

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Energy Efficiency and Conservation : Docket No. M-2008-2069887  
Program and EDC Plans :

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COMMENTS OF THE  
OFFICE OF CONSUMER ADVOCATE

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## I. INTRODUCTION

On November 26, 2008, the Pennsylvania Public Utility Commission circulated the draft staff proposal and further questions relative to the first phase of the Act 129 of 2008 implementation plan. The Secretarial Letter requested comments on the draft proposal and questions by December 8, 2008 in anticipation of the Working Group meeting to be held on December 10, 2008. The OCA has reviewed the draft Order as well as the further questions and has some recommendations for consideration.

The OCA's review of the draft Order has identified several key areas where modifications or clarifications are needed. Of major concern are the procedural schedule, including the filing requirements and the timing of the development and review of the load forecast. As to the procedural schedule, the OCA is concerned that the draft Order provides insufficient time for the stakeholders to review and present their recommendations to the Commission on the EDC Plans. Additionally, the filing requirements do not call for the EDC to provide "live" spread sheets and models to the stakeholders with the filing. Many of the stakeholders will be in the extremely difficult position of having to simultaneously review and comment on seven EDC Plans. Under the draft proposal, the stakeholders will have only 38 days to provide meaningful comments. The short time frame, coupled with the lack of necessary spread sheets and models, will seriously compromise the ability of the stakeholders to make complete recommendations. This short time frame is even more problematic in that while the draft Order calls for "informal discussions" before the EDC Plan is filed, it does not provide for any formal stakeholder process during the Plan development process where information, ideas and data could be exchanged that would result in EDC Plans that address many of the issues, concerns, and recommendations of the stakeholders. In these Comments, the OCA provides an

alternative recommended schedule and some additional filing requirements. The OCA also requests that the Commission provide additional direction and detail for the stakeholder process to ensure that it is a useful tool in the development of the EDC Plans.

The OCA also has a concern regarding the development of the load forecast and the timing of that effort. The draft Order seems to place the responsibility for the development of the load forecast on the EDC, within parameters established by the Commission. While it was the OCA's view that the Commission was to perform the load forecast, the OCA agrees that the Commission could have the EDCs initially perform the load forecast if the Commission provides the appropriate parameters and if the Commission reviews and approves the forecast in a timely manner. The draft Order, however, is unclear as to when this forecast is to be completed and approved by the Commission. In one portion of the draft Order, it appears as if the stakeholders will see this forecast for the first time on July 1, 2009, after the Plan is developed, and that the EDC will not receive approval of the load forecast from the Commission until final approval of the Plan. The OCA submits that the load forecast must be completed and approved as early in the planning process as reasonably possible. The load forecast determines the amount of savings that an EDC must achieve which will drive the measures selected by the EDC. The OCA urges the Commission to require that the load forecast be presented, reviewed and approved in early 2009.

In these Comments, the OCA will comment briefly on each section of the draft Order. The OCA has also attached to these Comments an Appendix that provides the OCA's Response to the additional questions issued by the Commission. The OCA looks forward to participating in the Working Group as the Commission further develops the necessary program to implement Act 129 of 2008.

## II. COMMENTS

### Section A: Plan Approval Process

In its draft Order, the Commission proposes a procedure for EDC Plan approval that includes the materials that must be included in the EDC filing and a procedural schedule for completing the cases. The OCA has several concerns with the draft Order's proposal. The OCA has identified four key concerns with the draft Order's proposed approach. First, the draft Order appears to leave the load forecast to the July 1 filing. Second, the filing requirements for Plan information do not explicitly require the EDCs to provide "live" electronic spreadsheets or models used in the development of the Plan in a useable format so that intervenors have a meaningful opportunity to evaluate and comment on the Plans. Third, while the draft Order directs the EDCs to offer informal discussions with the statutory advocates and interested parties, the draft Order may not have provided sufficient direction to the EDCs as to these processes. Fourth, the time frames for intervening parties to provide Comments and recommendations are too short for the necessary review.

The OCA will briefly address each of its concerns in turn.

#### 1. The Load Forecast Should Not Be Left To The EDC Plan Filing In July 2009.

In Section A of the draft Order, the Commission requires that the EDC provide its load forecast as part of its July 1, 2009 filing. The OCA submits that the load forecast must be completed and approved in advance of the filing so that the EDCs can properly select the necessary measures to achieve the energy savings. The load forecast for each EDC should be completed, reviewed and approved by the Commission well before the filing of the EDC Plan.

The OCA recommends that the draft Order that sets forth the EDC filing requirements be modified to reflect that the load forecast, and the weather normalization adjustments, that are to be filed on July 1, 2009 must already be approved by the Commission as part of an earlier process.

2. Filing Requirements for the EDC Plan Should Require The Provision Of Electronic Spread Sheets And Models Subject To Appropriate Proprietary Protection.

At pages 7-8 of the draft Order, the EDC filing requirements are set forth. In general, the OCA agrees with the materials and analyses called for by these filing requirements. The OCA is concerned, however, that the filing requirements do not explicitly require the EDC to provide spreadsheets and models in a “live” electronic format to the statutory advocates and other interested parties. The OCA discussed the need for the electronic versions of the spreadsheets and models in its Comments of November 3, 2008 at pages 14-15. Given the very short time frame allowed for review of the EDC Plans under the Act, the OCA again stresses the need for such data in a useable format so that the parties have a meaningful opportunity to review and analyze the measures, and provide recommendations. The OCA recognizes the need for an appropriate Protective Order and urges the Commission to enter one as soon as possible. In the very short time frame for review, however, the parties will not have time to argue over “proprietary” models, attempt to recreate Company models, or attempt to create their own models for Company data. Without the ability to use models and spread sheets relied upon by the EDCs in the development of their Plans, the stakeholders and Commission Staff will be at a significant disadvantage in reviewing and making recommendations regarding these Plans.

3. The Stakeholder Process Should Be Further Detailed In The Commission's Program.

In its Comments of November 3, 2008, the OCA recommended a stakeholder process during the Spring of 2009 where the EDCs and the interested parties could work on the development of the EDC Plans in a cooperative fashion. The draft Order directs the EDCs to offer informal discussions with the statutory advocates and interested parties. Draft Order at 7. The OCA supports this direction to the EDCs, but the OCA urges the Commission to add further detail to this process. As the Order is currently drafted, the informal discussions could result in very different levels of input into the process by the stakeholders depending on the EDC. The OCA recommends that the Commission clarify that it is directing a collaborative process to include a series of meetings over the Winter and Spring so that stakeholders can provide input into the Plan and planning process as well as remain informed by the EDC of Plan development. The collaborative process should include a meeting in June, 2009 where the EDC meets with the stakeholders to review and preview the final Plan.

The OCA would note that PECO Energy has initiated a stakeholder process, convening its first meeting this December. The OCA is encouraged by the development of this process by PECO. The OCA believes that such a process will result in EDC Plans that are able to address the many interests of the stakeholders in an effective manner.

4. The Proposed Procedural Schedule Does Not Provide Adequate Time For The Stakeholders To Provide Comment And Recommendations.

The draft Order proposes a procedural schedule that calls for each EDC Plan to be published in the Pennsylvania Bulletin within 20 days of the filing. The schedule then calls for the interested parties to file Answers, Comments and Recommendations within 20 days of

publication. Thereafter, about 30 days after the Answers, Comments and Recommendations, the Commission proposes to have evidentiary hearings on disputed material facts with the ALJ certifying the record to the Commission. Additionally, the Commission proposes to conduct public input hearings in the service territory. Draft Order at 9. The OCA submits that the procedural schedule proposed by the Commission does not provide adequate time for the stakeholders to formulate comments and recommendations on such important issues. The longest period of time that stakeholders will have to prepare comments and recommendations, assuming publication in the *Pennsylvania Bulletin* on the 20<sup>th</sup> day, would be 40 days. In reality, however, the last Saturday in July 2009 where publication could be achieved would be July 18, 2009, thus cutting 2 days off of the maximum time frame for review of these plans. This period of time is too short for stakeholders to adequately review these plans.<sup>1</sup>

The OCA proposed a schedule in its Comments of November 3, 2008. The OCA's proposal did not include an evidentiary hearing before an ALJ as does the draft Order proposal, but the OCA's proposed procedural schedule could be modified to include the evidentiary hearing. A modified schedule, beginning with the July 1, 2009 filing, including publication in the *Pennsylvania Bulletin* and including an evidentiary hearing, could be developed from the OCA's original proposal. Using some of the time frames and considerations in the draft Order, the OCA suggests the following type of schedule:

- July 1, 2009: All filings with all materials set forth in the filing requirements, in-hand and electronically (or on disk) to the OCA, OSBA, designated Commission Bureau Staff, and all members of the stakeholder collaborative.
- July 1, 2009: Each EDC provides notice of its Plan and the review process through publication in newspapers in its service territory and through mailing to customers with all notices having been pre-approved by the Commission staff.

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<sup>1</sup> If the parties must also review the load forecast and address allocation issues, this time period is wholly inadequate.



- July 4, 11, or 18, 2009: Each EDC Plan is published in the *Pennsylvania Bulletin*
- July 2009: Technical Conferences on each EDC plan.
- Early August: Public Input Hearings
- August 21, 2009: Written Comments and Recommendations by OCA, OSBA and interested stakeholders.
- August 25 through September 3: Evidentiary hearings on disputed issues of material fact, if necessary.
- September 18: Responsive Comments or revised Plan by the EDC.
- October 28: Special Public Meeting to rule on the plans

The OCA submits that this proposed schedule would allow the interested stakeholders to provide more meaningful and detailed comment and recommendations for the Commission's consideration.

The OCA would also point out that the draft Order calls for public input hearings, but the draft Order does not provide any clear requirement for notice to an EDC's customers of the EDC Plan filing. If the Commission wishes to have public input hearings, it will be necessary to provide customers with adequate and timely notice of the EDC Plan as well as notice of the public input hearings. In the OCA's proposed schedule detailed above, the OCA recommends notice through publication in local newspapers and mailing to customers with all notices pre-approved by the Commission. Without such notice, the OCA would not expect that the public input hearings would be well attended or fully informative to the Commission.

The OCA recognizes that the 120 day time frame for review of the EDC Plans called for in Act 129 presents a major challenge to the Commission, the stakeholders and the EDCs. The OCA submits that a procedural approach such as that recommended above could

meet the requirements set forth in the draft Order but still provide time for the stakeholders to provide comment and recommendations to the Commission.

Section B: Plan Effectiveness Process

The draft Order proposes to utilize the Technical Reference Manual developed by a Commission working group in 2005 to evaluate the Plan's effectiveness. Under the "savings approach" for determining compliance with the Act, an updated Technical Reference Manual would provide a reasonable means to determine the effectiveness of the measures contained in the Plan.

Section C: Cost-Benefit Analysis Approval Process

In this section of the draft Order, the Total Resource Cost Test is discussed and the Order proposes to adopt the California Standard Practice Manual development of the Total Resource Cost Test. The OCA agrees that the use of the California Manual is appropriate.

The Commission also requests comments on the appropriate discount rate to use in the total resource cost test. The selection of a discount rate can be controversial and the OCA recommends that the Commission specify the discount rate to be used upfront in order to reduce this controversy. In its preliminary research, the OCA found three referenced approaches. Some states use the Treasury bill rate as the discount rate. See, e.g., Massachusetts D.T.E. 98-100, Order Promulgating Final Guidelines To Evaluate And Approve Energy Efficiency Programs, Att. 1, Section 3.4. Other states use the utility's cost of capital, and a third approach has been identified as a "market discount rate" See, California Standard Practice Manual. A market discount rate may be particularly useful when comparing alternative investments. Depending on the timing of the costs and benefits of the program, these approaches could result in very different analyses of a specific measure. The higher the discount rate, the greater the

requirement for a quick “payback” period, and the less attractive measures that produce long term future savings appear. At this time, the OCA does not have a specific recommendation.

Section D: Process To Analyze How The Program And Each Plan Will Enable EDCs to Meet Reduction Requirements

The initial comments and testimony at the November 19, 2008 *en banc* hearing on Act 129 highlighted the fact that there were two possible interpretations of Sections 2806.1(c) and 2806.1(d) regarding the consumption and demand reductions required under Act 129. In the comments, the two approaches were referred to as a “savings approach” and an “absolute reduction approach.” Under the savings approach, a load forecast is developed for the base year of June 1, 2009 to May 31, 2010. That forecast is then multiplied by 1% to produce the amount of annual energy (kwh) savings that must be produced by May 31, 2011 and by 3% to produce the amount of annual energy savings that must be produced by May 31, 2011. As the OCA understands the Comments filed by various parties on the savings approach, these values would be established now and would not change. For example, if the load forecast for an EDC was for 100,000 kilowatthours of sales in the base year, the EDC would have to establish programs that produced 1,000 kilowatthours of energy savings by May 31, 2011 and 3,000 kilowatthours of energy savings by May 31, 2013. A similar calculation is used for the demand reductions required under Section 2806.1(d).

The Testimony of Acting Secretary John Hanger of the Department of Environmental Protection (DEP) supported the savings approach as the method intended by Act 129. The draft Order appears to adopt the savings approach, but this is not clear. For example, on page 15, the draft Order states: “The Commission agrees with PECO, PPL and DEP that the statute targets are intended to reflect energy and demand savings, as opposed to absolute reductions in consumption.” Earlier language on page 12, however, is as follows: “Specifically,

the Commission will conduct the evaluations using a savings approach reduction approach.” Additionally, several of the paragraphs of the draft Order may still be read as if the Commission is using an absolute reduction approach. The OCA recommends that the Commission clarify its intent to use a savings approach and amend the discussion at pages 12-15 of the draft Order to clearly distinguish between the two approaches.

The OCA would also note that if the Commission is utilizing the savings approach, it should also ensure that only measures that are part of the EDC Plan are counted towards meeting the required energy savings and demand reductions. As DEP Secretary Hanger testified at the *en banc* hearing of November 19, 2008, under the savings approach, the savings must come from within the four corners of the Act.

Section E: Standards To Ensure That A Variety OF Measures Are Applied Equitably To Each Class

*In Addition To The Requirement That At Least One Measure Be Available To Each Customer Class, The Commission Should Require Each EDC To Provide A Technical Potential Study To Assess The Potential Of Each Class And The System.*

The draft Order proposes that there be at least one energy efficiency and one demand side management program for each customer class. The proposal is directed to the requirement in Act 129 that the measures are provided equitably to all customer classes. The OCA agrees that requiring at least one measure for each class is an appropriate first step in meeting the requirement that measures be provided to all customer classes. The OCA submits, however, that the Commission should require each EDC to perform, and provide to the Commission and stakeholders, a Technical Potential Study for each customer class and the system as a whole so that the Commission can better determine the measures, and potential savings, for each class. With the Technical Potential Study as a guide, the Commission will be

better able to determine whether the EDC Plan deploys measures equitably to all customer classes.

Section F: Process To Make Recommendations For Additional Measures

The draft Order proposes that, after a Plan is approved, additional measures or modifications be considered in the Commission's annual review of the Plan. The OCA agrees with this approach as it will allow for the consideration of any necessary modifications or additions along with a review of the Plan costs.

Section G: Procedures To Require Competitive Bidding And Approval Of Contracts With CSPs

*The Bidding Process For Conservation Service Providers Should Include Community Based Organizations That Deliver Conservation And Weatherization Services To Low Income Customers.*

The draft Order provides minimum criteria for the conservation service provider (CSP) bidding process. The OCA does not have particular comments on the minimum criteria. The OCA recommends, though, that the Commission staff and EDCs work with the Community Based Organizations that have traditionally delivered low income conservation and weatherization programs to ensure that they are able to participate as CSPs in the bidding process.

Section H: Procedures To Ensure Compliance With Consumption Reduction Requirements

*The Draft Order Must Be Clarified As To The Load Forecast And The Timing Of The Presentation Of The Load Forecast.*

In its Comments of November 3, 2008, the OCA noted that Act 129 calls for the Commission to perform a load forecast for each EDC. OCA Comments of November 3, 2008 at 6-8. If the Commission had adopted an absolute reduction approach, the load forecast, as well as the weather normalization methodology and the definition of extraordinary loads, would have

been one of the most critical tasks that the Commission faced. The OCA recommended that the Commission retain an outside expert to assist its Staff in performing these load forecasts. The OCA also recommended that the Commission complete the load forecasts early in the process so that the EDCs and the stakeholders understood the savings targets as they worked on the development of the plans.

While it was the OCA's view that the Commission is to perform the load forecast, under the "energy savings" approach proposed in the draft Order, the details and methodology of the load forecast are less critical. If the Commission is using the energy savings approach, it can rely on the EDC to perform the initial load forecast within the parameters established by the Commission. The OCA would recommend that the Commission establish the weather normalization procedure as is proposed at pages 21-22 of the draft Order and that the Commission define extraordinary loads as is proposed on pages 21-22 of the draft Order. As the OCA discussed in its Comments of November 3, 2008, extraordinary loads should neither increase nor decrease the EDC's normalized load forecast. In particular, as the nation is now in a recession, recessionary impacts should be normalized out of the load forecast that will be used to establish the amount of energy savings that must result from the EDC Plan.

The draft Order is also not clear as to the timing of the load forecast. At page 8 of the draft Order, the load forecast is to be presented as part of the EDC Plan on July 1, 2009. At page 13 of the draft Order, however, the EDCs are to provide a load forecast to the Commission, statutory advocates, and interested stakeholders "at least six months prior to the Commission's forecast completion date." Later, at page 21, the draft Order indicates that the Commission will consider the EDCs load forecast and the adjustments to the forecast as part of the Plan. It appears as if the draft Order requires that the EDC perform the load forecast and provide it to the

Commission, but the timing is unclear. As noted above, the OCA submits that the load forecast must be submitted and approved by the Commission in advance of the filing of the Plan itself.

The OCA strongly urges the Commission to clarify the timing of the completion of the load forecast and the provision of the peak demand calculation. In the OCA's view, the load forecast must be approved before the July 1, 2009 Plan filing date. The load forecast is a necessary data point for determining the amount of savings that the Plan must achieve. By the time the Plan is filed, it is too late to be arguing about the reasonableness of the load forecast. The OCA urges the Commission to receive, review and approve the load forecasts in early 2009 so that appropriate planning can be undertaken.

A question was also posed regarding the calculation of the peak demand reductions. Specifically, the question was posed as to whether the 100 highest hours were to be measured in the summer only or year round. It is the OCA's position that it should be the 100 hours year round that are factored into the calculation. While many of those hours will be in the summer, the Act is to reduce demand overall, not just in the summer.

Section I: Participation Of Conservation Service Providers

The draft Order indicates that the Commission is establishing a separate working group to develop the application and registry for conservation service providers since it must have the registry available by March, 2009. The OCA supports this approach and would urge the Commission to reach out to Community Based Organizations so that they can participate in this working group.

Section J: EDC Cost Recovery

Section J of the draft Order addresses EDC cost recovery and spending. The draft Order establishes that cost recovery will be through a Section 1307 mechanism that will adjust

once annually. It is the OCA's view that this type of mechanism is consistent with the requirements of Act 129. The draft Order sets forth three key issues in cost recovery. Those issues are the determination of allowable costs, allocation of costs to customer classes and the cost recovery mechanism.

1. Determination of Allowable Cost

The draft Order requires the EDC to provide a careful estimate of the costs of its Plan and measures with the Plan filing. The draft Order also clarifies that approval of the EDC Plan does not end the Commission's inquiry as to the reasonableness and prudence of the Plan costs. The OCA agrees with the Commission that the Plan costs must be the subject of ongoing scrutiny by the Commission and a determination that the costs are reasonable and prudent.

As to the 2% of 2006 annual revenues limitation, the draft Order interprets this provision as allowing for spending at the 2% level in each year of the five year plan. The OCA agrees with this interpretation. The draft Order also questions whether the 2% limitation must be applied separately to each class. The OCA submits that the 2% limitation is a total system limitation, not a class limitation.

The OCA is concerned, however, with the Commission's treatment of EDCs that had a large percentage of customer load served by alternative electric generation suppliers in 2006. Among the utilities that are covered by the Act, this provision has by far the most impact on Duquesne Light Company. Because a large portion of Duquesne generation revenues in 2006 were ultimately paid to EGSs, this interpretation would have the unintended consequence of substantially restricting the amount that is available for Duquesne to spend on the programs. The OCA urges the Commission to adopt a methodology that will allow EDCs that had significant shopping in 2006 to spend an adequate amount to meet the requirements of the Act.



One approach would be for the Commission to impute revenue for shopping customers so that the revenues that are used to calculate the 2% reflect revenue from all customers.<sup>2</sup>

## 2. Allocation of Costs To Customer Classes

The draft Order addresses the allocation of costs to the customer class by requiring, primarily, that costs be assigned to the customer class receiving the benefit. For those measures that are applicable to more than one class or that can be shown to provide a system wide benefit, the draft Order suggests the use of generally accepted cost of service principles that are commonly utilized in base rate proceedings. The draft Order also requires a cost of service study for allocating these costs be included with the Plan filing.

Initially, the OCA submits that the Commission need not require a full cost of service study for these proceedings. Cost of service studies address far more costs than just the limited set of costs being addressed here. A cost of service study would be unnecessary to just review these measures.

The draft Order also suggests that measures that provide system wide benefits should be allocated using cost of service principles utilized in base rate proceedings. The OCA agrees with this point and would urge the Commission to consider system-wide benefits of programs and measures when determining cost allocation so that costs and benefits are reasonably matched.

## 3. Cost Recovery Tariff Mechanism

The draft Order proposes a reconcilable adjustment clause that is non-bypassable.

The draft Order sets forth an annual review and adjustment process for the clause which includes

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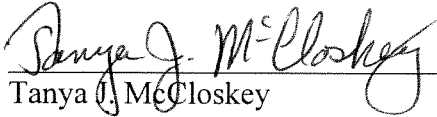
<sup>2</sup> The “electric distribution company total annual revenue” is defined in Act 129 as “amounts paid to the electric distribution company for generation, transmission, distribution and surcharges by retail customers.” To the extent that an EDC performs consolidated billing and a retail customer pays the generation charges to the EDC, the revenues for generation service would seem to fit under the definition, even if the revenues were subsequently transmitted by the EDC to an EGS.

a review of the reasonableness of all program costs and the allocation of the costs. The OCA supports this approach.

### III. CONCLUSION

The OCA appreciates this opportunity to further comment on the Commission's Act 129 Implementation Plan. The OCA looks forward to participating in the Working Group to finalize the Commission's Implementation Program.

Respectfully Submitted,

  
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## APPENDIX A

### OCA Responses of December 8, 2008

#### Additional Questions Related to the Commission's Energy Efficiency and Conservation Program at Docket No. M-2008-2069887

##### 1. Efficiency targets/Goals:

a) *Should the Commission use the average usage during the 100 highest peak hours during the entire reference year, or the average usage during the 100 highest summer peak hours when calculating the peak demand reduction targets for each EDC?*

**OCA Response:** The Commission should use the average usage during the 100 highest peak hours during the entire reference year.

b) *Does Act 129 require reductions down to a fixed level, or require a fixed amount of decrease? How should this be calculated? Should the consumption reduction requirements contained in Section 2806.1(c) be treated the same as the demand reduction requirements contained in Section 2806.1(d)?*

**OCA Response:** The testimony of Secretary Hanger of the Department of Environmental Protection on November 19, 2008 indicated that a fixed amount of decrease in both consumption and demand was intended by Act 129. As the OCA understands Secretary Hanger's testimony, for consumption reductions, the load forecast is multiplied by the percentage requirement to produce a fixed amount of savings that must be produced by the EDC's Plan. For consumption, for example, if the EDC's load forecast was for sales of 100 Mwh for the reference year, the EDC would need to show savings of 1 Mwh for the first compliance year and 3 Mwh for the second compliance year. For demand reduction, for example, if the average demand of the 100 highest peak hours was 100 MW of demand, the EDC would have to show savings of 4.5 MW of demand from its Plan in the compliance year.

##### 2. Program Design:

a) *Statewide vs. EDC specific: Should the Commission encourage, by policy, a statewide approach to some programs that are likely to be effective across Pennsylvania? For example, should rebate programs be harmonized across the state? Should specific programs, such as Energy Audits, PJM load reduction programs, Home Performance With Energy Star, and Energy Star Homes be consistently available in all EDC service territories? If so, what programs should the EDCs implement consistently across the state?*

**OCA Response:** The Commission should encourage a statewide approach for some measures. The rebate programs mentioned in the question is a good example of a measure that can benefit from a statewide approach. The OCA would also expect that the measures listed by the Commission should be available in most service territories.

b) *Can Act 129 programs have negative impacts on existing cost effective energy efficiency and demand side programs by 3<sup>rd</sup> parties? If so, how can this Commission avoid damaging existing 3<sup>rd</sup> party efforts when socializing Act 129 energy efficiency and demand side programs through non-bypassable charges to all customers, while increasing customer participation in these services?*

**OCA Response:** If it is possible that such programs could be negatively impacted, the EDCs should consider this impact in their Plan design. A collaborative process that includes all stakeholders, including third party conservation service providers, would help to identify these potential impacts.

c) *Should the Commission seek to harmonize Act 129 programs with other Federal, State, local, RTO or other group programs? If so, what specific programs should this Commission encourage EDCs to replicate, incorporate, or leverage as part of their compliance filings? How can this best be achieved?*

**OCA Response:** The OCA expects that harmonizing Act 129 programs with other federal, state, local, RTO, or other group programs could prove cost-effective and should be considered. If the EDC Plan is harmonized with other programs, or used to enhance other state or federal programs, the Commission will need to determine how to assess the level of savings solely attributable to the EDC Plan. Since the savings measured for compliance are just those produced by the EDC Plan, some method for separating out the savings will be needed.

### **3. Total Resource Test**

a) *How can the Total Resource Cost Test that must be approved by the Commission under Sections 2806.1(a)(3) and 2806.1(b)(1)(i)(I) be simplified?*

**OCA Response:** The OCA recommends that the Commission rely on the Total Resource Cost Test as it has been implemented by other states, particularly in the California Standard Practice Manual.

b) *The Act defines "Total Resource Cost Test" (TRC 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 avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures." Under this definition, may the Commission limit consideration of monetary costs to the costs incurred by the EDC?*

**OCA Response:** The total resource cost test is to include the costs paid by both the utility and the participants. The OCA recommends that the Commission follow the methodology in the California Standard Practice Manual.

- c) *Can the TRC test include avoided environmental costs or other avoided societal costs?*

**OCA Response:** Under the TRC test, to the extent that environmental costs are included in the price of energy, the costs would be included in the TRC test. The inclusion of costs, such as environmental and societal, that are not part of the price of energy would be what is referred to as the “societal cost test” and not the total resource cost test. It is important to note, however, that environmental costs, such as the cost of carbon emissions, are not reflected in prices today, but are likely to be reflected in prices in the near future. In considering the life-cycle benefits of energy efficiency measures, it may be appropriate to include the anticipated costs.

- d) *If the Commission limits costs considered under the TRC test to those incurred by the EDC, should the Commission exclude costs not incurred by the EDC from the test?*

**OCA Response:** The total resource cost test is to include all costs and benefits, regardless of who accrues them. Looking only at the EDC costs is what is referred to as the utility cost test.

- e) *If participant costs that are not paid by the EDC are included, should these costs be reduced by tax credits or credits under the AEPS Act received by the participants?*

**OCA Response:** Participant costs in the TRC are to be the actual costs incurred, *i.e.* the costs net of any credits received.

- f) *What elements of the "avoided monetary cost of supplying electricity" should be included in the TRC test?*

**OCA Response:** The cost of supplying electricity should include energy, capacity, ancillary services, other PJM charges. In addition, the TRC would include any avoided transmission and distribution costs.

- g) *Should these costs be valued at the "marginal costs for the periods when there is a load reduction" as required by the draft Implementation Order? What does this mean precisely?*

**OCA Response:** The marginal cost of energy should be used as one component of the avoided cost of supply. For PJM companies, the locational marginal price (LMP) for the EDC zone for the hours when reductions occur may be the most reasonable measure.

- h) *Should the methodology for calculating the Net Present Value (NPV) and B/C ratio set forth in The California Standard Practice Manual - Economic Analysis of Demand-Side Programs and Projects (July 2002) be used, or is there a better alternative?*

**OCA Response:** The OCA would support adoption of the California methodology.

- i) *What discount rate should be used in the calculation of NPV? How frequently should it be reevaluated? Should it be established for each EDC service territory, or for the Commonwealth as a whole?*

**OCA Response:** The OCA's preliminary research identified three approaches to the discount rate. The three methods identified to date are use of a Treasury Bill rate, a market discount rate, and the utility's cost of capital. The Commission should establish the discount rate and should consider periodic updates. It should be noted that the higher the discount rate, the less attractive long term energy efficiency benefits appear to be.

- j) *Should the elements used in the calculation of an EDC's total annual revenue be the same elements used to calculate the "avoided monetary cost of supplying electricity" under the TRC test?*

**OCA Response:** No. The total annual revenue of the EDC may not be the same as avoided cost of supply particularly for demand response measures that impact peak prices in a few specific hours each year.

- k) *The gas industry raised some interesting points on the net impact of displacing natural gas heating equipment (space and water) with electricity heating equipment. Should the TRC test include parameters to capture the consequences of net energy gains or losses in delivering alternative fuels to consumers?*

**OCA Response:** As the OCA understood the testimony of the gas industry, there should be consideration of whether natural gas heating should displace electric space heating or water heating. The total resource cost test can be applied to such measures as explained in the California Standard Practice Manual. Such measures should be considered as part of an overall Plan. The OCA would note that the question implies that natural gas heating equipment would be displaced by electric heat. It is the opposite approach that would be considered under the gas industry testimony.

#### **4. Evaluation, Measurement and Verification:**

- a) *Should the Commission use a statewide, independent evaluator hired by the Commission to review EDC compliance with Act 129, pursuant to 2806.1(b)(1)(i)(J)? What would be the advantages and disadvantages of consolidating this review process?*

**OCA Response:** The Commission should consider a statewide, independent evaluator. Such an approach would provide consistent evaluation of all EDC Plans.

- b) *What programs lend themselves to a “deemed savings” approach, and what programs require more rigorous pre- and post-verification processes? How often should savings estimates be reviewed and how?*

**OCA Response:** The Commission’s Technical Reference Manual provides a compilation of programs that would lend themselves to a “deemed savings” approach.

- c) *The Commission has a revised draft update to the 2005 Technical Reference Manual (TRM) that provides energy savings calculations for standard measures. The draft update is ready to be reviewed by interested parties. Should the Commission use a Secretarial Letter process to seek comments on this and subsequent updates to the TRM in the future? What timetable would be optimal for periodically updating the TRM?*

**OCA Response:** The Commission should use a working group procedure to update the TRM. The working group procedure worked well in developing the manual.

- d) *In addition to the TRM for standard measures, should the Commission adopt a standard measure and evaluation protocol for determining the energy savings from the installation or adoption of non-standard or custom measures not addressed in the TRM? If so, what protocols should be adopted? Comments to date have included the following protocols: 1) International Performance and Measurement Verification Protocol; 2) ISO New England Protocol; and 3) DOE Energy Star Portfolio Manager.*

**OCA Response:** The OCA recommends that the Commission adopt a standard measurement and evaluation protocol. The Commission may also wish to consider the measurement and evaluation protocols that PJM is in the process of developing in conjunction with its proposal to allow DSM measures and energy efficiency measures to participate in the RPM capacity auctions.

- e) *How might the Commission simplify and streamline the monitoring and verification of data so as to maximize resources for program measures but enable a thorough evaluation of program results consistent with Act 129 requirements?*

**OCA Response:** The use of the Technical Reference Manual would provide one means of simplifying and streamlining verification under a deemed savings approach.



- f) *Should the Commission adopt standard data collection formats and data bases for the evaluation of program benefits and results that would be used across all EDC service territories?*

**OCA Response:** Yes. Standard data collection formats and data bases will assist the Commission in evaluating the measures and Plans and in identifying the best measures.

**5. Revenue Requirement:**

- a) *The Act defines "Electric Distribution Company Total Annual Revenue" as amounts paid to the EDC for "generation, transmission, distribution and surcharges" by retail customers. What "surcharges" should be included in the calculation of an EDC's total annual revenue?*

**OCA Response:** All surcharges and riders should be included in the total annual revenue determination.

**6. Cost Recovery Issues:**

- a) *Can one class of customers have EE&C charges in excess of 2% of class revenues, due to an abundance of cost effective opportunities relative to other customer classes, while overall EE&C charges remain below 2% of revenues for the utility as a whole?*

**OCA Response:** Yes. The 2% limitation is based on total annual revenue and need not be applied on a class basis. It is likely that cost effective savings opportunities will be greater for some classes than for others. Those opportunities should be maximized.

**7. CSP Issues:**

- a) *Does the definition of "Conservation Service Provider" (CSP) in the Act prohibit an affiliated company of an EDC from serving as a CSP to an EDC other than its affiliate?*

**OCA Response:** The definition does not seem clear. A reasonable approach may be to prohibit an affiliated company of an EDC from serving as a CSP to the EDC with which it is affiliated, but to allow such an affiliate to serve as a CSP for wholly unrelated EDCs.

- b) *Are there existing barriers to CSP market development that the Commission should address in the context of Act 129? For example, what data access, meter access or other barriers should the Commission accelerate resolution of in order to enhance Act 129 goal achievement?*

**OCA Response:** The OCA is not aware of such barriers, but would be willing to work with CSPs to eliminate any unjustified barriers that are identified.

- c) *How should the Commission ensure that EDC self supplied EE&C programs are more cost effective than similar services offered by CSPs? Should this Commission require EDCs to demonstrate in their implementation filing that their self supplied program is more cost effective than similar CSP provided services?*

**OCA Response:** The cost effectiveness of a program will be established through the total resource cost test. The Commission is accustomed to reviewing many EDC self supplied services for reasonableness, and should use the same standards as it applies in rate cases. It is also likely that the Commission will have information from CSPs and other EDC's Plan implementation or bid responses if it wishes to assess whether the costs incurred by an EDC in implementing its programs are reasonable.

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