

COMMONWEALTH OF PENNSYLVANIA



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January 14, 2014

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

Re: Energy Efficiency and Conservation Program
(Amended Demand Response Study)
Docket Nos. M-2012-2289411
M-2008-2069887

Dear Secretary Chiavetta:

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

If you have any questions, please feel free to contact me.

Sincerely,

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

David T. Evrard
Assistant Consumer Advocate
PA. Attorney ID# 33870

Attachment

cc: Megan Good, Bureau of Technical Utility Services
Kriss Brown, Law Bureau
178038

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Energy Efficiency and Conservation Program : Docket Nos. M-2012-2289411
: M-2008-2069887

REPLY COMMENTS
OF THE
OFFICE OF CONSUMER ADVOCATE

The Office of Consumer Advocate (OCA) files these Reply Comments pursuant to the Pennsylvania Public Utility Commission's (Commission) directive in the Tentative Order entered on November 14, 2013 and the Pennsylvania Bulletin published notice on November 29, 2013.

I. INTRODUCTION

On November 14, 2013, the Commission issued its Tentative Order regarding demand response programs under Act 129 of 2008 (the Act or Act 129). 66 Pa. C.S. § 2806.1; Tentative Order at 1-2. The Commission also released for comment the amended Act 129 Demand Response Study (Amended DR Study) prepared by the Statewide Evaluator (SWE). The Amended DR Study assessed the cost-effectiveness of the Phase I peak demand reduction programs operated by the Electric Distribution Companies (EDCs) and performed a Preliminary Wholesale Price Suppression analysis and a Prospective Total Resource Cost (TRC) analysis. The Commission requested Comments on the Amended DR Study, the proposed demand response program methodology for future phases of Act 129, and on alternative peak reduction programs to be studied for inclusion in a subsequent phase of the Energy Efficiency and

Conservation (EE&C) program. Tentative Order at 2, 35. The Pennsylvania Bulletin published notice of the Tentative Order on Saturday, November 30, 2013. Consistent with the Tentative Order, Comments were filed by the following: (1) the Office of Consumer Advocate (OCA); (2) the Energy Association of Pennsylvania (EAP); (3) PPL Electric Utilities Corporation (PPL); (4) the Demand Response Providers, Comverge, Inc., EnerNOC, Inc., and Johnson Controls, Inc.; (5) the Citizens for Pennsylvania's Future, Clean Air Council, Keystone Efficiency Alliance, and the Sierra Club; (6) PECO Energy Company; (7) Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively the FirstEnergy Companies); (8) the Industrial Energy Consumers of Pennsylvania (IECPA), Duquesne Industrial Intervenors (DII), Met-Ed Industrial Users Group (MEIUG), Penelec Industrial Users Group (PICA), Penn Power Users Group (PPUG), Philadelphia Area Industrial Users Group (PAIEUG), PP&L Industrial Customer Alliance (PPLICA), and West Penn Power Industrial Intervenors (WPPII)(collectively the Industrial Customer Groups); and (9) the Electric Power Generation Association (EPGA).

The OCA notes that there is one commonality throughout the Comments. That is, that the top 100 hours methodology compliance approach should not be continued. The SWE's Amended DR Study analyzed whether or not the top 100 hours methodology is cost-effective and determined that as implemented, the costs outweigh the benefits of the program. Tentative Order at 16; Amended DR Study at 54. As discussed at pages 5 to 7 of its Comments, the OCA supports this conclusion and the recommendation that the top 100 hours methodology be discontinued. In light of the uniform agreement on this issue in the Comments, the OCA recommends that the Commission adopt its proposal in the Tentative Order to discontinue the use of the top 100 hours methodology and to consider an alternative approach.

On the issue of proceeding with an alternative methodology, however, there is less agreement. Some Commentators do not recommend continuation of demand response programs based on the SWE's conclusion that the Phase 1 programs were not cost-effective. As explained in more detail below, the SWE's conclusion as to the Phase 1 programs that used the top 100 hours reduction methodology does not provide justification for abandoning the demand response programs contemplated under Act 129. Rather, the Amended DR Study provides a basis for moving forward with an alternative approach to demand response programs that will be cost-effective and will provide benefits to participants and the system as a whole.

The OCA continues to support the implementation of cost effective demand response programs for residential customers as part of the Act 129 Plans. Nothing in the filed Comments has changed the OCA's view that the Amended DR Study provides a reasonable basis to move forward with the design and implementation of residential Demand Response programs contemplated by Act 129. The OCA will not respond to each issue identified in the Comments, but the absence of response should not be construed to connote agreement with other parties' Comments. The OCA limits its Comments to the arguments that the Commission is without authority under Act 129 to move forward with cost-effective demand response programs.¹

¹ The OCA also notes that the Industrial Customer Groups include a proposal to decrease the Large Commercial & Industrial (C&I) customers' Act 129 EE&C Plan budgets by 50% if the DR programs do not continue for Large C&I customers in order to ensure "these customers are not subsidizing the DR goals of other customer classes." Industrial Customer Groups' Comments at 11-12. The OCA submits that there is no basis here to provide for a 50% reduction in the Large C&I customer budget or to support the allegation that other customer classes' DR programs would be "subsidized" by the Large C&I customer program budget. This is particularly the case since Phase II programs are focused on energy efficiency programs and not demand response programs. Budgets are set in each Electric Distribution Company's individual EE&C Plan filing. Any such Comments should be directed to those respective dockets and addressed in those individual EE&C Plan proceedings where the necessary facts can be developed.

II. COMMENTS

EAP, PPL and the FirstEnergy Companies argue that if the SWE determines that the top 100 hours methodology is not cost-effective, *i.e.* the costs of the program outweigh the benefits, then the Commission is barred by statute from further examining whether an alternative demand response design would be cost-effective and from establishing demand response goals and demand response programs. EAP Comments at 5-7; PPL Comments at 6-9; FirstEnergy Companies Comments at 4-7. The OCA submits that such a reading of Act 129 is unnecessarily limiting and contrary to the intent of the statute. Indeed, the Commission rejected these arguments in its Implementation Order regarding Phase 2 programs. Energy Efficiency and Conservation Programs, Docket M-2012-2289411, *slip op.* at 32 (Implementation Order entered August 23, 2012)(Phase 2 Implementation Order). The Commission retains the authority to set goals and implement demand response programs as part of the Act 129 Plans.

The relevant portion of Section 2806.1(d) states:

The plans adopted under subsection (b) shall reduce electric demand as follows:

* * *

(2) By November 30, 2013, the commission shall compare the total costs of energy efficiency and conservation plans implemented under this section to the total savings in energy and capacity costs to retail customers in this Commonwealth or other costs determined by the commission. If the commission determines that the benefits of the plans exceed the costs, the commission shall set additional incremental requirements for reduction in peak demand for the 100 hours of greatest demand or an alternative reduction approved by the commission. Reductions in demand shall be measured from the electric distribution company's peak demand for the period from June 1, 2011, through May 31, 2012. The reductions in consumption required by the commission shall be accomplished no later than May 31, 2017.

66 Pa. C.S. §2806.1(d)(2). The Commission has commented on this subsection and stated its authority and intentions with regard to this statutory provision in its Phase 2 Implementation Order. There, the Commission stated:

The Commission's interpretation of subsection 2806.1(d)(2) of Act 129, 66 Pa.C.S. §2806.1(d)(2), is that, in order to be required to prescribe specific peak demand reduction targets for subsequent phases of Act 129, the demand response programs must be proven to be cost effective. In order to determine the cost-effectiveness of current and potential future demand response programs, the Commission has directed the SWE to complete a demand response study.

Phase 2 Implementation Order at 32-33. The Commission then went on to direct the SWE to evaluate the current demand response programs and whether another peak demand reduction program design is cost effective. Id.

The Commission's interpretation is exactly on point. If the Commission determines that the demand response programs are not cost effective, the Commission is not *required* to set specific peak demand reduction targets. This is very different than a conclusion that the Commission is without authority to establish demand response goals and direct the implementation of demand response programs. The Commission found in its Phase 2 Implementation Order that it would await the analysis of the cost-effectiveness of the current programs and potential future programs, as well as the Demand Response Potential Study, before determining whether to establish incremental compliance targets. Phase 2 Implementation Order at 33-42.

Several of the Comments continue to argue that the Commission is without statutory authority to examine any other form of reduction other than the top 100 hours approach since the amended DR Study has concluded that the programs under this approach were not cost-effective. See, e.g., EAP Comments at 5-7; PPL Comments at 6-9; FirstEnergy Companies Comments at 4-7. Such a reading of the statute is too narrow and limiting of the Commission's authority. First, the statute is clear that the Commission can consider "alternative reductions." Such alternatives could be reductions in the "top 100 hours" requirement and/or reductions in the "4.5% of peak load" specified for Phase 1. The Commission specifically requested the SWE to

examine alternative reduction approaches so that the Commission could give meaning to the portion of the statute about “an alternative reduction” when determining how to move forward with demand response programs. See, 1 Pa.C.S. §1921(a)(“Every statute shall be construed, if possible, to give effect to all its provisions.”)

Moreover, the intent of Act 129 can be seen from its design. Section 2806.1 contemplates well rounded programs that forward the goals of both energy efficiency (Section 2806.1(c)—Reductions in consumption) and demand response (Section 2806.1(d)—Peak demand). Act 129 included energy efficiency programs and demand response programs, as well as carve outs for government, education and nonprofit entities (Section 2806.1(b)(i)(B)) and low income customers (Section 2806.1(b)(i)(G)). The Commission has continued with the energy efficiency programs, the carve out for government/education/nonprofit and the carve out for low income customers. Continuing cost effective demand response programs would ensure that all of the goals of Act 129 are carried forward into subsequent Phases.²

EAP further states that the General Assembly would not allow for ratepayer dollars to support a program that was not cost-effective.³ EAP Comments at 5. The Amended DR Study, however, shows that there are cost-effective demand response program alternatives that could be implemented under Act 129. The Amended DR Study also provided many recommendations for the design of cost-effective demand response programs, particularly for the

² It is also noteworthy that Section 2806.1(d)(2) required that the Commission evaluate whether the benefits of the “energy efficiency and conservation plans” exceeded the costs. The statute does not specifically call for a program by program consideration as urged by some of the comments. As the Commission is well aware, even as to the energy efficiency programs implemented under Act 129 in both Phase 1 and Phase 2, not every single program has a TRC above 1, but the overall Plans were cost effective.

³ The OCA would also note that in its Comments, PECO points out that its existing, Phase II DLC program for Mass Market customers was approved by the Commission as cost-effective last year. PECO Comments at 5. PECO estimated the TRC for its Residential DLC Program at 3.01. *See Petition of PECO Energy Company for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan*, Docket No. M-2012-2333992 (Order entered May 9, 2013) at 12. In the OCA’s view, PECO’s analysis shows that residential direct load control programs can be cost-effective under a variety of designs.

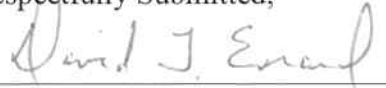
residential customer class. For all the reasons stated in the OCA's Comments, the OCA submits that an alternative demand reduction program for residential customers should be developed and continued as part of Act 129 Plans.

The OCA submits that the Section 2806.1(d)(2) does not preclude the Commission from further exploring the cost-effectiveness of a properly designed and implemented alternative demand reduction program as part of Act 129, nor does it preclude the Commission from establishing targets for cost-effective demand response programs. As set forth in the OCA's Comments, the Commission should expeditiously establish reasonable demand reduction targets and task the EDCs, with the assistance of the stakeholder process, in designing cost-effective demand response programs, at least for the residential customer class.

III. CONCLUSION

The OCA appreciates the opportunity to provide its Comments and Reply Comments on these important issues. The OCA strongly supports the continuation of the Residential Demand Response and Load Control programs in Pennsylvania as such programs can be cost-effective when properly implemented and designed.

Respectfully Submitted,



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