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**Office of Energy and
Technology Deployment**

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Commonwealth of Pennsylvania
Secretary's Bureau
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Docket No. M-2008-2069887	Template for Pennsylvania EDC Energy Efficiency and Conservation Plans
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Dear Secretary McNulty:

Enclosed please find the Department of Environmental Protection's comments on the Template for Pennsylvania EDC Energy Efficiency and Conservation Plans.

Respectfully Submitted,

/s/ Daniel Griffiths

Daniel Griffiths
Deputy Secretary Director
Energy, Innovations and Technology Deployment

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

*Template for Pennsylvania EDC Energy
Efficiency and Conservation Plans*

Docket No. M-2008-2069887

The Department of Environmental Protection (Department) thanks the Public Utility Commission (Commission) for the opportunity to provide comments on the Template for Pennsylvania EDC Energy Efficiency and Conservation Plans (EE&C plans). This template is a useful tool for both the EDCs and the public as it solicits information in greater detail than is contained in Act 129 or the Commission's Implementation Order and provides for a more uniform process for plan development and review. The Department also believes that the template provides important elements that can substantially improve EE&C plans. These elements include, among others, "early warning systems" to identify successful or substandard programs and descriptions of the EDC's approach to overseeing program implementers. See sections 4.1.4 and 4.2.2. While this template will improve the quality of EE&C plans, the Department believes that several additional features are needed to ensure that the clear language of Act 129 is followed and the public's confidence in the EE&C plans is maintained.

The Department suggests that the template be modified to include the following critical concepts: 1) Revenues that an EDC may lose as a result of demand reduction produced by Act 129 programs can not be included in the cost of the Act 129 programs; 2) Only energy conservation measures paid for by electric utilities under approved Act 129 programs may be used to comply with the Act; 3) Only demonstrated savings created by approved Act 129 programs, and never economic factors or climate, may be used to demonstrate compliance with

Act 129 and; 4) Only energy savings demonstrated to have actually occurred in a given year may be used to satisfy compliance with Act 129 in that year.

Lost Revenue Cost Recovery

Act 129 clearly prohibits EDCs from recovering revenues that are lost as a result of reduced electricity consumption or shifting energy demand pursuant to the implementation of an EE&C plan. 66 Pa. C.S. § 2806.1(k)(2). Revenues lost as a result of these programs cannot be included in the costs of the programs. Including the revenues lost by installing a CFL in the cost of the CFL in an Act 129 program would grossly increase the cost of conservation programs to rate payers, would destroy the ability of such programs to be effective, and was rejected by the sponsors of Act 129 and Act 129 itself.

As contemplated by Act 129, EDCs have two options for dealing with revenue declines whether from Act 129 programs or for other reasons. The EDCs can file a distribution rate proceeding, where rates can be established on the basis of current electricity sales. Revenues lost as a result of these Act 129 programs cannot be included in the costs of the programs. The Department also believes that lost revenues could be addressed through a properly designed decoupling mechanism and the Department would encourage EDCs to file appropriate rate decoupling petitions with the PUC. Finally, the Department believes that EDCs should certify as part of their EE&C plans that lost or decreased revenues are not being recovered through the section 1307 cost recovery mechanism. Section 7.2 of the template should be revised to include this certification.

Program Coordination

Section 9.2.3 of the template asks EDCs to describe how the EE&C plan will leverage and utilize other financial resources, including funds from other public and private programs.

The Department believes that EE&C plans should be developed in coordination with the existing third party programs. Coordinated development of new programs could provide EDCs with the opportunity to learn from the existing programs and to harmonize their efforts in providing services.

However, an EDC should only be allowed to take credit for reductions that are directly related to specific activities listed in their approved programs. Through the Alternative Energy Investment Act and the American Recovery and Reinvestment Act, the Commonwealth will be providing significant incentives for energy conservation and efficiency projects. While EDCs should coordinate implementation of their plans with the Commonwealth (and other energy efficiency programs) to take advantage of available synergies, the Commonwealth's efforts should not be credited towards meeting the EDC's obligations. The "savings approach" adopted by the Commission clearly precludes EDCs from claiming credit for activities or forces beyond the measures identified in their plans. Section 9.2.3 of the template should be revised to stress this requirement.

Economic and Climate Factors

Similar to the Commonwealth's energy conservation efforts, economic factors such as the crisis we face today or cooler than normal summer temperatures cannot be used as a basis for demonstrating compliance with Act 129. Only reductions resulting from activities that are identified and measurable under the approved program should be credited to the EE&C plan. Reductions that occur as a result of unforeseen circumstances such as those described, should NOT count toward achievement of an EDC's goals. If the Commission determines that forces other than implementation of the plan are responsible for the reductions in consumption, it

should not allow the EDC to recover the costs of plan, impose a civil penalty and take over implementation of the plan as required by Act 129.

The Commission's Implementation Order indicates that weather and load factors be considered when evaluating energy conservation "custom measures"¹ at the time the plans are reviewed and approved (but not peak demand measures, See Implementation Order pages 19-20). Even under these circumstances weather and economic factors cannot be used to justify compliance as a proper evaluation will eliminate the impact of these factors. Section 6.1.2 should be amended to require a description of how EDCs will account for weather or load factors when using custom measures.

Measurement of Savings

Act 129 requires that an EDC's EE&C plan reduce electricity consumption by at least 1% by May 31, 2011 and 3% by May 31, 2013 based on expected consumption for June 1, 2009 through May 31, 2010. It has come to the Department's attention that some EDCs believe that these percentage reductions can be met by amortizing the life savings of a conservation measure in the compliance year. That is, the lifetime savings of a measure (like a CFL) would be presumed to have occurred in a single year – perhaps after some discount rate is applied.

Permitting such an acceleration of deemed savings would turn Act 129 into a farce. The goal of Act 129 is to achieve actual reductions in electricity consumption. To achieve that goal, only energy savings demonstrated to have actually occurred in a given year may be used to satisfy compliance with Act 129 in that year. Accordingly section 9.1.2 should be amended to clearly state this requirement.

¹ Measures that are not considered deemed savings measures.

The Department thanks the Commission for this opportunity to comment on the implementation of Act 129 and looks forward to working with the Commission, the EDCs and other parties to achieve the goals of this important act.