

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Energy Efficiency and Conservation :
Program and EDC Plans : **Docket No. M-2008-2069887**

**REPLY COMMENTS OF THE
OFFICE OF SMALL BUSINESS ADVOCATE
ON THE DRAFT IMPLEMENTATION ORDER**

Background

Section 2 of the act of October 15, 2008 (P.L. ____, No. 129), added Section 2806.1 and Section 2806.2 to the Public Utility Code, 66 Pa. C.S. §§2806.1 and 2806.2. Section 2806.1 requires the Pennsylvania Public Utility Commission (“Commission”) to adopt an energy efficiency and conservation program, including the adoption and implementation of a cost-effective plan for each electric distribution company (“EDC”) with at least 100,000 customers.

By Secretarial Letter dated October 20, 2008, the Commission invited parties to provide comments on each of the individual aspects of the energy efficiency and conservation program required under Section 2806.1(a)(1)-(11). The Office of Small Business Advocate (“OSBA”) submitted comments on November 3, 2008, in response to the Commission’s invitation.

By Secretarial Letter dated October 29, 2008, the Commission announced a special *en banc* hearing on alternative energy, energy conservation and efficiency, and demand side response to be held on November 19, 2008. The OSBA presented testimony at that hearing.

By Secretarial Letter dated November 26, 2008, the Commission invited parties to provide comments on a Draft Implementation Order (“Draft Order”) and to respond to certain questions. On December 8, 2008, the OSBA submitted comments.

On December 10, 2008, the Commission held a working group meeting. At the working group meeting, the Commission invited parties to submit reply comments. The OSBA submits the following in response to the Commission’s invitation.

Plan Approval Process

Many parties which submitted comments in this proceeding requested that the Commission establish a pre-filing collaborative process with each EDC and the appropriate stakeholders to provide input on the EDC’s plan during the months leading up to July 1, 2009. The Draft Order also directs EDCs to offer informal discussions to the statutory advocates and interested stakeholders during the pre-filing development of the plans.¹ The OSBA does not object to a pre-filing collaborative process. However, the pre-filing collaborative process should not include Commission staff. Excluding Commission personal would eliminate the risk that the collaboratives could set Commission policy on how the EDCs’ plans must be implemented in order to meet the standards of Act 129.

The EDCs’ plans will have a significant financial impact on all customers. Specifically, implementing the plans could entitle EDCs to recover \$247 million to \$1.235 billion in ratepayers’ money. Therefore, it is critical that the Commission follow the normal adjudicatory process in reviewing the EDCs’ plans.

¹ Draft Order at 7.

Cost Recovery Mechanism

The OCA commented that “the Commission should provide an interpretation of the type of ‘direct benefit’ that would support cost recovery of program measures from a particular class.” OCA then argued that “wide spread implementation of energy efficiency and demand side response programs may well have the effect of lowering the wholesale price of energy and capacity in the PJM wholesale market. Since nearly all customers of the PJM EDCs receive their generation from these markets there may be benefits to all customers from the deployment of some programs under Act 129.”²

The Draft Order states that 1) 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, 2) those costs that relate to measures 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, and 3) administrative costs should also be allocated using reasonably acceptable cost of service principles.³

Section 2806.1(a)(11) provides that “the [Commission’s] program must include cost recovery to ensure that measures approved are financed by the same customer class that will receive the direct energy and conservation benefits.” There is no basis for concluding that the legislature intended “direct energy and conservation benefits” to be interpreted to include hypothetical, theoretical, and immeasurable benefits. For example, if an EDC implements energy audits of houses, then the actual costs of those audits should be assigned to the residential class, because those audits directly benefit

² OCA November 3, 2008, Comments at 27.

³ Draft Order at 28.

residential customers. However, if the EDC implements energy audits of small commercial and industrial (“Small C&I”) customers, then the actual costs of those audits should be collected from Small C&I customers because those audits directly benefit Small C&I customers. Similarly, if the EDC implements energy audits of Large C&I customers, then the actual costs of those audits should be recovered from Large C&I customers because those audits directly benefit Large C&I customers. Adopting the OCA’s approach (*i.e.*, actual costs for a residential program may provide a system-wide benefit) could shift the actual costs from one class to another in a way which would at least arguably violate Section 2806.1(a)(11) and would definitely lead to contentious litigation. Therefore, the OSBA requests a revision in the Draft Order language regarding recovery of costs that relate to measures applicable to more than one class or that can be shown to provide system-wide benefits to make clear that the Commission is not adopting the OCA approach.⁴

Two Percent Limitation

Both the OCA and PPL argued that the two percent cap on plan spending is an annual amount and not a total amount for the five-year term of an EDC’s plan.⁵ The Draft Order at 26 agrees. However, the OSBA disagrees with the Draft Order, the OCA, and PPL. Section 2806.1(g) provides in pertinent part as follows:

The total cost of any plan ... shall not exceed 2% of the electric distribution company’s total annual revenue as of December 31, 2006. (emphasis added)

If the legislature had intended that the EDC could recover 2% of its base year revenue for plan costs each year, Section 2806.1(g) would have stated that “[t]he total *annual* cost of

⁴ Draft Order at 28.

⁵ OCA December 8, 2008, Comments at 14 and PPL December 8, 2008, Comments at 10-11

any plan” rather than “[t]he total cost of any plan” is 2% of the EDC’s base year revenues.

Shopping Customers

Duquesne Light Company (“Duquesne”) commented that Section 2806(1)(c) and (d) require reductions in overall consumption and peak demand of “retail customers.”

Duquesne requested that the Commission clarify that “retail customers” exclude customers purchasing their generation from Electric Generation Suppliers (“EGS”).⁶

Duquesne has raised an important point regarding limitations on an EDC’s offering incentives to shopping customers to decrease or modify their consumption. Therefore, the Commission should consider requiring EGSs, rather than EDCs, to be responsible for decreasing and modifying the loads of shopping customers.

The OSBA does not agree with Duquesne’s alternative solution that the Commission allow Duquesne’s 2% cap on cost recovery to reflect generation revenues as if there had been no shopping.⁷ In that regard, the OSBA agrees with the Draft Order that Section 2806.1(g) does not provide for the alternative remedy that Duquesne is seeking.⁸

Standards to Ensure that a Variety of Measures are Applied Equitably to all Customer Classes

Section 2806.1(a)(5) provides that “the [Commission’s] program must 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.” The Draft Order states that “‘equitable’ does not mean ‘pro rata’ especially

⁶ Duquesne November 3, 2008 Comments at 2-3.

⁷ Duquesne December 8, 2008, Comments at 8.

⁸ Draft Order at 27.

when ‘cost-effective’ is factored into the process.” The Draft Order further states that “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 will leave the initial mix and proportion of programs to the EDCs.” The OSBA agrees with the Draft Order’s interpretation of “equitably.”

On the other hand, The Reinvestment Fund commented that the Commission should adopt a safe harbor position, *i.e.*, that the EDC’s plan is deemed to be equitably diverse if the programs offered to each customer class achieve consumption reductions that are at least 80% of what that class’ pro rata share of system wide savings would be.⁹ However, the statute does not mandate that each class must produce approximately the same level of reduced consumption or 80% of some target level of reduced consumption. The overriding purpose of new Section 2806.1 is to reduce overall and peak energy consumption, even if meeting the mandated reduction requires a relatively narrow focus on the customers (or customer classes) which consume the largest quantities of electricity or whose consumption can most readily be shifted off peak. For example, an effective strategy for achieving the reductions mandated by Section 2806.1(c) and (d) would be to pay particular attention to space heating and air conditioning, regardless of how the potential savings might break down on a customer class basis.

⁹ The Reinvestment Fund December 8, 2008, Comments at 8.

Conclusion

In view of the foregoing, the OSBA respectfully requests that the Commission revise the Draft Order in accordance with the OSBA's comments.

Respectfully submitted,

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