

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

**Act 129 Energy Efficiency
Program – Phase 2**

**Public Meeting: August 2, 2012
2289411-LAW
Docket No. M-2012-2289411,
M-2008-2069887**

Dissenting Statement of
Commissioner James H. Cawley

Before us is the proposed Implementation Order for all aspects of the Energy Efficiency and Conservation Program (EE&C Program) mandated by Act 129, including adoption of additional incremental reductions in electric consumption and establishment of standards that each electric distribution company (EDC) must attain during the implementation of Phase II of the EE&C Program of Act 129 beginning on June 1, 2013. *See* 66 Pa.C.S. §§ 2806.1 & 2806.2

At the direction of the Commission during the stakeholder process considering Phase II of the EE&C Program, the independent Statewide Evaluator (SWE) conducted Pennsylvania-specific residential, commercial, and industrial baseline saturation studies and prepared a Market Potential Study (Study). Among other things, the Study recommended EDC-specific energy efficiency reduction targets. In addition, the Study found that future acquisition costs will be considerably higher than the \$140 per MWh of weighted cost average acquisition costs experienced in the first two years of the Act 129 EE&C Program.¹ The Study provided reasons in support of the imposition of a 25% acquisition cost adder based upon future projected acquisition costs that the EDCs would incur in meeting their program targets.² Specifically, the SWE looked at administrative costs for implementing programs as well as measure costs and incentive costs on a forward looking basis.³

In its Order today, the Commission finds that the SWE's determination of an acquisition cost of \$221.39 per MWh is credible as a statewide average for Phase II.⁴ The Study methodology averaged the administration costs from Phase I, program years one and two, and increased them by 25%.⁵ The study explains that this change is due to impacts of federal legislation, changed baseline conditions, and

¹ Act 129 Energy Efficiency and Conservation Program Implementation Plan Order, M-2012-2289411, at p. 19 (EEC Program Order).

² ID at pp. 17-18.

³ Market Potential Study at 100.

⁴ EEC Program Order at 18.

⁵ Market Potential Study at 100.

increased saturation of energy efficiency equipment requiring greater marketing and outreach to persuade customers to buy into the measures.

The Commission's Order states that the "adjustment factor was used to account for future uncertainties when establishing program goals. The SWE used their judgment and experience with similar studies and programs, primarily through benchmarking the analysis against similar programs."

It is important to understand that, if the acquisition cost estimates contained in the Study turn out to be lower than estimated, the EDC targets set by the SWE will be achieved at a lower cost, effectively lowering the need to effectuate greater energy efficiencies going forward. However, on the upside, it is also possible that, if such a budget surplus in the last year of Phase II occurs, EDCs will be permitted, as in Phase I, to continue spending their approved budgets until the end of the Phase, thereby garnering additional savings beyond the targets established by the Commission. Such an outcome would be viewed positively by the Commission.⁶

The Commission received significant commentary critical of this 25% adder. While it may be said that the critics of the SWE's adder have not put forth a significant counter proposal, they have provided an abundance of comparable data from other states that calls into question the validity of the SWE's conclusion. Even assuming that the SWE is correct about the added costs, neither the SWE nor the utilities introduced evidence supportive of the 25% adder. Perhaps an adjustment for inflation is reasonable, but clearly there is no evidence to support acquisition costs at this high price.

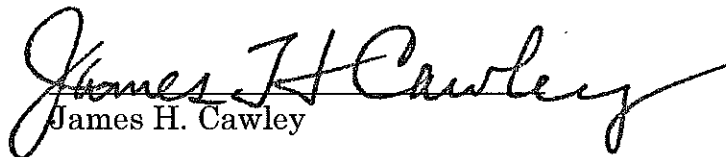
The proper standard for our review, however, is whether or not the acquisition costs are just and reasonable. 66 Pa.C.S. § 2806.1. Although the SWE has certainly provided a rationale as to why there should be an adder, it has not provided support for a determination that the adoption of the 25% adder is just and reasonable. Nor does the possibility that the actual costs will be less than the estimated costs offer any solace. The 25% adder is simply an invitation to profligate spending without accountability. In the end, ratepayers will not receive the proper bang for their buck, and actual consumption targets will be lower than they could be. Adoption of the 25% adder is clearly not within the spirit of Act 129 and in all likelihood is violative of it.

While I acknowledge the expertise of the SWE in reviewing the EE&C Plan performance of the Pennsylvania's EDCs, we need to ensure going forward that our goals are supported by substantial qualitative *and* quantitative evidence. In this proceeding, a number of parties submitted substantial empirical evidence that the

⁶ *Implementation Order*, pp. 19 & 20.

25% administrative cost adder is not justified and not reasonable.⁷ Moreover, the SWE report provides little or no empirical evidence for its position. Given the significant amount of consumer dollars at risk here, it is imperative that our decision making be based on more sound evidence.

For these reasons I must part company with my colleagues and respectfully dissent on this issue.


James H. Cawley

Date: August 2, 2012

⁷ See the Comments of: American Council for an Energy Efficient Economy at 3-5; PennFuture at 4; Sierra Club at 4; Sustainable Energy Fund of Central Eastern Pennsylvania at 6; Reinvestment Fund at 4, Northeast Energy Efficiency Partnerships NEEP) at 3; NEEP Reply Comments at 2; and Energy Association of Pennsylvania at 4.