COMMONWEALTH OF PENNSYLVANIA

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June 25, 2012

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

Re: Energy Efficiency and Conservation Program
Docket No. M-2012-2289411

Dear Secretary Chiavetta:

Enclosed for filing please find the Office of Consumer Advocate's Comments in the above-captioned proceeding.

Sincerely,

Tanya J. McCloskey

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Senior Assistant Consumer Advocate
PA. Attorney ID# 50044

Enclosures
cc: Megan Good, CEP (E-Mail Only)
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Energy Efficiency and Conservation Program : Docket No. M-2012-2289411
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COMMENTS
OF THE OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

On May 11, 2012, the Pennsylvania Public Utility Commission entered its Tentative Implementation Order (Tentative Order) regarding Phase II of the Energy Efficiency and Conservation Programs required under Act 129 of 2008. 66 Pa.C.S. § 2806.1. The Commission also released a Baseline Energy Efficiency Study and a Market Potential Study conducted by the Statewide Evaluator (SWE) to assess the further potential for energy efficiency in the service territories of Pennsylvania's major Electric Distribution Companies (EDCs). The OCA commends the Commission for taking these initiatives to prepare for Phase II. The OCA also wishes to thank the Commission for providing the stakeholders the opportunity to meet with the SWE to discuss the Market Potential Study and the Baseline Study. The exchange of information with the SWE, and the ability to have questions answered about the Studies was very valuable in considering the Commission's proposals for Phase II.

The OCA will not respond to each issue identified in the Tentative Order. The OCA will focus on several key issues it has identified with the Commission's proposals. The primary issues that the OCA will address in these comments are the Planning Timeline, the length of the Phase II Plan, and the need to address the inclusion of demand response programs in Phase II. The OCA respectfully submits that the Commission should extend the Planning Timeline by three months so that the EDCs and stakeholders have adequate time to develop Phase II Plans. A three month extension of the Planning Timeline will also allow for the SWE to complete the evaluation of the demand response programs and thus facilitate the inclusion of demand response programs and new demand response targets in the Phase II Plans. To that end, the OCA also recommends that the Commission utilize a four year Plan length, a time period necessary not only for the development of energy efficiency programs but for the full development of cost-effective demand response programs and the achievement of new demand response targets by May 31, 2017 as required by Act 129.

In these Comments, the OCA will also discuss its support for the Commission's proposal to create an energy savings targets for the low income customer sector and the government/education/non-profit sector. These sectors provide many challenges and the specific energy savings goals will ensure that the proper attention is given to these customer groups in program design. The inclusion of multi-family public housing in the government/education/non-profit sector will also facilitate program delivery to this very challenging sector.

In the Comments below, the OCA details some specific proposals for the Phase II Energy Efficiency and Conservation Plans. The OCA looks forward to continuing to work with the EDCs, the stakeholders, the Commission and the SWE through the robust stakeholder process that facilitated the development of the successful Phase I EE&C Plans under Act 129 of 2008 to implement Phase II in accordance with the Final Implementation Order.

II. COMMENTS

A. Planning Timeline for Phase II

A major concern for the OCA remains the Commission's proposed procedural schedule for review and implementation of Phase II. The Commission timeline provides only a 90 day period (from August 2, 2012 to November 1, 2012) for the design of the programs and Plan in response to the Final Implementation Order. Tentative Order at 33. Most critically, the new Plans would be due on November 1, 2012, before the results of the evaluation of the demand response programs will be available. As the OCA discussed in its Comments of April 17, 2012 and will discuss below, this timeline results in the Commission's recommendation to forego the inclusion of demand response programs in Phase II EE&C Plans and limits the ability of the stakeholders to include lessons learned from the Phase I Plans into the Phase II Plans. See, OCA Comments of April 17, 2012 at 2-5.

While the OCA shares the Commission's desire to try to complete this process expeditiously and align with the currently scheduled end of the Phase I Plans, the OCA is concerned that the proposed schedule provides insufficient time for the EDCs and stakeholders to develop, review and present their recommendations. Additionally, the proposed timeline as currently set out could detract from the benefits of a robust stakeholder process that helped shape the Phase I Plans. It will be difficult to engage the stakeholders in a meaningful process in the short time period between the Final Implementation Order and the filing of any Phase II Plans. Moreover, the current procedural schedule precludes the development of new demand response targets which could result in many lost opportunities and appears to preclude the inclusion of existing demand response programs in Phase II EE&C Plans.

To avoid these issues and to ensure that the Phase II Plans are well-reasoned, appropriately focused, and can reflect the demand response evaluation, the OCA proposed in its Comments of April 17, 2012 that the schedule be extended by three months. OCA Comments of April 17, 2012 at 2-5. The Commission did not specifically address this proposal in its Tentative Order. Under the OCA's proposal, the Commission would extend the current Phase I Plans by three months so that there is no disruption in existing programs. The OCA anticipates that a three month extension should be sufficient, which would result in any Phase II Plans beginning in September 2013.

Extending the existing programs for a three month period would not be unduly difficult nor would it raise issues regarding the continuing program expenditures. The programs that would be continued have been approved by the Commission and are the subject of continuing review and monitoring by the EDCs, the stakeholders and the Commission. Additionally, contract extensions or addendums with the Conservation Service Providers (CSPs) may be required to modify the end date of the Phase I Plans. While the OCA recognizes that such modifications might need to be brought before the stakeholder groups and the Commission, such a filing could be addressed as a reasonable minor modification under the Commission's procedures.

The OCA submits that extending the Phase I Plans to September of 2013 will allow for continuation of the robust stakeholder process, development of better-focused Phase II Plans following the Final Implementation Order, inclusion of demand response programs and new demand response targets, and sufficient time from a Final Order on each individual EE&C Plan to implementation of each Plan. To further facilitate this approach, the OCA recommends that any savings accrued during the three month extension could be "banked" by the EDCs for application during the Phase II Plans as set out in the Tentative Order at 29.[1]

The OCA provides the following proposed timeline:

August 2, 2012	• Final Implementation Order on Public Meeting Agenda
November, 2012	• SWE Evaluation of Demand Response and Demand Response Potential Study
January 2, 2013	• EDCs file EE&C Plans, incorporating Demand Response recommendations
May 1, 2013	• Commission rules on EE&C Plans
September 1, 2013	• EE&C Phase II begins

The OCA submits that even this schedule is expeditious. But the schedule proposed by the OCA would allow the stakeholders time to develop the next round of energy efficiency programs and time to incorporate new demand response targets if such are recommended by the Statewide Evaluator upon completion of the demand response evaluation.

For these reasons, the OCA respectfully requests that the Commission consider modifications to its proposed timeline to allow three additional months for review of the SWE studies, evaluation of the demand response options, and formulation of the Phase II EE&C Plans. Simultaneously, the Commission should extend the Phase I Plans by three months.[2]

B. Phase II Plan Length

In the Tentative Implementation Order, the Commission proposes to implement a three-year Phase II program from June 1, 2013 through May 31, 2016. Tentative Order at 10. The Commission stated that a major consideration in the selection of the three-year length of

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1 The EDCs could continue to collect EE&C costs at the levels charged on May 31, 2013.

2 The OCA would note that the exact date of the completion of the Demand Response Market Potential Study is not set forth in the Tentative Order. The Tentative Order states that it will be available in late 2012. If the Study is not available in November of 2012 an additional month could be added to the extension time frame to accommodate the review and incorporation of the Study into the Plans.

program is the contingency of dealing with a potential demand reduction target that will need to be accomplished by May 31, 2017. Id. The OCA submits that the Commission should establish a length for the Phase II Plans that is sufficiently long to establish robust programs that consumers can depend on for a reasonable period of time and to fully accommodate the continuation of demand response programs in the Phase II Plans. The OCA submits that a four year EE&C Plan length combined with a robust stakeholder process may provide the best framework for efficient program management.[3] A four year program through May 31, 2017 and will also accommodate the statutory requirement to achieve further demand reductions (if ordered by the Commission) by May 31, 2017. 66 Pa.C.S. §2806.1(d)(2).

In recommending a Phase II Plan length of four years, the OCA has two primary considerations in mind.[4] First, as discussed in more detail below, the OCA urges the Commission to continue to include demand response programs and demand response targets in the Phase II EE&C Plans. If demand response continues as a component of the Phase II Plans, it is not necessary to artificially shorten the Phase II Plan period so that demand response can be addressed at a later time.[5] In Section II.A., the OCA provided a Planning Timeline to allow for the full incorporation of demand response in Phase II.

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3 In the Tentative Order, the Commission identified two parties, Duquesne and PECO that recommended a four year plan length. Tentative Order at 9. In its Comments of April 17, 2012, the OCA also recommended a four year plan length. OCA Comments of April 17, 2012 at 5-7.

4 The OCA is aware that many parties propose a five year plan period. The OCA would not object to the five year plan period. The OCA does, however, view the four year period as the minimum plan period necessary to properly develop and implement full Phase II Plans.

5 The OCA would also note that the three year Plan period proposed by the Commission may not accommodate the statutory requirement that new demand response targets be achieved by May 31, 2017. For those targets to be achieved, the demand response programs must be implemented and operational by the Summer of 2016. Under the Commission's proposal, Phase III, which would include the new demand response programs, would begin on June 1, 2016. Thus, the new programs would only start to be implemented in the summer of 2016 when full compliance must be measured. The programs would not have sufficient implementation time to reach full participation levels before the compliance time frame.

Moreover, for demand response to realize its full benefits for customers, including the possibility of participating in the PJM Reliability Pricing Mechanism (RPM) auctions, there must be certainty that the demand response programs will be in existence three years in advance of the RPM base residual auction bid opportunity. The base residual auction occurs in May of each year. By way of example, an EE&C Plan that is implemented in June of 2013 would first be able to bid demand response into the PJM RPM base residual auction in May of 2014 for a June of 2017 delivery year. A three year program would not accommodate this opportunity. A minimum of four years is needed to allow for program implementation and development of participation before the program can be bid into the three-year forward PJM RPM base residual auction.

The OCA also recommends a four year Phase II Plan length to allow the programs to operate over a sufficient period of time for the impacts and cost-effectiveness of the programs to be reasonably determined. At the same time, a four year Plan length should allow for market developments to be captured in future planning. As significant new appliance, manufacturing and lighting standards are implemented over the next several years, a four year plan length will allow the impacts of these standards to be assessed and incorporated into future planning.

The OCA would also note that a shorter plan period will increase administrative costs and will more quickly focus attention away from program implementation to future program planning. Planning for the next phase will have to begin before results of current efforts are fully known.

The OCA submits that the Phase II Plan should be of sufficient duration to provide certainty with respect to incentives and programs, allow for a response to evolving markets and new standards, accommodate the continuation of demand response, and reduce administrative costs. A four year Phase II Plan length with a robust stakeholder process and the potential for efficient mid-course corrections will achieve these goals. The OCA recommends that the Commission adopt a four year Phase II Plan length rather than the three year Plan length set forth in the Tentative Order.

C. Demand Response

1. Introduction

The Commission proposes to forego setting any peak demand reduction targets for the proposed Phase II EE&C Plan period. Tentative Order at 15-16. Instead, the Commission proposes to evaluate the cost-effectiveness of demand response programs and conduct a demand response market potential study so that demand response targets and programs can be included in a Phase III Plan period. Tentative Order at 15-16. The Commission anticipates tha the Market Potential Study will be completed in late 2012. Tentative Order at 15. During Phase II, the Commission encourages EDCs, CSPs, and all stakeholders "to review the cost-effectiveness of particular measures and their potential applicability to Pennsylvania electric customers outside the realm of Act 129 EE&C Programs." Tentative Order at 17. The OCA respectfully requests that the Commission reconsider this proposal.

There are two issues that the Commission should address. The first concerns the continuation of the existing demand response programs that were implemented as part of Phase I. As discussed below, the OCA strongly urges the Commission to continue the Phase I demand response programs, but to allow some program design changes to better target the demand response to high value time periods and to address other implementation issues identified in Phase I. Second, the OCA urges the Commission to also consider a planning timeline and plan length (discussed above in Sections II.A. and II.B) that will allow for the incorporation of new, and modified, demand response targets.

The OCA supports the inclusion of demand response programs and new demand response targets in the Phase II Plans. Demand response programs can be beneficial to customers in many ways, especially by reducing the amount of peak load that must be served (thus avoiding costly increments of capacity resources), impacting high peak hour prices, and reducing customer bills. The OCA recognizes that implementation and compliance issues have been presented in the Phase I EE&C Plans, particularly regarding the reference in Act 129 to the "100 hours of highest demand." 66 Pa.C.S. §2806.1(d)(1). The OCA also recognizes that there will not be full experience with the operation of the demand response programs that are now in place until the end of the Summer of 2012 as this will be the first year where the full demand response measures are deployed.[6] The OCA submits, however, that these issues need not stand in the way of the continuation of demand response programs in the Phase II EE&C Plans or in the setting of new targets for Phase II. As discussed above, the OCA has proposed a Planning Timeline that would address the timing and evaluation issues. The OCA's proposed Planning Timeline would allow for the incorporation of new demand response targets and additional demand response programs to achieve those targets. If the Commission determines to proceed with its proposed timeline, the OCA submits that at a minimum the existing demand response programs with some revised program parameters should continue as part of Phase II.

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[6] While the evaluation of the Summer 2012 experience will be important to the consideration of the impact of the demand response programs, the OCA urges the Commission to not constrain the analysis to the Summer of 2012 savings. Many of the demand response measures have useful lives of 15 years and will provide savings and benefits over that life that should be captured in the evaluation. Additionally, different programs designs may need to be considered as the implementation of the "100 hours of highest demand" requirement may have impacted the costs of the program.

2. Existing Demand Response Programs Implemented In Phase I Should Be Continued With Revised Program Parameters To Target High Value Periods.

Under the Commission's Tentative Order, it appears as if the demand response programs implemented as part of Phase I could go dark for a three year period. The Tentative Order does not call for the continuation of these programs under Act 129, but rather encourages the stakeholders to seek to find ways to continue the programs outside of Act 129. Tentative Order at 17. As an initial step, the OCA respectfully requests that the Commission include the continuation of existing demand response programs in the Phase II EE&C Plans. Continuing the demand response portion of the Plan is essential to ensure that the value of the applications and devices installed to meet the demand reduction and savings goals of Phase I are not lost.

Critically important, the significant benefits of demand response measures *that have already been paid for* by customers should not be lost as we work towards appropriate resolution of these issues. This is particularly critical for the residential demand response programs, such as the direct load control programs, that have significant up front costs that have already been sunk, but also have significant long term benefits when properly maintained and deployed each year over the life of the equipment. To put it another way, demand response programs, once implemented, should be sustained so that the continuing savings made possible by the initial investment in the programs can be realized. For example, if as part of a demand response program, an EDC installs an interrupting switch (a direct load control device for residential customers) on the customer's premise and a communication system to control that switch, those infrastructure costs are sunk whether the switch is used or not. The demand savings, on the other hand, can be achieved only when the switch is activated as part of a program. So the program to maintain and operate the switch and communicating system must be funded in order to achieve the ongoing benefits from the existing investment.

The Commission suggests that the demand response measures be continued in some fashion outside of Act 129 EE&C programs. Tentative Order at 17. The OCA respectfully submits that at least for the residential demand response programs, this would not be workable. The means of funding for a demand response program outside of Act 129 would be through the PJM markets.[7] The primary value that can be obtained in the PJM markets at this time for demand response is the ability to bid the program into the base residual capacity auction, known as the RPM auction. The RPM base residual auction is designed to obtain capacity commitments three years in advance. The most recent RPM auction, conducted in May of 2012, was to procure capacity for the June 1, 2015 to May 31, 2016 planning year. The revenues to be derived from the auction if the program clears the auction will not be paid out until that 2015-2016 time period. The RPM auction provides no current funding stream for the programs to sustain themselves throughout Phase II.[8]

Similarly, the incremental auctions conducted between the RPM base residual auctions have not provided significant funding to sustain these programs. The incremental auctions are, by their nature, relatively modest auctions designed to address imbalances for the upcoming planning year. The prices obtained in these auctions are somewhat variable, and have

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7 At page 16 of the Tentative Order, the Commission in addressing establishing new targets did state that it was premature to determine whether demand response programs should be left to the competitive wholesale markets. Tentative Order at 16. The OCA submits that it is also premature to leave the continuation of existing programs to the competitive wholesale markets.

8 Once programs are established and certain, the OCA agrees that the PJM RPM auction should be looked to as a source of support for these programs. To get there, however, EE&C Plans will need to be of sufficient length and certainty so that the demand response programs can be counted on three years in advance. Pennsylvania has not yet reached that steady state with its EE&C and demand response programs.

tended to be low. They do not provide a consistent, or sufficient, means of funding the programs in the interim.[9]

The OCA respectfully submits that the best means of securing the benefits of the significant investment in demand response that has already been made is to continue the existing programs in Phase II. [10] The OCA recommends that the Commission continue the existing demand response programs but allow for program design changes for Phase II that will address some of the implementation and cost concerns identified in Phase I. Of particular concern, for the continuation of the programs, the Commission should modify the "100 hours of highest demand" requirement. Instead, program parameters should be directed toward achieving the highest value. The OCA discusses below some possible changes for continuation of the existing demand response programs as well as for future demand response programs.

3. <u>Modifications To The Demand Response Program Parameters Are Needed To Develop The Most Cost-Effective Programs</u>.

The OCA recognizes that certain implementation and compliance issues that arose during Phase I must be addressed for both the continuation of existing programs and the establishment of new targets so that the most cost-effective demand response program design can

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[9] Demand response can also participate in the PJM energy markets and ancillary services markets. Participation in these markets requires active, day-to-day management and decision making. This may not be possible at this time for the EDC programs. This concern particularly applies to residential load response programs.

[10] The Commission has expressed a concern about moving forward with setting new targets for demand response programs without knowing whether the programs are cost-effective. Tentative Order at 15. The Commission also expresses concern that it cannot simply extend the current demand response programs without associated targets. Id. The OCA submits, however, that the Commission could continue with the existing demand response programs at the total MW level of demand response secured in Phase I until such time as the Statewide Evaluator completes the evaluation of the demand response programs and makes recommendations for new targets. Such an approach would ensure that existing programs do not lapse while the evaluation is being completed. Under Section 2806.1(d)(2), the Commission would not need to complete its evaluation of demand response until November 2013. The section does not require a cessation of demand response until that evaluation is completed even though it is after the stated May 31, 2013 compliance deadline. The Commission has correctly determined to move forward with its evaluation sooner, which the OCA supports. But that action should not result in a loss of the demand response programs.

be achieved for Phase II and beyond. The most difficult issue regarding the design of the programs has been the reference in Act 129 to the "100 hours of highest demand." 66 Pa.C.S. §2806.1(d)(1). There is no way to know with any certainty what the top 100 hours will be in any given compliance period until after the compliance period is over. But, the EDC must show reductions in these top 100 hours. This leads to a need for EDCs to "over comply" to attempt to ensure that the top 100 hours requirement is met. This need to over comply has cost consequences which may reduce the comparative benefits of a more properly designed demand response program.[11]

If one recognizes that the goal of the top 100 hours requirement in the statute was to reduce peak loads and, correspondingly, to reduce price, then measuring demand response in the top 100 hours may not be the optimal method to achieve this goal. The cost that can be avoided by demand response is a function of the load level, the available capacity resources and available transmission. Abnormally high temperatures and extreme weather can increase expected load (outside the highest 100 hours), as can higher levels of industrial activity. Power plant outages during near peak conditions (outside the highest 100 hours) may cause higher marginal production costs during non-peak periods. Similarly, the outage of transmission or distribution lines (due to storms, accidents or component failure) can increase local or regional costs by making lower cost supplies unavailable. In each of these examples, the cost of power and capacity could be higher than was anticipated during the top 100 hours targeted by the EDC.

The OCA submits that by utilizing demand response programs during the hours of highest value, rather than a specified 100 hours, the cost effectiveness of the demand response programs could be enhanced and the goals of Act 129 could be achieved. Several states,

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[11] The OCA suggests that the Demand Response Market Potential Study consider different demand response program designs that address high value periods rather than the current implementation approach.

including California, Colorado, Delaware, Illinois, Maryland and Ohio, require the implementation of demand response programs using this type of approach and some of these states can be looked to for guidance. In Maryland, reductions are ramped up over time and made in per capita peak energy demand (measured in kW), while in California, reductions vary by utility based on a fixed percentage of the savings goals. The lessons learned in other states can be applied in Pennsylvania to develop an alternative approach.

For example, the Commission could examine the top 100 hours from a prior historic period to determine how many megawatts of demand reduction capability an EDC should have available to it. As for calling the demand response and for compliance purposes, the Commission could use triggers—such as price or load—to determine when some or all of the demand response resources should be called. An approach similar to this is used in New York by Consolidated Edison Company (Con Ed). In Con Ed in New York, the demand response is called when the day-ahead forecast is 96% or greater of forecasted summer system peak. Similarly, price could be used to trigger the demand response. In this way, adequate levels of demand response would be available to the EDC, the goal of impacting price and load could be achieved, but the difficulties of "predicting" the top 100 hours would be eliminated.

The OCA urges the Commission to consider these alternative approaches to demand response when determining program design for the continuation of the existing demand response programs in Phase II and when determining new demand response targets. Demand response, when properly designed, can provide significant benefits. Such programs should remain an integral part of the Act 129 EE&C Plans.

D. Proposed Additional Incremental Reductions in Consumption

1. Establishment of Consumption Reduction Targets For A Four Year Plan Length.

The OCA recommends that the Commission consider a four year Phase II Plan period rather than the three year plan period. In light of this, the OCA recommends that four year goals be established from the Market Potential Study and from other information provided to the Commission through this Comment process to match the four year plan period recommended by the OCA.[12] If a four year Plan length is adopted as the OCA recommends, the Commission should consider setting a two year target and a four year target to ensure that the programs stay on track.

2. Low Income Sector Carve Out

The Commission is proposing to continue the requirement that each EDC's EE&C Plan include specific energy efficiency measures for households at or below 150% of the Federal Poverty Income Guidelines in proportion to that sector's share of the total energy usage in the EDC's service territory. Tentative Order at 23. The Commission is also proposing that the Phase II EE&C Plan obtain a minimum of 4.5% of the consumption reduction targets from this sector. Tentative Order at 24. The OCA supports this requirement.

In the OCA's view, the General Assembly sought to establish a set aside for low income customers through Section 2806.1(b)(1)(i)(G) to ensure that low income customers receive a significant share of the benefits that energy efficiency can bring to all customers. The OCA submits that the most effective way to address low income customer needs is to ensure that

[12] Currently, the Market Potential Study provides charts for three year and five year targets. A four year target will need to be derived from the study. In addition, the OCA anticipates that many parties will provide additional information to the Commission through the Comment process about the appropriate savings goals. This information will also need to be accounted for in setting four year Plan goals.

a specific percentage of the overall savings to be achieved from the Plan is realized through programs directed to the low income customer sector.

The Commission also proposes that EDCs retain the flexibility to voluntarily expand the low income programs to include households up to 250% of the Federal Poverty Income Guidelines to facilitate attainment of the 4.5% reduction in consumption for the low income sector. Tentative Order at 27. While the OCA understands that extending the income level to 250% of the Federal Poverty Income Guidelines may have some benefits, particularly in reaching senior citizens and the disabled, the OCA remains concerned that by extending the income guideline, attention to the needs of the most income challenged could be diverted. The purpose of the carve out and the specific target is to ensure that those with the lowest income continue to receive a proportionate share of the benefits related to these programs.

The OCA submits that a more beneficial approach may be for the Commission to require that the EDCs pay specific attention to the needs and challenges of customers with incomes between 150% and 250% of the Federal Poverty Income Guideline during program selection and design for Phase II. The needs of this group of customers may be different than customers with much lower incomes who are the focus of the statutory carve out for customers with incomes at or below 150% of the Federal Poverty Income Guidelines. 66 Pa.C.S. §2806.1(b)(i)(G). A more targeted approach to the specific needs of customers with incomes between 150% and 250% of the Federal Poverty Income Guidelines, perhaps with some initial pilot programs, may be more workable.

As such, the OCA supports that Commission's proposal to have EDC programs attain 4.5% of the total reduction in consumption from the low income sector. At this time, the OCA recommends that the income level not be extended to include customers with incomes between 150% and 250% of the Federal Poverty Income Guidelines. Rather, the OCA recommends that the Commission direct the EDCs to specifically address the needs and challenges for this customer segment as it selects and designs its programs.

3. Government/Education/Non-Profit Carve Out

For Phase II, the Commission proposes to continue the requirement that the EE&C Plan obtain a minimum of 10% of the consumption reduction requirements from the federal, state and local governments, including municipalities, school districts, institutions of higher education and non-profit entities. Tentative Order at 19. The OCA supports this proposal. These sectors are unique and the customer base is often hard to reach. This sector, while presenting many challenges, also presents many opportunities for energy efficiency. For the reasons set forth in the Commission's Order and the OCA's Comments of April 17, 2012, the OCA continues to support the Commission's proposal. See, OCA Comments of April 17, 2012 at 13-16.

The Commission also proposes to include multi-family public housing in this sector and recommends that this housing sector be given special emphasis and consideration. Tentative Order at 20-22. The OCA also supports this proposal. As the Commission notes in its Tentative Order, this sector provides significant potential and can have many benefits, including benefits to moderate and low income households in Pennsylvania.

The OCA submits that energy efficiency upgrades in multi-family public housing are a cost-effective means to reduce energy consumption, maintain housing affordability, and create healthier, more comfortable living environments for moderate and low income families. These properties, particularly those that are master-metered under a commercial account, can present challenges for program design and delivery. In these properties, as the owners pay the utility bill, energy efficiency improvements will lower operating costs and thereby reduce the need for owners to raise rents. Allowing the savings from programs for non-profit, master-metered, multi-family public housing units to be included in this sector should help to direct some much needed attention to this sector.

E. Cost Recovery

1. Application of Excess Phase I Budget

The Commission proposes to allow the EDCs the full Phase II budget, regardless of Phase I spending and consumption reduction attainment. Tentative Order at 62. The Commission also finds that it is more beneficial to allow the EDCs to spend Phase I budgets to attain savings in excess of the compliance targets so that the EDC programs do not "go dark." Tentative Order at 63. The OCA agrees with these proposals.[13] The Commission also proposes that the use of Phase I budget spending expire on May 31, 2013, and that any excess amounts be returned to ratepayers. The OCA agrees with the general concept set forth by the Commission but in accordance with the OCA's Planning Timeline proposal set forth above, the OCA recommends that Phase I be extended to September 2013 and that EDCs continue to collect its surcharge amounts approved for Phase I until that time to fund the continuation of the Phase I programs. The amounts that were unspent for Phase I programs by September 2013, if any, would then be returned to customers.

2. Cost Recovery Tariff Mechanism

In its Tentative Order, the Commission proposed to continue the recovery of the costs of the Plan through a Section 1307 mechanism. Tentative Order at 67-68. For Phase I programs, EDCs collected a levelized annual amount, *i.e.*, the authorized annual 2% budget

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[13] On a related topic, the OCA also supports the Commission's proposal to allow EDCs that accrue savings in excess of the 3% target to use those savings towards Phase II consumption reduction targets. See, Tentative Order at 29.

amount, to support the program with no interest on any over- or under-recovery. As the programs were in the initial phase of development, there was no reconciliation during the Plan period of actual expenses incurred in a given year to the actual revenues received in a given year. Reconciliation at the end of the Plan period based on the total budget collected and the total actual costs provided the mechanism for ensuring that ratepayers only paid for actual Plan expenditures. It is the OCA's view that this levelized recovery mechanism, without interest, provides the necessary spending flexibility for dynamic programs and allows the lessons learned during program deployment to be readily incorporated. This approach also assures that the EDC never collects more than the authorized 2% budget amount in any annual period.

The Commission now proposes that the surcharge be developed using projected annual program costs rather than the levelized budget amount. The Commission also proposes that the actual expenses in a given year be reconciled to the actual revenues received in a given year. Interest of 6% would apply to any over- or under-recoveries. Tentative Order at 69. The OCA has several concerns with the Commission's proposal and the possible impacts of this proposal on the Plans.

Initially, it is not clear to the OCA how the Commission intends for the annual reconciliation procedure and the 2% annual spending limitation to fit together. If, for example, an EDC has an annual 2% spending amount of $50 million and only spends $40 million, does the EDC lose the right to spend the missing $10 million in another year? Under a standard Section 1307 mechanism, there would be no carry forward of unspent amounts so this overcollection would be returned to the customer with interest. If the intent, however, is to allow the EDC to spend this $10 million at some point during the Plan period, the reconciliation process may result in unnecessary fluctuations in the surcharge for customers. In addition, the EDC would be paying interest on the $10 million overcollection in this example which could reduce the available dollars to be spent on the programs. In the opposite situation where there is an undercollection and interest paid by customers, this interest payment could cause ratepayers to pay more than the 2% limitation. 66 Pa. C.S. §2806.1(g).

When there is a capped spending amount, with a total budget based on the length of the Plan, attempting to reconcile actual expenses and actual revenues on a yearly basis produces unusual swings in cost recovery and in surcharge amounts charged to customers. If the Commission intends to allow an EDC to spend all of its approved budget over the course of the plan period to achieve the savings targets, a levelized approach will provide more certainty and stability in cost recovery that will benefit both the program and ratepayers.

F. Continuation of Contracts with CSPs

In the Tentative Order, the Commission states that it will require the EDCs to competitively bid all Conservation Service Provider (CSP) contracts for Phase II programs regardless of whether the EDCs have an existing contract with a CSP to provide services associated with existing measures that will continue for Phase II programs. Tentative Order at 53. The OCA respectfully requests that the Commission reconsider this proposal. Requiring the rebidding of these contracts may result in the loss of valuable experience in program delivery as well as introduce inefficiency to the process.

CSPs that are providing program delivery services for the EE&C programs have developed many systems to coordinate with EDCs, the community and trade allies. Requiring the disruption of these networks without a showing that there is a performance issue might not be cost-effective. The OCA submits that EDCs are working closely with the CSPs and know the market. EDCs are in the best position to determine if a rebid of a CSP contract is necessary or appropriate for a program that will continue into Phase II. The OCA submits that EDCs should not be required to rebid contracts with CSPs for existing programs that will continue in Phase II, but that such decision should be left to the discretion of the EDC based on contract performance and the market. The EDCs should report to the Commission and stakeholders their decisions regarding whether to continue their CSP contracts for continuing programs in the Phase II so that complete information is available.

III. CONCLUSION

The OCA again thanks the Commission for the opportunity to review the Baseline and Market Potential Studies with the Statewide Evaluator and for the opportunity to provide these Comments on the Tentative Implementation Order. The OCA submits that the Commission should implement Phase II in a manner and in a time frame that allows for the full development and continuation of both energy efficiency and demand response programs.

Respectfully Submitted,

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