

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ENERGY EFFICIENCY AND CONSERVATION :	
PROGRAM AND ELECTRIC DISTRIBUTION :	Docket No. M-2008-2069887
COMPANY PLANS :	

**COMMENTS AND RECOMMENDATIONS OF
THE REINVESTMENT FUND
PURSUANT TO THE SECRETARIAL LETTER
OF NOVEMBER 26, 2008**

On November 26, 2008, the Commission issued a Secretarial Letter in the above-referenced docket to implement Act 129 of 2008. This response from The Reinvestment Fund (“TRF”) contains TRF’s proposed edits to the Working Group’s November 26, 2008 draft Implementation Order that was provided in Attachment B of the Secretarial Letter.

The changes TRF proposes to the draft Implementation Order follow in large part the themes in the recommendations and comments made by TRF in its November 3, 2008 filing and in its November 19 testimony.¹

TRF has restructured the draft Implementation Order to be an Order and an attached document called the *Guidelines for the Commission’s Energy Efficiency and Conservation Program Under Act 129*. The most important proposed edit to the Implementation Order is to create a Part One of the Guidelines that addresses all of the issues connected with the reduction goals of Act 129. TRF strongly urges the Commission to settle these issues sooner rather than later so the EDCs and the other interested parties know exactly what is required before the EDCs complete their proposed plans. Waiting until the July plan filings to receive the base year forecasts from the EDCs would only complicate the plan review process and work. TRF recommends that the generic issues be resolved by the Commission in the near future, and the

¹ One change is that the consumption reduction and peak demand reduction goals are now cast as savings, not as absolute reductions as TRF originally proposed.

issues of the base year forecast, the consumption reduction goals, the historic peak demand data and the peak demand reduction goals are the most fundamental issues that should be resolved soon. TRF proposes language that addresses these issues in the Guidelines and then suggest that the Commission will finalize the base year forecast and other goal-related issued in a future document entitled *Guidelines on the Goals of Act 129*.

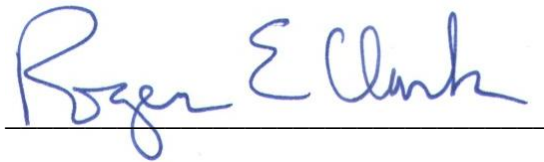
TRF also suggests two additional *Guideline* documents are needed to finalize important generic requirements of Act 129:

- *Guidelines for Data Collection, Reporting and Evaluation under Act 129; and,*
- *Guidelines for Analyzing the Costs and Benefits of Programs under Act 129.*

Care was made to ensure that the attached edited draft Implementation Order shows all of the proposed deletions and additions of text, though this has not always been easy. Minor formatting changes are not tracked.

TRF looks forward to discussing these issues further at the Commission's working group meeting on December 10, 2008.

Respectfully submitted,

A handwritten signature in blue ink that reads "Roger E. Clark". The signature is written in a cursive style and is positioned above a horizontal line.

Roger E. Clark, Esquire
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Date: December 8, 2008

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION**
Harrisburg, PA. 17105-3265

Public Meeting held _____

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
Robert F. Powelson
Kim Pizzingrilli
Wayne E. Gardner

Energy Efficiency and Conservation Program

Docket No. M-2008-2069887

IMPLEMENTATION ORDER

BY THE COMMISSION:

The Commission has been charged by the Pennsylvania General Assembly (“General Assembly”) with establishing an energy efficiency and conservation program. The energy efficiency and conservation program requires each electric distribution company (“EDC”) with at least 100,000 customers to adopt a plan to reduce energy demand and consumption within its service territory. 66 Pa. C.S. § 2806.1. In order to fulfill this obligation, the Commission has commenced a stakeholder process with interested parties invited to address relevant issues. This Implementation Order will establish the standards each plan must meet and provide guidance on the procedures to be followed for submittal, review and approval of the EDC plans.

BACKGROUND AND HISTORY OF THIS PROCEEDING

Governor Edward Rendell signed Act 129 of 2008 (“the Act”) into law on October 15, 2008. The Act took effect 30 days thereafter on November 14, 2008. Among other things, the Act created an energy efficiency and conservation program, codified in the Pennsylvania Public Utility Code at Sections 2806.1 and 2806.2, 66 Pa. C.S. §§ 2806.1 and 2806.2. This program requires an EDC with at least 100,000 customers to adopt a plan, approved by the Commission,

to reduce electric consumption by at least one percent (1%) of its expected load for June 1, 2009 through May 31, 2010, adjusted for weather and extraordinary loads. This one percent (1%) reduction is to be accomplished by May 31, 2011. By May 31, 2013, the total annual weather-normalized consumption is to be reduced by a minimum of three percent (3%). Also, by May 31, 2013, peak demand is to be reduced by a minimum of four-and-a-half percent (4.5%) of the EDC's annual system peak demand in the 100 hours of highest demand, measured against the EDC's peak demand from June 1, 2007 through May 31, 2008. By November 30, 2013, the Commission is to assess the cost effectiveness of the program and set additional incremental reductions in electric consumption if the benefits of the program exceed its costs.

On October 21, 2008, the Commission issued a Secretarial Letter seeking comments on each of the individual aspects of the EE&C Program outlined in Sections 2806.1(a)(1)-(11). 66 Pa. C.S. §§ 2806.1(a)(1)-(11). The Secretarial Letter was sent to all EDCs and the members of the DSR Working Group¹ at Docket No. M-00061984. Pursuant to an October 29, 2008 Secretarial Letter at Docket No. M-00061984, the comments were due November 3, 2008. The October 29th Secretarial Letter announced a special *en banc* hearing on alternative energy, energy conservation and efficiency, and demand side response to be held on November 19, 2008. Presenters at this *en banc* hearing provided comments related to the EE&C Program. Comments in reply to those expressed at the November 19th *en banc* hearing were due no later than December 2, 2008.

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The Act requires the Commission to develop and adopt an Energy Efficiency and Conservation Program ("EE&C Program") by January 15, 2009, and sets out specific issues the EE&C Program must address. 66 Pa. C.S. § 2806.1(a). The Commission's EE&C Program is to include the following:¶

... [1]

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The parties who filed comments [on November 3, 2008](#) in response to the October 21, 2008 Secretarial Letter were: The Industrial Users Groups ("IUG")²; Department of Environmental Protection ("DEP"); Duquesne Light Company ("Duquesne"); Office of Consumer Advocate ("OCA"); Office of Small Business Advocate ("OSBA"); Pennsylvania Utility Law Project ("PULP"); Citizens for Pennsylvania's Future ("PennFuture"); PECO Energy Company ("PECO"); PPL Electric Utilities Corporation ("PPL"); West Penn Power Company, d/b/a Allegheny Power ("Allegheny"); Pennsylvania Gas Association ("PGA"); Metropolitan

¹ Demand Side Response.

² Industrial Energy Consumers of PA, Duquesne Industrial Intervenors, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, Philadelphia Area Industrial energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors.

Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), and Pennsylvania Power Company (“Penn Power”), (collectively, “FirstEnergy”); UGI Utilities Inc. – Electric Division (“UGI”); Energy Association of Pennsylvania (“EAP”); Reliant Energy, Inc., (“Reliant”); Retail Energy Supply Association (“RESA”); Augusta Systems, Inc. (“Augusta”); ClearChoice Energy (“ClearChoice”); Comverge, Inc. (“Comverge”); EnergyConnect, Inc. (“EnergyConnect”); Elster Integrated Solution (“Elster”); The E Cubed Company, LLC (“E Cubed”); eMeter Strategic Consulting (“eMeter”); Keystone Energy Efficiency Alliance (“KEEA”); The Reinvestment Fund (“TRF”); and Sensus Metering Systems (“Sensus”).

The parties that participated at the November 19, 2008 *en banc* hearing were: Rep. Camille Bud George (D-Clearfield), Chairman, House Environmental Resources & Energy Committee; Acting Secretary John Hanger, DEP; Frank Jiruska, Director of Energy & Marketing Services, PECO; Nancy Krajovic, Major Commercial and Industrial Accounts Manager, Duquesne; Doug Krall, Manager, Regulatory Strategy, PPL; John Paganie, Vice President of Energy Efficiency, FirstEnergy; Paul H. Raab, Principal, energytools llc; Ron Edelstein, Director of Regulatory and Government Relations, Gas Technology Institute; Ritchie Hudson, Pennsylvania Chairman, RESA; Chris Kallagher, Director, Government and Regulatory Affairs, Direct Energy; Arthur Pearson, Director of Operations, E Cubed, on behalf of Joint Supporters; Arthur Pearson, on behalf of Donald D. Gilligan, President, National Association of Energy Service Companies; Greg Thomas, President, Performance System Development, on behalf of PA Home Energy; Edward V. Johnstonbaugh, Extension Educator, Renewable Energy, Penn State University, Westmoreland County Cooperative Extension; Jay Birnbaum, Senior Vice President and General Counsel, Current Group LLC; Robert Chiste, Chairman and CEO, Comverge; Carolyn Pengidore, President/CEO, ClearChoice; Tom Rutigliano, Program Manager, Mid-Atlantic Region, CPower Inc.; Ed Gray, Vice President of Regulatory Affairs, Elster; Glenn Garland, President, CLEAResult Consulting Inc.; Jeremy Kirsch, Vice President, Client Solutions, Positive Energy Inc.; Helen E. Perrine, Executive Director, Affordable Comfort Inc.; Doug Bloom, CEO, RealWinWin Inc.; Clif Payne, Executive Vice President, CMC Energy Services; Pamela C. Polacek, Counsel, McNees Wallace & Nurick LLC, on behalf of Industrial Energy Consumers of Pennsylvania (IECPA); William Lloyd Jr., State Small Business Advocate; Sonny Popowsky, State Consumer Advocate; Scott H. DeBroff, Chair, Energy &

Telecommunications Practice Group, Rhoads & Sinon, on behalf of Wal-Mart Stores; Courtney Lane, Policy Analyst, PennFuture; Roger Clark, Manager for Technology and Policy, TRF; Liz Robinson, Executive Director, Energy Coordinating Agency.

Those who provided reply comments were: _____

An EE&C Program stakeholder meeting was held on December 10, 2008. Those in attendance were: _____

Attached to this Order are the Commission's *Guidelines for the Commission's Energy Efficiency And Conservation Program Under Act 129*. Part One of these *Guidelines* addresses the reduction goals of Act 129. Part Two of the these *Guidelines* addresses the eleven specific issues that must be included in the Commission's Energy Efficiency and Conservation Program ("EE&C Program") in compliance with 66 Pa. C.S. § 2806.1(a).

THEREFORE,

IT IS ORDERED:

1. That electric distribution companies with at least 100,000 customers will adhere to the requirements for the submission of energy efficiency and conservation plans identified in this Implementation Order and the attached *Guidelines for the Commission's Energy Efficiency And Conservation Program Under Act 129*.

2. That this Implementation Order and the attached *Guidelines for the Commission's Energy Efficiency And Conservation Program Under Act 129* be published in the *Pennsylvania Bulletin* and served on the Office of Consumer Advocate, Office of Small Business Advocate, Office of Trial Staff, and all jurisdictional electric distribution companies.

BY THE COMMISSION

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: _____

ORDER ENTERED: _____

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA. 17105-3265

Energy Efficiency and Conservation Program

Docket No. M-2008-2069887

**GUIDELINES FOR THE COMMISSION'S ENERGY EFFICIENCY AND
CONSERVATION PROGRAM UNDER ACT 129**

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INTRODUCTION

The goal of these *Guidelines for the Commission's Energy Efficiency and Conservation Program Under Act 129* is to provide certainty to the EDCs and the public about the required elements of the EDC plans and budgets that the EDCs must file with the Commission by July 1, 2009. The process of reviewing and approving the EDC plans will benefit from clear and unambiguous *Guidelines* and save everyone time and effort this coming summer and fall.

Deleted: In this section the Commission will outline its EE&C Program by addressing the issues delineated in Section 2806.1(a) of the Act. This EE&C Program becomes effective with the entry of this order.¶

In addition to these *Guidelines*, the Commission will be finalizing additional *Guidelines* to address other generic issues presented by Act 129. The focus and tenor of the future guidelines are addressed below, but additional work is needed to finalize all of the important details. The future *Guidelines* that the Commission will be issuing include:

- *Guidelines on the Goals of Act 129;*
- *Guidelines for Data Collection, Reporting and Evaluation under Act 129; and,*
- *Guidelines for Analyzing the Costs and Benefits of Programs under Act 129.*

These *Guidelines for the Commission's Energy Efficiency and Conservation Program Under Act 129* are in two parts. Part One addresses the goals of Act 129 and Part Two addresses the the elements of the Commission's energy efficiency and conservation program set forth in 66 Pa. C.S. § 2806.1(a).

PART ONE - THE GOALS OF ACT 129

A. THE CONSUMPTION REDUCTION GOALS OF ACT 129

1. The Base Year Retail Sales Forecast - June 1, 2009 – May 31, 2010

The consumption reduction goals in §§ 2806.1(c)(1) and (2) direct the Commission to forecast the expected retail electricity sales of the EDCs in the Base Year of June 1, 2009 to May 31, 2010. The Commission will be assisted by an outside consultant and by the EDCs in the preparation of this forecast, which will be contained in the *Guidelines on the Goals of Act 129* document to be issued in the near future.

The EDCs are directed to submit by [insert date] their own forecasts for retail sales for the period June 1, 2009 to May 31, 2010. These forecasts are to be developed for residential, commercial, industrial, and other customer classes. The EDC submissions should explain the economic assumptions used to generate the forecast and any special circumstances in their service territory. The EDCs are asked specifically to address how the current recession will affect retail sales through the Base Year and beyond.

The Commission will take these EDC submissions and develop its own draft forecast, which will be distributed to the EDCs and the stakeholders by email and regular mail and will be posted on the Commission's website for written public comment. EDCs and the public will have 15 working days to prepare and submit comments about the Commission's draft forecast.

Following receipt and consideration of the written comments, the Commission will release its final forecast as part of its *Guidelines on the Goals of Act 129*. This final forecast will be distributed to the EDCs and the stakeholders by email and regular mail and will be posted on the Commission's website by [insert date].

For planning purposes until the Commission's final *Guidelines on the Goals of Act 129* are released, the EDCs are directed to use the following placeholder forecast:¹

<u>Placeholder Base Year Sales Forecast - 06/01/09 - 05/31/10</u>					
<u>EDC</u>	<u>Residential (MWH)</u>	<u>Commercial (MWH)</u>	<u>Industrial (MWH)</u>	<u>Other (MWH)</u>	<u>Total (MWH)</u>
<u>Duquesne</u>	<u>4,364,906</u>	<u>6,978,205</u>	<u>3,229,490</u>	<u>69,589</u>	<u>14,642,189</u>
<u>Met-Ed</u>	<u>5,800,425</u>	<u>4,899,512</u>	<u>4,099,299</u>	<u>35,831</u>	<u>14,835,067</u>
<u>PECO</u>	<u>13,981,779</u>	<u>9,239,610</u>	<u>17,026,679</u>	<u>962,267</u>	<u>41,210,336</u>
<u>Penelec</u>	<u>4,661,702</u>	<u>5,339,982</u>	<u>4,733,125</u>	<u>42,628</u>	<u>14,777,438</u>
<u>Penn Power</u>	<u>1,751,546</u>	<u>1,468,924</u>	<u>1,670,734</u>	<u>6,715</u>	<u>4,897,919</u>
<u>PPL</u>	<u>14,938,976</u>	<u>14,293,946</u>	<u>9,735,798</u>	<u>233,611</u>	<u>39,202,331</u>
<u>West Penn</u>	<u>7,531,895</u>	<u>5,193,535</u>	<u>8,378,320</u>	<u>53,764</u>	<u>21,157,514</u>
<u>Totals:</u>	<u>53,031,229</u>	<u>47,413,715</u>	<u>48,873,445</u>	<u>1,404,404</u>	<u>150,722,793</u>

2. Normalizing for Weather Differences

The Base Year Retail Sales Forecast, future retail sales data, the Base Year Peak Demand figures and future peak demand data are all to be normalized for weather. As the Commission has learned, this is not always an easy matter² and the Commission believes that a consistent methodology for weather normalization must be developed by the Commission as a component of the Commission's *Guidelines on the Goals of Act 129*.

The EDCs are directed to submit by [insert date] their recommendations for the weather normalization methodology. The EDCs are asked to address:

- the weather normalization methodology from their most recent rate proceeding where weather was an issue;
- the weather stations in each EDC service territory that will be used to measure the temperature variations in Heating Degree Days and Cooling Degree Days for each EDC;

¹ This placeholder forecast is based on data contained in *Electric Power Outlook for Pennsylvania 2007-2012*, issued in August 2008 and available at www.puc.state.pa.us/General/publications_reports/pdf/EPO_2008.pdf.

² [Cite to recent cases]

- the ratio for each EDC that describe the relationship between changes in Heating Degree Days and Cooling Degree Days and in electric consumption; and,
- any other factors or issues that the Commission's methodology should consider.

3. Defining Extraordinary Loads

The Commission defines an extraordinary load to include loads that result from dramatic shifts in the economy or economic development in the EDCs service territory, to include both extraordinary reductions, as well as increases. Examples of such extraordinary loads are technological innovation that increases electric demand (*e.g.*, plug-in electric hybrid cars), regulation or legislation mandating changes in the use of electricity to serve a particular load, load resulting from discontinued self-generation that the EDC is required to serve, and any other load the Commission credits as being extraordinary and beyond the EDCs control.

The Commission's future *Guidelines on the Goals of Act 129s* will further define an extraordinary load, make clear how it is to be measured and how the forecast and the future consumption data are to be adjusted to account for any extraordinary loads.

4. The Consumption Reduction Goals

The Consumption Reduction Goals will be the number of megawatt-hours ("MWHs") that the EDC's energy conservation and efficiency programs must save in order to be considered in compliance with the Act. The required savings are a quantity of MWHs calculated as a percentage of the Base Year Forecast. The energy savings that count towards each goal must be saved by the EDC's energy efficiency and conservation programs in the 12 month period preceding the goal date, or what the Commission is calling the Goal Year. Energy savings from measures that were implemented prior to the Goal Year are counted, but only those savings realized in the Goal Year are counted towards the goal.

Example: A CFL is installed January 12, 2010. The savings from the CFL are counted towards the May 31, 2011 goal, but only those savings that occur between June 1, 2010 and May 31, 2011. The CFL's savings between January 12, 2010 and May 31, 2010 are not recognized for the May 31, 2011 goal since they occur prior to the 12 month period preceding the goal date.

Act 129 establishes two dates for the goals: May 31, 2011 and May 31, 2013. In order to track the EDC's progress towards these two statutory goals, the Commission establishes two interim goals. The four Goal Years and the four Savings Goals are as follows:

<u>Goal Year</u>	<u>Dates</u>	<u>Savings Goal</u>
<u>Goal Year 1</u>	<u>June 1, 2009 – May 31, 2010</u>	<u>0.25%</u>
<u>Goal Year 2</u>	<u>June 1, 2010 – May 31, 2011</u>	<u>1.00%</u>
<u>Goal Year 3</u>	<u>June 1, 2011 – May 31, 2012</u>	<u>2.00%</u>
<u>Goal Year 4</u>	<u>June 1, 2012 – May 31, 2013</u>	<u>3.00%</u>

Only the 1.0% savings goal in Goal Year 2 and the 3.0% savings goal in Goal Year 4 can be the basis of any penalties assessed under § 2806.1(f), but the Commission expects the EDCs to make constant progress towards these goals and the EDCs are expected to meet the interim goals as well.

For planning purposes until the Commission's final *Guidelines on the Goals of Act 129* document is released, the EDCs are directed to use the following placeholder consumption reduction goals, which are simply the product of the savings percentages in the preceding table and the placeholder forecast of Base Year retail sales:

<u>Base Year (MWH)</u>	<u>Goal Year 1 .25% Savings (MWH)</u>	<u>Goal Year 2 1.0% Savings (MWH)</u>	<u>Goal Year 3 3.0% Savings (MWH)</u>	<u>Goal Year 4 3.0% Savings (MWH)</u>
<u>Duquesne</u>	<u>36,605</u>	<u>146,422</u>	<u>292,844</u>	<u>439,266</u>
<u>Met-Ed</u>	<u>37,088</u>	<u>148,351</u>	<u>296,701</u>	<u>445,052</u>
<u>Penelec</u>	<u>36,944</u>	<u>147,774</u>	<u>295,549</u>	<u>443,323</u>
<u>Penn Power</u>	<u>12,245</u>	<u>48,979</u>	<u>97,958</u>	<u>146,938</u>
<u>PECO</u>	<u>103,026</u>	<u>412,103</u>	<u>824,207</u>	<u>1,236,310</u>
<u>PPL</u>	<u>98,006</u>	<u>392,023</u>	<u>784,047</u>	<u>1,176,070</u>
<u>West Penn</u>	<u>52,894</u>	<u>211,575</u>	<u>423,150</u>	<u>634,725</u>
<u>Totals:</u>	<u>376,807</u>	<u>1,507,228</u>	<u>3,014,456</u>	<u>4,521,684</u>

These consumption reduction goals will be updated by the Commission when the Base Year Retail Sales Forecast is finalized and the final *Guidelines on the Goals of Act 129* document is issued.

5. The Consumption Reduction Goals for Government, Education and Nonprofit Organizations

Section 2806.1(b)(1)(i)(b) requires “a minimum of 10% of the required reductions in consumption under subsections (c) and (d) shall be obtained from units of federal, state and local government, including municipalities, school districts, institutions of higher education and nonprofit entities.”

Applying the 10% figure to the placeholder consumption reduction goals in the previous section produces the following table of placeholder consumption reductions for these three categories of ratepayers:

<u>Placeholder Consumption Reduction Goals – Gov’t/Education/Nonprofits</u>				
<u>EDC</u>	<u>Goal Year 1</u> <u>0.25% Savings</u> <u>(MWH)</u>	<u>Goal Year 2</u> <u>1.0% Savings</u> <u>(MWH)</u>	<u>Goal Year 3</u> <u>2.0% Savings</u> <u>(MWH)</u>	<u>Goal Year 4</u> <u>3.0% Savings</u> <u>(MWH)</u>
<u>Duquesne</u>	<u>3,660</u>	<u>14,642</u>	<u>29,284</u>	<u>43,927</u>
<u>Met-Ed</u>	<u>3,709</u>	<u>14,835</u>	<u>29,670</u>	<u>44,505</u>
<u>Penelec</u>	<u>3,694</u>	<u>14,777</u>	<u>29,555</u>	<u>44,332</u>
<u>Penn Power</u>	<u>1,224</u>	<u>4,898</u>	<u>9,796</u>	<u>14,694</u>
<u>PECO</u>	<u>10,303</u>	<u>41,210</u>	<u>82,421</u>	<u>123,631</u>
<u>PPL</u>	<u>9,801</u>	<u>39,202</u>	<u>78,405</u>	<u>117,607</u>
<u>West Penn</u>	<u>5,289</u>	<u>21,158</u>	<u>42,315</u>	<u>63,472</u>
<u>Totals:</u>	<u>37,680</u>	<u>150,722</u>	<u>301,445</u>	<u>452,168</u>

The reduction goals for government, education and nonprofit ratepayers will be updated by the Commission when the Base Year Retail Sales Forecast is finalized and the final *Guidelines on Act 129 Goals* document is issued.

6. The Consumption Reduction Goals for Households at or Below 150% or Poverty

Section 2806.1(b)(1)(i)(g) requires

(g) 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 electric distribution company shall coordinate measures under this clause with other programs administered by the commission or another federal or state agency. The expenditures of an electric distribution company under this clause shall be in addition to expenditures made under 52 Pa. Code Ch. 58 (relating to residential low income usage reduction programs).

As part of their retail sales forecast submission described in Section B.1 above, the EDCs are directed to identify the number of residential customers who are at or below 150% of the federal poverty income guidelines and the total annual consumption of these customers, both for the historic period June 1, 2007 to May 31, 2008 and for the Forecast Base Year of June 1, 2009 to May 31, 2010. This information is to be submitted by [submission date].

Once this data has been received and the Base Year Retail Sales Forecast finalized, the Commission will provide updated guidance on this issue in its *Guidelines on the Goals of Act 129* document.

7. The Consumption Reduction Goals by Customer Class

Section 2806.1(a)(5) requires that the Commission's guidelines include standards "to ensure that each plan includes a variety of energy efficiency and conservation measures and will provide the measures equitably to all classes of customers." Section 2806.1(b)(1)(i)(i) requires that the EDC plans provide "a diverse cross section of alternatives for customers of all rate classes."

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The Commission believes that "equitable" does not mean strictly "pro rata," especially when "cost-effective" is factored into the process. EDCs must offer a well-reasoned and balanced set of measures that are tailored to usage and to the potential for savings and reductions

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for each customer class. We believe that the overall limitation on cost recovery and the specific limitation tying costs to benefited class will ensure that offerings will not be skewed toward any particular class or away from any particular class.

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The Commission adopts the safe harbor position that the EDC plans are deemed to be equitably diverse when the programs offered each customer class achieve consumption reductions that are at least 80% of what that classes' pro rata share of savings would be. EDCs that present plans that are not expected to satisfy these class thresholds will have the burden of explaining and justifying their distribution of measures among its customer classes.

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To illustrate the 80% calculation, the table below shows the placeholder 1% savings goal of Goal Year Two (June 1, 2010 to May 31, 2011) by customer class based on the placeholder Base Year Sales Forecast (see Section A.1 above). The reduction goals by customer class will be updated by the Commission when the Base Year Retail Sales Forecast is finalized and the final Guidelines on the Goals of Act 129 document is issued.

¶
While we do not require a proportionate distribution of measures among customer classes, we shall require that each customer class be offered at least one EE and one DR program, but we will leave the initial mix and proportion of programs to the EDCs. The burden is on an EDC to explain and justify its

Placeholder Consumption Reduction Goals by Class – Goal Year 2 (2010-2011)

<u>EDC</u>	<u>Total</u>	<u>Residential</u>		<u>Commercial</u>		<u>Industrial</u>		<u>Other</u>	
		<u>Pro Rata</u>	<u>80%</u>	<u>Pro Rata</u>	<u>80%</u>	<u>Pro Rata</u>	<u>80%</u>	<u>Pro Rata</u>	<u>80%</u>
<u>Duquesne</u>	<u>146,422</u>	<u>43,649</u>	<u>34,919</u>	<u>69,782</u>	<u>55,826</u>	<u>32,295</u>	<u>25,836</u>	<u>696</u>	<u>557</u>
<u>Met-Ed</u>	<u>148,351</u>	<u>58,004</u>	<u>46,403</u>	<u>48,995</u>	<u>39,196</u>	<u>40,993</u>	<u>32,794</u>	<u>358</u>	<u>287</u>
<u>Penelec</u>	<u>147,774</u>	<u>46,617</u>	<u>37,294</u>	<u>53,400</u>	<u>42,720</u>	<u>47,331</u>	<u>37,865</u>	<u>426</u>	<u>341</u>
<u>Penn Power</u>	<u>48,979</u>	<u>17,515</u>	<u>14,012</u>	<u>14,689</u>	<u>11,751</u>	<u>16,707</u>	<u>13,366</u>	<u>67</u>	<u>54</u>
<u>PECO</u>	<u>412,103</u>	<u>139,818</u>	<u>111,854</u>	<u>92,396</u>	<u>73,917</u>	<u>170,267</u>	<u>136,213</u>	<u>9,623</u>	<u>7,698</u>
<u>PPL</u>	<u>392,023</u>	<u>149,390</u>	<u>119,512</u>	<u>142,939</u>	<u>114,352</u>	<u>97,358</u>	<u>77,886</u>	<u>2,336</u>	<u>1,869</u>
<u>West Penn</u>	<u>211,575</u>	<u>75,319</u>	<u>60,255</u>	<u>51,935</u>	<u>41,548</u>	<u>83,783</u>	<u>67,027</u>	<u>538</u>	<u>430</u>

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B. THE PEAK DEMAND REDUCTION GOALS OF ACT 129

Section 2806.1(d)(1) contains the Act's goal for reductions in peak demand:

(d) Peak demand.--the plans adopted under subsection (b) shall reduce electric demand as follows:

(1) By May 31, 2013, the weather-normalized demand of the retail customers of each electric distribution company shall be reduced by a minimum of 4.5% of annual system peak demand in the 100 hours of highest demand. The reduction shall be measured against the electric distribution company's peak demand for June 1, 2007, through May 31, 2008.

The goal is to reduce “annual system peak demand.” The two key words are “annual” and “system.” Annual means the 100 hours are to be the hours when demand is the highest throughout the year, not just throughout the summer months. It is very likely that almost all of the highest 100 hours are in the summer, but the statute provides no support for limiting the relevant time period to the summer months. System peak demand means when the relevant regional transmission organization (PJM for Duquesne, Met-Ed, Penelec, PECO, PPL and West Penn; and MISO for Penn Power) is experiencing peak demand, not the individual EDCs. The hours when the peak is highest for the system are the hours when prices are at their highest. An individual EDC peak for an hour when the system was not experiencing a peak would not likely result in power costs as expensive as during times of system peak.

The peak demand reduction goals can be satisfied only by reductions that are the direct result of EDC programs. The peak demand reductions achieved by the demand response programs of PJM, MISO or others will not be counted towards the EDC's results. In this way, the peak demand reductions will use the same savings approach as the consumption reductions, rather than an absolute goal.

To provide the necessary guidance about the peak demand reduction goal, the Commission will follow a process that is similar to the consumption reduction goal process addressed above in Section A.1. The Commission will conduct this analysis, using its own staff and consultants, and it will be included in the future *Guidelines on the Goals of Act 129* document.

This analysis will begin by identifying the 100 hours during the base year of June 1, 2007 through May 31, 2008 when the two relevant systems (PJM and MISO) experienced their greatest real-time demand.

The next step is to determine what each EDC's demand was during each of these 100 hours for the historical period June 1, 2007, through May 31, 2008.

The analysis will then present the methodology to be used to calculate the peak demand reduction goals for each EDC. The Commission does not believe the Act requires a 4.5% reduction in every hour of the 100 highest hours, but a single number that is the average for all 100 hours would fail to capture what is happening at the hours when demand (and thus prices) are highest. The Commission therefore suggests the methodology may look at the 100 hours in blocks of 10, so that the peak demand reductions required and achieved are calculated for 10 sets of hours. The methodology will also address how the peak demand figures are to be normalized for weather.

Commission will prepare the draft version of the peak demand analysis as part of the *Guidelines on the Goals of Act 129* document. The draft Guidelines will be shared with the public and written comments will be solicited. EDCs and the public will have 15 working days to prepare and submit comments about the Commission's draft peak demand analysis. The Commission will then review and consider the comments submitted and then issue a final version of the analysis as part of the final *Guidelines on the Goals of Act 129* document.

**PART TWO: THE COMMISSION'S ENERGY EFFICIENCY AND
CONSERVATION PROGRAM ELEMENTS UNDER § 2806.1(a)**

Act 129 of 2008 directs the Commission to adopt an energy efficiency and conservation program to require electric distribution companies to adopt and implement cost-effective energy efficiency and conservation plans to reduce energy demand and consumption within the service territory of each electric distribution company in this Commonwealth. 66 Pa. C.S. § 2806.1(a). The eleven key elements of that program, as listed in § 2806.1(a), are addressed below.

**A. THE PROCEDURES FOR THE SUBMISSION AND APPROVAL OF EDC
PLANS - § 2806.1(a)(1)**

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1. Statutory Basis

The Act requires the Commission to establish procedures for approving plans submitted by EDCs. 66 Pa. C.S. § 2806.1(a)(1). The Act further dictates that by July 1, 2009, all EDCs with at least 100,000 customers must develop and file an EE&C plan with the Commission for approval. 66 Pa. C.S. §§ 2806.1(b)(1) and 2806.1(l). The Commission is to conduct a public hearing on each plan that allows for submission of recommendations by the statutory advocates and the public regarding how the plan could be improved. 66 Pa. C.S. § 2806.1(e)(1). The Commission is to rule on each plan within 120 days of submission. 66 Pa. C.S. § 2806.1(e)(2). If the Commission disapproves a plan, it must describe in detail its reasons after which the EDC has 60 days to submit a revised plan. 66 Pa. C.S. § 2806.1(e)(2). The Commission then has 60 days to rule on the revised plan. *Id.*

The Commission notes that the plan approval process being established balances the desire to provide all interested parties an opportunity to be heard with the need to complete the process within the statutory time constraints. In addition, the Commission notes that these plans are evolutionary in nature as the Act provides for modification of plans after approval. See 66 Pa. C.S. §§ 2806.1(a)(6), 2806.1(b)(2) and 2806.1(b)(3).

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2. EDC Plan Development

The Commission notes that while the process outlined below establishes a formal approval process, the Commission directs all covered EDCs to use a collaborative process involving the statutory advocates and interested stakeholders during the pre-filing development of the plans. There are many entities in Pennsylvania with energy efficiency and conservation expertise and the EDCs are should work collaboratively with these entities in the design of their programs. The Commission firmly believes that this will greatly reduce the amount of time needed to formally review and approve the plans when they are submitted on July 1, 2009.

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The Commission is also planning to hold joint meetings with the EDCs to address possible collaboration with each other in programs that span the service territories of multiple EDCs. For example, a respected program such as *Home Performance with ENERGY STAR* can be expected in every EDC plan, but it makes no sense for all seven EDCs to be individually administering the program and creating multiple brands that confuse the public. The Commission will work with the EDCs, the statutory advocates and interested stakeholders to identify opportunities for the EDCs to jointly propose programs that are administered state-wide by a single conservation service provider.

3. Required Contents of EDC Plans

All EDCs with at least 100,000 distribution service customers (as opposed to default service customers) are required to file their plans by July 1, 2009.³ Each EDC filing must contain the following:

- a) An overview of the process the EDC used to develop the plan, including efforts it made to involve stakeholders in the program design.
- b) Specific proposals to implement energy efficiency and conservation measures for each customer class (§ 2806.1(b)(1)(i)(a)).

³ Only those EDCs with at least 100,000 customers must comply with Act 129. See 66 Pa. C.S. § 2806.1(l). The Commission will not accept voluntary plans proposed by other EDCs at this time due to the compressed time constraints of the approval process.

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1. For each program contained in the plan, the EDC is to discuss:
 - Which customers are targeted by the program;
 - What services or incentives that will be provided;
 - Who will be delivering the services or incentives;
 - The five-year projection of the number of services or incentives provided;
 - The five-year projection of consumption reductions and/or peak demand reductions; and,
 - The five-year budget for the program.
2. The plan will identify the specific proposals that are designed to serve government, education and nonprofit customers and demonstrate how those proposals will result in a minimum of 10% of the required reductions in consumption (§ 2806.1(b)(1)(i)(b)).
3. The plan will identify the specific proposals that are designed to serve households at or below 150% of poverty and demonstrate how these households will receive services in proportion to their share to total energy usage (§ 2806.1(b)(1)(i)(g)).
- c) A demonstration, with sufficient supporting documentation, that the plan provides a diverse set of program alternatives for customers of all rate classes (§ 2806.1(b)(1)(i)(i)) and that these programs will be provided equitably to all classes of customers (§ 2806.1(a)(5)).
- d) An explanation, with sufficient supporting documentation, of how the plan will achieve or exceed the required reductions in consumption and peak demand (§ 2806.1(b)(1)(i)(d)). Included in this explanation will be a demonstration of how the plan will achieve the required reductions for government, education and nonprofit customers and for households at or below 150% of poverty.
- e) A comprehensive program budget, including the EDC's administrative costs and projected contributions by participating customers (§ 2806.1(b)(1)(i)(f) and § 2806.1(b)(1)(i)(k))

- f) A demonstration, with sufficient supporting documentation, that the plan is cost-effective (§ 2806.1(b)(1)(i)(i)).
- g) A description of the EDC's method for monitoring and collecting data about program.
- h) An explanation, with sufficient supporting documentation, of how program performance will be measured, verified and evaluated and how quality assurance will be ensured (§ 2806.1(b)(1)(i)(c)).
- i) A description of how the EDC will use staff and/or Conservation Service Providers ("CSPs") to deliver the plan's programs and a justification for that allocation. The description will include the competitive bidding process used to select the CSPs and a sample contract that will be used for CSPs (§ 2806.1(b)(1)(i)(e)).
- j) A proposed cost-recovery mechanism, in accordance with Section 1307, 66 Pa. C.S. § 1307, to fund the plan.

4. EDC Plan Review Process

All EDCs with at least 100,000 customers are required to file energy efficiency and conservation plans that contain the information listed in section A.3 above by July 1, 2009. The plans are to be submitted in both hard copy and in electronic format. The EDCs are to serve their plans on the Commission, OCA, OSBA, the Commission's Office of Trial Staff (OTS) and to the interested stakeholders who were active in the collaborative process that developed the plans (see Section A.2 above).

The Commission will post each proposed plan on its website and will publish a notice of each proposed plan in the *Pennsylvania Bulletin* within 20 days of its filing.

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. Each EDC filing must contain the following:¶

¶
<#>A detailed plan addressing each of the requirements in 66 Pa. C.S. § 2806.1(b)(1)(i).⁵¶

<#>Sufficient supporting documentation and verified statements or testimony or both.¶

<#>Approved contract(s) with one or more CSPs and a description of the competitive bidding process used to select the CSPs. ¶

<#>Description of the work and measures being performed by CSPs and by the EDC along with a justification for the allocation.¶

<#>A budget showing total planned expenditures by program and customer class.¶

<#>Tariffs and a Section 1307 cost recovery mechanism.¶

<#>A forecast load for the period of June 1, 2009 through May 31, 2010.¶

<#>A weather adjustment calculation that meets the requirements outlined in Section H of this Implementation Order.¶
<#>An average of the 100 highest peak hours during the period of June 1, 2007 through May 31, 2008.¶

A description of the EDC's method for monitoring and verifying plan results.¶

¶

An answer along with comments and recommendations are to be filed within 20 days of the publication of the notice in the *Pennsylvania Bulletin*. Each plan will be referred to an Administrative Law Judge (“ALJ”), who will hold a public input hearing(s) in the EDC’s service territory and, if necessary, evidentiary hearings on any material issues of disputed facts. Such hearings are to be held on or before the 70th day after a plan is filed, after which, the ALJ will certify the record. The EDC will have 15 days following the last hearing to submit a revised plan or reply comments or both.

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The Commission will approve or reject a plan at public meeting within 120 days of the EDC’s filing. The Commission will provide a detailed rationale for all rejected plans. Thereafter, the EDC will have 60 days from the entry date of the order to file a revised plan that addresses the identified deficiencies. This revised plan is to be served on OCA, OSBA and OTS, who, along with other interested parties have ten days to file comments on the revised plan, with reply comments due ten days thereafter. The Commission will approve or reject a revised plan at a public meeting within 60 days of the EDC’s revised plan filing. This process will be repeated until a plan receives Commission approval.

B. THE PROCESS FOR MONITORING, VERIFYING AND EVALUATING THE EDC PLANS - § 2806.1(a)(2)

Deleted: Plan Effectiveness Evaluation Process

The Act requires the Commission to establish an evaluation process that monitors and verifies data collection, quality assurance and the results of each EDC plan and the program as a whole. 66 Pa. C.S. § 2806.1(a)(2). While § 2806.1(b)(1)(i)(C) requires each EDC plan to explain how quality assurance and performance will be measured, verified and evaluated, it is apparent that § 2806.1(a)(2) requires the Commission to monitor and verify this data. This evaluation process is to be conducted every year, as each EDC is to submit an annual report that contains documentation of program expenditures, measurement and verification of energy savings, an evaluation of the cost-effectiveness of expenditures and any other information the Commission requires. 66 Pa. C.S. § 2806.1(i)(1).

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To monitor and verify data collection, quality assurance and results, the Commission will utilize the Technical Reference Manual (“TRM”) to fulfill the evaluation process requirements

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contained in the Act. The TRM was supported by participants and previously adopted by the Commission in the Alternative Energy Portfolio Standards Act (“AEPS”) proceedings at Docket No. M-0051865 (order entered October 3, 2005). The TRM will, however, will be updated and expanded to fulfill the requirements of Act 129. The Commission will be issuing Guidelines for Data Collection, Reporting and Evaluation under Act 129 in the future that, among other things, will expand the TRM to provide for additional energy efficient technologies, peak load reduction, conservation projects and rates/pricing designs.

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The Commission also believes that a standardized format for the reporting of data is important. However, given that the EDCs will not be required to file their annual reports until 2010, we will address the annual report filing requirements in a subsequent order containing the Guidelines for Data Collection, Reporting and Evaluation under Act 129.

Evaluation is critical in determining the effectiveness of the programs and their impact on energy usage and demand. Evaluation is also the primary vehicle for uncovering opportunities for improving the programs from year to year. Evaluation must be a central component of the energy efficiency and conservation program from the start and should be addressed in the initial program designs.

Section 2806.1(b)(1)(i)(j) requires the EDC to obtain an annual evaluation by an independent evaluator of the cost-effectiveness of the plan. The Commission is required by § 2806.1(a)(2) to develop an “evaluation process, including a process to monitor and verify data collection, quality assurance and results of each plan and the program.”

Because of the importance of consistent and effective evaluation, it is appropriate to shield the evaluators from undue influence by the EDCs and to avoid the possibility of uneven and disparate evaluation approaches. The Commission is considering managing the evaluation process and contracting directly with a group of evaluators that would each examine the programs of all of the EDCs for each different customer class. The Commission and not the EDCs would select the evaluators and negotiate the work plans for the evaluations. The EDCs would have an active voice in the evaluation process, but not the final say. The draft evaluation

reports should be provided to the Commission staff, the Office of Consumer Advocate, the Office of Small Business Advocate, the EDCs and the public for written comments. The final evaluation reports should be public documents.

These issues of data collection, reporting and evaluation will be address in a future Commission Implementation Order and the future *Guidelines for Data Collection, Reporting and Evaluation under Act 129.*

C. **THE ANALYSIS OF THE COSTS AND BENEFITS OF THE EDC PLANS - § 2806.1(a)(3).**

Deleted: Analysis Approval Process

The Act requires that an analysis of the cost and benefit of each plan, in accordance with a total resource cost test ("TRC test"), be approved by the Commission. 66 Pa. C.S.

§ 2806.1(a)(3). The Act also requires an EDC to demonstrate that its plan is cost-effective using

a total resource cost test approved by the Commission, 66 Pa. C.S. § 2806.1(b)(1)(i)(I). The Commission's five-year evaluation of the EDC plans is to be "consistent with a total resources cost test or a cost benefit analysis determined by the commission." 66 Pa. C.S. § 2806.1(c)(3).

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The Act defines "total resource cost test" as "a standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures." 66 Pa. C.S. § 2806.1(m).

The Commission directs that EDCs shall evaluate the cost effectiveness of each of their energy efficiency or demand reduction programs using the TRC test, which represents the combination of the effects of a program on both participating and non-participating customers. The benefits calculated in the TRC test are the avoided supply costs, which shall include the reduction in transmission, distribution, generation and capacity costs valued at marginal cost for the periods when there is a load reduction. The avoided supply costs should be calculated using net program savings, savings net of changes in energy use that would have happened in the absence of the program. The persistence of savings over time must also be considered in the net savings.

The costs calculated in this test are the program costs paid by the utility and the participants, plus the increase in supply costs for the periods in which load is increased. Thus, all equipment, installation, operation and maintenance costs, cost of removal (less salvage value), and administrative costs, regardless of who pays for them, are included. Any tax credits should be considered a reduction to costs. The Commission is soliciting comments on what additional costs and benefits should be included in the TRC [and will be providing final guidance in the planned *Guidelines for Analyzing the Costs and Benefits of Programs under Act 129*.](#)

The results of the TRC test can be expressed as either a net present value (“NPV”) or a benefit-cost ratio (“B/C ratio”). The NPV is the discounted value of the net benefits of this test over a specified period of time. The NPV is a measure of the change in the total resource costs due to the program. An NPV above zero indicates that the program is a less expensive resource than the supply option upon which the marginal costs are based. The B/C ratio is the ratio of the discounted total benefits of the program to the discounted total costs over some specific time period. The B/C gives an indication of the rate of return of this program to the utility and its ratepayers. A B/C ratio above one indicates that the program is beneficial to the utility and its ratepayers on a total resource cost basis. The methodology to calculate either the NPV or B/C ratio of the TRC is found in *The California Standard Practice Manual – Economic Analysis of Demand-Side Programs and Projects*, July, 2002, page 18.⁷ The Commission is adopting this California Standard Practice Manual and will modify it as necessary to meet this Commonwealth’s particular needs.

A discount rate must be established to calculate the net present value. The Commission is soliciting comments on what the discount rate should be. Specifically, the Commission would like comments related to what the rate should be based on, how frequently it should be re-evaluated, and whether it should be established for each EDC service territory or for the Commonwealth as a whole.

[As noted above, the Commission will be providing final guidance in the future *Guidelines for Analyzing the Costs and Benefits of Programs under Act 129*.](#)

⁷ This manual can be found at www.clarkstrategicpartners.net/files/calif_standard_practice_manual.pdf.

D. PROCESS TO ANALYZE HOW THE PROGRAM AND EACH EDC PLAN WILL ENABLE EDCS TO MEET REDUCTION REQUIREMENTS - §2806.1(a)(4)

The Act requires the Commission to conduct an analysis of how the program, as a whole, and how the EDC's individual plan, in particular, will enable an EDC to meet or exceed the required consumption (66 Pa. C.S. § 28061(c)) and peak demand reductions (66 19a. C.S. § 2806.1(d)). 66 Pa. C.S. § 2806.1(a)(4). Each EDC plan must include specific proposals to implement measures to achieve or exceed the required reductions. 66 Pa. C.S. § 2806.1(b)(1)(i)(a). Each plan must also state the manner in which it will achieve or exceed the required consumption reductions. 66 Pa. C.S. § 2806.1(b)(1)(i)(d). Specifically, the Commission will conduct the evaluations using a savings approach reduction approach.

The consumption reduction goals and the peak demand reduction goals are addressed in Part One of these Guidelines. The Commission will be issuing Guidelines on the Goals of Act 129 in [approximate date] that will finalize the goals and related issues addressed in Part One.

E. STANDARDS TO ENSURE THAT A VARIETY OF MEASURES ARE PROVIDED EQUITABLY TO ALL CUSTOMER CLASSES - § 2806.1(a)(5)

The Act requires the Commission to establish standards to ensure that each plan includes a variety of measures and that each plan will provide the measures equitably to all customer classes. 66 Pa. C.S. § 2806.1(a)(5). The Act defines "energy efficiency and conservation measures" at 66 Pa. C.S. § 2806.1(m).

The issues raised here are addressed in Part One, Section A.5 (involving government, education and nonprofit customers), Section A.6 (involving households at or below 150% of

Deleted: Consumption is addressed at 66 Pa. C.S. § 2806.1(c), which requires the Commission to forecast each EDC's expected load for the period June 1, 2009, through May 31, 2010. In order to make this forecast, the Commission will need input from the EDCs and other interested parties. The Commission intends to complete these forecasts by _____. As such, the EDCs are to petition the Commission and serve the statutory advocates and interested stakeholders for such a forecast at least six months prior to the Commission's forecast completion date. The EDCs must include in the pleading all relevant information upon which the Commission will base the forecast. ¶

¶ Thereafter, within 45 days after May 31, 2011, and after May 31, 2013, the EDCs are to file with the Commission (at the forecast petition docket, and serving the parties to that docket) information documenting their consumption for June 1, 2010, through May 31, 2011, and for June 1, 2012, through May 31, 2013, respectively. To be in compliance with the Act, an EDC's 2010-2011 consumption must be at least 1% less than the forecasted 2009-2010 load; the 2012-2013 consumption must be at least 3% lower than the forecasted 2009-2010 load.⁸ To the extent that an EDC alleges the need for weather-normalization or extraordinary load adjustments, such factors are to be fully explained in the consumption filings. ¶

¶ On or before November 30, 2013, and every five years thereafter, the Commission shall evaluate the costs and benefits of an EDC's EE&C plan relative to annual consumption using a TRC test or cost-benefit analysis as determined by the Commission. If the Commission determines that benefits exceed the costs, the Commission will adopt new incremental consumption reduction requirements. ¶

¶ Peak demand is addressed at 66 Pa. C.S. § 2806.1(d), which mandates that the 100 hours of highest demand for the period from June 1, 2007, to May 31, 2008, be calculated. This amount is the 2007-2008 peak demand. To be in compliance the EDC's 100 hours of highest demand, weather normalized, for the period June 1, 2012, through May 31, 2013, must be 4.5% less than the 2007-2008 peak demand.⁹ On or before November 30, 2013, the Commission shall evaluate the peak demand aspects of an EDC's EE&C plan by comparing the cost of the an EDC's EE&C plan to ... [2]

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federal poverty guidelines) and Section A.7 (involving the availability to measures for different customer classes. In Section A.7, the Commission adopts the safe harbor position that the EDC plans are deemed to be equitably diverse when the programs offered each customer class should achieve consumption reductions that are at least 80% of what that classes' pro rata share of savings would be. EDCs that present plans that are not expected to satisfy these class thresholds will have the burden of explaining and justifying their distribution of measures among its customer classes.

The Commission will be issuing *Guidelines on the Goals of Act 129* in [approximate date] that will finalize the Commission's guidance on these issues.

F. PROCESS TO MAKE RECOMMENDATIONS FOR ADDITIONAL MEASURES TO IMPROVE THE EDC PLANS - § 2806.1(a)(6)

The Act requires the Commission to establish procedures through which recommendations can be made as to additional measures that will enable an EDC to improve its plan. 66 Pa. C.S. § 2806.1(a)(6). Furthermore, the Act permits the Commission to direct an EDC to modify or terminate any part of an approved plan if, after an adequate period for implementation, the Commission determines that a measure included in the plan will not achieve the required consumption reductions in a cost-effective manner. 66 Pa. C.S. § 2806.1(b)(2).

The Commission's procedure for recommending additional measures that enable an EDC to improve its plan are as follows. Initially it must be noted that interested parties will have an opportunity to make recommendations during the initial plan approval process described above in Part Two, Section A.2 of these Guidelines.

Regarding approved plans, the Commission will permit EDCs, the statutory advocates and other interested stakeholders, to propose plan changes in conjunction with the EDC's annual report filing required by the Act at 66 Pa. C.S. § 2806.1(i)(1). The Commission will establish a deadline for the filing of annual reports by the EDCs following the approval of the EDCs' plans in 2009. The EDCs are to serve these annual reports on the Commission, OCA, OSBA and OTS and on the active parties. The Commission and any interested party can make a recommendation

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¶ We agree that "equitable" does not mean "pro rata," especially when "cost-effective" is factored into the process. 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 benefited class (discussed in Section J, below) will ensure that offerings will not be skewed toward any particular class 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 EE and DR programs may not come proportionally from each customer class.¶

¶ Most commenters agree that all classes of customers will, however, benefit the most from a general approach because it has the best potential to impact future energy prices. Further, there is no consensus as to what denominator (per capita, usage, revenue, potential for savings, etc.) to use if one were to attempt to require a proportionate distribution. ¶

¶ While we do not require a proportionate distribution of measures among customer classes, we shall require that each customer class be offered at least one EE and one DR program, but we will leave the initial mix and proportion of programs to the EDCs. The burden is on an EDC to explain and justify its distribution of measures among its customer classes if such distribution is challenged.

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for plan improvement or object to an EDC's proposed plan revision within 30 days of the annual report filing. EDCs will have 20 days to file replies, after which the Commission will determine whether to rule on the recommended changes or refer the matter to an ALJ for hearings and a recommended decision. The Commission notes that, in addition to the above-described process, the Commission retains its statutory authority to conduct investigations and initiate statutory and regulatory compliance proceedings against jurisdictional utilities.

G. PROCEDURES TO REQUIRE COMPETITIVE BIDDING OF CONSERVATION SERVICE PROVIDER CONTRACTS - § 2806.1(a)(7)

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The Act requires the Commission to establish procedures to require EDCs to competitively bid all contracts with conservation service providers. 66 Pa. C.S. § 2806.1(a)(7). The Act further requires the Commission to establish procedures to review all proposed contracts with conservation service providers prior to execution of the contract. 66 Pa. C.S. § 2806.1(a)(8). The Act gives the Commission power to order the modification of proposed contracts to ensure that plans meet consumption reduction requirements. *Id.* The Act also requires each EDC to include in its plan a contract with one or more CSPs selected by competitive bid to implement all or part of the plan as approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(E). This section of the Act establishes that CSPs can perform some or all functions of an EE&C plan, to include management of the entire plan.

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The Commission's procedure for reviewing and approving proposed CSP bidding process is as follows:

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- The Commission is to develop a list of Commission-approved and registered CSPs (66 Pa. C.S. § 2806.2). This registry is to be completed by March 1, 2009, though it will be an ongoing activity.

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- EDCs are permitted to issue their requests for proposals ("RFPs") only to CSPs approved and registered by the Commission.

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- EDCs are encourage to acquire bids from "disadvantaged businesses" (i.e., minority-owned, women-owned, persons-with-disability-owned, small companies, companies

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located in Enterprise Zones, and similar entities) consistent with the Commission's Policy Statements at 52 Pa. Code §§ 69.804, 69.807 and 69.808.

- EDCs are encouraged to use of pay-for-performance contracts with CSPs.
- EDCs are required to obtain at least three bids (unless the EDC is unable to obtain three bids despite best efforts to publicize the RFP).
- EDCs are required to submit their selection criteria to the Commission for review and approval, to include:
 - Designation of and weighting of factors for the selection criteria.
 - Selection of overall best bid/proposal (*i.e.*, no requirement to select the lowest qualified bid) that consider:
 - Quality of prior performance;
 - Timeliness of performance;
 - Quality of the proposed work plan or approach;
 - Knowledge, background, and experience of the personnel to be utilized; and,
 - Other factors as deemed relevant.

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If the Commission has not commented upon or disapproved the proposed RFP process within 15 days of it being submitted to the Commission for review, then the EDC is permitted to proceed with the RFP process without modification.

H. PROCEDURES TO REQUIRE COMPETITIVE BIDDING OF CONSERVATION SERVICE PROVIDER CONTRACTS - § 2806.1(a)(8)

The Act requires the Commission to establish procedures to review all proposed contracts with conservation service providers prior to execution of the contract. 66 Pa. C.S. § 2806.1(a)(8). The Act gives the Commission power to order the modification of proposed contracts to ensure that plans meet consumption reduction requirements. *Id.*

The Commission's procedure for reviewing and approving proposed CSP contracts prior to execution is as follows:

- The Commission will review the contracts for satisfactory form and content, including:

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- Nature and type of services to be provided;
- Assurance that the CSP's work product in the EDC's plan will meet the requirement for reduction in demand and consumption;
- Legal issues, enforceability, and protection of ratepayer funds for poor performance or non-compliance and similar issues;
- Adequate provisions and procedures for monitoring CSP and EDC performance quality and rate of progress; and,
- Certification that the proposed CSP is not an EDC affiliate.

If the Commission has not commented upon or disapproved the proposed contract within 45 days of it being submitted to the Commission for review, then the EDC is permitted to proceed with the contract without modification.

L. PROCEDURES TO ENSURE COMPLIANCE WITH CONSUMPTION REDUCTION REQUIREMENTS - § 2806.1(a)(9)

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The Act requires the Commission to establish procedures to ensure compliance with the consumption reduction requirements of the Act. 66 Pa. C.S. § 2806.1(a)(9). The consumption reduction requirements are outlined in the Act at Sections 2806.1(c) and (d). 66 Pa. C.S. §§ 2806.1(c) and (d). Both the one percent load reduction to be met by May 31, 2011, and the three percent load reduction to be met by May 31, 2013, are to be measured against the EDC's expected load as forecasted by the Commission for June 1, 2009, through May 31, 2010, with provisions made for weather adjustments and extraordinary loads the EDC must serve. 66 Pa. C.S. § 2806.1(c)(1). The four-and-a-half percent reduction of annual system peak demand in the 100 hours of highest demand to be met by May 31, 2013, is to be measured against the EDC's peak demand for June 1, 2007, through May 31, 2008. 66 Pa. C.S. § 2806.1(d)(1). Furthermore, the Act requires that a minimum of ten percent of all consumption reduction requirements are to come from units of the federal, state and local governments, including municipalities, school districts, institutions of higher education and nonprofit entities. 66 Pa. C.S. § 2806.1(b)(1)(i)(B).

The Commission's procedures for ensuring compliance with the consumption reduction requirements of the Act are contained in Part One of these *Guidelines*.

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I. THE REQUIREMENT FOR THE PARTICIPATION OF CONSERVATION SERVICE PROVIDERS - § 2806.1(a)(10)

The Act establishes a requirement for the participation of conservation service providers in the implementation of all or part of a plan. 66 Pa. C.S. § 2806.1(a)(10). The Act requires the Commission to establish, by March 1, 2009, a registry of approved persons qualified to provide conservation services to all classes of customers, that meet experience and other qualifying criteria established by the Commission. 66 Pa. C.S. § 2806.2(a). The Act further requires the Commission to develop a conservation service provider application and permits the Commission to charge a reasonable registration fee. 66 Pa. C.S. § 2806.2(b).

The Commission initiated a separate stakeholder process to establish the qualification requirements CSPs must meet to be included in a Commission registry of CSPs under Docket Number M-2008-2074154. The Commission chose to institute a separate proceeding due to the requirement that the CSP registry is to be in place by March 1, 2009.

K. PROVISIONS TO ENSURE PROGRAM COSTS ARE RECOVERED FROM CUSTOMERS BENEFITING FROM THE PROGRAM - § 2806.1(A)(11)

The Act directs the Commission to establish a cost recovery mechanism that ensures that approved measures are financed by the customer class that receives the direct energy and conservation benefit of the measure. 66 Pa. C.S. § 2806.1(a)(11). All EDC plans must include cost estimates for implementation of all measures. 66 Pa. C.S. § 2806.1(b)(1)(i)(F). Each plan must also include a proposed cost-recovery tariff mechanism, in accordance with Section 1307 (relating to sliding scale or rates; adjustments), to fund all measures and to ensure full and current recovery of prudent and reasonable costs, including administrative costs, as approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(H). In addition, each plan must include an analysis of administrative costs. 66 Pa. C.S. § 2806.1(b)(1)(i)(K). The Act dictates that the total

Deleted: There are five main issues that the Commission must address to ensure compliance with the Act's requirements. First, the Commission must establish a procedure for properly forecasting the baseline for expected EDC consumption levels from June 1, 2009 through May 31, 2010. To accomplish this, the Commission is directing each covered EDC to provide a proposed expected load forecast with its plan for Commission approval. The Commission believes this is the appropriate procedure as each EDC has the data, expertise and experience to make such projections regarding its customers and their usage patterns.¶

¶ Second, the Commission must establish a procedure to determine weather adjustments to the June 1, 2009 through May 31, 2010 load figures. Again, the Commission directs each covered EDC to propose, with its plan, a weather adjustment calculation based on the EDC's most recent rate proceeding where weather was an issue. However, any such proposal shall use a 30-year norm for the weather normalization calculation, consistent with the Commission's weather normalization allowances in recent history.¹⁴¶

¶ Third, the Commission must define what would qualify as an extraordinary load. The Commission defines an extraordinary load to include loads that result from dramatic shifts in the economy or economic development in the EDCs service territory, to include both extraordinary reductions, as well as increases. Examples of such extraordinary loads are technological innovation that increases electric demand (e.g., plug-in electric hybrid cars), regulation or legislation mandating changes in the use of electricity to serve a particular load, load resulting from discontinued self-generation that the EDC is required to serve, and any other load the Commission credits as being extraordinary and beyond the EDCs control.¶

¶ Fourth, the Commission must establish a procedure for determining the 100 hours of highest peak demand in an annual period. To determine this, the Commission will take a weather-normalized average of the 100 highest peak hours during the summer months of June, July, and August in 2007 and compare that to a weather-normalized average of the ... [3]

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cost of any plan must not exceed two percent of the EDC's total annual revenue as of December 31, 2006, excluding Low-Income Usage Reduction Programs established under 52 Pa. Code § 58 (relating to residential Low Income Usage Reduction Programs). 66 Pa. C.S. § 2806.1(g). Finally, all EDCs, including those subject to generation or other rate caps, must recover on a full and current basis from customers, through a reconcilable adjustment clause under Section 1307, all reasonable and prudent costs incurred in the provision or management of its plan. 66 Pa. C.S. § 2806.1(k).

We view the matter of cost recovery as consisting of three main issues as set forth in the relevant provisions of Act 129. These issues are:

- Determination of allowable costs,
- Allocation of costs to customer classes, and
- Cost recovery tariff mechanism.

1. Determination of Allowable Costs

The Act allows an EDC to recover all prudent and reasonable costs relating to the provision or management of its EE&C plan, but limits such costs to an amount not to exceed two percent of the EDC's total annual revenue as of December 31, 2006, excluding Low-Income Usage Reduction Programs established under 52 Pa. Code § 58.

In order to determine the level of costs that an EDC will be permitted to recover in implementing its EE&C program, it will first be necessary to ascertain the amount of the EDC's total annual revenues as of December 31, 2006. Accordingly, we will require all subject EDCs

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to confirm this information in [a separate filing that is to be submitted to the Commission by January 9, 2009](#).¹⁵ Pursuant to the Act, total annual revenues shall be defined as “[a]mounts paid to the electric distribution company for generation, transmission, distribution and surcharges by retail customers.” 66 Pa. C.S. § 2806.1(m). We will then require each EDC to include a calculation of the total amount of EE&C costs it will be permitted to recover (exclusive of expenditures on Low-Income Usage Reduction Programs established under 52 Pa. Code § 58) based on the two percent limitation as set forth in the Act. This will represent the maximum level of spending on EE&C measures that will be recoverable under the EDC’s plan.

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We will next require each EDC to provide a careful estimate of the costs relating to all EE&C programs and measures as set forth in its plan. Such costs will include both capital and expense items relating to all program elements, equipment and facilities, as well as an analysis of all related administrative costs. More specifically, these costs would include, but not be limited to, capital expenditures for any equipment and facilities that may be required to implement the EE&C programs, as well as depreciation, operating and maintenance expenses, a return component based on the EDC’s weighted cost of capital, and taxes. Administrative costs would include, but not be limited to, costs relating to plan and program development, cost-benefit analysis, measurement and verification, and reporting. The EDC must also provide ample support to demonstrate that all such costs are reasonable and prudent in light of its plan and the goals of the Act, keeping in mind that the total level of these costs must not exceed the two percent limitation as previously determined.

[An](#) EDC should be permitted to recover both the ongoing costs of its plan, as well as costs incurred to design, create, and obtain Commission approval of the plan. However, all costs

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¹⁵ The records on file with the Commission indicate the following total annual revenues as of December 31, 2006:

Company	2006 Total Revenue	Placeholder 2% Cap
Duquesne Light Company	\$723,299,451	\$14,465,989
Metropolitan Edison Company	\$1,243,344,716	\$24,866,894
PECO Energy Company	\$4,371,215,020	\$87,424,300
Pennsylvania Electric Company	\$1,148,737,096	\$22,974,742
Pennsylvania Power Company	\$332,989,436	\$6,659,789
PPL Electric Utilities Corporation	\$3,402,953,852	\$68,059,077
West Penn Power Company	\$1,130,243,686	\$22,604,874

submitted for recovery in an EDC's plan will be subject to review by the Commission to determine whether the costs are prudent and reasonable, and are directly related to the development and implementation of the plan. Furthermore, EE&C measures and associated costs that are approved by the Commission will be subject to after-the-fact scrutiny. In this regard, we note that the Act provides that:

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The Commission shall direct an [EDC] to modify or terminate any part of a plan approved under this section if, after an adequate period for implementation, the Commission determines that an energy efficiency or conservation measure included in the plan will not achieve the required reductions in consumption in a cost-effective manner under [66 Pa. C.S. §§ 2806.1(c) and (d)].

66 Pa. C.S. § 2806.1(b)(2). Thus, plan measures and their associated costs that may be tentatively approved, will, in fact, be subject to ongoing review and possible modification or termination if it is determined that such measures are not or have not been cost effective.

With regard to the two percent limitation provision of the Act, we find that this limitation should be interpreted not as an annual amount, but rather as a cost limit over the full five-year period. Since the EDC plans are for five years, it makes sense that the cost limitation should provide flexibility over that same five year period,

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As to the concern regarding the application of the two percent spending limitation to an EDC with customers on its system that have substantial load being served by EGSs, we interpret the definition of "electric distribution company total annual revenues" not to exclude EGS generation costs provided the generation costs are initially paid to the EDC by retail customers. See 66 Pa. C.S. § 2806.1(m). Even in the case where the customers are receiving default service, the generation costs paid by retail customers are passed through the EDC to another corporate entity. We see no reason to distinguish between the two pass-throughs.

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Deleted: recognize that such an EDC may be unfairly restricted in the amount of costs it is permitted to recover if it cannot consider the generation revenues of those customers in the application of the two percent limitation. However, the language of Act 129 specifically limits the total cost of a plan to two percent (2%) of the EDC's total annual revenue. See 66 Pa. C.S. § 2806.1(g). EDC total annual revenue is further defined in Act 129 as "[a]mounts paid to the [EDC] for generation, transmission, distribution and surcharges by retail customers." 66 Pa. C.S. § 2806.1(m) (emphasis added). While the Commission recognizes Duquesne's concern, the Commission must follow the language of the Act.

Finally, with respect to the recovery of revenues lost due to reduced energy consumption or changes in demand, we note that the Act clearly states that such revenue losses shall not be a recoverable cost under a reconcilable automatic adjustment clause. 66 Pa. C.S. § 2806.1(k)(2).

The Act does provide, however, that “[d]eferred revenue and reduced energy consumption may be reflected in revenue and sales data used to calculate rates in a distribution-base rate proceeding filed by an electric distribution company under 66 Pa. C.S. § 1308 (relating to voluntary changes in rates).” 66 Pa. C.S. § 2806.1(k)(3).

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2. Allocation of Costs to Customer Classes

The Act requires that all approved EE&C measures be financed by the customer class that receives the direct energy and conservation benefit of such measures. In order to ensure that all approved EE&C measures are financed by the customer classes that receive the benefit of such measures, it will be necessary to first assign the costs relating to each measure to those classes to whom it is targeted. Therefore, once the EDC has developed an estimate of its total EE&C costs as directed above, we will require it to allocate those costs to each of its customer classes that will benefit from the measures to which the costs relate. Those costs that can be clearly demonstrated to relate exclusively to measures that have been dedicated to a specific customer class should be assigned solely to that class. Those costs that relate to measures that are applicable to more than one class, or that can be shown to provide system-wide benefits, must be allocated using generally acceptable cost of service principles as are commonly utilized in base rate proceedings. Administrative costs should also be allocated using reasonable and generally acceptable cost-of-service principles. In this regard, the EDC will be required to include in its plan a class cost-of-service study for the limited purpose of allocating all costs expected to be incurred in the implementation of its EE&C plan.

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With regard to the assignment of EE&C costs to low-income customers, the Act requires EE&C measures to be financed by the same customer class that will receive the direct energy and conservation benefits from them. 66 Pa. C.S. §2806.1(a)(11). The Act does not provide for the exclusion of low-income customers from EE&C cost recovery as recommended by PULP, and in any event, it would be difficult to determine a way to exclude such customers from the allocation of EE&C costs within their particular customer class. Although we have great concern for the difficulties experienced by low-income customers in paying their energy bills, we do not believe that exempting such customers from contributing toward the recovery of fairly

allocated EE&C costs is the appropriate way to address this concern. We point out that low-income customers will stand to benefit financially from well-designed EE&C measures implemented by the EDCs. Moreover, such customers can take advantage of the many programs currently available to help low-income and payment-troubled customers pay their energy bills.

3. Cost Recovery Tariff Mechanism

As noted above, the Act allows all EDCs, including those subject to generation or other rate caps, to recover on a full and current basis from customers, through a reconcilable adjustment clause under 66 Pa. C.S. § 1307, all reasonable and prudent costs incurred in the provision or management of its plan. The Act also requires that each EDC's plan include a proposed cost-recovery tariff mechanism, in accordance with 66 Pa. C.S. § 1307 (relating to sliding scale of rates; adjustments), to fund all measures and to ensure full and current recovery of prudent and reasonable costs, including administrative costs, as approved by the Commission.

We will require each subject EDC to develop a reconcilable adjustment clause tariff mechanism in accordance with 66 Pa. C.S. § 1307 and include this mechanism in its EE&C plan. Such a mechanism shall be designed to recover, on a full and current basis from each customer class, all prudent and reasonable EE&C costs that have been assigned to each class as directed above. The mechanism shall be non-bypassable and shall be set forth in the EDC's tariff, accompanied by a full and clear explanation as to its operation and applicability to each customer class. We agree with OCA that there should be no need to adjust the mechanism more frequently than on an annual basis. Therefore, the tariff mechanism will be subject to an annual review and reconciliation in accordance with 66 Pa. C.S. § 1307(e). The annual review and reconciliation for each EDC's cost recovery mechanism will occur pursuant to a public hearing, if required due to petitions filed by interveners, and will include an evaluation of the reasonableness of all program costs and their allocation to the applicable customer classes. Such annual review and reconciliation will be scheduled to coincide with our review of the annual report on the EDC's plan submitted in accordance with 66 Pa. C.S. § 2806.1(i), and all calculations and supporting cost documentation shall be provided at the time that report is filed.

K. CONCLUSION