

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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February 7, 2013

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17105-3265

Re: Petition of Duquesne Light Company for  
Approval of its Act 129 Phase II Energy  
Efficiency and Conservation Plan  
Docket No. M-2012-2334399

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Reply Brief in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Sincerely,

A handwritten signature in cursive script that reads "David T. Evrard".

David T. Evrard  
Assistant Consumer Advocate  
PA Attorney I.D. # 33870

Enclosures

cc: Hon. Dennis J. Buckley, ALJ  
Certificate of Service

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company :  
for Approval of its Act 129 Phase II : Docket No. M-2012-2334399  
Energy Efficiency and Conservation Plan :

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REPLY BRIEF  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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Dated: February 7, 2013

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## I. INTRODUCTION

On November 14, 2008, Act 129 of 2008 (Act 129) became effective. Act 129 contains a requirement for the Pennsylvania Public Utility Commission (Commission) to implement an Energy Efficiency and Conservation (EE&C) Program for Electric Distribution Companies (EDCs) with more than 100,000 customers. *See* 66 Pa.C.S. § 2806.1 *et seq.* The seven largest EDCs—PECO Energy Company (PECO), PPL Electric Utilities, Inc. (PPL), the FirstEnergy Companies (Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company), and Duquesne Light Company (Duquesne or the Company) filed their Phase I EE&C Plans in the summer of 2009. These Phase I Plans expire on May 31, 2013.

On August 3, 2012, the Commission entered its Phase II Implementation Order, tentatively adopting EDC-specific targets for reducing energy consumption for the next EE&C Program term (June 1, 2013-May 31, 2016). Energy Efficiency and Conservation Implementation Order, Docket Nos. M-2012-2289411 and M-2008-2069887 (Order entered August 3, 2012) (Phase II Implementation Order). As part of that Order, each EDC was given an EDC-specific Phase II consumption reduction target. Duquesne's Phase II target was set at 2.0% of its expected sales for the period June 1, 2009 through May 31, 2010. Phase II Implementation Order at 24. The Commission also directed that: (1) 10% of overall consumption reductions come from the Government/Institutional/Non-Profit sector; (2) a plan's portfolio of measures includes a proportionate number of low-income measures, and (3) EDCs obtain a minimum of 4.5% of their consumption reductions from the low-income sector. *Id.* at 45-57. As in Phase I, the total resource cost (TRC) test is to be used to evaluate each EDC's Plan. *Id.* at 78-83.

Act 129 caps annual spending on the Phase II Plan at 2% of the EDC's total revenues for calendar year 2006. 66 Pa.C.S. § 2806.1(g); *see gen'ly* Phase II Implementation Order at 100-119. The Act provides for full and current cost recovery of the Plan costs through an automatic adjustment rider, but prohibits the recovery of lost revenues by the EDC. 66 Pa.C.S. § 2806.1(b)(1)(H). The costs incurred are to be allocated to the classes that directly benefit from the measures implemented, unless a system-wide benefit can be shown.

Duquesne filed its Phase II Energy Efficiency and Conservation Plan (Plan) on November 15, 2012. On December 10, 2012, ALJ Dennis J. Buckley held a prehearing conference where the parties<sup>1</sup> agreed to a procedural schedule, which was memorialized in Judge Buckley's December 12, 2012 Second Prehearing Order (Second Prehearing Order). In accordance with that Order, the Parties (other than Duquesne) submitted Direct Testimony on January 3, 2013; submitted Rebuttal Testimony on January 15, 2013; and conducted an evidentiary hearing on January 18, 2013. In advance of the hearing, Duquesne Light, OCA, CAUSE-PA, CAAP and Comverge reached a full settlement in principle. The January 18 evidentiary hearing was held for the purpose of allowing DII to cross-examine the Company regarding the allocation of program costs to large commercial and industrial customers (Large C&I), and for admitting into evidence the Company's Plan, testimony and exhibits, along with the testimony and exhibits of other parties.

The Second Prehearing Order also provided for the Parties to submit Main Briefs by January 28, 2013, and to submit Reply Briefs, Reply Comments, and/or a Revised Plan by February 7, 2013.

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<sup>1</sup> Active parties in the case include the Company, OCA, the Office of Small Business Advocate (OSBA), Duquesne Industrial Intervenors (DII), Citizen Power, The Coalition for Affordable Utility Service and Energy Efficiency (CAUSE-PA), Citizens Action Alliance of Pennsylvania (CAAP), Comverge, Inc.

Because of the settlement reached on all issues other than the cost allocation issues raised by DII, only Duquesne and DII submitted Main Briefs on January 28.

Wishing to respond to a particular argument made by DII in its Main Brief, the OCA submits this Reply Brief.

## II. SUMMARY OF ARGUMENT

The OCA takes issue with DII's argument that because Duquesne's Large C&I customers are being asked to bear a share of the Phase II EE&C costs that is out of proportion to the share of revenue those customers contribute to the Company, there must be a shifting of EE&C costs away from the Large C&I customers onto other customer classes, including the Residential class. Act 129 imposes no requirement for a proportional allocation of EE&C costs among customer classes. Further, in its Phase II Implementation Order, the Commission clearly stated that it would not require a proportionate distribution of EE&C measures (and therefore costs) among customer classes. Thus, DII is in error in seeking to introduce proportionality between class EE&C cost responsibility and class revenue contribution. However, even if proportionality were a requirement of Act 129, usage, and not revenue would be the proper basis for determining it as the Act's focus is on usage reduction, not reduction in revenue.

## III. REPLY ARGUMENT

### A. Duquesne's Phase II Plan Costs are Appropriately Allocated to Each Customer Class.

In its Main Brief, DII takes issue with the Duquesne's proposed allocation of Phase II EE&C costs among customer classes. Specifically, DII argues that Duquesne allocates a significantly greater percentage of Plan costs to Large C&I customers in comparison to the Large C&I customer classes' contribution to the Company's overall revenue. DII M.B. at 8. DII asserts that the Large C&I customer classes produce 14.4% of Duquesne's revenue, but under the

Phase II Plan are being allocated 36.2% of the costs. Id. This, DII says, is in comparison to the Residential class which generates 59% of Duquesne's revenue but is being allocated 45.4% of Phase II costs, and the Small C&I classes which account of for 16.7% of revenue and are allocated 8.5% of costs. Id. In order to meet the requirements of Act 129, DII submits, a portion of the Phase II costs must be shifted away from the Large C&I customer classes so that the overall cost allocation is "better aligned" with class revenue contribution. Id. at 7. Essentially, DII argues that the EE&C Phase II class cost allocation should be in proportion to class revenue contribution.

DII is incorrect on several counts. First, Act 129 does not require any type of proportionality in the allocation of EE&C program costs. The Act requires two things with respect to the distribution of EE&C programs: (1) that the Commission put in place standards to ensure that each EE&C plan includes a variety of energy efficiency and conservation measures and will provide the measures equitably to all classes of customers, 66 Pa.C.S. §2806.1(a)(5); and (2) that an EE&C plan must be cost effective under the Commission's total resource cost (TRC) test and must provide a diverse cross section of alternatives for customers of all rate classes, 66 Pa.C.S. §2806.1(b)(1)(i)(I). Importantly, in its Phase II Implementation Order, interpreting the requirement that it is to ensure that a variety of measures are applied equitably to all customer classes, the Commission said the following:

The Commission believes the EDCs must offer a well-reasoned and balanced set of measures that are tailored to usage and to the potential for savings and reductions for each customer class. We believe that the overall limitation on cost recovery and the specific limitation tying costs to a benefited class (discussed in Section K of this Implementation Order) will ensure that offerings are not skewed toward or away from any particular class. There is no single set of measures that will fit all EDCs and the myriad mix of customer classes. It is entirely possible that the most cost-effective energy efficiency programs may not come proportionally from each customer class.



The Commission believes that all classes of customers will benefit from a general approach because it has the best potential to impact future energy prices. The Commission will not require a proportionate distribution of measures among customer classes. However, the Commission directs that each customer class be offered at least one energy efficiency program. The Commission believes that, as with Phase I, the initial mix and proportion of energy efficiency programs should be determined by the EDCs, subject to Commission approval. The Commission expects the EDCs to provide a reasonable mix of energy efficiency programs for all customers.

Phase II Implementation Order at 87-88 (emphasis added). It is clear from these statements, which interpret the requirements of Act 129, that there exists no requirement for the type of proportionality of EE&C measures or costs among customer classes that is argued for by DII.

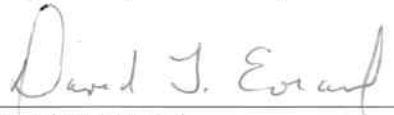
The OCA would also note that Act 129 and the Commission's Implementation Order also point to the importance of usage, not revenues. DII's assertion that the proportions should be based on class revenue contributions ignores this fundamental fact. The very purpose of the energy efficiency and conservation provisions of Act 129 is to reduce electricity usage. The focus is not on revenues. If, for the sake of argument, Act 129 contained a proportionality requirement, the proper basis for applying such a requirement would be on usage, not revenue. Using that criterion, Duquesne's Phase II Plan would not be found wanting. Based on information found in the Plan, the Large Commercial and Industrial classes (including the governmental and nonprofit sectors) are responsible for 44.8% of the overall consumption (usage) in the 2009-2010 forecast adopted by the Commission as the baseline for establishing Phase II reduction targets. Plan at 120-121, Appendix A. At the same time, the Large Commercial and Industrial classes (again including the governmental and nonprofit sectors) are being asked to bear 45.9% of the costs of the Phase II Plan. Plan at 145, Appendix D. Unlike the discrepancy between revenues and costs cited by DII, there is extremely close alignment between usage and costs under the Phase II Plan.

Therefore, DII's argument that the costs of the Phase II Plan are disproportionately slanted toward the Large C&I customer classes and should be reallocated is misplaced. In the first instance, the Commission has made clear that there is no proportionality requirement applicable to the Phase II EE&C plans. Assuming, *arguendo*, that there were, DII's argument also fails because when the costs being assigned to the Large C&I classes are compared with the appropriate metric for Act 129 purposes – Large C&I usage – the percentages (proportions) are nearly identical. DII's argument must be rejected.

#### IV. CONCLUSION

Because neither Act 129 nor the Commission require proportionality in the distribution of EE&C measures or costs among customer classes in the Act 129 Phase II programs, the Commission should reject DII's call for establishing it.

Respectfully Submitted,



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Dated: February 7, 2013

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CERTIFICATE OF SERVICE

Petition of Duquesne Light Company :  
For Approval of its Act 129 Phase II : Docket No. M-2012-2334399  
Energy Efficiency and Conservation Plan :

I hereby certify that I have this day served a true copy of the foregoing, the Office of Consumer Advocate's Reply Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 7th day of February 2013.

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