**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of West Penn Power Company :

d/b/a Allegheny Power for Approval of its :

Energy Efficiency and Conservation Plan, :

Approval of Recovery of Costs Through a : M-2009-2093218

Reconcilable Adjustment Clause and :

Approval of Matters Relating to the Energy :

Efficiency and Conservation Plan :

**RECOMMENDED DECISION**

Before

Dennis J. Buckley

and

Elizabeth H. Barnes

Administrative Law Judges

 This Decision recommends that the Pennsylvania Public Utility Commission (Commission) approve the Petition of West Penn Power Company d/b/a Allegheny Power (Allegheny or Company) for Approval of its Energy Efficiency and Conservation Plan (EE&C Plan), Approval of Recovery of Costs Through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan (Second Amended Plan), as modified, below. The Second Amended Plan was filed on September 10, 2010, pursuant to 66 Pa. C.S. § 2806.1(i)(1).

 This Decision incorporates a consensus History provided by the parties which has been expanded to include earlier proceedings and Orders at this docket so as to maintain continuity and context. This Decision also incorporates three separate Stipulations entered into between Allegheny and individual parties, an Overview of Plan Changes, and proposed Ordering paragraphs. While minor stylistic changes have been made to the consensus History, to the Stipulations and to the proposed Ordering paragraphs so that they conform with established Office of Administrative Law Judge (OALJ) drafting practices, the consensus History, the Stipulations, the Overview of Plan Changes, and the proposed Ordering paragraphs are presented, below, as provided by the parties, with their terms unaltered.

I. HISTORY OF THE PROCEEDING

 A comprehensive “Background” of the steps taken by the Commission to implement Act 129 is set forth in the Commission’s Order entered October 23, 2009, at this docket, and that “Background” is incorporated herein by reference.[[1]](#footnote-1)

 In sum, Allegheny filed its original EE&C Plan on July 1, 2009, in conformity with the requirements of Act 129 of 2008, 66 Pa. C.S. § 2806.1 (Act 129 or The Act). The Act expanded the Commission’s oversight responsibilities and imposed new requirements on electric distribution companies (EDCs), with the overall goal of reducing energy consumption and demand. Allegheny’s original EE&C Plan was referred to the Office of Administrative Law Judge (OALJ) for hearings. After holding hearings on July 31, 2009, and on August 19‑20, 2009, Administrative Law Judge (ALJ) Katrina L. Dunderdale certified the record to the Commission on September 10, 2009, for consideration and disposition.

 Subsequently, in *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan*, Docket No. M‑2009‑2093218 (Order entered October 23, 2009), the Commission approved in part and rejected in part the EE&C Plan as filed and required Allegheny to submit a revised Plan within sixty days.

 The Company submitted its revised EE&C Plan to the Commission for consideration and disposition. By Order entered March 10, 2010, the Commission approved in part and rejected in part Allegheny’s revised EE&C Plan. The Commission required Allegheny to submit a further revised Plan within sixty days.

 On April 29, 2010, Allegheny filed further modifications to its EE&C Plan (the First Amended Plan) in conformity with the Commission’s October 23, 2009 Order.

 On June 23, 2010, the Commission entered an Order approving Allegheny’s First Amended Plan.

 In a Secretarial Letter dated June 24, 2010, at Docket No. M-2008-2069887, the Commission directed all EDCs that were required under Act 129 to file EE&C Plans to submit their 2010 Act 129 annual report and any proposed EE&C plan revisions to the Commission by September 15, 2010.[[2]](#footnote-2) In its Act 129 *Implementation Order* entered January 16, 2009,[[3]](#footnote-3) the Commission had established the annual report filing as the opportunity for EDCs and other interested parties to propose recommendations for revisions to EE&C plans.

 The Secretarial Letter also stated that any interested party could make recommendations for plan improvements or object to proposed EE&C Plan revisions within 30 days of the filing of the annual reports and proposed EE&C Plan revision filings. Interested parties would have 20 days to file replies to any recommendations for plan improvements or objections to plan revisions, after which the Commission would determine whether to rule on the recommended changes or refer the matter to an ALJ for hearings and a Recommended Decision.[[4]](#footnote-4)

 On September 10, 2010, Allegheny filed with the Commission an Amended EE&C Plan (Second Amended Plan) pursuant to 66 Pa. C.S. § 2806.1(i)(1), and a Petition for Approval of the Second Amended Plan (Petition). Answers and comments to the Petition were filed by the Office of Small Business Advocate (OSBA), the Pennsylvania State University (PSU), and the West Penn Power Industrial Intervenors (WPPII).

 On October 18, 2010, the Association of Community Organizations for Reform Now (ACORN) filed a Petition to Withdraw its intervention in the initial Company EE&C Plan filing. Also on October 18, 2010, the Pennsylvania Communities Organizing for Change (PCOC) filed a Petition to Intervene and comments on the Second Amended Plan. The Company filed a reply to the comments of the OSBA, the WPPII, PSU and PCOC on November 1, 2010.

 In a Secretarial Letter dated November 4, 2010, the Commission noted that the OSBA requested hearings in this proceeding and that PSU and the WPPII requested that the Commission investigate the Second Amended Plan. Accordingly, the Commission granted those requests and referred the proceeding to the OALJ. The Commission further directed that the presiding ALJ issue a Recommended Decision by December 20, 2010, that Exceptions would be due no later than January 5, 2011, and that no Replies to Exceptions would be accepted.[[5]](#footnote-5) The case was assigned to ALJ Elizabeth H. Barnes and ALJ Dennis J. Buckley (ALJs).

 Consistent with the First Prehearing Conference Order issued in this case on November 4, 2010, an Initial Prehearing Conference was scheduled for November 9, 2010, and was conducted as scheduled. Allegheny Power, the Office of Trial Staff (OTS), the Office of Consumer Advocate (OCA), the OSBA, PCOC, the WPPII, the Department of Environmental Protection (DEP) and PSU appeared at that conference. In the Second Prehearing Conference Order, a litigation schedule was established that set November 24, 2010 as the due date for Intervenor Direct Testimony, December 1, 2010 for all Parties' Rebuttal Testimony, a hearing date of December 3, 2010, and a due date for Main Briefs of December 10, 2010.

 In a Third Prehearing Conference Order dated November 10, 2010, the ALJs granted ACORN's Petition to Withdraw Intervention. In a Fourth Prehearing Conference Order, also dated November 10, 2010, the ALJs granted PCOC’s Petition to Intervene.

 Discovery responses were provided to the OSBA by Allegheny. Direct Testimony in the form of OSBA Statement No. 2, the Supplemental Direct Testimony and Exhibits of Robert D. Knecht, was served by the OSBA on November 24, 2010. On December 1, 2010, Allegheny Power served the Rebuttal Testimony of Edward C. Miller, Statement No. 1-REB and Raymond E. Valdes, Statement No. 2-REB.

 On December 3, 2010, the ALJs conducted an evidentiary hearing in Harrisburg, Pennsylvania. The pre-filed testimony of Allegheny Power and the OSBA was admitted into evidence. In addition, the ALJs admitted into the record Allegheny Power Filing Exhibit 1, the Petition and Second Amended EE&C Plan Filing, as well as separate Joint Stipulations entered into between the Company and the OSBA, between the Company and PCOC, and between the Company and the WPPII that resolved all disagreements between Allegheny and those parties. Counsel agreed that in view of the Joint Stipulations, there were no disputed issues to refer to the ALJs for adjudication.

 At the hearing on December 3, 2010, the parties also agreed to formally submit to the ALJs, in writing, by December 10, 2010: the parties positions relative to the three Stipulations to resolve outstanding issues between Allegheny the OSBA, PCOC and the WPII; a consensus History of the case; and proposed Ordering Paragraphs in lieu of formal briefs. Allegheny subsequently offered to provide an Overview of Plan Changes. The consensus History, proposed Ordering Paragraphs and Overview of Plan Changes were circulated among the parties between December 3, 2010 and December 10, 2010. On December 10, 2010, the parties filed letters variously stating acceptance or non-opposition to the three Stipulations, the consensus History of the case, the proposed Ordering Paragraphs, and the Second Amended EE&C Plan as modified. There are no outstanding objections to the proposed amendments to Allegheny’s EE&C Plan, and no further hearings are required in this matter.

II. THE STIPULATIONS

 Allegheny Power resolved all issues between itself and three parties in the case through the vehicle of Joint Stipulations. These stipulations can be considered modifications of the Second Amended EE&C filing and are summarized as follows.

 Allegheny Power – OSBA Joint Stipulation

The Allegheny Power – OSBA Joint Stipulation establishes that the Company will not oppose OSBA's raising in the 2011 EE&C Pa PUC reconciliation proceeding the issue of whether the additional costs allocated to Small Commercial and Industrial customers over the costs that would have been collected under the currently effective EE&C Plan were unreasonably charged to Small Commercial and Industrial customers.[[6]](#footnote-6) The Company reserves its defenses relative to this issue. In the event paragraph 18 of the pending settlement of the proposed merger between FirstEnergy Corp and Allegheny Energy, Inc. is approved without modification and the merger closes, OSBA is barred from raising the issue in the 2011 EE&C reconciliation proceeding.[[7]](#footnote-7)

 Allegheny Power has also agreed as part of this Joint Stipulation to provide supporting detail for the allocation of common costs in the 2011 EE&C reconciliation proceeding.

 Allegheny Power – WPPII Joint Stipulation

 The Allegheny Power – WPPII Joint Stipulation reflects the Company's agreement to reduce the budget of the Custom Applications Program by $930,000. This reduces the costs allocated to Rate Schedules 40, 44 and 46, which impact WPPII members, by approximately $570,000, and reduces the cost allocated to Rate Schedules 30 (large), 41, and Tariff 37 by approximately $360,000. This budget reallocation results in a $465,000 expansion of the Residential CFL Rewards Program budget and a $465,000 expansion of the Residential Whole Home Appliance Efficiency Program budget. These additional costs will be recovered from residential customers through Rate Schedule 10. In order to allow prompt implementation of the Amended EE&C Plan, the Joint Stipulation provides for Commission approval of these budget amendments, with submission of Plan and program revisions associated with these budget changes no later than as part of the annual review of the 2010 Plan year.

 The Joint Stipulation also provides $130,000 in funds, not recoverable through the EE&C Plan surcharge[[8]](#footnote-8) or through the Company's retail rates, to eligible customers on Rate Schedules 40, 44 and 46 for completed energy audit services or for projects selected and completed under the Company's Custom Applications Program, via a one-time contribution up to $10,000 per customer, not to exceed the customer's cost of completing such services or projects and not to exceed $130,000 in the aggregate. Eligibility and customers notice provisions are also part of the Joint Stipulation.

 The Joint Stipulation addresses EE&C Plan incremental cost increases that WPPII raised in objections to the smart meter settlement submitted in Docket No. M-2009-2123951. Therefore, the Joint Stipulation provides for WPPII supporting the Company's Amended EE&C Plan and withdrawing its objections to the smart meter Joint Petition for Settlement. In the event Company monitoring of the Amended EE&C Plan indicates sufficient progress toward achievement of Act 129 goals is not being achieved, or customer use of the Custom Applications Program warrants increasing its budget, the Company may propose further amendments to Plan budgets and programs. The Stipulating Parties reserve all rights in any proceeding considering further plan amendments, which can be proposed as part of the annual review process or at other times.

 Allegheny Power – PCOC Joint Stipulation

The Allegheny Power – PCOC Joint Stipulation confirms that the Company will target energy conservation services to low-income families residing in multi-family properties. These services primarily include those offered under the Low Income Home Performance Check-Up Audit and Appliance Replacement Program.[[9]](#footnote-9) The services will be provided to multi-family properties providing affordable housing to low-income families, regardless of whether the multi-family housing account is classified as individual low-income residential, non-profit, governmental or commercial.

 Allegheny Power will provide targeted outreach and marketing of the Commercial HVAC Efficiency Program to non-profit, governmental or commercial multi-family properties providing affordable housing to low-income families. In addition, Allegheny Power will expand its Joint Utility Usage Management Program for low-income customers in 2011, including expansion of its existing partnership with Columbia Gas of Pennsylvania, and to other interested gas companies in the Company's service territory.

III. OVERVIEW OF PLAN CHANGES

 Allegheny Power submitted for approval an EE&C Plan to comply with Act 129. The Company’s Act 129 EE&C Plan was approved by Commission Orders dated October 23, 2009, March 1, 2010, and June 23, 2010. In its Orders, the Commission cited concerns related to the Company’s reliance on the rapid deployment of smart meters and encouraged the Company to develop an alternative EE&C plan that is “less reliant” on smart meters.

 The Company’s alternative EE&C Plan is based on additional experience gained since filing its original EE&C Plan in 2009. This additional experience permitted the Company to develop an alternative EE&C Plan placing greater emphasis on non-Smart Meter enabled programs to meet the requirements of Act 129. The additional experience gained that underpins the alternative EE&C Plan includes:

* The June 2010 Technical Reference Manual Update, which provides deemed savings for prescriptive energy efficiency and conservation measures;
* The efforts to develop Interim Deemed Savings by the Technical Working Group under direction of the Statewide Evaluator for additional prescriptive energy efficiency and conservation measures;
* The measurement and verification plans being established in consultation with the Company’s measurement and verification contractor and the Statewide Evaluator;
* Implementation and Program Management of the Company’s Act 129 EE&C programs to date.

 The changes to the Company’s EE&C Plan related to Smart Meters can be summarized as follows:

1. The Company’s alternative EE&C Plan removes the following Smart Meter enabled programs to reduce reliance of the Plan on the rapid deployment of Smart Meters:
	* Residential Efficiency Rewards Rate;
	* Pay Ahead Smart Service Rate;
	* Hourly Pricing Option Rate;
	* Programmable Controllable Thermostat (PCT) Demand Response Program.
2. The Company’s alternative EE&C Plan maintains the following voluntary Smart Meter enabled programs to offer a demand response program to all customer classes and support time-of-use/real-time pricing plans:
	* Critical Peak Rebate (CPR) Rate Offering for residential customers;
	* Time of Use (TOU) with Critical Peak Pricing Rate Offering for Commercial / Industrial Small and Government, School and Non-Profit customers.

 Additional EE&C Plan changes were required due to changes to the Smart Meter programs listed above as well as on the additional experience gained since the Company filed its original EE&C Plan in order to meet the requirements of Act 129. Also, some program name changes result from the program changes and the name change is represented by “(old /new)” nomenclature below. The program changes include:

1. Home Performance Program: The Company consolidated the “Check Up” and “Comprehensive” audit measures included in the Home Performance Program into a single “In Home” audit measure to simplify program design and administration. This, in conjunction with a revised estimate of program participation based on feedback from program management, results in a decreased program budget.
2. Low Income Room Air Conditioner Replacement Program: The Company removed this as a stand-alone program and instead provided for the replacement of room air conditioners through the Company’s Low Income Home Performance Check Up with Appliance Replacement Program. Room Air Conditioner Replacement is already included in the Company’s Low Income Home Performance Check Up with Appliance Replacement Program and the removal of this stand alone program removes duplication of this measure in the Company’s EE&C Plan.
3. Commercial and Industrial Drives Program: The Company removed this program and instead provided for the installation of energy efficient drives through the Company’s custom programs. The Company plans to provide for Commercial and Industrial Drives through the existing Custom Technology Applications and Custom Applications Programs due to the requirement for custom measurement and verification protocols. Handling energy efficient drives and custom measurement and verification protocols through the custom programs leverages existing processes and streamlines program administration.
4. Residential (HVAC/Whole Home Appliance) and Commercial HVAC Efficiency Programs: The Company replaced the incentive for the installation of new energy efficient HVAC units with an incentive for the maintenance of existing HVAC units. The Technical Reference Manual provides for energy and demand savings for maintenance activities of residential HVAC units. The change to providing an incentive for maintenance activities provides the opportunity for more customers to participate due to the much lower cost of performing maintenance as opposed to the higher cost of new installations.
5. Commercial (Lighting/Products) Efficiency Program: The Company revised its Commercial (Lighting/Products) Efficiency Program to expand the eligible lighting measures by leveraging the June 2010 Technical Reference Manual update. This provides the opportunity for more customers to participate in the program and for additional energy and demand savings due to the addition of different lighting types and sizes that are contained in Appendix C of the Technical Reference Manual. This also results in an increased program budget.
6. Custom Technology Applications Program: The Company expanded the Custom Technology Applications Program to provide the opportunity for more customer projects to be completed. This is based on program implementation and management to date which supports the opportunity for additional customer projects to be completed than originally projected. This results in an increased program budget.
7. Custom Applications Program: Similar to the expansion of the Custom Technology Applications Program, the Company expanded the Custom Applications Program to provide the opportunity for more customer projects to be completed. This is based on program implementation and management to date, which supports the opportunity for additional customer projects to be completed than originally projected. This results in an increased program budget.
8. Residential Energy Star Domestic Water Heating measure: The Company added a new measure to the Residential (HVAC/Whole Home Appliance) Efficiency Program. This is based on the development of Interim Deemed Savings for new Energy Star Domestic Water Heating types, which provides the opportunity for more customers to participate in the program and supports the opportunity for additional energy and demand savings not already included in the Company’s EE&C Plan.

1. Commercial Smart Strips measure: The Company added Smart Strips to the Company’s Commercial (Lighting/Products) Efficiency Program. This is based on the development of Interim Deemed Savings for Smart Strips, which provides the opportunity for more customers to participate in the program and supports the opportunity for additional energy and demand savings not already included in the Company’s EE&C Plan.

 Additional non-program changes were completed to the alternative EE&C Plan including:

* Updated cost categories (administration, marketing, outside services, measurement and verification and customer incentives) based on actual costs or revised participation or costs associated with the program changes. Includes reallocation of common costs based on the revised program portfolio.
* Updated cost-effectiveness testing based on revised programs, program impacts and program costs.

 Detailed Program Descriptions and budgets associated with the above program changes can be found in Section 3.2 of the Amended EE&C Plan. Due to changes in program make up and budgets, the Amended EE&C Plan causes a shift in program spending from residential to non-residential programs. Table 5: Budget and Parity Analysis Summary of the Amended EE&C Plan provides the following budget shifts by customer sector (current approved plan to alternative plan):

* Residential: 43% to 36%
* Residential, Low Income: 14% to 13%
* Small Commercial and Industrial: 21% to 27%
* Large Commercial and Industrial: 16% to 18%
* Government/Non-Profit: 6% to 5%

 The Company solicited input and feedback from stakeholders during development of the Amended EE&C Plan. In addition to informal discussions the Company conducted two additional stakeholder meetings on June 10, 2010 and August 5, 2010, and appreciated the stakeholder involvement and feedback provided.

IV. DISCUSSION

 It is important from the outset to make clear that this Recommended Decision is applicable only to this proceeding, and it is not intended as dispositive of issues in the outstanding cases of: *Petition of West Penn Power Company d/b/a Allegheny Power for Expedited Approval of its Smart Meter Technology Procurement and Installation Plan* at Docket No. M-2009-2123951 (Smart Meter Proceeding), and the *Joint Application of* *West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code Approving a Change of Control of West Penn Power Company and Trans-Allegheny Interstate Line Company*,at Docket Nos. A-2010-2176520 and A-2010-2176732 (Merger Application).[[10]](#footnote-10)

 Further, what is being offered in this case is not a settlement, *per se*. It is a modification of the Second Amended Plan that was originally filed by Allegheny on September 10, 2010, arrived at after discussion with the active parties in this case and agreement among the parties with respect to three separate stipulations, a consensus History and Proposed

Ordering Paragraphs submitted to the ALJs for consideration and inclusion in this Recommended Decision. While this is an unusual way of proceeding, it is not barred by the Commission’s procedural regulations, and given the severe time-constraints imposed on the parties, it is a workable resolution.

 In Commission proceedings, the proponent of a rule or order bears the burden of proof. 66 Pa. C.S. § 332(a). To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

 In this proceeding, Allegheny is asking the Commission for approval to make changes to Allegheny’s EE&C Plan. Those changes are not opposed by any of the active parties in this case.

 Act 129 requires that an EDC’s plan reduce electric consumption by at least 1% of its expected consumption for June 1, 2009, through May 31, 2010, adjusted for weather and extraordinary loads. This 1% reduction is to be accomplished by May 31, 2011. 66 Pa. C.S.

§ 2806.1(c)(1). By May 31, 2013, the total annual weather‑normalized consumption is to be reduced by a minimum of 3%. 66 Pa. C.S. § 2806.1(c)(2). Also, by May 31, 2013, peak demand is to be reduced by a minimum of 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. 66 Pa. C.S. § 2806.1(d)(1).

Act 129 also establishes the following plan requirements:

(1) The plan shall include specific proposals to implement energy efficiency and conservation measures to achieve or exceed the required reductions in consumption.

(2) A minimum of 10% of the required reductions in consumption shall be obtained from units of federal, state and local government, including municipalities, school districts, institutions of higher education, and nonprofit entities.

(3) The plan shall explain how quality assurance (QA) and performance will be measured, verified and evaluated.

(4) The plan shall state the manner in which the plan will achieve the requirements of the program and will achieve or exceed the required reductions in consumption.

(5) The plan shall include a contract with one or more conservation service providers selected by competitive bid to implement the plan or a portion of the plan.

(6) The plan shall include estimates of the cost of implementation of the energy efficiency and conservation measures in the plans.

(7) The plan shall include specific energy efficiency measures for households at or below 150% of the federal poverty income guidelines. The number of measures shall be proportionate to those households’ share of the total energy usage in the service territory. The EDC shall coordinate these measures with other programs administered by the Commission or another federal or state agency. The expenditures of an EDC under this clause shall be in addition to those made under the Commission’s Regulations at 52 Pa. Code Chapter 58.

(8) The plan shall include a proposed cost-recovery tariff mechanism to fund the EE&C measures and to ensure full and current recovery of the prudent and reasonable costs of the plan, including administrative costs.

(9) The EDC shall demonstrate that the plan is cost-effective, using a TRC Test approved by the Commission, and provides a diverse cross section of alternatives for customers of all rate classes.

(10) The plan shall require an annual independent evaluation of its cost-effectiveness and a full review of the results of each five-year plan and, to the extent practical, how the plan will be adjusted on a going-forward basis as a result of the evaluation.

(11) The plan shall include an analysis of the EDC’s administrative costs.

66 Pa. C.S. § 2806.1(b)(1)(i)(A)-(K).

 The Act permits an EDC to recover, on a full and current basis from customers, all reasonable and prudent costs incurred in the provision or management of an EE&C plan. The costs, however, are limited to 2% of the EDC’s total annual revenue as of December 11, 2006. 66 Pa. C.S. § 2806.1(g) and (k). The Act also provides that the Commission is to recover from EDCs its costs of implementing the EE&C Program. 66 Pa. C.S. § 2806.1(h).

 The issue before us is whether the changes to the EE&C Plan proposed by Allegheny and agreed or not-objected to by the active parties results in an EE&C Plan that continues to satisfy the requirements of Act 129 and the prior related Orders of the Commission. Having reviewed the extensive record in this proceeding as well as Allegheny’s September 10, 2010, Petition, supporting documents and the subsequent Stipulations of the parties, we find that this Second Amended EE&C Plan conforms with the requirements of Act 129, specifically the requirements enumerated at 66 Pa. C.S. § 2806.1(b)(1)(i)(A)-(K).

V. CONCLUSIONS OF LAW

 1. The Commission has jurisdiction over the parties and subject matter of this proceeding.

 2. Act 129 of 2008, 66 Pa. C.S.A. §2806.1, required each electric distribution company to develop and file an Energy Efficiency and Conservation Plan with the Commission. 66 Pa. C.S.A. §2806.1(b)(1)(i).

 3. Act 129 of 2008, 66 Pa. C.S.A. §2806.1, requires that the Commission have in place an Energy Efficiency and Conservation Program that includes procedures to make recommendations as to additional measures that will enable an electric distribution company to improve its plan and to exceed the required reductions in consumption under 66 Pa. C.S.A. §2806.1(c) and 66 Pa. C.S.A. §2806.1(d). 66 Pa. C.S.A. §2806.1(a)(6).

 4. The Commission’s prior Order in *Energy Efficiency and Conservation Program Implementation Order*, Docket No. M-2008-2069887 (Order entered January 16, 2009), requires each electric distribution company to submit an annual report to the Commission. relating to the results of each company’s Energy Efficiency and Conservation Plan. See also 66 Pa. C.S.A. §2806.1(i)(1).

 5. Pursuant to 66 Pa. C.S. §332(a), the burden of proof in this proceeding is upon the Petitioner, West Penn Power Company d/b/a Allegheny Power.

 6. The Petitioner, West Penn Power Company d/b/a Allegheny Power, has met its burden of proof in this proceeding. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990).

V. ORDER

 THEREFORE,

 IT IS RECOMMENDED:

1. That the Joint Stipulation between West Penn Power Company d/b/a Allegheny Power and the Office of Small Business Advocate is approved.

 2. That the Joint Stipulation between West Penn Power Company d/b/a Allegheny Power and Pennsylvania Communities Organizing for Change is approved.

 3. That the Joint Stipulation between West Penn Power Company d/b/a Allegheny Power and the West Penn Power Industrial Intervenors is approved.

 4. That the Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Amended Energy Efficiency and Conservation Plan, as modified by the Joint Stipulations, is approved, including the associated program and budget changes.

 5. That the Amended Energy Efficiency and Conservation Plan submitted by West Penn Power Company d/b/a Allegheny Power and modified by the Joint Stipulations meets the requirements of Section 2806.1(a), (b) and (c) of the Pennsylvania Public Utility Code.

 6. That within thirty (30) days of the entry date of the Commission’s Order, West Penn Power Company d/b/a Allegheny Power shall file tariffs, including supporting materials, implementing the Amended Energy Efficiency and Conservation Plan surcharge rates, and the provisions of the Joint Stipulations, consistent with this Order.

Date: December 17, 2010 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Dennis J. Buckley

 Administrative Law Judge

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 Elizabeth H. Barnes

 Administrative Law Judge

1. See *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of Its Energy Efficiency and Conservation Plan, Approval of Recovery of Costs Through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093218 (Order entered October 23, 2009) at 1-6. [↑](#footnote-ref-1)
2. Secretarial Letter, at 1. [↑](#footnote-ref-2)
3. *Energy Efficiency and Conservation Program Implementation Order*, Docket No. M-2008-2069887 (Order entered January 16, 2009). [↑](#footnote-ref-3)
4. Secretarial Letter, at 2. [↑](#footnote-ref-4)
5. Secretarial Letter, at 1. [↑](#footnote-ref-5)
6. The reconciliation proceeding is required to be filed no later than March 31, 2011. [↑](#footnote-ref-6)
7. Paragraph 18 provides for credits to Small Commercial and Industrial customers for incremental costs arising from the [Second] Amended EE&C Plan compared to the currently effective EE&C Plan. [↑](#footnote-ref-7)
8. Data and supporting tables with respect to the proposed surcharge rates, their calculation and allocation may be found in the Allegheny Energy Efficiency and Conservation Plan filed on September 10, 2010, at pages 167-168, 268-298. [↑](#footnote-ref-8)
9. Elimination of Allegheny Power's Low Income Room Air Conditioner Replacement Program will not reduce services to low-income households participating in the Low Income Home Performance Check-Up Audit and Appliance Replacement Program. [↑](#footnote-ref-9)
10. In its letter of December 10, 2010, agreeing with the consensus History and Ordering Paragraphs and non-objection to the Plan Overview provided by Allegheny, the OSBA noted its continuing objection to the non-unanimous Settlement in the Smart Meter Proceeding and its continued opposition to the non-unanimous Joint Petition for Settlement in the Merger Proceeding. [↑](#footnote-ref-10)