in, are as follows: ACLARA; Affordable Comfort, Inc.; Allegheny Power; Altimate Energy; CM3 Building Solutions; CMC Energy Services; Clean Power Markets; ClearChoice Energy; CLEAResult Consulting; Cogentrix; Conexus, Inc; Dauphin County Commission; Duquesne Light ; ECA; Elster Intergrated Solutions; Energy Solve; FirstEnergy;Honeywell; Itron, Inc; KEEA; Lockheed Martin; MaGrann Associates; MWN Industrials; NAESCO; OCA; PECO; PJM; PPL Electric ; PA DEP; Pennsylvania Utility Law Project; PennFuture; PenTap – PSU; Performance Systems; Positive Energy; RealWinWin; Regulatory Connect.; Reliant Energy; Rhodes & Sinon; Senator Tomlinson's Office; Sustainable Energy Fund; The E Cubed Company, LLC; The Reinvestment Fund; UGI; and Warren Energy Engineering.

Those entities that indicated that they intended to participate in person but whose names are not on the sign-in sheet include: OSBA; PA Home Energy; Pennsylvania Small Business Development Center; and US Steel Corp. Those entities who indicated they would participate via conference bridge include the following: Bottom Line Resource Technology; Citizens Power; the Energy Association; Gastechology; Imagine ProCom, Inc.; Landis+Gyr; MCR Performance Solution; National Fuel Gas Distribution Corporation; PCL&P; and Renewable Energy – PSU. The names of those who participated by telephone were not recorded.

Those who provided reply comments by December 19, include: ClearChoice Energy; Federal Trade Commission; Department of General Services; Altimate Energy; PennFuture; Sustainable Energy Fund; OSBA; UGI Gas Distribution Companies; Department of Environmental Protection; E Cubed; Joint Supporters Industrial Energy Consumers of PA; FirstEnergy Companies; Green Building Alliance; Energy Association of PA; Keystone Energy Efficiency Alliance; Wal-Mart; Trilliant Inc.; PECO Energy Company; West Penn Power; RealWinWin; PPL Electric Utilities; DC Energy.

DISCUSSION

In this section the Commission will outline its EE&C Program by addressing the issues delineated in Section 2806.1(a) of the Act. This EE&C Program becomes effective with the entry of this order.

A. Plan Approval Process

The Act requires the Commission to establish procedures for approving plans submitted by EDCs. 66 Pa. C.S. § 2806.1(a)(1). The Act further dictates that by July 1, 2009, all EDCs with at least 100,000 customers must develop and file an EE&C plan with the Commission for approval. 66 Pa. C.S. §§ 2806.1(b)(1) and 2806.1(l). The

Commission is to conduct a public hearing on each plan that allows for submission of recommendations by the statutory advocates and the public regarding how the plan could be improved. 66 Pa. C.S. § 2806.1(e)(1). The Commission is to rule on each plan within 120 days of submission. 66 Pa. C.S. § 2806.1(e)(2). If the Commission disapproves a plan, it must describe in detail its reasons after which the EDC has 60 days to submit a revised plan. 66 Pa. C.S. § 2806.1(e)(2). The Commission then has 60 days to rule on the revised plan. *Id.*

1. Consumption Forecast

Initially, the Commission notes that both the one percent consumption reduction, to be met by May 31, 2011, and the three percent consumption reduction to be met by May 31, 2013, are to be measured against the EDC's expected consumption as forecasted by the Commission for June 1, 2009, through May 31, 2010. 66 Pa. C.S. § 2806.1(c)(1). As the expected consumption forecast for June 1, 2009, through May 31, 2010 will establish the target each covered EDC must meet, it is critical that this consumption forecast be established early in 2009 so that EDCs can develop a plan to meet the target.

In order to make this forecast, the Commission will need input from the EDCs and other interested parties. The Commission intends to complete these forecasts by March 26, 2009. As such, each EDC that is required to file an EE&C plan must file with the Commission its consumption forecast for the period of June 1, 2009 through May 31, 2010 by February 9, 2009. Each filing shall include a listing of assumptions used to calculate the forecast, supporting data, a description of the weather normalization methodology and any other supporting documentation. The consumption forecast filing is to be served on OCA, OSBA, the Commission's Office of Trial Staff ("OTS") and interested parties. Comments will be accepted through February 24, 2009, with reply comments due no later than March 6, 2009.

2. Peak Demand

The four-and-a-half percent reduction in peak demand to be met by May 31, 2013, is to be measured against the EDC's historical peak load for June 1, 2007, through May 31, 2008. 66 Pa. C.S. § 2806.1(d). As this peak demand data will be used to establish the target each covered EDC must meet, it is critical that this data also be available early in 2009 so that EDCs can develop a plan to meet their peak demand reduction targets. As such, the Commission directs each EDC that is required to file an EE&C plan, to file by February 9, 2009, its hourly peak load data, in megawatts ("MW"), for the period June 1, 2007, through May 31, 2008. Each filing shall also include the average of hourly peak loads for the 100 hours of highest load for June 1, 2007, through May 31, 2008, and the average of hourly peak loads for the 100 hours of highest load for the period of June 1, 2007, through September 30, 2007. We direct that this data also be filed in electronic format (Microsoft Office Excel format is acceptable) on compact disk.

3. Conservation Service Provider Contract Review Process

The Act also requires each EDC to include in its plan a contract with one or more CSPs selected by competitive bid to implement all or part of the plan as approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(E). This section of the Act establishes that CSPs can perform some or all functions of an EDC's EE&C plan, to include management of the entire plan. The Act requires the Commission to establish procedures to require EDCs to competitively bid all contracts with conservation service providers. 66 Pa. C.S. § 2806.1(a)(7). The Act further requires the Commission to establish procedures to review all proposed contracts with conservation service providers prior to execution of the contract. 66 Pa. C.S. § 2806.1(a)(8). The Act gives the Commission power to order the modification of proposed contracts to ensure that plans meet consumption reduction requirements. *Id.*

As CSPs can be consulted or utilized by EDCs to design, administer or manage its EE&C plan, a process for Commission review of an EDC's CSP bidding processes and contracts must be established now so that EDCs can employ CSPs during the plan development phase. To facilitate this, the Commission directs all EDCs subject to Act 129 to file by March 1, 2009, proposed RFP procedures and its standard form CSP contract for Commission approval. The criteria the Commission will utilize in approving the RFP procedures and standard form contracts are established below in Section G of this Order.

4. EE&C Plan Approval Process

The plan approval process being established below balances the desire to provide all interested parties an opportunity to be heard, with the need to complete the process within the statutory time constraints. In addition, the Commission notes that these plans are evolutionary in nature as the Act provides for modification of plans after approval. See 66 Pa. C.S. §§ 2806.1(a)(6), 2806.1(b)(2) and 2806.1(b)(3). Finally, the Commission notes that while the process outlined below establishes a formal approval process, the Commission directs all covered EDCs to offer and engage in informal discussions with the statutory advocates and interested stakeholders during the pre-filing development of the plans.

All EDCs with at least 100,000 customers are required to file their plans by July 1, 2009.³ The plans are to be served on OCA, OSBA and OTS. Each EDC filing must contain the following:⁴

³ The Commission reserves the ability to issue a filing schedule with a specific date for each EDC to file its EE&C plan with the Commission. The Commission will not accept voluntary plans proposed by other EDCs at this time due to the compressed time constraints of the approval process.

⁴ The Commission will issue a Secretarial Letter establishing a more detailed format for plan filings.

1. A detailed plan addressing each of the requirements in 66 Pa. C.S. § 2806.1(b)(1)(i).⁵
2. Sufficient supporting documentation and verified statements or testimony or both.
3. Approved contract(s) with one or more CSPs.⁶
4. Description of the work and measures being performed by CSPs and by the EDC along with a justification for the allocation.
5. A budget showing total planned expenditures by program and customer class.
6. Tariffs and a Section 1307 cost recovery mechanism.

⁵ In addition to meeting the requirements laid out in 66 Pa. C.S. §§ 2806.1(a), 2806.1(c) & 2806.1(d), and this Implementation Order, the plans must include the following:

- a) Specific proposals to implement EE&C measures that at least achieve the required consumption reductions.
- b) Specific proposals to obtain 10% of required consumption reductions from units of federal, state and local governments, to include municipalities, school districts, institutions of higher education and nonprofit entities.
- c) An explanation of how quality assurance and performance will be measured, verified and evaluated.
- d) A statement delineating the manner in which the plan will achieve the requirements of the program under 66 Pa. C.S. §§ 2806.1(a), 2806.1(c) & 2806.1(d).
- e) Contract(s) with one or more CSPs selected by competitive bid to implement all or part of the plan as approved by the Commission.
- f) Estimates of the cost of implementing the EE&C measures.
- g) Specific measures for households at or below 150% of the federal poverty income guidelines, the number of which shall be proportionate to those households' share of the total energy usage in the service territory.
- h) A proposed cost-recovery mechanism, in accordance with Section 1307, 66 Pa. C.S. § 1307, to fund the EE&C measures, to include administrative costs.
- i) A demonstration that the plan is cost-effective through a total resource cost test approved by the Commission and that provides a diverse cross-section of measures for customers of all rate classes.
- j) A statement delineating how an annual independent evaluation of cost-effectiveness will be accomplished, as well as a full review of the results of each five-year plan. Furthermore, to the extent practical, provide a description of how the plan will be adjusted as a result of these evaluations.
- k) An analysis of the EDC's administrative costs associated with the implementation of the plan.

⁶ A CSP is defined in the Act at 66 Pa. C.S. § 2806.1(m) as an "entity that provides information and technical assistance on measures to enable a person to increase energy efficiency or reduce energy consumption and that has no direct or indirect ownership, partnership or other affiliated interest with an" EDC.

7. The Commission approved consumption forecast for the period of June 1, 2009 through May 31, 2010.
8. A weather adjustment calculation that meets the requirements outlined in Section H of this Implementation Order.
9. The Commission approved average of the EDC's 100 highest peak hours during the period of June 1, 2007 through September 30, 2007.
10. A description of the EDC's method for monitoring and verifying plan results.

The Commission will publish a notice of each proposed plan in the *Pennsylvania Bulletin* within 20 days of its filing. In addition, the Commission will post each proposed plan on its website. An answer along with comments and recommendations are to be filed within 20 days of the publication of the notice in the *Pennsylvania Bulletin*. Each plan will be referred to an Administrative Law Judge (“ALJ”), who will establish a discovery schedule and hold a public input hearing(s) in the EDC's service territory, as well as an evidentiary hearing(s) on issues related to the EDC's EE&C plan. Such hearings are to be completed on or before the 65th day after a plan is filed,⁷ after which, the parties will have 10 days to file briefs.⁸ The EDC will then have 10 days to submit a revised plan or reply comments or both.⁹ The ALJ will then certify the record to the Commission.

The Commission will approve or reject all or part of a plan at public meeting within 120 days of the EDC's filing.¹⁰ The Commission will provide a detailed rationale for rejecting all or part of a plan. Thereafter, the EDC will have 60 days from the entry date of the order to file a revised plan that addresses the identified deficiencies. This revised plan is to be served on OCA, OSBA, OTS and all other parties to the EDC's

⁷ If the plans are filed on July 1, 2009, all hearings must be completed by September 3, 2009.

⁸ Briefs are due, at the latest, September 14, 2009.

⁹ Reply briefs are due, at the latest, September 24, 2009.

¹⁰ The Commission must complete its review of all plans by October 29, 2009.

EE&C plan filing, who, along with other interested parties, will have ten days to file comments on the revised plan, with reply comments due ten days thereafter. The Commission will approve or reject a revised plan at a public meeting within 60 days of the EDC's revised plan filing. This process will be repeated until a plan receives Commission approval.

B. Plan Effectiveness Evaluation Process

The Act requires the Commission to establish an evaluation process that monitors and verifies data collection, quality assurance and the results of each EDC plan and the program as a whole. 66 Pa. C.S. § 2806.1(a)(2). While Section 2806.1(b)(1)(i)(C) requires each EDC plan to explain how quality assurance and performance will be measured, verified and evaluated, it is apparent that Section 2806.1(a)(2) requires the Commission to monitor and verify this data. This evaluation process is to be conducted every year, as each EDC is to submit an annual report documenting the effectiveness of its plan, energy savings measurement and verification, an evaluation of the cost-effectiveness of expenditures and any other information the Commission requires. 66 Pa. C.S. § 2806.1(i)(1).

The Commission will utilize the Technical Reference Manual (“TRM”) to help fulfill the evaluation process requirements contained in the Act. The TRM was supported by participants and previously adopted by the Commission in the Alternative Energy Portfolio Standards Act (“AEPS”) proceedings at Docket No. M-00051865 (order entered October 3, 2005). However, as the TRM was initially created to fulfill requirements of the AEPS Act, it will need to be updated and expanded to fulfill the requirements of the EE&C provisions of Act 129. As such, the Commission will initiate a process to update and expand the TRM to provide for additional energy efficient technologies, under Docket No. M-00051865. It is the intent of the Commission to complete the TRM update

early in 2009 such that EDCs will have ample time to incorporate any TRM updates in its EE&C plan.

Thereafter, the Commission will periodically review and initiate the process to update the TRM as needed. Any such updates will be prospective in nature and applicable to measures undertaken after final approval of any TRM changes.

The Commission also believes that a standardized format for the reporting of data is important. However, given that the EDCs will not be required to file their annual reports until 2010, we will address the annual report filing requirements in a subsequent order.

C. Cost – Benefit Analysis Approval Process

The Act requires that an analysis of the cost and benefit of each plan, in accordance with a total resource cost test (“TRC test”), be approved by the Commission. 66 Pa. C.S. § 2806.1(a)(3). The Act also requires an EDC to demonstrate that its plan is cost-effective using this TRC test, and that it provides a diverse cross section of alternatives for customers of all rate classes. 66 Pa. C.S. § 2806.1(b)(1)(i)(I). The Act defines “total resource cost test” as “a standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures.” 66 Pa. C.S. § 2806.1(m).

The Commission believes that the TRC test set forth in *The California Standard Practice Manual – Economic Analysis of Demand-Side Programs and Projects*, July 2002, p. 18,¹¹ (“*California Manual*”) provides an excellent beginning framework. As the

¹¹ This manual can be found at http://www.clarkstrategicpartners.net/files/calif_standard_practice_manual.pdf.

TRC test will be a critical measuring tool in determining the cost effectiveness of the Act 129 EE&C plans, the Commission believes it may be necessary to modify the *California Manual* to meet any unique requirements of Act 129 and this Commonwealth's electric industry. As such, the Commission will institute a process to review and, if necessary, modify the *California Manual*.

The Commission directs that EDCs evaluate the cost effectiveness of each of its energy efficiency or demand reduction programs using the TRC test to be set forth in the version of the *California Manual* adopted by this Commission. The TRC test will take into account the combined effects of a program on both participating and non-participating customers based on the costs incurred by the EDC and participating customers. In addition, the Commission expects the benefits calculated in the TRC test will include the avoided supply costs, such as the reduction in transmission, distribution, generation and capacity costs valued at marginal cost for the periods when there is a consumption reduction. The avoided supply costs should be calculated using net program savings, savings net of changes in energy use that would have happened in the absence of the program. The persistence of savings over time should also be considered in the net savings.

The Commission further expects that the costs calculated in this test will include the program costs paid by the utility and the participants, plus the increase in supply costs for the periods in which consumption is increased. Thus, for example, all equipment, installation, operation and maintenance costs, cost of removal (less salvage value), and administrative costs, regardless of who pays for them, should be included.

The *California Manual* allows for the Societal Test to be used as part of the TRC test. The Societal Test is a variant of the TRC and goes beyond the TRC test in that it attempts to quantify the change in the total resource costs to society as a whole rather than to only the service territory. Act 129 specifically notes that environmental and

societal benefits are not to be included in the TRC test by referencing only monetary costs. See 66 Pa. C.S. 2806.1(m) (TRC test defined as “A standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures”). Furthermore, the Commission agrees with Allegheny, EAP and FirstEnergy, who point out those environmental costs are already reflected in energy market prices. Therefore, the TRC test that we will be adopting will exclude environmental and societal costs that are not otherwise already embedded in the wholesale costs for the generation of electricity.

In addition, the Commission expects the results of the TRC test to be expressed as both a net present value (“NPV”) and a benefit-cost ratio (“B/C ratio”). The NPV is the discounted value of the net benefits of this test over a specified period of time. The NPV is a measure of the change in the total resource costs due to the program. An NPV above zero indicates that the program is a less expensive resource than the supply option upon which the marginal costs are based. A discount rate must be established to calculate the net present value. The Commission agrees with PECO and the Energy Association, that each EDC’s post-tax weighted average cost of capital is the most appropriate discount rate to use in calculating the net present value for the TRC test.

The B/C ratio is the ratio of the discounted total benefits of the program to the discounted total costs over some specific time period. The B/C gives an indication of the rate of return of this program to the utility and its ratepayers. A B/C ratio above one indicates that the program is beneficial to the utility and its ratepayers on a total resource cost basis. The methodology to calculate the NPV and B/C ratio of the TRC is found in the *California Manual*, at page 18-19.

D. Process to Analyze How the Program and Each Plan will Enable EDCs to Meet Reduction Requirements

The Act requires the Commission to conduct an analysis of how the program, as a whole, and how the EDC's individual plan, in particular, will enable an EDC to meet or exceed the required consumption (66 Pa. C.S. § 28061(c)) and peak demand reductions (66 Pa. C.S. § 2806.1(d)). 66 Pa. C.S. § 2806.1(a)(4). Each EDC plan must include specific proposals to implement measures to achieve or exceed the required reductions. 66 Pa. C.S. § 2806.1(b)(1)(i)(A). Each plan must also state the manner in which it will achieve or exceed the required consumption reductions. 66 Pa. C.S. § 2806.1(b)(1)(i)(D).

1. Measuring Annual Consumption Reductions

Consumption is addressed at 66 Pa. C.S. § 2806.1(c), which requires that by May 31, 2011, total annual weather-normalized consumption of the retail customers of each EDC must be reduced by a minimum of one percent, measured against the EDC's expected consumption for the period June 1, 2009, through May 31, 2010. 66 Pa. C.S. § 2806.1(c)(1). Furthermore, by May 31, 2013, the total annual weather-normalized consumption of the retail customers of each EDC must be reduced by a minimum of three percent, measured against the EDC's expected consumption for the period June 1, 2009, through May 31, 2010. 66 Pa. C.S. § 2806.1(c)(2).

Participants in the working group and commenters noted that there were two possible ways to measure the consumption reduction goals. One method would require each EDC to show that its actual annual retail customer consumption for the year ending May 31, 2011 was at least one percent lower (three percent lower for the year ending May 31, 2013) than the EDC's forecasted consumption for the year ending May 31, 2010. In other words, if an EDC's June 1, 2009, through May 31, 2010 forecast consumption was 100,000 MWh that EDC would have to demonstrate that its

consumption for the period of June 1, 2010, through May 31, 2011 was actually 99,000 MWh, with adjustments made for weather and extraordinary loads. This method is commonly referred to as the reduction approach. TRF supported this method asserting that the goal of Act 129 was to reduce sales, not merely to slow down the increases in retail sales. Under a savings approach, TRF claims that the EDCs could “meet” the targets even while seeing energy consumption and peak demand grow.¹²

The second method, commonly referred to as the savings approach, would require each EDC to show that during the year ending May 31, 2011, its EE&C plan conserved the equivalent of one percent of its forecasted consumption for the year ending May 31, 2010 and three percent for the year ending May 31, 2013. In other words, if the EDC’s forecasted consumption for the year ending May 31, 2010 was 100,000 MWh, that EDC would have to demonstrate that its EE&C plan conserved 1,000 MWh during the year ending May 31, 2011, and 3,000 MWh during the year ending May 31, 2013. Commenters, such as DEP, PECO, and PPL, stated that the correct interpretation was that the EDCs must demonstrate that its plan conserved 1,000 MWh of electricity, in this example.

The Commission believes (along with most of the commenters) that the savings approach is the appropriate method to use and therefore adopts this approach. The Commission agrees with PECO, PPL, and DEP, as well as other commenters, that the statutory targets are intended to reflect energy savings, as opposed to absolute reductions in consumption.¹³ The absolute reduction approach advocated by TRF would, in effect, as even TRF acknowledges, penalize an EDC for economic growth in terms of new customers and businesses in its service territory.¹⁴ Accordingly, each plan will be

¹² At the December 10, 2008 stakeholder meeting the representative for TRF indicated that TRF agreed with DEP’s position on this issue.

¹³ See PECO Comments at 6; PPL Comments at 4 at this docket; and DEP En Banc Comments at transcript page ___ on November 19, 2008, at Docket M-0061984.

¹⁴ TRF Comments at 11-12.

evaluated as to whether the consumption and demand reduction goals in Act 129 will be achieved based on the use of a TRM and other metric resources to measure the effect of various energy efficiency and conservation measures. In addition, if peak demand reductions can be demonstrated to result in overall consumption reduction (not load shifting), then they should also be allowed to contribute to the consumption reduction goals.

The Commission further notes that the adoption of the savings approach will simplify everyone's tasks and reduce the likelihood of unnecessary litigation. Specifically, the Commission believes that the adoption of the savings approach moots the need to weather-normalize the target year overall program results or determine what qualifies as extraordinary load. This belief is based on the fact that the results of specific conservation measures will be determined by using the deemed savings approach as outlined in the TRM, which uses calculations derived from studies or measurement methods that already account for extraordinary weather or loads. Regarding custom measures not included in the TRM, the Commission directs its staff to take into account extraordinary weather and loads when reviewing and approving any such custom measure.

2. Measuring Peak Demand Reductions

Peak demand is addressed at 66 Pa. C.S. § 2806.1(d), which requires that by May 31, 2013, the weather-normalized demand of the retail customers of each EDC must be reduced by a minimum of four-and-a-half percent of the annual system peak demand in the 100 hours of highest demand, measured against the EDC's peak demand for June 1, 2007, through May 31, 2008. Commenters have also proposed two methods for measuring the peak demand reduction requirement.

One method, put forth by PECO and FirstEnergy would require each EDC to show that they have the demonstrated capability to reduce a specific amount of peak demand when a predetermined demand trigger point of peak demand is met. Advocates of this “demonstrated capability” approach assert that this approach would prevent the need to impose demand response when it is not needed or when it would have no effect on the wholesale energy market.

The other method, put forth by DEP, uses the savings approach outlined above for annual consumption reductions for peak demand reductions as well. Based on our interpretation of the act, the Commission agrees with DEP that the savings approach is the appropriate method to use for measuring peak demand reductions and therefore adopts this approach. The savings approach measures the actual reduction in peak demand from what the peak demand would have been absent the EDC’s demand reduction program. Moreover, as explained by DEP, curbing peak demand, even at a time that does not constitute a critical reliability or peak price situation, will still provide significant savings for consumers.¹⁵ Lastly, the Commission believes that utilizing the savings approach for determining peak demand reductions will not penalize the EDC for economic growth in its service territory and will moot the need to weather-normalize overall program results.

However, the Commission notes that it does not agree with DEP’s assertion that measures that reduce both overall consumption and peak demand can only be used for the consumption or peak demand targets, but not both. The Commission agrees with FirstEnergy and EAP¹⁶ that as these measures do in fact have an effect on both consumption and peak demand, it is a wise and cost effective use of customer provided funds to allow EDCs to use these combined effect measures toward both reduction targets. In fact, the Commission expects EDC EE&C plans to contain peak pricing, load

¹⁵ DEP Reply Comments at 3 and 4.

¹⁶ See FirstEnergy Reply Comments at 6 and 7, and EAP Reply Comments at 4-6.

control and curtailment programs that, along with energy efficiency programs, will meet or exceed the four-and-a-half percent peak demand reduction target.

The commenters also put forward two methods for determining the 100 hours of highest demand. DEP, OCA and others assert that the Commission should use the 100 highest peak hours during the entire year. These commenters assert that the Act specifically references “annual system peak demand.” See 66 Pa. C.S. § 2806.1(d)(1). PECO, PPL and others assert that the Commission should use the 100 highest peak hours during the summer months of June through September. These commenters point out that the Act references the “system peak demand,” and note that the “system” the legislature was referencing was the regional transmission organization. These commenters further stress that energy prices are highest during the summer months and note that limiting the 100 hours to the summer months will allow the EDCs to focus the limited resources on programs that will have the largest impact on energy prices.

The Commission agrees with PECO and PPL that the 100 hours of highest demand for the annual system peak demand determination should be limited to the months of June, July, August and September. The Commission believes that focusing the EE&C program efforts on the summer peak period will provide the greatest benefit and be more cost effective. Therefore, to determine the targeted peak demand savings each EDC must meet in the year ending May 31, 2013, the Commission adopts the use of four-and-a-half percent of the EDC’s average of the 100 highest peak hours during the summer months of June, July, August and September in 2007.

E. Standards to Ensure that a Variety of Measures are Applied Equitably to all Customer Classes

The Act requires the Commission to establish standards to ensure that each plan includes a variety of measures and that each plan will provide the measures equitably to all customer classes. 66 Pa. C.S. § 2806.1(a)(5).¹⁷ The Act defines “energy efficiency and conservation measures” at 66 Pa. C.S. § 2806.1(m).

There are clear requirements in the Act regarding proportionate measures for low-income customers (within a residential customer class) as well as for governments, schools, etc. (within a commercial customer class). Beyond those requirements, we believe that EDCs should develop plans to achieve the most energy savings per expenditure. The driving principle should be the most cost effective use of resources so that benefits can accrue to all customers, even if only by virtue of more reasonable energy market prices.

We agree that “equitable” does not mean “pro rata,” especially when cost-effectiveness is factored into the process. EDCs must offer a well-reasoned and balanced set of measures that are tailored to usage and to the potential for savings and reductions for each customer class. We believe that the overall limitation on cost recovery and the specific limitation tying costs to a benefited class (discussed in Section J, below) will ensure that offerings will not be skewed toward or away from any particular class. There is no single set of measures that will fit all EDCs and the myriad mix of customer classes. It is entirely possible that the most cost effective energy efficiency and demand response programs may not come proportionally from each customer class.

¹⁷ The program must include “standards to ensure that each plan includes a variety of energy, efficiency and conservation measures and will provide the measures equitably to all classes of customers.”

Most commenters agree that all classes of customers will, however, benefit the most from a general approach because it has the best potential to impact future energy prices. Furthermore, there is no consensus as to what denominator (per capita, usage, revenue, potential for savings, etc.) to use if one were to attempt to require a proportionate distribution.

We will not require a proportionate distribution of measures among customer classes. However, we direct that each customer class be offered at least one energy efficiency and one demand response program. While we will leave the initial mix and proportion of energy efficiency and demand response programs to the EDCs, we expect the EDCs to provide a reasonable mix of energy efficiency and demand response programs for all customers. The burden is on an EDC to explain and justify its distribution of measures among its customer classes if such distribution is challenged.

F. Process to Make Recommendations for Additional Measures

The Act requires the Commission to establish procedures through which recommendations can be made as to additional measures that will enable an EDC to improve its plan. 66 Pa. C.S. § 2806.1(a)(6). Furthermore, the Act permits the Commission to direct an EDC to modify or terminate any part of an approved plan if, after an adequate period for implementation, the Commission determines that a measure included in the plan will not achieve the required consumption reductions in a cost-effective manner. 66 Pa. C.S. § 2806.1(b)(2).

Below is the Commission's procedure for recommending additional measures that enable an EDC to improve its plan. Initially it must be noted that interested parties will have an opportunity to make recommendations during the initial plan approval process described above in Section A of this Implementation Order.

Regarding approved plans, the Commission will permit EDCs and other interested stakeholders, as well as the statutory advocates, to propose plan changes in conjunction with the EDC's annual report filing required by the Act at 66 Pa. C.S. § 2806.1(i)(1). The Commission will establish a deadline for the filing of annual reports by the EDCs following the approval of the EDCs' plans in 2009. These annual reports are to be served on OCA, OSBA and OTS. The Commission will also post the annual reports on a web page dedicated to the EE&C program. The Commission and any interested party can make a recommendation for plan improvement or object to an EDC's proposed plan revision within 30 days of the annual report filing. EDCs will have 20 days to file replies, after which the Commission will determine whether to rule on the recommended changes or refer the matter to an ALJ for hearings and a recommended decision. The Commission notes that, in addition to the above-described process, the Commission retains its statutory authority to conduct investigations and initiate statutory and regulatory compliance proceedings against jurisdictional utilities.

G. Procedures to Require Competitive Bidding and Approval of Contracts with CSPs

The Act requires the Commission to establish procedures to require EDCs to competitively bid all contracts with conservation service providers. 66 Pa. C.S. § 2806.1(a)(7). The Act further requires the Commission to establish procedures to review all proposed contracts with conservation service providers prior to execution of the contract. 66 Pa. C.S. § 2806.1(a)(8). The Act gives the Commission power to order the modification of proposed contracts to ensure that plans meet consumption reduction requirements. *Id.* The Act also requires each EDC to include in its plan a contract with one or more CSPs selected by competitive bid to implement all or part of the plan as approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(E). This section of the Act

establishes that CSPs can perform some or all functions of an EE&C plan, to include management of the entire plan.¹⁸

Initially, the Commission would like to stress that as the General Assembly, for prudent policy reasons, has established an aggressive design and implementation schedule; EDCs are not expected to have all bids for and contracts with CSPs completed by the July 1, 2009 plan filing. However, we do expect that each filed plan will include at least one contract with a CSP. In addition, while a contract with a CSP cannot be finalized unless that CSP is on the Commission's CSP registry, we encourage EDCs to solicit bids from all potential CSPs on the condition that the CSP apply and obtain approval to be on the registry prior to final acceptance of the bid.

Furthermore, the Commission would also like to stress that CSPs covered by the procedures in this section are those that provide plan consultation, design, administration and management services to the EDC. All entities that provide services to customers or the public in general, such as equipment installers or suppliers, are not to be included in the Commission's CSP registry. In addition, any competitive bid processes for and contracts with such entities will not be reviewed by the Commission under the process described below. However, the Commission notes that it retains its statutory authority to conduct investigations and initiate statutory and regulatory compliance proceedings against jurisdictional utilities.

Below is the Commission's procedure for reviewing and approving proposed CSP bidding process. These are the minimum criteria:

- Develop list of PUC-approved and -registered CSPs created under Docket No. M-2008-2074154.

¹⁸ As delineated in Section A above, an EDC must provide detailed justifications for why it did or did not use a CSP to perform EE&C plan functions.

- Require EDCs to issue requests for proposal (“RFPs”) only to CSPs approved and registered by the PUC.
- Encourage efforts to acquire bids from “disadvantaged businesses” (*i.e.*, minority-owned, women-owned, persons-with-disability-owned, small companies, companies located in Enterprise Zones, and similar entities) consistent with the Commission’s Policy Statements at 52 Pa. Code §§ 69.804, 69.807 and 69.808.
- Encourage the use of pay-for-performance contracts with CSPs.
- Acquisition of at least three bids, or sufficient justification for proceeding based on less bids for a particular aspect of the program.
- Require submission of selection criteria to PUC for review and approval, to include:
 - Designation of and weighting of factors for the selection criteria.
 - Selection of overall best bid/proposal (*i.e.*, no requirement to select the lowest qualified bid) that consider:
 - Quality of prior performance,
 - Timeliness of performance,
 - Quality of the proposed work plan or approach,
 - Knowledge, background, and experience of the personnel to be utilized, and
 - Other factors as deemed relevant.

If the Commission staff has not commented upon or disapproved the proposed RFP process within 15 days of it being submitted to the Commission for review, then the EDC is permitted to proceed with the RFP process without modification.

Below is the Commission's procedure for reviewing and approving proposed CSP contracts prior to execution. These are the minimum criteria:

- Review for satisfactory form and content, including:
 - Nature and type of services to be provided,
 - Assurance that the CSP's work product in the EDC's plan will meet the requirement for reduction in demand and consumption,
 - Legal issues, enforceability, and protection of ratepayer funds for poor performance or non-compliance and similar issues,
 - Adequate provisions and procedures for monitoring CSP and EDC performance quality and rate of progress, and
 - Certification that the proposed CSP is not an EDC affiliate.

If the Commission staff has not commented upon or disapproved the proposed contract within 45 days of it being submitted to the Commission for review, then the EDC is permitted to proceed with the contract without modification.

H. Procedures to Ensure Compliance with Consumption Reduction Requirements

The Act requires the Commission to establish procedures to ensure compliance with the consumption reduction requirements of the Act. 66 Pa. C.S. § 2806.1(a)(9). The consumption reduction requirements are outlined in the Act at Sections 2806.1(c) and (d). 66 Pa. C.S. §§ 2806.1(c) and (d). Both the one percent consumption reduction to be met by May 31, 2011, and the three percent consumption reduction to be met by May 31, 2013, are to be measured against the EDC's expected consumption as forecasted by the Commission for June 1, 2009, through May 31, 2010, with provisions made for weather adjustments and extraordinary loads the EDC must serve. 66 Pa. C.S. § 2806.1(c)(1). The four-and-a-half percent reduction of annual system peak demand in the 100 hours of

highest demand to be met by May 31, 2013, is to be measured against the EDC's peak demand for June 1, 2007, through May 31, 2008. 66 Pa. C.S. § 2806.1(d)(1).

Furthermore, the Act requires that a minimum of ten percent of all consumption reduction requirements are to come from units of the federal, state and local governments, including municipalities, school districts, institutions of higher education and nonprofit entities. 66 Pa. C.S. § 2806.1(b)(1)(i)(B).

Under the statutory requirements listed above, the Commission must establish a procedure for properly forecasting the baseline for expected EDC consumption levels from June 1, 2009 through May 31, 2010. To accomplish this, the Commission has outlined the timeline and process for establishing this baseline in Section A of this Order. The Commission believes this is the appropriate procedure as each EDC has the data, expertise and experience to make such projections regarding its customers and their usage patterns.

Next, the Commission must determine whether the term retail customer includes all customers or just those in the EDC's default service plan. The Commission defines retail customer as all customers who receive an EDC's distribution service regardless of their electric supply source. The Commission believes that it was the intent of the General Assembly that all customers contribute to the consumption and demand reduction goals, as they all collectively produce the consumption and demand.

Regarding the requirements for determining compliance with the Act 129 reduction requirements, each EDC subject to the Act is directed to file with the Commission, within 45 days after May 31, 2011, and after May 31, 2013, (at the EDC's EE&C plan docket, and serving the parties to that docket) information documenting their consumption reductions for June 1, 2010, through May 31, 2011, and for June 1, 2012, through May 31, 2013, respectively. This filing must provide total savings and savings by class of customer. To be in compliance with the Act, an EDC's must demonstrate that

during the June 1, 2010 to May 31, 2011 period its plan produced total energy savings equal to at least one percent of the forecasted 2009-2010 consumption in a cost effective manner. During the June 1, 2012 to May 31, 2013 period the EDC must demonstrate that its plan produced total energy savings equal to at least three percent of the forecasted 2009-2010 consumption in a cost effective manner.¹⁹

On or before November 30, 2013, and every five years thereafter, the Commission shall evaluate the costs and benefits of an EDC's EE&C plan related to annual consumption using a TRC test or cost-benefit analysis as determined by the Commission. If the Commission determines that benefits exceed the costs, the Commission will adopt new incremental consumption reduction requirements.

Peak demand is addressed at 66 Pa. C.S. § 2806.1(d), which mandates that the 100 hours of highest demand for the period from June 1, 2007, to May 31, 2008, be calculated. As described above, this amount is determined by taking an average of the 100 highest peak hours during the months of June, July, August and September of 2007. To be in compliance the EDCs must demonstrate that its EE&C plan produced demand savings during the 100 hours of highest demand for the period June 1, 2012, through September 30, 2012, equal to at least 4.5% of the average of the 100 highest peak hours during the period from June 1, 2007 to September 30, 2007.²⁰

On or before November 30, 2013, the Commission shall evaluate the peak demand aspects of an EDC's EE&C plan by comparing the cost of the an EDC's EE&C plan to the retail savings in energy and capacity benefits of an EDC's EE&C plan related to peak

¹⁹ The failure to meet these reduction mandates will subject the EDC to a civil penalty of between one million and twenty million dollars that cannot be recovered in rates (66 Pa. C.S. § 2806.1(f)((2)(i)), and the Commission will engage a CSP, at the EDC's expense, to achieve the mandated reductions (66 Pa. C.S. § 2806.1(f)((2)(ii)).

²⁰ The failure to meet this reduction mandates will subject the EDC to a civil penalty of between one million and twenty million dollars that cannot be recovered in rates (66 Pa. C.S. § 2806.1(f)((2)(i)), and the Commission will engage a CSP, at the EDC's expense, to achieve the mandated reductions (66 Pa. C.S. § 2806.1(f)((2)(ii)).

demand or by other means chosen by the Commission. If the Commission determines that benefits exceed the costs, the Commission will adopt new incremental requirements for reductions in peak demand for the highest 100 hours or otherwise as may be determined by the Commission. The new reductions shall be achieved by May 31, 2017, as measured against the EDC's peak demand for June 1, 2011, through September 30, 2011.

However, after-the-fact measurement and verification remain critical to ensure that an EDC has properly implemented its EE&C plan, that the projected savings metrics remain accurate, that non-controllable factors such as economic growth or contraction and weather have not skewed results, and that the savings are the result of the EE&C plan. The Commission will analyze the program as a whole and individual EDC plan effectiveness in meeting or exceeding the Act's mandatory savings through the initial review process as described in Section A above. In addition, the Commission will assess the program and individual plan effectiveness during the annual report review process described above in Section F of this Order.

Finally, based on comments received and the nature of the work to be performed, an outside consultant may be necessary to undertake the annual and five year independent evaluations of the cost-effectiveness of each EDC plan, assuming that an acceptable and cost-effective proposal is received. As such, the Commission intends to issue a request for proposal to retain the services of an evaluation vendor or vendors to perform the annual and five year independent evaluation of the cost-effectiveness of each EDC plan, as well as to develop the measurement and evaluation protocols, standard data collection formats, and data bases for the evaluation of program benefits and results to be used across all EDC service territories. The evaluation vendors will work with the Commission staff and interested parties in the development of the evaluation methods, protocols, data collection formats and data bases. The evaluation methods, protocols, data collection formats and data bases will be fully developed and approved by the

Commission prior to the initiation of EDC programs and no later than November 1, 2009. The costs for the evaluation contract or contracts with the Commission will be recovered from EDCs consistent with Section 2806.1(h) of the Act. 66 Pa. C.S. § 2806.1(h).

I. Participation of Conservation Service Providers

The Act establishes a requirement for the participation of conservation service providers in the implementation of all or part of a plan. 66 Pa. C.S. § 2806.1(a)(10). The Act requires the Commission to establish, by March 1, 2009, a registry of approved persons qualified to provide conservation services to all classes of customers, that meet experience and other qualifying criteria established by the Commission. 66 Pa. C.S. § 2806.2(a). The Act further requires the Commission to develop a conservation service provider application and permits the Commission to charge a reasonable registration fee. 66 Pa. C.S. § 2806.2(b).

The Commission initiated a separate stakeholder process to establish the qualification requirements CSPs must meet to be included in a Commission registry of CSPs under Docket Number M-2008-2074154. The Commission chose to institute a separate proceeding due to the requirement that the CSP registry is to be in place by March 1, 2009.

J. EDC Cost Recovery

The Act directs the Commission to establish a cost recovery mechanism that ensures that approved measures are financed by the customer class that receives the direct energy and conservation benefit of the measure. 66 Pa. C.S. § 2806.1(a)(11). All EDC plans must include cost estimates for implementation of all measures. 66 Pa. C.S. § 2806.1(b)(1)(i)(F). Each plan must also include a proposed cost-recovery tariff mechanism, in accordance with Section 1307 (relating to sliding scale or rates;

adjustments), to fund all measures and to ensure full and current recovery of prudent and reasonable costs, including administrative costs, as approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(H). In addition, each plan must include an analysis of administrative costs. 66 Pa. C.S. § 2806.1(b)(1)(i)(K). The Act dictates that the total cost of any plan must not exceed two percent of the EDC's total annual revenue as of December 31, 2006, excluding Low-Income Usage Reduction Programs established under 52 Pa. Code § 58 (relating to residential Low Income Usage Reduction Programs). 66 Pa. C.S. § 2806.1(g). Finally, all EDCs, including those subject to generation or other rate caps, must recover on a full and current basis from customers, through a reconcilable adjustment clause under Section 1307, all reasonable and prudent costs incurred in the provision or management of its plan. 66 Pa. C.S. § 2806.1(k).

We view the matter of cost recovery as consisting of three main issues as set forth in the relevant provisions of Act 129. These issues are:

- 1) Determination of allowable costs,
- 2) Allocation of costs to customer classes, and
- 3) Cost recovery tariff mechanism.

1. Determination of Allowable Costs

The Act allows an EDC to recover all prudent and reasonable costs relating to the provision or management of its EE&C plan, but limits such costs to an amount not to exceed two percent of the EDC's total annual revenue as of December 31, 2006, excluding Low-Income Usage Reduction Programs established under 52 Pa. Code § 58. 66 Pa. C.S. § 2806.1(g).

In order to determine the level of costs that an EDC will be permitted to recover in implementing its EE&C program, it will first be necessary to ascertain the amount of the EDC's total annual revenues as of December 31, 2006. Accordingly, we will require all

subject EDCs to confirm this information in their EE&C plans. Pursuant to the Act, total annual revenues shall be defined as “[a]mounts paid to the electric distribution company for generation, transmission, distribution and surcharges by retail customers.” 66 Pa. C.S. § 2806.1(m). We will then require each EDC to include a calculation of the total amount of EE&C costs it will be permitted to recover (exclusive of expenditures on Low-Income Usage Reduction Programs established under 52 Pa. Code § 58) based on the two percent limitation as set forth in the Act. This will represent the maximum level of spending on EE&C measures that will be recoverable under the EDC’s plan.

We will next require each EDC to provide a careful estimate of the costs relating to all EE&C programs and measures as set forth in its plan. Such costs will include both capital and expense items relating to all program elements, equipment and facilities, as well as an analysis of all related administrative costs. More specifically, these costs would include, but not be limited to, capital expenditures for any equipment and facilities that may be required to implement the EE&C programs, as well as depreciation, operating and maintenance expenses, a return component based on the EDC’s weighted cost of capital, and taxes. Administrative costs would include, but not be limited to, costs relating to plan and program development, cost-benefit analysis, measurement and verification, and reporting. The EDC must also provide ample support to demonstrate that all such costs are reasonable and prudent in light of its plan and the goals of the Act, keeping in mind that the total level of these costs must not exceed the two percent limitation as previously determined.

We agree generally with PPL that the EDC should be permitted to recover both the ongoing costs of its plan, as well as incremental costs incurred to design, create, and obtain Commission approval of the plan. However, all costs submitted for recovery in an EDC’s plan will be subject to review by the Commission to determine whether the costs are prudent and reasonable, and are directly related to the development and implementation of the plan. Furthermore, we do not agree with PECO and Duquesne that

EE&C measures and associated costs that are approved by the Commission should not be subject to after-the-fact scrutiny. In this regard, we note that the Act provides that:

The Commission shall direct an [EDC] to modify or terminate any part of a plan approved under this section if, after an adequate period for implementation, the Commission determines that an energy efficiency or conservation measure included in the plan will not achieve the required reductions in consumption in a cost-effective manner under [66 Pa. C.S. §§ 2806.1(c) & (d)].

66 Pa. C.S. § 2806.1(b)(2). Thus, plan measures and their associated costs that may be tentatively approved, will, in fact, be subject to ongoing review and possible modification or termination if it is determined that such measures are not or have not been cost effective.

With regard to the two percent limitation provision of the Act, we agree with PPL that this limitation on the “total cost of any plan” should be interpreted as an annual amount, rather than an amount for the full five-year period. Since the statutory limitation in this subsection is computed based on annual revenues as of December 31, 2006, we believe it is reasonable to require that the resulting allowable cost figure be applied on an annual basis as well. In addition, we note that the plans are subject to annual review and annual cost recovery under the Act, 66 Pa. C.S. §§ 2806.1(h) and (k). Finally, based upon the information presented in the comments²¹ and experience in other states, it appears that the statutory goals for consumption and demand savings are not likely to be achievable if the two percent limit was read as applicable to the entire multi-year EE&C program.

Duquesne raised a concern regarding the application of the two percent spending limitation on an EDC with a substantial number of customers being served by EGSs. Specifically, Duquesne commented that the cost limitation provision of Act 129 could be

²¹ See Duquesne Light Company Comments at 6-8. See also, PPL Reply Comments at 11 and 12.

interpreted in a manner that makes compliance very difficult for any EDC where rate caps have been removed and significant electric competition has occurred. Duquesne points out that approximately half of its load were taking service with an EGS at the end of 2006, including about 50 percent of its commercial and 85 percent of its industrial customers. If the Commission were to interpret 66 Pa. C.S. § 2806.1(g) such that EDC generation and transmission revenues exclude those collected by EGSs, Duquesne would be limited to a substantially smaller program budget than other EDCs. And if, under this scenario, Duquesne did not meet the Act 129 targets, it would be subject to mandatory financial penalties that would not be recoverable from rate payers.

To alleviate this situation, Duquesne proposed that it be allowed to revise its 2006 total annual revenue to reflect POLR revenues as if there had been no shopping. OCA, DEP and TRF, all suggest that EDC 2006 total annual revenues include generation and transmission revenues paid to an EGS through an EDC's combined bill. OSBA disagreed, asserting that the language in Section 2806.1(g) does not permit this outcome.

The Commission agrees with Duquesne, OCA, DEP and TRF, in that the General Assembly intended Act 129 to be competitively neutral, and not disadvantage EDCs that had active retail electric markets. The Commission also notes that, in ascertaining legislative intent, the Commission is to presume that the General Assembly did not intend a result that was impossible of execution, unreasonable or unconstitutional. See 1 Pa. C.S. § 1922. Excluding these EGS revenues may so limit Duquesne's EE&C plan budget such that it could be impossible for it to meet the Act 129 EE&C targets. Therefore, the Commission interprets "amounts paid to the [EDC] for generation, transmission, distribution and surcharges by retail customer," set forth as the definition of EDC total annual revenue in 66 Pa. C.S. § 2806.1(m), to include all amounts paid to the EDC for generation service, including generation revenues collected by an EDC for an EGS that uses consolidated billing. This result will bring Duquesne's program budget closer to a

level of parity with the other EDCs, and ensure that it has a more meaningful opportunity to comply with the EE&C provisions of Act 129.

Finally, with respect to the recovery of revenues lost due to reduced energy consumption or changes in demand, we note that the Act clearly states that such revenue losses shall not be a recoverable cost under a reconcilable automatic adjustment clause. 66 Pa. C.S. § 2806.1(k)(2). The Act does provide, however, that “[d]ecreased revenue and reduced energy consumption may be reflected in revenue and sales data used to calculate rates in a distribution-base rate proceeding filed by an electric distribution company under [66 Pa. C.S. § 1308] (relating to voluntary changes in rates).” 66 Pa. C.S. § 2806.1(k)(3).

2. Allocation of Costs to Customer Classes

The Act requires that all approved EE&C measures be financed by the customer class that receives the direct energy and conservation benefit of such measures. Several of the parties filed comments addressing the issue of how to allocate the total allowable EE&C costs in order to ensure that this provision is met.

In order to ensure that all approved EE&C measures are financed by the customer classes that receive the benefit of such measures, it will be necessary to first assign the costs relating to each measure to those classes to whom it benefits. Therefore, once the EDC has developed an estimate of its total EE&C costs as directed above, we will require it to allocate those costs to each of its customer classes that will benefit from the measures to which the costs relate. Those costs that can be clearly demonstrated to relate exclusively to measures that have been dedicated to a specific customer class should be assigned solely to that class. Those costs that relate to measures that are applicable to more than one class, or that can be shown to provide system-wide benefits, must be allocated using reasonable and generally acceptable cost of service principles as are

commonly utilized in base rate proceedings.²² Administrative costs should also be allocated using reasonable and generally acceptable cost-of-service principles.

With regard to the assignment of EE&C costs to low-income customers, the Act requires EE&C measures to be financed by the same customer class that will receive the direct energy and conservation benefits from them. 66 Pa. C.S. § 2806.1(a)(11). The Act does not provide for the exclusion of low-income customers from EE&C cost recovery as recommended by PULP, and in any event, it would be difficult to determine a way to exclude such customers from the allocation of EE&C costs within their particular customer class. Although we have great concern for the difficulties experienced by low-income customers in paying their energy bills, we do not believe that exempting such customers from contributing toward the recovery of fairly allocated EE&C costs is the appropriate way to address this concern. We point out that low-income customers will stand to benefit financially from well-designed EE&C measures implemented by the EDCs. Moreover, such customers can take advantage of the many programs currently available to help low-income and payment-troubled customers pay their energy bills.

3. Cost Recovery Tariff Mechanism

As noted above, the Act allows all EDCs, including those subject to generation or other rate caps, to recover on a full and current basis from customers, through a reconcilable adjustment clause under 66 Pa. C.S. § 1307, all reasonable and prudent costs incurred in the provision or management of its plan. The Act also requires that each EDC's plan include a proposed cost-recovery tariff mechanism, in accordance with 66 Pa. C.S. § 1307 (relating to sliding scale of rates; adjustments), to fund all measures and to

²² As the General Assembly declared in its Act 129 policy statement “[i]t is in the public interest to adopt energy efficiency and conservation measures and to implement energy procurement requirements designed to ensure that electricity obtained reduces the possibility of electric price instability, promotes economic growth and ensures affordable and available electric service to all residents.”

ensure full and current recovery of prudent and reasonable costs, including administrative costs, as approved by the Commission.

We will require each subject EDC to develop a reconcilable adjustment clause tariff mechanism in accordance with 66 Pa. C.S. § 1307 and include this mechanism in its EE&C plan. Such a mechanism shall be designed to recover, on a full and current basis from each customer class, all prudent and reasonable EE&C costs that have been assigned to each class as directed above. When the EE&C plans to be offered by EDCs will benefit both shopping and non-shopping customers, the cost recovery mechanism shall be non-bypassable, and structured such that it will not affect the EDC's price-to-compare.²³ The mechanism shall be set forth in the EDC's tariff, accompanied by a full and clear explanation as to its operation and applicability to each customer class. We agree with OCA that there should be no need to adjust the mechanism more frequently than on an annual basis. Therefore, the tariff mechanism will be subject to an annual review and reconciliation in accordance with 66 Pa. C.S. § 1307(e). The annual review and reconciliation for each EDC's cost recovery mechanism will occur pursuant to a public hearing, if required due to petitions filed by interveners, and will include an evaluation of the reasonableness of all program costs and their allocation to the applicable customer classes. Such annual review and reconciliation will be scheduled to coincide with our review of the annual report on the EDC's plan submitted in accordance with 66 Pa. C.S. § 2806.1(i), and all calculations and supporting cost documentation shall be provided at the time that report is filed.

²³ However, it may not be appropriate to subsidize or assign costs for various utility-offered curtailment or pricing programs across all customers if any such subsidies or incentives are not offered to competitive providers of service, or are used exclusively for or to support utility curtailment or generation supply programs. An EDC may not recover costs under its EE&C plan cost recovery mechanism for any costs which it recovers through its default service program.

CONCLUSION

This Order establishes an energy efficiency and conservation program that requires electric distribution companies with at least 100,000 customers to adopt and implement cost-effective plans to reduce energy consumption and peak demand within this Commonwealth. We extend our thanks to those who participated in the stakeholder meeting and provided comments on this crucial and timely energy program. We would especially like to note our appreciation for the cooperation and courtesy extended by all, which was essential in meeting the aggressive timeline established by the General Assembly.

THEREFORE,

IT IS ORDERED:

1. That the Commission establishes an energy efficiency and conservation program as outlined in this Implementation Order.
2. That electric distribution companies with at least 100,000 customers adhere to the schedule for submission and filing requirements for energy efficiency and conservation plans identified in this Implementation Order.
3. That all electric distribution companies that are required to file an energy efficiency and conservation plan also must file by February 9, 2009, its consumption forecast for the period of June 1, 2009 through May 31, 2010, as outlined in this Implementation Order.

4. That all electric distribution companies that are required to file an energy efficiency and conservation plan also must file by February 9, 2009, its hourly peak load data, in megawatts (“MW”), for the period June 1, 2007, through May 31, 2008, as outlined in this Implementation Order.

5. That the Commission staff shall have delegated authority to review and approve electric distribution company proposed conservation service provider bidding processes, as set forth in Section G of this order. Such staff determinations shall be the final determination of the Commission unless appealed to the full Commission within 20 days, per 52 Pa. Code § 5.44.

6. That the Commission staff shall have delegated authority to review and approve contracts between electric distribution companies and conservation service providers, as set forth in Section G of this order. Such staff determinations shall be the final determination of the Commission unless appealed to the full Commission within 20 days, per 52 Pa. Code § 5.44.

7. That all electric distribution companies that are required to file an energy efficiency and conservation plan also must file by March 1, 2009, proposed conservation service provider request for proposal procedures and standard form conservation service provider contracts for Commission approval, as outlined in this Implementation Order.

8. That this Implementation Order be published in the *Pennsylvania Bulletin* and served on the Office of Consumer Advocate, Office of Small Business Advocate, Office of Trial Staff, and all jurisdictional electric distribution companies.

BY THE COMMISSION

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: January 15, 2009

ORDER ENTERED: January 16, 2009

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265**

**ENERGY EFFICIENCY AND CONSERVATION PROGRAM
IMPLEMENTATION ORDER**

**PUBLIC MEETING
January 15, 2009
2069887-LAW
Docket No. M-2008-2069887**

MOTION OF COMMISSIONER KIM PIZZINGRILLI

The Commission has taken an important step today in meeting its obligations under Act 129 of 2008. The Act required that the Commission, by today's date, identify the standards and processes that govern the filing, content, and evaluation of electric distribution companies' (EDC) energy efficiency and conservation plans. This schedule, while aggressive, is reflective of the immediacy of the energy challenges the Commonwealth is addressing, and I appreciate the hard work by all involved in helping us comply with this timetable.

This implementation order resolves many important legal and policy issues raised by the stakeholders in the comments that have been filed with us since the Act took effect. We have identified the standards that the Commission will use in measuring consumption and demand reductions, evaluating plan implementation, analyzing the cost-effectiveness of plan components, and ensuring that measures are equitably available to all customer classes. EDCs may now begin to develop plans to be filed with the Commission by the July 1, 2009 deadline.

There was one issue identified by Duquesne Light Company that I believe requires additional action by the Commission. Duquesne commented that the cost limitation provision of Act 129 could be interpreted in a manner that makes compliance very difficult for it. This provision limits program budgets to 2% of the total annual EDC revenues as of December 31, 2006. Approximately half of Duquesne's retail customer load was receiving generation supply service from an electric generation supplier (EGS) at the end of 2006, including about 50% of its commercial and 85% of its industrial customers. No other EDC had nearly as active a retail market during this period. Duquesne will be limited to a substantially smaller program budget than the other EDCs if it must exclude all generation revenues collected by EGSs. If Duquesne does not meet its Act 129 targets, it would be subject to mandatory financial penalties that it cannot recover in rates.

I believe that the General Assembly intended the Act to be competitively neutral, and not disadvantage EDCs that had active retail electric markets. In ascertaining legislative intent, the Commission is to presume that the General Assembly did not intend a result that was impossible of execution, unreasonable or unconstitutional. 1 Pa.C.S. § 1922. I find that the Commission should interpret the definition of "electric distribution company total annual revenue" to include generation revenues collected by an EDC for an EGS that uses consolidated billing. This will bring Duquesne's program budget closer to a level of parity with the other companies, and ensure that it has a more meaningful opportunity to comply with the provisions of Act 129.

THEREFORE, I MOVE THAT:

1. The Implementation Order is adopted, as amended by this Motion.
2. The Law Bureau prepare an Implementation Order consistent with this Motion.

January 15, 2009
Date

KIM PIZZINGRILLI, COMMISSIONER

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265**

**Re: Energy Efficiency and
Conservation Program
Implementation Order**

**Public Meeting: January 15, 2009
2069887-LAW
M-2008-2069887**

**JOINT STATEMENT OF CHAIRMAN CAWLEY AND
COMMISSIONER GARDNER**

Before the Commission is the Energy Efficiency and Conservation Program Implementation Order (Order). The Order establishes the guidelines and requirements for electric distribution company (EDC) energy efficiency and conservation plans to be filed on or before July 1, 2009. In this Order, the Commission seeks to enhance the ability of EDCs to attain the goals established under Act 129 of 2008.

In order to achieve lasting efficiency gains, it may be necessary for some customers to invest significant amounts of capital in their homes, apartments or small businesses – capital they may not have at hand. To eliminate this financial barrier, we strongly encourage EDCs to support, design and implement a statewide program similar to Keystone HELP.

Keystone HELP is a loan program administered by AFC Financial, and funded in part by the PA Treasury, and supported by PA Home Energy, which provides needed capital to customers throughout Pennsylvania for projects that reduce energy consumption.

To date, Keystone HELP has loaned \$23 million to 3,511 households across the Commonwealth. Loan rates range from 5.99% to 8.875% depending upon customer qualifications. The program has a remarkably low default rate of .33% and has successfully helped the often overlooked middle income segment of our population to undertake conservation and energy efficiency projects that those individuals may have not otherwise been able to afford.

Similarly, the Pennsylvania Housing Finance Agency (PHFA) initiated a program to provide funding for the implementation of energy upgrades in multifamily developments throughout the Commonwealth to address the energy efficiency needs of over 139,000 affordable rental units, over 50 percent of which have been placed into service at least 25 years ago. PHFA is in the process of providing training for the certification of energy auditors to become skilled in auditing multifamily buildings. They are also pooling together various funding sources for low interest loans for the upgrades.

Additionally, they have an agreement with the West Penn Sustainable Energy Fund where they will help defray the costs of the energy audits on developments in their footprint and will provide some funding for training of the energy auditors.

We strongly encourage the EDCs, EAPA, PA Treasury, AFC Financial, PA Home Energy, sustainable energy funds/economic development funds and other interested stakeholders to work collaboratively to develop such programs prior to July 1, 2009. Important program goals include the following elements:

- Identify a sustainable source of low cost capital for funding of these programs in conjunction with the PA Treasury, EDCs, sustainable energy funds/economic development funds, federal sources, and others.
- Develop additional mechanisms for interest buy-down and bad debt reserve to further mitigate consumer interest charges.
- Design programs to maximize efficiencies achievable with a “whole home” or “whole building” approach.
- Ensure adequate contractor training is available regionally to support these programs.
- Ensure that participating EDCs are provided with a mechanism for recovery of program contributions, and receive efficiency credits towards Act 129 goals. Any EDC contributions should be matched with customers residing in that EDC’s service area.

January 15, 2009

James H. Cawley
Chairman

Wayne E. Gardner
Commissioner

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265**

**Energy Efficiency and Conservation
Program**

**Public Meeting – January 15, 2009
2069887-LAW*
Docket No. M-2008-2069887**

STATEMENT OF VICE CHAIRMAN TYRONE J. CHRISTY

Today the Commission is taking yet another significant step toward implementing a comprehensive Energy Efficiency and Conservation Program for Pennsylvania. The Energy Efficiency and Conservation Program offers the most meaningful tool available to the Commission to cushion the rate shock that likely will occur as rate caps continue to expire in additional utility service territories in the Commonwealth over the next 23 months. As electric rate caps continue to expire, Pennsylvania customers increasingly will be exposed to higher electric prices that are to large extent beyond our current ability to control given federal jurisdiction over the wholesale power market. I commend the General Assembly and Governor for championing the passage of Act 129, and extend my appreciation to our staff for their hard work in crafting the order that we are approving today in the short amount of time available to us under the requirements of Act 129.

I have some concerns regarding the separate approval processes that the Commission is establishing by this order for contracts with conservation service providers (CSPs) and for the plans that will be filed by the electric distribution companies (EDCs) beginning July 1 of this year. In contrast to the abbreviated staff review process being established for CSP contracts, proposed EDC plans will be reviewed in evidentiary proceedings assigned to an ALJ. Because CSP contracts may constitute a large portion of an EDC's plan, I believe that it may be better to review proposed CSP contracts in conjunction with the EDC's plan rather than separately. However, if the separate review procedures that we are establishing today prove to be unworkable, we can revisit the procedures in the future.

DATE

TYRONE J. CHRISTY, VICE CHAIRMAN