THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2200 Session of 2008

INTRODUCED BY GEORGE, McCALL, BELFANTI, CALTAGIRONE, CONKLIN, DALEY, N. P. GOODMAN, HARHAI, HARKINS, KULA, MANDERINO, McGEEHAN, VITALI, J. WHITE, WALKO, SURRA, DeLUCA, DERMOY, GRUCELA, JOSEPHS, JAMES, GINGRICH, FREEMAN, K. SMITH, McILVAINE SMITH, YOUNGBLOOD AND FRANKEL, JANUARY 15, 2008

SENATOR TOMLINSON, CONSUMER PROTECTION AND PROFESSIONAL LICENSURE, IN SENATE, RE-REPORTED AS AMENDED, OCTOBER 7, 2008

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, providing for recovery of certain labor relations expenses; further providing for definitions; providing for adoption of energy efficiency and demand-side response; and further providing for duties of electric distribution companies. FURTHER PROVIDING FOR DEFINITIONS; PROVIDING FOR ENERGY EFFICIENCY AND CONSERVATION; FURTHER PROVIDING FOR DUTIES OF ELECTRIC DISTRIBUTION COMPANIES; AND PROVIDING FOR PROCUREMENT. FURTHER PROVIDING FOR DIRECTOR OF OPERATIONS, SECRETARY, EMPLOYEES AND CONSULTANTS; REPEALING PROVISIONS RELATING TO OFFICE OF TRIAL STAFF; FURTHER PROVIDING FOR BUREAUS AND OFFICES; PROVIDING FOR OTHER BUREAUS, OFFICES AND POSITIONS; FURTHER PROVIDING FOR ELECTRIC UTILITY DEFINITIONS; PROVIDING FOR ENERGY EFFICIENCY AND CONSERVATION PROGRAM AND FOR ENERGY EFFICIENCY AND CONSERVATION; FURTHER PROVIDING FOR DUTIES OF ELECTRIC DISTRIBUTION COMPANIES AND FOR MARKET POWER REMEDIATION; AND PROVIDING FOR PROCUREMENT, FOR ADDITIONAL ALTERNATIVE ENERGY SOURCES AND FOR CARBON DIOXIDE SEQUESTRATION NETWORK.

20 THE GENERAL ASSEMBLY RECOGNIZES THE FOLLOWING PUBLIC POLICY FINDINGS AND DECLARES THAT THE FOLLOWING OBJECTIVES OF THE COMMONWEALTH ARE SERVED BY THIS ACT:

21 (1) THE HEALTH, SAFETY AND PROSPERITY OF ALL CITIZENS OF
THIS COMMONWEALTH ARE INHERENTLY DEPENDENT UPON THE
AVAILABILITY OF ADEQUATE, RELIABLE, AFFORDABLE, EFFICIENT AND
ENVIRONMENTALLY SUSTAINABLE ELECTRIC SERVICE AT THE LEAST
COST, TAKING INTO ACCOUNT ANY BENEFITS OF PRICE STABILITY,
OVER TIME AND THE IMPACT ON THE ENVIRONMENT.

(2) IT IS IN THE PUBLIC INTEREST TO ADOPT ENERGY
EFFICIENCY AND CONSERVATION MEASURES AND TO IMPLEMENT ENERGY
PROCUREMENT REQUIREMENTS DESIGNED TO ENSURE THAT ELECTRICITY
OBTAINED REDUCES THE POSSIBILITY OF ELECTRIC PRICE
INSTABILITY, PROMOTES ECONOMIC GROWTH AND ENSURES AFFORDABLE
AND AVAILABLE ELECTRIC SERVICE TO ALL RESIDENTS.

(3) IT IS IN THE PUBLIC INTEREST TO EXPAND THE USE OF
ALTERNATIVE ENERGY AND TO EXPLORE THE FEASIBILITY OF NEW
SOURCES OF ALTERNATIVE ENERGY TO PROVIDE ELECTRIC GENERATION
IN THIS COMMONWEALTH.

The General Assembly of the Commonwealth of Pennsylvania
hereby enacts as follows:

Section 1. Title 66 of the Pennsylvania Consolidated
Statutes is amended by adding a section to read:

§ 1329. Recovery of certain labor relations expenses.
No public utility may charge its customers as a permissible
operating expense for ratemaking purposes any portion of the
direct or indirect cost of meetings, publications, consultants,
attorneys or other professional services and expenses associated
with the utility's efforts to dissuade the employees of the
utility, or the employees of any affiliated interest of the
utility as defined in section 2101 (relating to definition of
affiliated interest), from becoming or remaining a member in, or
otherwise being represented by, any labor union.

Section 2. Section 2803 of Title 66 is amended by adding
definitions to read:

§ 2803. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Affiliated interest." As defined in section 2101 (relating to definition of affiliated interest).

* * *

"Cost effective." In relation to a program being evaluated, satisfaction of the total resource cost test.

* * *

"Demand-side response." Load management technologies, management practices or other strategies employed by retail customers that decrease peak electricity demand or shift demand from on-peak to off-peak periods provided that:

(1) The measure is installed on or after the effective date of this section at the service location of a retail customer.

(2) The measure reduces the peak demand or cost of energy by the retail customer.

(3) The costs of the acquisition or installation of the measure are directly incurred in whole or in part by the electric distribution company.

* * *

"Energy efficiency." Technologies, management practices or other strategies or measures employed by retail customers that reduce electricity consumption provided that:

(1) The measure is installed on or after the effective date of this definition at the service location of a retail customer.
(2) The measure reduces the consumption of energy by the retail customer.

(3) The costs of the acquisition or installation of the measure are directly incurred in whole or in part by the electric distribution company.

"Independent entity." An entity with no direct or indirect ownership, partnership or other affiliated interest with an electric distribution company.

"Peak demand." The highest electrical requirement occurring during a specified period. For an electric distribution company, the term means the sum of the metered consumption for all retail customers over that period.

"Real-time price." A rate that directly reflects the different cost of energy during each hour.

***

"Smart meter technology." Technology, including, but not limited to, metering technology and network communications technology capable of bidirectional communication and that records electricity usage on at least an hourly basis, including related electric distribution system upgrades to enable the technology. The technology shall provide customers with direct access to and use of price and consumption information. The technology shall also:

(1) Directly provide customers with information on their hourly consumption.

(2) Enable time-of-use rates and real-time price programs.

(3) Effectively support the automatic control of the customer's electricity consumption by one or more of the following as selected by the customer:
(i) the customer;
(ii) the customer's utility; or
(iii) a third party engaged by the customer or the customer's utility.

"Time-of-use rate." A rate that reflects the costs of serving customers during different time periods, including off-peak and on-peak periods, but not as frequently as each hour.

"Total resources cost test." A standard test that is met if, over the effective life of the program, the avoided supply-side monetary costs are greater than the monetary costs of the demand-side programs borne by both the electric distribution company and the participants.

* * *

Section 3. Title 66 is amended by adding a section to read:

§ 2806.1. Adoption of procedures encouraging energy efficiency and demand-side response.

(a) Program.—The commission shall develop a program to provide for the implementation of cost-effective programs that reduce energy demand and consumption within the service territories of all electric distribution companies throughout this Commonwealth. The program shall include, but is not limited to, the following:

(1) Selecting a program administrator to develop and oversee the delivery of energy efficiency and demand-side response programs within the service territory of each electric distribution company within this Commonwealth.

(2) Implementing the necessary administrative and financial mechanisms that will enable the program administrator to develop and oversee the provision of energy efficiency and demand-side response programs within the
service territory of each electric distribution company within this Commonwealth, including the levying of assessments in accordance with sections 510 (relating to assessment for regulatory expenses upon public utilities), 1307 (relating to sliding scale of rates; adjustments) and 1308 (relating to voluntary changes in rates). The commission shall not approve or implement and shall not assess or charge to customers the costs of energy efficiency or demand-response programs to the extent that the costs of such programs exceed 2% of the total annual revenues of the electric distribution company from all sources, including default service generation revenues as of January 1, 2007. This funding limit shall not include amounts provided for by the low-income usage reduction programs established under regulations at 52 Pa. Code Ch. 58 (relating to residential low income usage reduction programs).

(3) Implementing the necessary administrative and financial mechanisms that facilitate a system of third-party entities to deliver all or portions of the energy efficiency and demand-side response programs within the service territory of each electric distribution company within this Commonwealth, including the levying of assessments in accordance with sections 510, 1307 and 1308. The commission may order the electric distribution company to pay the third-party entity for services rendered in an electric distribution company's respective service territory pursuant to this section. The electric distribution company may be a third-party entity.

(b) Selection of program administrator.--The commission shall implement the following procedures when selecting a
program administrator:

(1) The commission shall prepare a request for proposals for a program administrator to provide for the development and delivery of the energy efficiency and demand-side response programs in the service territories of all electric distribution companies and shall make the request for proposals available for public comment.

(2) The commission shall, within 60 days of the completion of the public comment period, issue the final request for proposals.

(3) The commission shall, based on a competitive bid process, select an independent entity to serve as the energy efficiency and demand-side response program administrator.

(4) The commission shall include as a part of its agreement with the program administrator a system of performance parameters and a financial mechanism that provides incentives for exceeding established performance parameters and penalties for third parties not meeting established performance parameters.

(c) Powers and duties of program administrator.--The program administrator shall have powers and duties assigned by the commission. The powers and duties shall include, but not be limited to:

(1) Soliciting through a competitive procurement process within each electric distribution company service territory a program of providing energy efficiency and demand-side response programs to residential, commercial and industrial customers utilizing third-party entities.

(2) Ensuring that each proposal includes, but is not limited to:
(i) A clear delineation of how the program will be conducted.

(ii) The types of specific program measures to be offered.

(iii) The cost and benefit of each program to be offered.

(iv) A process for monitoring and verifying results, data collection and management procedures, program evaluation processes and financial management strategies.

(3) In its review of each proposal received:

(i) Taking into account the unique circumstances of each electric distribution company’s service territory.

(ii) Finding that each program is cost effective and that the portfolio of programs is designed to provide every affected customer class with the opportunity to participate and benefit economically.

(iii) Determining the cost-effectiveness of energy efficiency and demand-side response measures using the total resource cost test.

(4) Recommending to the commission those entities best suited to provide energy efficiency and demand-side response programs within the service territory of each electric distribution company.

(5) In the event no qualified proposals are received that meet the required plan goals in an electric distribution company service territory to conduct the program activities:

(i) Issuing a subsequent request for proposals with plan goals that are reduced no more than necessary to obtain qualified proposals to provide program activities. The lowered plan goals for energy efficiency and demand-
side response shall only be in effect for that year.

(ii) In subsequent years, utilizing the plan goals unless no qualified proposals are received to conduct the program activities that meet the plan goals, the program administrator shall issue a subsequent request for proposals in accordance with the procedures identified in this subparagraph.

(6) Executing agreements on behalf of the commission with the selected entity in each electric distribution company service territory to conduct the energy efficiency and demand-side response program. As part of these agreements the program administrator shall ensure that:

(i) The programs offered by the selected entity are provided equitably across all customer classes.

(ii) A clearly defined process for financial compensation for the entity delivering the program which is tied to defined goals for performance regarding program activities accomplished, energy cost savings on a per-customer basis and utility-wide basis and overall energy and peak demand reduction is established.

(iii) A system of incentives and penalties for performance of contractual activities above and below predetermined levels is in place.

(iv) There is a set contract term which may include an initial three-year term with renewal terms of varied length.

(7) Submitting reports to the commission at such times and in such manner as the commission directs.

(d) Commission review of recommendations.--The commission shall review the recommendations made by the program
administrator regarding those entities best suited to provide energy efficiency and demand-side response programs within the service territory of each electric distribution company. The commission shall approve or disapprove the recommendations made by the program administrator.

(1) The commission review of the recommendations of the program administrator shall be limited to ensuring that:

(i) There is no evidence of fraud or market abuse.

(ii) Any costs entered into are borne by the appropriate parties and that costs, including the costs of subsection (e)(6)(iii) incentives, related to the provision of the contracted services are borne by the appropriate customer class.

(iii) There will be provided, in a cost-effective manner, a program that provides energy efficiency and demand-side response measures to all customer classes throughout the service territory of each electric distribution company.

(2) If the commission approves a third-party entity to conduct the program, the commission shall ensure the program administrator finalizes the agreement between the commission and the third-party entity selected to provide the program of energy efficiency and demand-side response.

(3) In the event the commission disapproves the recommendation of the program administrator, the commission shall provide a rationale for this decision and direct the program administrator on a course of action.

(e) Plan goals.--The program administrator shall ensure that each proposal submitted by a third-party entity to deliver a program of energy efficiency and demand-side response measures
includes meeting the following energy saving goals:

(1) The following relate to energy efficiency goals:

   (i) By May 31, 2011, total annual deliveries to retail customers of electric distribution companies shall be reduced by a minimum of 1%. This load reduction shall be measured against the expected load forecasted by the commission for June 1, 2010, through May 31, 2011, based on load for the period June 1, 2007, through May 31, 2008, with provision made for weather adjustments and extraordinary load that the electric distribution company must serve. The commission shall determine and make public the forecasts to be used for each electric distribution company no later than August 31, 2008. The program administrator shall ensure that a third-party entity meets the goals contained in this section through the implementation of a program of energy efficiency measures throughout the service territory of the electric distribution company.

   (ii) By May 31, 2013, total annual deliveries to retail customers of electric distribution companies shall be reduced by a minimum of 2.5%. This load reduction shall be measured against the expected load forecasted by the commission for June 1, 2012, through May 31, 2013, based on load for the period June 1, 2007, through May 31, 2008, with provision made for weather adjustments and extraordinary load that the electric distribution company must serve. The commission shall determine and make public the forecasts to be used for each electric distribution company no later than August 31, 2008. The program administrator shall ensure that a third-party
entity meets the goals contained in this section through
the implementation of a program of energy efficiency
measures throughout the service territory of the electric
distribution company.

(iii) By November 30, 2013, the program
administrator shall evaluate the costs and benefits of
these energy efficiency and conservation programs. If the
benefits have been shown to exceed the costs, consistent
with the total resource cost test, the program
administrator, in consultation with the commission, shall
set additional, incremental energy efficiency and
conservation goals for the period ending May 31, 2018.

(iv) After May 31, 2018, the program administrator
shall continue to evaluate the costs and benefits of
efficiency and conservation measures and, in consultation
with the commission, may adopt additional incremental
load reduction standards for electric distribution
companies.

(2) The following relate to demand-side response
measures:

(i) Cost-effective demand-side response measures to
reduce peak demand by a minimum of 4% in the 100 hours of
highest demand with provision made for weather
adjustments and extraordinary load that the electric
distribution company must serve shall be implemented in
each electric distribution company's service territory.
This reduction will be measured against the electric
distribution company's peak demand in the 100 hours of
The reductions shall be accomplished by May 31, 2012.
(ii) By November 30, 2012, the program administrator shall compare the total costs of these demand-side response measures to the total savings in energy and capacity costs to retail customers of this Commonwealth. If the benefits have been shown to exceed the costs, consistent with the total resource cost test, the commission shall order additional peak demand reductions for the 100 hours of greatest demand or an alternative measure adopted by the commission. The reductions shall be measured from the electric distribution company's peak demand for the period from June 1, 2011, through May 31, 2012. The mandated reductions shall be accomplished no later than May 31, 2017.

(iii) After May 31, 2017, the program administrator shall continue to evaluate the costs and benefits of demand-side response measures and may, in consultation with the commission, adopt additional incremental peak load reduction standards.

(f) Measurements and verification.--The commission shall establish standards by which the program administrator submits to the commission an annual report, which includes that information relating to the actions and results of the energy efficiency and demand-side response programs undertaken within each electric distribution service territory by each third-party entity.

(1) The report shall include, but not be limited to:

(i) Documentation of program expenditures.

(ii) Measurement and verification of savings resulting from programs.

(iii) Evaluation of the cost-effectiveness of
expenditures.

(iv) Any other information the commission may require pursuant to its rulemaking authority.

(2) The program administrator, upon consultation with the commission, shall direct a third-party entity to modify or terminate a particular energy efficiency or a demand-side response program if, after an adequate period for implementation of the program, the commission determines the program is not sufficiently meeting its goals and purposes.

(3) In the event an energy efficiency or demand-side response program is terminated, the program administrator shall require the third-party entity to submit a revised program describing the actions to be undertaken to either offer a substitute program or increase the availability of existing programs to make up for the effect of the terminated program on its overall program goals.

(g) Responsibilities of electric distribution companies.-- Each electric distribution company that does not seek to be a third-party entity shall:

(1) Cooperate with the program administrator as needed in its efforts to competitively procure the services of a third-party entity to provide an energy efficiency and demand-side response program within the service territory of the electric distribution company.

(2) Provide information necessary to effectively facilitate the work of the selected third-party entity in conducting the energy efficiency and demand-side response program.

(3) Provide assistance as may be requested by the program administrator in reviewing proposals from third-party
entities seeking to provide energy efficiency and demand-side
response programs within their service territories.

(4) Provide assistance as may be requested by the
program administrator to facilitate the successful execution
of the contract agreement with the third-party entities to
provide an energy efficiency and demand-side response program
within their service territories.

(h) Recovery of administrative and program costs.--An
electric distribution company may fully recover all
administrative costs, including, but not limited to, costs
incurred under subsections (a)(3) and (g)(1), (2), (3) and (4),
that the commission determines are prudently incurred and
reasonable in amount pursuant to implementing a program to
deliver cost-effective energy efficiency and demand-side
response activities through a third-party entity. Program and
administrative costs shall be recovered on a full and current
basis by the electric distribution company from customers
through a reconcilable automatic adjustment clause pursuant to
section 1307. Energy efficiency and demand-side resource
programs shall be deemed to be a new service offered for the
first time under section 2804(4)(vi) (relating to standards for
restructuring of electric industry).

(i) Reporting.--The commission shall submit an annual report
to the General Assembly describing the results of the programs
implemented by each of the electric distribution companies,
including, but not limited to:

(1) The costs, benefits and reductions in energy costs.

(2) Energy use by customer class within this
Commonwealth.

(3) Reductions in overall peak demand and projections
toward complying with the overall target reduction goals of this section.

(j) Definitions.—For purposes of this section, the term "electric distribution company" shall mean a public utility providing facilities for the jurisdictional transmission and distribution of electricity to 100,000 or more retail customers in this Commonwealth.

Section 4. Section 2807(e) of Title 66 is amended by adding a paragraph to read:

§ 2807. Duties of electric distribution companies.

* * *

(c) Obligation to serve.* * *

(6) (i) Within nine months after the effective date of this paragraph, electric distribution companies shall file a smart meter technology procurement and installation plan with the commission for approval and make the plan available for public comment for a minimum of 30 days. The plan shall describe the smart meter technologies the electric distribution company proposes to install, how the smart meter technology meets the requirements of this paragraph and how the smart meter technology shall be installed according to this paragraph. In addition, the plan shall ensure that all smart meter technology installation and maintenance work shall be performed by adequately trained and qualified personnel and that, to the extent practical, such work shall be offered initially to employees of the electric distribution company.

(ii) Electric distribution companies shall furnish smart meter technology to:
(A) Customers responsible for 40% of the
distribution company's annual peak demand within four
years after the effective date of this paragraph.

(B) Customers responsible for 75% of the
distribution company's annual peak demand within six
years after the effective date of this paragraph.

(C) One hundred percent of its customers within
ten years after the effective date of this paragraph.

Electric distribution companies shall, with customer
consent, make available electronic access to customer
meter data to third parties, including electric
generation suppliers and providers of conservation and
load management services.

(iii) Electric distribution companies shall be
permitted to recover all reasonable and prudent costs, as
determined by the commission, of providing smart meter
technology, including annual depreciation and capital
costs over the life of the smart meter technology, that
are incurred after the effective date of this paragraph,
less all operating and capital costs savings realized by
the electric distribution company from the introduction
and use of the smart meter technology. An electric
distribution company may, at its option, recover such
smart meter technology costs:

(A) through base rates, including a deferral for
future base rate recovery of current costs, with
carrying charges equal to 6%; or

(B) on a full and current basis through a
reconcilable automatic adjustment clause under
section 1307 (relating to sliding scale of rates).
adjustments).

In no event shall lost or decreased revenues by an electric distribution company due to reduced electricity consumption or shifting energy demand be considered a cost of smart meter technology. Smart meter technology shall be deemed to be a new service offered for the first time under section 2804(4)(vi) (relating to standards for restructuring of electric industry).

(iv) By January 1, 2010, or at the end of the applicable generation rate cap period, whichever is later, a default service provider shall submit to the commission one or more proposed time-of-use rates and a real-time price plan. The commission shall approve or modify the time-of-use rates and real-time price plan within six months of submittal. The default service provider shall offer commission-approved time-of-use rates and a real-time price plan to all residential and commercial customers that have been provided with smart meter technology within 60 days of installation of the smart meter technology or commission approval of the time-of-use rates and a real-time price plan, whichever is later. Customer participation in time-of-use rates or real-time pricing shall be voluntary and shall only be provided with the affirmative consent of the customer. The default service provider shall submit an annual report to the commission on the participation in the time-of-use and real-time price programs and the efficacy of the programs in affecting energy demand and consumption and the effect on wholesale market prices.

(v) For purposes of this paragraph, the term
"electric distribution company" shall mean a public utility providing facilities for the jurisdictional transmission and distribution of electricity to 100,000 or more retail customers in this Commonwealth.

Section 5. This act shall take effect immediately.

SECTION 1. SECTION 2803 OF TITLE 66 OF THE PENNSYLVANIA CONSOLIDATED STATUTES IS AMENDED BY ADDING DEFINITIONS TO READ:

§ 2803. DEFINITIONS.

THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

* * *

"BILATERAL CONTRACT." AN AGREEMENT, AS APPROVED BY THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, REACHED BY TWO PARTIES, EACH ACTING IN ITS OWN INDEPENDENT SELF-INTEREST, AS A RESULT OF NEGOTIATIONS FREE OF UNDUE INFLUENCE, DURESS OR FAVORITISM, IN WHICH THE ELECTRIC ENERGY SUPPLIER AGREES TO SELL AND THE ELECTRIC DISTRIBUTION COMPANY AGREES TO BUY A QUANTITY OF ELECTRIC ENERGY AT A SPECIFIED PRICE FOR A SPECIFIED PERIOD OF TIME UNDER TERMS AGREED TO BY BOTH PARTIES, AND WHICH FOLLOWS A STANDARD INDUSTRY TEMPLATE WIDELY ACCEPTED IN THE INDUSTRY OR VARIATIONS THERETO ACCEPTED BY THE PARTIES. STANDARD INDUSTRY TEMPLATES MAY INCLUDE THE EEI MASTER AGREEMENT FOR PHYSICAL ENERGY PURCHASES AND SALES AND THE ISDA MASTER AGREEMENT FOR FINANCIAL ENERGY PURCHASES AND SALES.

* * *

"DEFAULT SERVICE PROVIDER." AN ELECTRIC DISTRIBUTION COMPANY WITHIN ITS CERTIFIED SERVICE TERRITORY OR AN ALTERNATIVE SUPPLIER APPROVED BY THE PENNSYLVANIA PUBLIC UTILITY COMMISSION THAT PROVIDES GENERATION SERVICE TO RETAIL ELECTRIC CUSTOMERS
WHO:

(1) CONTRACT FOR ELECTRIC POWER, INCLUDING ENERGY AND CAPACITY, AND THE CHOSEN ELECTRIC GENERATION SUPPLIER DOES NOT SUPPLY THE SERVICE; OR

(2) DO NOT CHOOSE AN ALTERNATIVE ELECTRIC GENERATION SUPPLIER.

SECTION 2. TITLE 66 IS AMENDED BY ADDING A SECTION TO READ:

§ 2806.1. ENERGY EFFICIENCY AND CONSERVATION.

(A) PROGRAM.—THE COMMISSION SHALL ADOPT A 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 TERRITORIES OF ALL ELECTRIC DISTRIBUTION COMPANIES IN THIS COMMONWEALTH. THE PROGRAM SHALL INCLUDE:

(1) PROCEDURES FOR THE APPROVAL OF PLANS SUBMITTED UNDER SUBSECTION (B).

(2) A PLAN EVALUATION PROCESS INCLUDING A PROCESS TO MONITOR AND VERIFY DATA COLLECTION, QUALITY ASSURANCE AND RESULTS SUBMITTED.

(3) AN ANALYSIS OF THE COST AND BENEFIT OF EACH PLAN SUBMITTED UNDER SUBSECTION (B) IN ACCORDANCE WITH A TOTAL RESOURCE COST TEST.

(4) AN ANALYSIS OF HOW THE PROGRAM AND INDIVIDUAL PLANS WILL ENABLE EACH ELECTRIC DISTRIBUTION COMPANY TO ACHIEVE THE REQUIREMENTS FOR REDUCTION IN CONSUMPTION UNDER SUBSECTIONS (C) AND (D).

(5) 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.
(6) Procedures to review all proposed contracts prior to the execution of the contract with third-party entities to implement the plan. The Commission may order the modification of a proposed contract to ensure that the plan is adequate.

(7) Procedures to ensure compliance with requirements for reduction in consumption under subsections (C) and (D).

(8) A requirement for the participation of third-party entities in the implementation of all or part of a plan.

(9) A process to link reductions in consumption to the compensation of third-party entities.

(10) Procedures for the levy of assessments in accordance with sections 510 (relating to assessment for regulatory expenses upon public utilities) and 1308 (relating to voluntary changes in rates) subject to the limitations of subsection (C) to fund plans filed under subsection (B) subject to the limitations set forth under subsection (C).

(B) Duties of electric distribution companies. --

(1) (i) By November 15, 2008, each electric distribution company shall develop and file an energy efficiency and conservation plan with the Commission for approval to meet the requirements of subsection (A) and the requirements for reduction in consumption under subsections (C) and (D). The plan shall be implemented upon approval by the Commission and shall comply with all of the following:

(A) Include specific proposals to implement energy efficiency and conservation measures to achieve the required reductions in consumption under subsections (C) and (D).

(B) 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.

(C) THE MANNER IN WHICH PERFORMANCE WILL BE
MEASURED, VERIFIED AND EVALUATED.

(D) THE MANNER IN WHICH THE PLAN WILL ACHIEVE
THE REQUIREMENTS OF THE PROGRAM UNDER SUBSECTION (A)
AND THE REQUIRED REDUCTIONS IN CONSUMPTION UNDER
SUBSECTIONS (C) AND (D).

(E) INCLUDE A CONTRACT WITH ONE OR MORE THIRD-
PARTY ENTITIES TO IMPLEMENT THE PLAN OR A PORTION OF
THE PLAN AS APPROVED BY THE COMMISSION.

(F) INCLUDE ESTIMATES OF THE COST OF
IMPLEMENTATION OF THE ENERGY EFFICIENCY AND
CONSERVATION MEASURES IN THE PLAN.

(G) 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 THIS COMMONWEALTH. 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).
(H) Include a proposed cost-recovery tariff mechanism to fund the energy efficiency and conservation measures and to ensure recovery of the prudent and reasonable costs of the plan as approved by the Commission.

(I) A demonstration that the plan is cost-effective using a total resource cost test or other cost-benefit analysis approved by the Commission and provides a diverse cross section of alternatives for customers of all rate classes.

(J) Require an annual independent evaluation of the performance of the cost-effectiveness of the plan and a full review of the five-year results of the plan and, to the extent practicable, how the plan will be adjusted on a going-forward basis as a result of the evaluation.

(II) A new plan shall be filed with the Commission every five years or as otherwise required by the Commission. The plan shall set forth the manner in which the company will meet the required reductions in consumption under subsections (C) and (D).

(III) No more than 2% of funds available to implement a plan under this subsection shall be allocated for experimental equipment or devices.

(2) The Commission shall direct an electric distribution company 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 is not effective.
(3) IF PART OF A PLAN IS MODIFIED OR TERMINATED UNDER
PARAGRAPH (2), THE ELECTRIC DISTRIBUTION COMPANY SHALL SUBMIT
A REVISED PLAN DESCRIBING ACTIONS TO BE TAKEN TO OFFER
SUBSTITUTE MEASURES OR TO INCREASE THE AVAILABILITY OF
EXISTING MEASURES IN THE PLAN TO ACHIEVE THE REQUIRED
REDUCTIONS IN CONSUMPTION UNDER SUBSECTIONS (C) AND (D).

(C) REDUCTIONS IN CONSUMPTION.--EACH ELECTRIC DISTRIBUTION
COMPANY SHALL REDUCE CONSUMPTION AS FOLLOWS:

(1) BY MAY 31, 2011, EACH ELECTRIC DISTRIBUTION COMPANY
SHALL REDUCE ITS TOTAL ANNUAL WEATHER-NORMALIZED DELIVERIES
TO RETAIL CUSTOMERS BY A MINIMUM OF 1%. THE 1% LOAD REDUCTION
IN CONSUMPTION SHALL BE MEASURED AGAINST THE ELECTRIC
DISTRIBUTION COMPANY'S EXPECTED LOAD AS FORECASTED BY THE
COMMISSION FOR JUNE 1, 2007 THROUGH MAY 31, 2008, WITH
PROVISIONS MADE FOR WEATHER ADJUSTMENTS AND EXTRAORDINARY
LOADS THAT THE ELECTRIC DISTRIBUTION COMPANY MUST SERVE.

(2) BY MAY 31, 2013, EACH ELECTRIC DISTRIBUTION COMPANY
SHALL REDUCE ITS TOTAL ANNUAL WEATHER-NORMALIZED DELIVERIES
TO RETAIL CUSTOMERS BY A MINIMUM OF 2.5%. THE 2.5% LOAD
REDUCTION IN CONSUMPTION SHALL BE MEASURED AGAINST THE
ELECTRIC DISTRIBUTION COMPANY'S EXPECTED LOAD AS FORECASTED
BY THE COMMISSION FOR JUNE 1, 2007, THROUGH MAY 31, 2008,
WITH PROVISION MADE FOR WEATHER ADJUSTMENTS AND EXTRAORDINARY
LOADS THAT THE ELECTRIC DISTRIBUTION COMPANY MUST SERVE.

(3) BY NOVEMBER 30, 2013, THE COMMISSION SHALL EVALUATE
THE COSTS AND BENEFITS OF THE PROGRAM ESTABLISHED UNDER
SUBSECTION (A) AND ENERGY EFFICIENCY AND CONSERVATION PLANS
SUBMITTED TO THE PROGRAM. THE EVALUATION SHALL BE CONSISTENT
WITH A TOTAL RESOURCE COST TEST OR A COST VERSUS BENEFIT
MEASUREMENT DETERMINED BY THE COMMISSION. IF THE COMMISSION
DETERMINES THAT THE BENEFITS OF THE PROGRAM EXCEED THE COSTS, the Commission shall adopt additional incremental required reductions in consumption for the period ending May 31, 2018.

(4) After May 31, 2018, the Commission shall continue to evaluate the costs and benefits of the program established under subsection (a) and energy efficiency and conservation plans approved under subsection (a). If the Commission determines that the benefits of the program exceed the costs, the Commission may require and approve additional plans to achieve incremental requirements for reduction in consumption for electric distribution companies. Each plan shall be for a term not to exceed five years.

(D) Peak Demand.--Each electric distribution company shall implement energy efficiency and conservation measures to achieve the following reductions in consumption:

(1) By May 31, 2013, each energy distribution company shall reduce its weather-normalized deliveries to retail customers by a minimum of 4% in the 100 hours of highest demand. The reduction shall be measured against the electric distribution company's peak demand in the 100 hours of greatest demand for June 1, 2007, through May 31, 2008.

(2) By November 30, 2013, the Commission shall compare the total costs of energy efficiency and conservation plans implemented under this section to the total savings in energy and capacity costs to retail customers in this Commonwealth. If the Commission determines that the benefits of the measures exceed the costs, the Commission shall set additional incremental requirements for reduction in peak demand for the 100 hours of greatest demand or an alternative reduction approved by the Commission. Reductions in

(E) COMMISSION APPROVAL.--THE COMMISSION SHALL APPROVE OR DISAPPROVE A PLAN FILED UNDER SUBSECTION (B) WITHIN 120 DAYS OF SUBMISSION. THE FOLLOWING SHALL APPLY TO AN ORDER DISAPPROVING A PLAN:

(1) THE COMMISSION SHALL DESCRIBE IN DETAIL THE REASONS FOR THE DISAPPROVAL.

(2) THE ELECTRIC DISTRIBUTION COMPANY SHALL HAVE 60 DAYS TO FILE A REVISED PLAN TO ADDRESS THE DEFICIENCIES IDENTIFIED BY THE COMMISSION.

(F) PENALTIES.--

(1) THE FOLLOWING SHALL APPLY FOR FAILURE TO SUBMIT A PLAN:

(I) AN ELECTRIC DISTRIBUTION COMPANY THAT FAILS TO FILE A PLAN UNDER SUBSECTION (B) SHALL BE SUBJECT TO A CIVIL PENALTY OF $100,000 PER DAY UNTIL THE PLAN IS FILED.

(II) AN ELECTRIC DISTRIBUTION COMPANY THAT FAILS TO FILE A REVISED PLAN UNDER SUBSECTION (E)(2) SHALL BE SUBJECT TO A CIVIL PENALTY OF $100,000 PER DAY UNTIL THE PLAN IS FILED.

(III) PENALTIES COLLECTED UNDER THIS PARAGRAPH SHALL BE DEPOSITED IN THE LOW-INCOME ELECTRIC CUSTOMER ASSISTANCE PROGRAM OF THE ENERGY DISTRIBUTION COMPANY FOR THE RESPECTIVE SERVICE TERRITORY.

(2) THE FOLLOWING SHALL APPLY TO AN ELECTRIC
DISTRIBUTION COMPANY THAT FAILS TO ACHIEVE THE REDUCTIONS IN
CONSUMPTION REQUIRED UNDER SUBSECTION (C) OR (D):

(I) THE ELECTRIC DISTRIBUTION COMPANY SHALL BE
SUBJECT TO A CIVIL PENALTY OF UP TO $5,000,000 FOR
FAILURE TO ACHIEVE THE REQUIRED REDUCTIONS IN CONSUMPTION
UNDER SUBSECTION (C) OR (D). ANY PENALTY PAID BY AN
ELECTRIC DISTRIBUTION COMPANY UNDER THIS SUBPARAGRAPH
SHALL NOT BE RECOVERABLE FROM RATEPAYERS.

(II) IF AN ELECTRIC DISTRIBUTION COMPANY FAILS TO
ACHIEVE THE REQUIRED REDUCTIONS IN CONSUMPTION UNDER
SUBSECTION (C) OR (D) BY 2013, RESPONSIBILITY TO ACHIEVE
THE REDUCTIONS IN CONSUMPTION SHALL BE TRANSFERRED TO THE
COMMISSION. THE COMMISSION SHALL DO ALL OF THE FOLLOWING:

(A) IMPLEMENT A PLAN TO ACHIEVE THE REQUIRED
REDUCTIONS IN CONSUMPTION UNDER SUBSECTION (C) OR
(D).

(B) CONTRACT WITH THIRD-PARTY ENTITIES AS
NECESSARY TO IMPLEMENT ANY PORTION OF THE PLAN.

(III) THE PROVISIONS OF SUBPARAGRAPH (II) SHALL
APPLY IN EACH SUBSEQUENT FIVE-YEAR PERIOD IF THE ELECTRIC
DISTRIBUTION COMPANY FAILS TO ACHIEVE THE REDUCTION
STANDARDS UNDER SUBSECTION (C) OR (D).

(C) LIMITATION ON COSTS.—THE TOTAL COST OF ANY PLAN
REQUIRED UNDER THIS SECTION SHALL NOT EXCEED 2% OF THE ELECTRIC
DISTRIBUTION COMPANY'S TOTAL ANNUAL REVENUE AS OF DECEMBER 31,
2006. NO MORE THAN 1% OF THE 2% OF THE COMPANY'S TOTAL ANNUAL
REVENUE MAY BE USED FOR THE ADMINISTRATIVE COSTS OF THE ELECTRIC
DISTRIBUTION COMPANY. THE LIMITATION UNDER THIS PARAGRAPH SHALL
NOT INCLUDE THE COST OF LOW-INCOME USAGE REDUCTION PROGRAMS
ESTABLISHED UNDER 52 PA. CODE CH. 58 (RELATING TO RESIDENTIAL
(H) REPORT.-- THE FOLLOWING SHALL APPLY:

(1) EACH ELECTRIC DISTRIBUTION COMPANY SHALL SUBMIT AN ANNUAL REPORT TO THE COMMISSION RELATING TO THE RESULTS OF THE ENERGY EFFICIENCY AND CONSERVATION PLAN WITHIN THE ELECTRIC DISTRIBUTION SERVICE TERRITORY. THE REPORT SHALL INCLUDE ALL OF THE FOLLOWING:

(I) DOCUMENTATION OF PROGRAM EXPENDITURES.

(II) MEASUREMENT AND VERIFICATION OF ENERGY SAVINGS UNDER THE PLAN.

(III) EVALUATION OF THE COST-EFFECTIVENESS OF EXPENDITURES.

(IV) ANY OTHER INFORMATION REQUIRED BY THE COMMISSION.

(2) BEGINNING FIVE YEARS FOLLOWING THE EFFECTIVE DATE OF THIS SECTION AND ANNUALLY THEREAFTER, THE COMMISSION SHALL SUBMIT A REPORT TO THE CONSUMER PROTECTION AND PROFESSIONAL LICENSURE COMMITTEE OF THE SENATE AND THE CONSUMER AFFAIRS COMMITTEE OF THE HOUSE OF REPRESENTATIVES.

(I) EXISTING FUNDING SOURCES.-- EACH ELECTRIC DISTRIBUTION COMPANY SHALL PROVIDE A LIST OF ALL ELIGIBLE FEDERAL AND STATE FUNDING PROGRAMS.

(J) RECOVERY.-- IN NO CASE SHALL DECREASED REVENUES OF AN ELECTRIC DISTRIBUTION COMPANY DUE TO REDUCED ENERGY CONSUMPTION OR CHANGES IN ENERGY DEMAND BE CONSIDERED A RECOVERABLE COST.

(K) APPLICABILITY.-- THIS SECTION SHALL NOT APPLY TO AN ELECTRIC DISTRIBUTION COMPANY WITH FEWER THAN 100,000 CUSTOMERS.

(L) DEFINITIONS.-- AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SUBSECTION:
"ELECTRIC DISTRIBUTION COMPANY TOTAL ANNUAL REVENUE."

AMOUNTS PAID TO THE ELECTRIC DISTRIBUTION COMPANY FOR
GENERATION, TRANSMISSION, DISTRIBUTION AND SURCHARGES BY RETAIL
CUSTOMERS.

"ENERGY EFFICIENCY AND CONSERVATION MEASURES."

(1) TECHNOLOGIES, MANAGEMENT PRACTICES OR OTHER MEASURES
EMPLOYED BY RETAIL CUSTOMERS THAT REDUCE ELECTRICITY
CONSUMPTION OR DEMAND IF ALL OF THE FOLLOWING APPLY:

(I) THE TECHNOLOGY, PRACTICE OR OTHER MEASURE IS
INSTALLED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION
AT THE LOCATION OF A RETAIL CUSTOMER.

(II) THE TECHNOLOGY, PRACTICE OR OTHER MEASURE
REDUCES CONSUMPTION OF ENERGY BY THE RETAIL CUSTOMER.

(III) THE COST OF THE ACQUISITION OR INSTALLATION OF
THE MEASURE IS DIRECTLY INCURRED IN WHOLE OR IN PART BY
THE ELECTRIC DISTRIBUTION COMPANY.

(2) ENERGY EFFICIENCY AND CONSERVATION MEASURES SHALL
INCLUDE SOLAR OR SOLAR PHOTOVOLTAIC PANELS, ENERGY EFFICIENT
WINDOWS AND DOORS, ENERGY EFFICIENT LIGHTING, INCLUDING EXIT
SIGN RETROFIT, HIGH BAY FLUORESCENT RETROFIT AND PEDESTRIAN
AND TRAFFIC SIGNAL CONVERSION, GEOTHERMAL HEATING,
INSULATION, AIR SEALING, REFLECTIVE ROOF COATINGS, ENERGY
EFFICIENT HEATING AND COOLING EQUIPMENT OR SYSTEMS AND ENERGY
EFFICIENT APPLIANCES AND OTHER TECHNOLOGIES, PRACTICES OR
MEASURES APPROVED BY THE COMMISSION.

"PEAK DEMAND." THE HIGHEST ELECTRICAL REQUIREMENT OCCURRING
DURING A SPECIFIED PERIOD. FOR AN ELECTRIC DISTRIBUTION COMPANY,
THE TERM SHALL MEAN THE SUM OF THE METERED CONSUMPTION FOR ALL
RETAIL CUSTOMERS OVER THAT PERIOD.

"QUALITY ASSURANCE." ALL OF THE FOLLOWING:
(1) THE AUDITING OF BUILDINGS, EQUIPMENT AND PROCESSES
TO DETERMINE THE COST-EFFECTIVENESS OF ENERGY EFFICIENCY AND
CONSERVATION MEASURES USING NATIONALLY RECOGNIZED TOOLS AND
CERTIFICATION PROGRAMS.

(2) INDEPENDENT INSPECTION OF COMPLETED ENERGY
EFFICIENCY AND CONSERVATION MEASURES COMPLETED BY THIRD-PARTY
ENTITIES TO EVALUATE THE QUALITY OF THE COMPLETED MEASURE.
"REAL-TIME PRICE." A RATE THAT DIRECTLY REFLECTS THE
DIFFERENT COST OF ENERGY DURING EACH HOUR.
"THIRD-PARTY ENTITY." AN ENTITY WITH NO DIRECT OR INDIRECT
OWNERSHIP, PARTNERSHIP OR OTHER AFFILIATED INTEREST WITH AN
ELECTRIC DISTRIBUTION COMPANY.
"TIME-OF-USE RATE." A RATE THAT REFLECTS THE COSTS OF
SERVING CUSTOMERS DURING DIFFERENT TIME PERIODS, INCLUDING OFF-
PEAK AND ON-PEAK PERIODS, BUT NOT AS FREQUENTLY AS EACH HOUR.
"TOTAL RESOURCE COST TEST." A STANDARD TEST THAT IS MET IF,
OVER THE EFFECTIVE LIFE OF EACH PLAN NOT TO EXCEED FIVE YEARS,
THE AVOIDED MONETARY COSTS OF SUPPLYING ELECTRICITY ARE GREATER
THAN THE MONETARY COSTS OF ENERGY EFFICIENCY MEASURES AND
CONSERVATION OF CONSUMPTION.

SECTION 3. SECTION 2807(E) OF TITLE 66 IS AMENDED AND THE
SECTION IS AMENDED BY ADDING SUBSECTIONS TO READ:
§ 2807. DUTIES OF ELECTRIC DISTRIBUTION COMPANIES.
* * *
(E) OBLIGATION TO SERVE. [AN ELECTRIC DISTRIBUTION
COMPANY'S] A DEFAULT SERVICE PROVIDER'S OBLIGATION TO PROVIDE
ELECTRIC GENERATION SUPPLY SERVICE FOLLOWING [IMPLEMENTATION OF
RESTRUCTURING AND THE CHOICE OF ALTERNATIVE GENERATION BY A
CUSTOMER] THE EXPIRATION OF A GENERATION RATE CAP SPECIFIED
UNDER SECTION 2804(4) (RELATING TO STANDARDS FOR RESTRUCTURING
OF ELECTRIC INDUSTRY) OR A RESTRUCTURING PLAN UNDER SECTION 2806(F) (RELATING TO IMPLEMENTATION, PILOT PROGRAMS AND PERFORMANCE-BASED RATES) IS REVISED AS FOLLOWS:

(1) WHILE AN ELECTRIC DISTRIBUTION COMPANY COLLECTS EITHER A COMPETITIVE TRANSITION CHARGE OR AN INTANGIBLE TRANSITION CHARGE OR UNTIL 100% OF ITS CUSTOMERS HAVE CHOICE, WHICHEVER IS LONGER, THE ELECTRIC DISTRIBUTION COMPANY SHALL CONTINUE TO HAVE THE FULL OBLIGATION TO SERVE, INCLUDING THE CONNECTION OF CUSTOMERS, THE DELIVERY OF ELECTRIC ENERGY AND THE PRODUCTION OR ACQUISITION OF ELECTRIC ENERGY FOR CUSTOMERS.

(2) AT THE END OF THE TRANSITION PERIOD, THE COMMISSION SHALL PROMULGATE REGULATIONS TO DEFINE THE ELECTRIC DISTRIBUTION COMPANY'S OBLIGATION TO CONNECT AND DELIVER AND ACQUIRE ELECTRICITY UNDER PARAGRAPH (3) THAT WILL EXIST AT THE END OF THE PHASE-IN PERIOD.

(3) IF A CUSTOMER CONTRACTS FOR ELECTRIC ENERGY AND IT IS NOT DELIVERED OR IF A CUSTOMER DOES NOT CHOOSE AN ALTERNATIVE ELECTRIC GENERATION SUPPLIER, THE ELECTRIC DISTRIBUTION COMPANY OR COMMISSION-APPROVED ALTERNATIVE SUPPLIER SHALL ACQUIRE ELECTRIC ENERGY AT PREVAILING MARKET PRICES TO SERVE THAT CUSTOMER AND SHALL RECOVER FULLY ALL REASONABLE COSTS.

(3.1) (I) FOLLOWING THE EXPIRATION OF AN ELECTRIC DISTRIBUTION COMPANY'S OBLIGATION TO PROVIDE ELECTRIC GENERATION SUPPLY SERVICE TO RETAIL CUSTOMERS AT CAPPED RATES, IF A CUSTOMER CONTRACTS FOR ELECTRIC GENERATION SUPPLY SERVICE AND THE CHOSEN ELECTRIC GENERATION SUPPLIER DOES NOT PROVIDE THE SERVICE OR IF A CUSTOMER DOES NOT CHOOSE AN ALTERNATIVE ELECTRIC GENERATION
SUPPLIER, THE DEFAULT SERVICE PROVIDER SHALL PROVIDE
ELECTRIC GENERATION SUPPLY SERVICE TO THAT CUSTOMER
PURSUANT TO A COMMISSION-APPROVED COMPETITIVE PROCUREMENT
PLAN. THE ELECTRIC POWER ACQUIRED SHALL BE PROCURED
THROUGH COMPETITIVE PROCUREMENT PROCESSES AND SHALL
INCLUDE ONE OR MORE OF THE FOLLOWING:

(A) AUCTIONS,

(B) REQUESTS FOR PROPOSAL,

(C) BILATERAL AGREEMENTS ENTERED INTO AT THE
SOLE DISCRETION OF THE DEFAULT SERVICE PROVIDER WHICH
SHALL BE AT PRICES WHICH ARE:

(I) NO GREATER THAN THE COST OF OBTAINING
GENERATION UNDER COMPARABLE TERMS IN THE
WHOLESALE MARKET, AS DETERMINED BY THE COMMISSION
AT THE TIME OF EXECUTION OF THE CONTRACT; OR

(II) CONSISTENT WITH A COMMISSION-APPROVED
COMPETITION PROCUREMENT PROCESS. ANY AGREEMENT
BETWEEN AFFILIATED PARTIES SHALL BE SUBJECT TO
REVIEW AND APPROVAL OF THE PENNSYLVANIA PUBLIC
UTILITY COMMISSION UNDER CHAPTER 21 (RELATING TO
RELATIONS WITH AFFILIATED INTERESTS). IN NO CASE
SHALL THE COST OF OBTAINING GENERATION FROM ANY
AFFILIATED INTEREST BE GREATER THAN THE COST OF
OBTAINING GENERATION UNDER COMPARABLE TERMS IN
THE WHOLESALE MARKET AT THE TIME OF EXECUTION OF
THE CONTRACT.

(II) THE PROVISIONS OF THIS PARAGRAPH SHALL APPLY TO
ANY TYPE OF FUEL PURCHASED BY A DEFAULT SERVICE PROVIDER
TO PROVIDE ELECTRIC GENERATION SUPPLY SERVICE, INCLUDING
FUEL REQUIRED TO BE PURCHASED UNDER THE ACT OF NOVEMBER
30, 2004 (P.L.1672, No.213), KNOWN AS THE ALTERNATIVE ENERGY PORTFOLIO STANDARDS ACT.

(3.2) THE ELECTRIC POWER PROCURED PURSUANT TO PARAGRAPH (3.1) SHALL INCLUDE A PRUDENT MIX OF THE FOLLOWING:

(I) SPOT MARKET PURCHASES.

(II) SHORT-TERM CONTRACTS.

(III) LONG-TERM PURCHASE CONTRACTS, ENTERED INTO AS A RESULT OF AN AUCTION, REQUEST FOR PROPOSAL OR BILATERAL CONTRACT THAT IS FREE OF UNDUE INFLUENCE, DURESS OR FAVORITISM, OF NOT LESS THAN THREE AND NOT MORE THAN 20 YEARS, UNLESS THE COMMISSION DETERMINES A LONGER TERM IS NECESSARY FOR THE RELIABILITY IN THE ACQUISITION OF GENERATION AND IT IS IN THE BEST INTEREST OF CONSUMERS TO EXTEND THE TERM OF THE CONTRACT BEYOND 20 YEARS. THE DEFAULT SERVICE PROVIDER SHALL HAVE SOLE DISCRETION TO DETERMINE THE SOURCE, FUEL TYPE AND LENGTH OF CONTRACT.

(3.3) THE PRUDENT MIX OF CONTRACTS ENTERED INTO PURSUANT TO PARAGRAPH (3.2) SHALL BE DESIGNED TO ENSURE:

(I) ADEQUATE AND RELIABLE SERVICE.

(II) THE LEAST COST TO CUSTOMERS OVER TIME.

(III) COMPLIANCE WITH THE REQUIREMENTS OF PARAGRAPH (3.1).

(3.4) THE DEFAULT SERVICE PROVIDER SHALL FILE A PLAN FOR COMPETITIVE PROCUREMENT WITH THE COMMISSION AND OBTAIN COMMISSION APPROVAL OF THE PLAN CONSIDERING THE STANDARDS IN PARAGRAPHS (3.1), (3.2) AND (3.3) BEFORE THE COMPETITIVE PROCESS IS IMPLEMENTED. THE COMMISSION SHALL HOLD HEARINGS AS NECESSARY ON THE PROPOSED PLAN. IF THE COMMISSION FAILS TO ISSUE A FINAL ORDER ON THE PLAN WITHIN NINE MONTHS OF THE DATE THAT THE PLAN IS FILED, THE PLAN SHALL BE DEEMED TO BE
APPROVED AND THE DEFAULT SERVICE PROVIDER MAY IMPLEMENT THE
PLAN AS FILED. COSTS INCURRED THROUGH AN APPROVED COMPETITIVE
PROCUREMENT PLAN SHALL BE DEEMED TO BE THE LEAST COST OVER
TIME AS REQUIRED UNDER PARAGRAPH (3.3).

(3.5) AT THE TIME THE COMMISSION EVALUATES THE PLAN AND
PRIOR TO APPROVAL, IN DETERMINING IF THE DEFAULT ELECTRIC
SERVICE PROVIDER'S PLAN OBTAINS GENERATION SUPPLY AT THE
LEAST COST, THE COMMISSION SHALL CONSIDER THE DEFAULT SERVICE
PROVIDER'S OBLIGATION TO PROVIDE ADEQUATE AND RELIABLE
SERVICE TO THE CUSTOMERS AND THAT THE DEFAULT SERVICE
PROVIDER HAS OBTAINED A PRUDENT MIX OF CONTRACTS TO OBTAIN
LEAST COST ON LONG-TERM, SHORT-TERM AND SPOT MARKET BASIS AND
SHALL MAKE SPECIFIC FINDINGS WHICH SHALL INCLUDE THE
FOLLOWING:

(I) THE DEFAULT SERVICE PROVIDER'S PLAN INCLUDES
PRUDENT STEPS NECESSARY TO NEGOTIATE FAVORABLE GENERATION
SUPPLY CONTRACTS.

(II) THE DEFAULT SERVICE PROVIDER'S PLAN INCLUDES
PRUDENT STEPS NECESSARY TO OBTAIN LEAST COST GENERATION
SUPPLY CONTRACTS ON A LONG-TERM, SHORT-TERM AND SPOT
MARKET BASIS.

(III) NEITHER THE DEFAULT SERVICE PROVIDER NOR ITS
AFFILIATED INTEREST HAS WITHHELD OR ASKED TO WITHHOLD
FROM THE MARKET ANY GENERATION SUPPLY WHICH SHOULD HAVE
BEEN UTILIZED AS PART OF THE LEAST COST PROCUREMENT
POLICY.

(3.6) NOTWITHSTANDING SECTIONS 508 (RELATING TO POWER OF
COMMISSION TO VARY, REFORM AND REVISE CONTRACTS) AND 2102
(RELATING TO APPROVAL OF CONTRACTS WITH AFFILIATED
INTERESTS), THE COMMISSION SHALL NOT MODIFY CONTRACTS OR
DISALLOW COSTS ASSOCIATED WITH AN APPROVED PROCUREMENT PROCESS WHEN IT HAS REVIEWED AND APPROVED THE RESULTS OF THE PROCUREMENT.

(3.7) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE TO THE CONTRARY, THE COMMISSION MAY MODIFY CONTRACTS OR DISALLOW COSTS WHEN THE PARTY SEEKING RECOVERY OF THE COSTS IS AT FAULT ASSOCIATED WITH CONTRACTS ENTERED INTO PURSUANT TO A COMMISSION-APPROVED PROCUREMENT PLAN IF THE COMMISSION DETERMINES AFTER A HEARING THAT:

(I) THE CONTRACT HAS NOT BEEN IMPLEMENTED OR APPROVED OR DOES NOT COMPLY WITH THE COMMISSION-APPROVED PROCUREMENT PLAN; OR

(II) THERE HAS BEEN FRAUD, COLLUSION OR MARKET MANIPULATION WITH REGARD TO THESE CONTRACTS.

(3.8) THE DEFAULT SERVICE PROVIDER SHALL HAVE THE RIGHT TO RECOVER ON A FULL AND CURRENT BASIS, PURSUANT TO A RECONCILABLE AUTOMATIC ADJUSTMENT CLAUSE UNDER SECTION 1307 (RELATING TO SLIDING SCALE OF RATES; ADJUSTMENTS), ALL COSTS INCURRED UNDER THIS SECTION AND A COMMISSION-APPROVED COMPETITIVE PROCUREMENT PLAN.

(4) IF A CUSTOMER THAT CHOOSES AN ALTERNATIVE SUPPLIER AND SUBSEQUENTLY DESIRES TO RETURN TO THE LOCAL DISTRIBUTION COMPANY FOR GENERATION SERVICE, THE LOCAL DISTRIBUTION COMPANY SHALL TREAT THAT CUSTOMER EXACTLY AS IT WOULD ANY NEW APPLICANT FOR ENERGY SERVICE.

(5) (I) NOTWITHSTANDING PARAGRAPH [(3)] (3.1), THE ELECTRIC DISTRIBUTION COMPANY OR COMMISSION-APPROVED ALTERNATIVE SUPPLIER MAY, IN ITS SOLE DISCRETION, OFFER LARGE CUSTOMERS WITH A PEAK DEMAND OF 15 MEGAWATTS OR GREATER AT ONE METER AT A LOCATION IN ITS SERVICE
TERRITORY ANY NEGOTIATED RATE FOR SERVICE AT ALL OF THE
CUSTOMERS' LOCATIONS WITHIN THE SERVICE TERRITORY FOR ANY
DURATION AGREED UPON BY THE ELECTRIC DISTRIBUTION COMPANY
OR COMMISSION-APPROVED ALTERNATIVE SUPPLIER AND THE LARGE
CUSTOMER. THE COMMISSION SHALL PERMIT, BUT SHALL NOT
REQUIRE, AN ELECTRIC DISTRIBUTION COMPANY OR COMMISSION-
APPROVED ALTERNATIVE SUPPLIER TO PROVIDE SERVICE TO LARGE
CUSTOMERS UNDER THIS PARAGRAPH. CONTRACT RATES ENTERED
INTO UNDER THIS PARAGRAPH SHALL BE SUBJECT TO REVIEW BY
THE COMMISSION IN ORDER TO ENSURE THAT ALL COSTS RELATED
TO THE RATES ARE BORNE BY THE PARTIES TO THE CONTRACT AND
THAT NO COSTS RELATED TO THE RATES ARE BORNE BY OTHER
CUSTOMERS OR CUSTOMER CLASSES. IF NO COSTS RELATED TO THE
RATES ARE BORNE BY OTHER CUSTOMERS OR CUSTOMER CLASSES,
THE COMMISSION SHALL APPROVE THE CONTRACT WITHIN 90 DAYS
OF ITS FILING, OR IT SHALL BE DEEMED APPROVED BY
OPERATION OF LAW UPON EXPIRATION OF THE 90 DAYS.
INFORMATION SUBMITTED UNDER THIS PARAGRAPH SHALL BE
SUBJECT TO THE COMMISSION'S PROCEDURES FOR THE FILING OF
CONFIDENTIAL AND PROPRIETARY INFORMATION.

(II) FOR PURPOSES OF PROVIDING SERVICE UNDER THIS
PARAGRAPH TO CUSTOMERS WITH A PEAK DEMAND OF 20 MEGAWATTS
OR GREATER AT ONE METER AT A LOCATION WITHIN THAT
DISTRIBUTION COMPANY'S SERVICE TERRITORY, AN ELECTRIC
DISTRIBUTION COMPANY THAT HAS COMPLETED ITS RESTRUCTURING
TRANSITION PERIOD AS OF THE EFFECTIVE DATE OF THIS
PARAGRAPH MAY, IN ITS SOLE DISCRETION, ACQUIRE AN
INTEREST IN A GENERATION FACILITY OR CONSTRUCT A
GENERATION FACILITY SPECIFICALLY TO MEET THE ENERGY
REQUIREMENTS OF THE CUSTOMERS, INCLUDING THE ELECTRIC
REQUIREMENTS OF THE CUSTOMERS' OTHER BILLING LOCATIONS
WITHIN ITS SERVICE TERRITORY. THE ELECTRIC DISTRIBUTION
COMPANY MUST COMMENCE CONSTRUCTION OF THE GENERATION
FACILITY OR CONTRACT TO ACQUIRE THE GENERATION INTEREST
WITHIN THREE YEARS AFTER THE EFFECTIVE DATE OF THIS
PARAGRAPH, EXCEPT THAT THE ELECTRIC DISTRIBUTION COMPANY
MAY ADD TO THE GENERATION FACILITIES IT COMMENCED
CONSTRUCTION OR CONTRACTED TO ACQUIRE AFTER THIS THREE-
YEAR PERIOD TO SERVE ADDITIONAL LOAD OF CUSTOMERS FOR
WHOM IT COMMENCED CONSTRUCTION OR CONTRACTED TO ACQUIRE
GENERATION WITHIN THREE YEARS. NOTHING IN THIS PARAGRAPH
REQUIRES OR AUTHORIZES THE COMMISSION TO REQUIRE AN
ELECTRIC DISTRIBUTION COMPANY TO COMMENCE CONSTRUCTION OR
ACQUIRE AN INTEREST IN A GENERATION FACILITY. THE
ELECTRIC DISTRIBUTION COMPANY'S INTEREST IN THE
GENERATION FACILITY IT BUILT OR CONTRACTED TO ACQUIRE
SHALL BE NO LARGER THAN NECESSARY TO MEET PEAK DEMAND OF
CUSTOMERS SERVED UNDER THIS SUBPARAGRAPH. DURING TIMES
WHEN THE CUSTOMER'S DEMAND IS LESS THAN THE ELECTRIC
DISTRIBUTION COMPANY'S GENERATION INTEREST, THE ELECTRIC
DISTRIBUTION COMPANY MAY SELL EXCESS POWER ON THE
WHOLESALE MARKET. AT NO TIME SHALL THE COSTS ASSOCIATED
WITH THE GENERATING FACILITY INTERESTS BE INCLUDED IN
RATE BASE OR OTHERWISE REFLECTED IN RATES. THE GENERATION
FACILITY INTERESTS SHALL NOT BE COMMISSION-REGULATED
ASSETS.

(6) A DEFAULT SERVICE PLAN APPROVED BY THE COMMISSION
PRIOR TO THE EFFECTIVE DATE OF THIS SECTION SHALL REMAIN IN
EFFECT THROUGH ITS APPROVED TERM. AT ITS SOLE DISCRETION, THE
DEFAULT SERVICE PROVIDER MAY PROPOSE AMENDMENTS TO ITS
APPROVED PLAN THAT ARE CONSISTENT WITH THIS SECTION, AND THE
COMMISSION SHALL ISSUE A DECISION WHETHER TO APPROVE OR
DISAPPROVE THE PROPOSED AMENDMENTS WITHIN NINE MONTHS OF THE
DATE THAT THE AMENDMENTS ARE FILED. IF THE COMMISSION FAILS
TO ISSUE A FINAL ORDER WITHIN NINE MONTHS, THE AMENDMENTS
SHALL BE DEEMED TO BE APPROVED AND THE DEFAULT SERVICE
PROVIDER MAY IMPLEMENT THE AMENDMENTS AS FILED.

(7) THE DEFAULT SERVICE PROVIDER SHALL OFFER RESIDENTIAL
AND SMALL BUSINESS CUSTOMERS A GENERATION SUPPLY SERVICE RATE
THAT SHALL CHANGE NO MORE FREQUENTLY THAN ON A QUARTERLY
BASIS. ALL DEFAULT SERVICE RATES SHALL BE REVIEWED BY THE
COMMISSION TO ENSURE THAT THE COSTS OF PROVIDING SERVICE TO
EACH CUSTOMER CLASS ARE NOT SUBSIDIZED BY ANY OTHER CLASS.

(F) SMART METER TECHNOLOGY AND TIME OF USE RATES.—

(1) WITHIN NINE MONTHS AFTER THE EFFECTIVE DATE OF THIS
PARAGRAPH, ELECTRIC DISTRIBUTION COMPANIES SHALL FILE A SMART
METER TECHNOLOGY PROCUREMENT AND INSTALLATION PLAN WITH THE
COMMISSION FOR APPROVAL. THE PLAN SHALL DESCRIBE THE SMART
METER TECHNOLOGIES THE ELECTRIC DISTRIBUTION COMPANY PROPOSES
TO INSTALL IN ACCORDANCE WITH PARAGRAPH (2).

(2) ELECTRIC DISTRIBUTION COMPANIES SHALL FURNISH SMART
METER TECHNOLOGY AS FOLLOWS:

(I) UPON REQUEST TO A CUSTOMER THAT AGREES TO PAY
THE COST OF THE SMART METER.

(II) IN THE CONSTRUCTION OF A NEW RESIDENCE OR NEW
BUILDING TO BE USED BY A COMMERCIAL CUSTOMER.

(III) IN ACCORDANCE WITH A SCHEDULE OF REPLACEMENT
OF FULL DEPRECIATION OF EXISTING METERS.

(3) ELECTRIC DISTRIBUTION COMPANIES SHALL, WITH CUSTOMER
CONSENT, MAKE AVAILABLE ELECTRONIC ACCESS TO CUSTOMER METER
DATA TO THIRD PARTIES, INCLUDING ELECTRIC GENERATION
SUPPLIERS AND PROVIDERS OF CONSERVATION AND LOAN MANAGEMENT
SERVICES.

(4) AN ELECTRIC DISTRIBUTION COMPANY SHALL NOT BE
PERMITTED TO RECOVER THE COSTS, AS DETERMINED BY THE
COMMISSION, OF PROVIDING SMART METER TECHNOLOGY UNDER
PARAGRAPH (2).

(5) IN NO EVENT SHALL LOST OR DECREASED REVENUES BY AN
ELECTRIC DISTRIBUTION COMPANY DUE TO REDUCED ELECTRICITY
CONSUMPTION OR SHIFTING ENERGY DEMAND BE CONSIDERED A COST OF
SMART METER TECHNOLOGY.

(6) BY JANUARY 1, 2010, OR AT THE END OF THE APPLICABLE
GENERATION RATE CAP PERIOD, WHICHERVER IS LATER, A DEFAULT
SERVICE PROVIDER SHALL SUBMIT TO THE COMMISSION ONE OR MORE
PROPOSED TIME-OF-USE RATES AND REAL-TIME PRICE PLANS. THE
COMMISSION SHALL APPROVE OR MODIFY THE TIME-OF-USE RATES AND
REAL-TIME PRICE PLAN WITHIN SIX MONTHS OF SUBMITAL. THE
DEFAULT SERVICE PROVIDER SHALL OFFER THE RATES AND REAL-TIME
PRICE PLAN TO ALL RESIDENTIAL AND COMMERCIAL CUSTOMERS THAT
HAVE BEEN PROVIDED WITH SMART METER TECHNOLOGY WITHIN 60 DAYS
OF INSTALLATION OF THE SMART METER TECHNOLOGY OR COMMISSION
APPROVAL OF THE TIME-OF-USE RATES AND REAL-TIME PRICE PLAN.
WHICHERVER IS LATER, RESIDENTIAL OR COMMERCIAL CUSTOMERS MAY
ELECT TO PARTICIPATE IN TIME-OF-USE RATES OR REAL-TIME
PRICING. THE DEFAULT SERVICE PROVIDER SHALL SUBMIT AN ANNUAL
REPORT TO THE COMMISSION ON THE PARTICIPATION IN THE TIME-OF-
USE AND REAL-TIME PRICE PROGRAMS AND THE EFFICACY OF THE
PROGRAMS IN AFFECTING ENERGY DEMAND AND CONSUMPTION AND THE
EFFECT ON WHOLESALE MARKET PRICES.

(7) THE PROVISIONS OF THIS SUBSECTION SHALL NOT APPLY TO
AN ELECTRIC DISTRIBUTION COMPANY WITH 100,000 OR FEWER
CUSTOMERS.

(C) DEFINITION.—AS USED IN THIS SECTION, THE TERM "SMART
METER TECHNOLOGY" MEANS TECHNOLOGY, INCLUDING METERING
TECHNOLOGY AND NETWORK COMMUNICATIONS TECHNOLOGY CAPABLE OF
BIDIRECTIONAL COMMUNICATION, THAT RECORDS ELECTRICITY USAGE ON
AT LEAST AN HOURLY BASIS, INCLUDING RELATED ELECTRIC
DISTRIBUTION SYSTEM UPGRADES TO ENABLE THE TECHNOLOGY. THE
TECHNOLOGY SHALL PROVIDE CUSTOMERS WITH DIRECT ACCESS TO AND USE
OF PRICE AND CONSUMPTION INFORMATION. THE TECHNOLOGY SHALL ALSO:

(1) DIRECTLY PROVIDE CUSTOMERS WITH INFORMATION ON THEIR
HOURLY CONSUMPTION.

(2) ENABLE TIME-OF-USE RATES AND REAL-TIME PRICE
PROGRAMS.

(3) EFFECTIVELY SUPPORT THE AUTOMATIC CONTROL OF THE
CUSTOMER'S ELECTRICITY CONSUMPTION BY ONE OR MORE OF THE
FOLLOWING AS SELECTED BY THE CUSTOMER:

(I) THE CUSTOMER;

(II) THE CUSTOMER'S UTILITY; OR

(III) A THIRD PARTY ENGAGED BY THE CUSTOMER OR THE
CUSTOMER'S UTILITY.

(4) PROVIDE A MEANS TO OBTAIN REAL-TIME CONSUMPTION
INFORMATION FROM A METER SUCH AS AN INSTALLED PORT OR OUTPUT
FOR TRANSMITTING METER PULSE DATA EXTERNAL TO THE METER TO BE
USED BY THE CUSTOMER, THE ELECTRIC DISTRIBUTION COMPANY OR A
THIRD PARTY ENGAGED BY THE CUSTOMER IN THE ELECTRIC
DISTRIBUTION COMPANY.

SECTION 4. TITLE 66 IS AMENDED BY ADDING A SECTION TO READ:

§ 2813. PROCUREMENT OF POWER.

EXCEPT AS PROVIDED UNDER THE ACT OF NOVEMBER 30, 2004
(P.L.1672, No.213), known as the Alternative Energy Portfolio Standards Act, the Commission may not order a default service provider to procure power from a specific generation supplier, from a specific generation fuel type or from new generation only.

Section 5. This Act shall take effect in 60 days.

Section 1. Section 305(a) of Title 66 of the Pennsylvania Consolidated Statutes is amended to read:

§ 305. Director of Operations, Secretary, Employees and Consultants.

(A) Director of Operations.--The Commission may appoint a Director of Operations who shall serve at the pleasure of the Commission and shall be responsible for the day-to-day administration and operation of the bureaus and offices of the Commission, except that the Director of Operations shall have responsibility for the [Office of Trial Staff] Prosecutorial function only with regard to administrative matters.

* * *

Section 1.1. Section 306 of Title 66 is repealed:

[§ 306. Office of Trial Staff.]

(A) General Rule.--The Office of Trial Staff to the Pennsylvania Public Utility Commission is hereby created. The Director of Trial Staff, who shall be the Chief Prosecutor of the Commission, shall be appointed by the Commission and hold office at its pleasure. The Commission shall assign a permanent staff of such legal, technical and other employees of the Commission as may be required for the proper conduct of the work of the Office of Trial Staff. Employees assigned to the Office of Trial Staff shall be under the supervision of the Director of Trial Staff and shall not be assigned to any duties other than...
WITH THE OFFICE OF TRIAL STAFF, EXCEPT AS THE COMMISSION MAY ON
A TEMPORARY CASE-BY-CASE BASIS PERMIT WHERE THE PERFORMANCE OF
SUCH OTHER DUTIES WILL NOT REPRESENT, OR CREATE THE APPEARANCE
OF, A CONFLICT OF INTEREST. THE COMMISSION MAY DESIGNATE
EMPLOYEES OF THE OFFICE OF TRIAL STAFF TO SERVE AS DEPUTIES TO
THE DIRECTOR OF TRIAL STAFF. THE DIRECTOR OF TRIAL STAFF MAY
RECOMMEND PERSONS FOR CONSIDERATION BY THE COMMISSION AS
EMPLOYEES UNDER HIS SUPERVISION. ATTORNEYS ASSIGNED TO THE
OFFICE OF TRIAL STAFF MAY BE REMOVED BY THE COMMISSION ONLY FOR
GOOD CAUSE. THE COMPENSATION OF THE DIRECTOR OF TRIAL STAFF AND
THE EMPLOYEES UNDER HIS SUPERVISION SHALL BE FIXED BY THE
COMMISSION. THE DIRECTOR OF TRIAL STAFF SHALL REPORT AND BE
RESPONSIBLE DIRECTLY TO THE COMMISSION, PROVIDED THAT THE
DIRECTOR OF TRIAL STAFF SHALL BE RESPONSIBLE TO THE COMMISSION
THROUGH THE DIRECTOR OF OPERATIONS ONLY FOR PURPOSES OF
ADMINISTRATIVE MATTERS.

(B) POWER AND DUTIES.--

(1) THE OFFICE OF TRIAL STAFF SHALL BE RESPONSIBLE FOR
AND SHALL ASSIST IN THE DEVELOPMENT OF, CHALLENGE OF AND
REPRESENTATION ON THE RECORD OF ALL MATTERS IN THE PUBLIC
INTEREST IN ALL COMMISSION PROCEEDINGS EXCEPT THOSE INVOLVING
TRANSPORTATION, SAFETY, EMINENT DOMAIN, SITING, SERVICE
ISSUES HAVING NO IMPACT ON RATES AND ABILITY TO PAY, PROVIDED
THAT THE DIRECTOR OF TRIAL STAFF MAY PETITION THE COMMISSION
OR MAY BE DIRECTED BY THE COMMISSION TO INTERVENE TO PROTECT
THE PUBLIC INTEREST IN ANY PROCEEDING INVOLVING
TRANSPORTATION, SAFETY, EMINENT DOMAIN, SITING, SERVICE
ISSUES HAVING NO IMPACT ON RATES AND ABILITY TO PAY. TO
ASSIST IN CARRYING OUT HIS POWERS AND DUTIES UNDER THIS
SECTION, THE DIRECTOR OF TRIAL STAFF SHALL SUPERVISE THE
ACTIVITIES OF THE OFFICE OF TRIAL STAFF IN ALL COMMISSION
PROCEEDINGS IN WHICH HE PARTICIPATES. IF THE DIRECTOR OF
TRIAL STAFF IS OF THE OPINION THAT THE INITIATION OF A
PROCEEDING IS NECESSARY TO PROTECT THE PUBLIC INTEREST, HE
SHALL REQUEST THAT THE COMMISSION INITIATE THE APPROPRIATE
PROCEEDING. WHEN HE PARTICIPATES IN A COMMISSION PROCEEDING,
IT SHALL BE THE DUTY AND RESPONSIBILITY OF THE DIRECTOR OF
TRIAL STAFF TO PROSECUTE IN THAT PROCEEDING.

(2) IN ADDITION TO ANY OTHER RESPONSIBILITY CONVEYED
UPON IT BY THE COMMISSION, THE OFFICE OF TRIAL STAFF SHALL
SUBMIT A REPORT TO THE COMMISSION RECOMMENDING WHETHER THE
COMMISSION SHOULD ENTER UPON A HEARING IN ORDER TO
INVESTIGATE THE JUSTNESS AND REASONABLENESS OF A TARIFF FILED
PURSUANT TO SECTION 1308 (RELATING TO VOLUNTARY CHANGES IN
RATES), TO SUSPEND THE EFFECTIVENESS OF SUCH TARIFF, TO ALLOW
SUCH TARIFF TO BE SUSPENDED BY OPERATION OF LAW OR TO ALLOW
TEMPORARY RATES PURSUANT TO SECTION 1310 (RELATING TO
TEMPORARY RATES). THE REPORT:

(1) SHALL RECOMMEND ONLY THE INITIAL ACTION WHICH
THE COMMISSION SHOULD TAKE AND SHALL NOT CONTAIN AN
OPINION AS TO THE PORTION OF A PROPOSED RATE INCREASE
WHICH APPEARS TO BE JUST AND REASONABLE, UNLESS THE
REPORT INCLUDES A FINDING THAT THE PROPOSED RATE INCREASE
APPEARS TO BE JUST AND REASONABLE IN ITS ENTIRETY;

(II) SHALL BE RELEASED TO THE PUBLIC IF THE REPORT
RECOMMENDS THAT NO HEARINGS NEED TO BE HELD REGARDING THE
PROPOSED TARIFF OR THAT THE PROPOSED TARIFF SHOULD NOT BE
SUSPENDED, AND MAY BE RELEASED TO THE PUBLIC IN OTHER
CIRCUMSTANCES WHEN, IN THE OPINION OF THE COMMISSION,
SUCH RELEASE WOULD BE IN THE PUBLIC INTEREST;
(III) SHALL BE CONSIDERED ONLY AS AN INDICATION OF THE OFFICE OF TRIAL STAFF'S OPINION REGARDING WHETHER THERE SHOULD BE A HEARING ON THE PROPOSED TARIFF OR WHETHER THE PROPOSED TARIFF SHOULD BE SUSPENDED; AND

(IV) SHALL NOT BE CONSIDERED AS EVIDENCE OF THE OFFICE OF TRIAL STAFF'S OPINION REGARDING THE JUSTNESS AND REASONABLENESS OF ANY PROPOSED TARIFF IN ANY SUBSEQUENT COMMISSION PROCEEDING.

(3) EXCEPT FOR THE DUTIES SET OUT IN PARAGRAPH (2), NEITHER THE DIRECTOR OF TRIAL STAFF NOR ANY EMPLOYEE WHOM THE DIRECTOR OF TRIAL STAFF SUPERVISES SHALL COMMUNICATE WITH THE COMMISSION, AN ADMINISTRATIVE LAW JUDGE OR ANY OTHER EMPLOYEE OF THE COMMISSION WHO IS DECIDING OR ADVISING IN THE DECISION IN AN ON-THE-RECORD PROCEEDING, WHETHER CONTESTED OR UNCONTESTED, AS DEFINED IN SECTION 332(C) (RELATING TO PROCEDURES IN GENERAL), EXCEPT THROUGH THE PRACTICE AND PROCEDURE AVAILABLE TO ALL PARTIES TO COMMISSION PROCEEDINGS.]

SECTION 1.2. SECTION 308(A)(2) AND (4), (B), (C), (E), (F) AND (G) OF TITLE 66 ARE AMENDED TO READ:

§ 308. BUREAUS AND OFFICES.

(A) ENUMERATION.--THERE SHALL BE ESTABLISHED WITHIN THE COMMISSION THE FOLLOWING BUREAUS AND FUNCTIONS:

* * *

[(2) BUREAU OF CONSERVATION, ECONOMICS AND ENERGY PLANNING.]

* * *

[(4) OFFICE OF SPECIAL ASSISTANTS.]

(B) LAW BUREAU.--THE LAW BUREAU SHALL BE A MULTIFUNCTION LEGAL STAFF, CONSISTING OF A PROSECUTORY FUNCTION, AN ADVISORY
ASSISTANCE FROM ANY OTHER BUREAU OR OFFICE OF THE COMMISSION AS DETERMINED TO BE NECESSARY.

[(C) BUREAU OF CONSERVATION, ECONOMICS AND ENERGY PLANNING.--THE BUREAU OF CONSERVATION, ECONOMICS AND ENERGY PLANNING SHALL CONDUCT STUDIES AND RESEARCH ALL MATTERS WITHIN THE COMMISSION'S JURISDICTION AND ADVISE THE COMMISSION OF THE RESULTS THEREOF IN ORDER TO ENABLE THE COMMISSION TO PROVIDE PROSPECTIVE REGULATION IN THE BEST INTEREST OF ALL PARTIES CONCERNED. SUCH STUDIES AND RESEARCH SHALL INCLUDE LONG RANGE FORECASTING OF ENERGY NEEDS AND DEVELOPMENT; RESEARCH INTO THE USE OF NEW, EFFICIENT AND ECONOMIC METHODS OF ENERGY PRODUCTION; THE REVIEW OF THE EFFICIENCY OF THE PRESENT GENERATING SYSTEMS OPERATED WITHIN THIS COMMONWEALTH; AND THE DEVELOPMENT OF AN EFFECTIVE PROGRAM OF ENERGY CONSERVATION. THE COMMISSION SHALL REQUIRE ALL ELECTRIC AND GAS PUBLIC UTILITIES SUBJECT TO ITS JURISDICTION TO FILE WITH IT AN ANNUAL CONSERVATION REPORT WHICH SHOWS THE PLANS AND PROGRESS ACHIEVED ON PROGRAMS OF ENERGY CONSERVATION. THE COMMISSION SHALL, BY RULE, PRESCRIBE GUIDELINES FOR THE FORM AND MANNER OF SUCH ANNUAL CONSERVATION REPORT WHICH REPORT SHALL DESCRIBE THE CURRENT AND PROPOSED PROGRAMS OF EACH SUCH UTILITY DESIGNED TO EDUCATE AND ENCOURAGE ITS CUSTOMERS IN THE OPTIMUM, EFFECTIVE AND EFFICIENT USE BY THEM OF ELECTRIC AND GAS ENERGY. THE REPORT SHALL INCLUDE AN ACCOUNTING OF THE MONETARY AND PERSONNEL RESOURCES ACTUALLY OR PROPOSED TO BE EXPENDED OR DEVOTED TO AND THE ACTUAL OR ANTICIPATED RESULTS OF SUCH PROGRAMS. THE BUREAU SHALL REVIEW ALL PROPOSALS FOR ELECTRIC AND GAS PUBLIC UTILITY PLANT EXPANSION AND SHALL SUBMIT FOR CONSIDERATION OF THE COMMISSION ITS FINDINGS ON WHAT IMPACT, IF ANY, THE ELECTRIC AND GAS PUBLIC UTILITY PLANT EXPANSION WILL HAVE ON RATES CHARGED BY THE PUBLIC
UTILITY.

* * *

[(E) OFFICE OF SPECIAL ASSISTANTS.--THE OFFICE OF SPECIAL ASSISTANTS SHALL BE A SUPPORT STAFF WHICH SHALL BE RESPONSIBLE TO ASSIST IN THE PREPARATION OF COMMISSION ORDERS AND SHALL PERFORM SUCH OTHER ADVISORY DUTIES AS MAY BE REQUIRED OF IT BY THE COMMISSION. NO MEMBER OF THE OFFICE OF SPECIAL ASSISTANTS SHALL PARTICIPATE IN ANY PROSECUTORY FUNCTION IN ANY MATTER BEFORE THE COMMISSION. NO MEMBER OF THE OFFICE OF SPECIAL ASSISTANTS SHALL ASSIST THE OFFICE OF TRIAL STAFF IN CARRYING OUT THE DUTIES OF THE OFFICE OF TRIAL STAFF, NOR SHALL ANY MEMBER OF THE OFFICE OF SPECIAL ASSISTANTS RECEIVE ASSISTANCE FROM THE OFFICE OF TRIAL STAFF IN THE PERFORMANCE OF HIS DUTIES. EXCEPT AS PROVIDED IN THIS SECTION, THE OFFICE OF SPECIAL ASSISTANTS MAY RECEIVE ASSISTANCE FROM, OR PROVIDE ASSISTANCE TO, ANY OTHER BUREAU OR OFFICE OF THE COMMISSION AS DETERMINED TO BE NECESSARY.

(F) OTHER BUREAUS AND OFFICES.--THE COMMISSION SHALL ESTABLISH SUCH BUREAU OR BUREAUS TO PERFORM SUCH DUTIES AS THE COMMISSION MAY PRESCRIBE REGARDING ALL MATTERS RESPECTING RATES OF PUBLIC UTILITIES AND ALL MATTERS RESPECTING COMMON CARRIERS AND CONTRACT CARRIERS. THE ESTABLISHMENT OF THESE BUREAUS SHALL NOT BE CONSTRUED TO PROHIBIT THE COMMISSION FROM ESTABLISHING ANY ADDITIONAL BUREAUS WHICH THE COMMISSION FINDS NECESSARY TO PROTECT THE INTERESTS OF THE PEOPLE OF THIS COMMONWEALTH. THE BUREAUS MAY PERFORM SUCH OTHER DUTIES NOT INCONSISTENT WITH LAW AS THE COMMISSION MAY DIRECT.

(G) STAFF TESTIMONY.--MEMBERS OF THE STAFF OF THE COMMISSION, EXCEPT FOR THE OFFICE OF SPECIAL ASSISTANTS, SHALL APPEAR AND PRESENT TESTIMONY IN ANY PROCEEDING BEFORE THE

SECTION 1.3. TITLE 66 IS AMENDED BY ADDING A SECTION TO READ:

§ 308.2. OTHER BUREAUS, OFFICES AND POSITIONS.

(A) ESTABLISHMENT OF OTHER BUREAUS, OFFICES AND POSITIONS.-- IN ADDITION TO THE SPECIFIC BUREAUS ESTABLISHED IN THIS PART, THE COMMISSION MAY ESTABLISH OTHER BUREAUS, OFFICES AND POSITIONS TO PERFORM THE FOLLOWING FUNCTIONS:

(1) REVIEW AND PROVIDE ADVICE REGARDING APPLICATIONS, PETITIONS, TARIFF FILINGS AND OTHER MATTERS FILED WITH THE COMMISSION.

(2) PROVIDE ADVICE, REVIEW EXCEPTIONS AND PREPARE ORDERS REGARDING MATTERS TO BE ADJUDICATED.

(3) CONDUCT FINANCIAL REVIEWS, EARNINGS ANALYSES AND OTHER FINANCIAL STUDIES.

(4) CONDUCT ECONOMIC RESEARCH, FORECASTING, ENERGY CONSERVATION STUDIES, COST STUDIES AND OTHER ECONOMIC STUDIES RELATED TO PUBLIC UTILITIES.

(5) MONITOR INDUSTRY MARKETS TO DETECT ANTICOMPETITIVE, DISCRIMINATORY OR OTHER UNLAWFUL CONDUCT.

(6) INSURE ADEQUATE MAINTENANCE, SAFETY AND RELIABILITY
OF UTILITY NETWORKS.

(7) INSURE ADEQUATE SERVICE QUALITY, EFFICIENCY AND AVAILABILITY AT JUST AND REASONABLE RATES.

(8) CONDUCT FINANCIAL, MANAGEMENT, OPERATIONAL AND SPECIAL AUDITS.

(9) PROVIDE CONSUMER INFORMATION, CONSUMER PROTECTION AND INFORMAL RESOLUTION OF COMPLAINTS.

(10) INSURE ADEQUATE SAFETY, INSURANCE, FITNESS AND OTHER REQUIREMENTS RELEVANT TO TRANSPORTATION UTILITIES.

(11) TAKE APPROPRIATE ENFORCEMENT ACTIONS, INCLUDING RATE PROCEEDINGS, SERVICE PROCEEDINGS AND ALLOCATION PROCEEDINGS, NECESSARY TO INSURE COMPLIANCE WITH THIS TITLE, COMMISSION REGULATIONS AND ORDERS.

(12) PERFORM OTHER FUNCTIONS THE COMMISSION DEEMS NECESSARY FOR THE PROPER WORK OF THE COMMISSION.

(B) PROHIBITION ON COMMINGLING OF FUNCTIONS.--A COMMISSION EMPLOYEE ENGAGED IN A PROSECUTORY FUNCTION MAY NOT, IN THAT MATTER OR A FACTUALLY RELATED MATTER, PROVIDE ADVICE OR ASSISTANCE TO A COMMISSION EMPLOYEE PERFORMING AN ADVISORY FUNCTION AS TO THAT MATTER.

SECTION 1.4. SECTION 2803 OF TITLE 66 IS AMENDED BY ADDING DEFINITIONS TO READ:

§ 2803. DEFINITIONS.

THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

* * *

"BILATERAL CONTRACT." AN AGREEMENT, AS APPROVED BY THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, REACHED BY TWO PARTIES, EACH ACTING IN ITS OWN INDEPENDENT SELF-INTEREST, AS A RESULT OF
NEGOTIATIONS FREE OF UNDUE INFLUENCE, DURESS OR FAVORITISM, IN WHICH THE ELECTRIC ENERGY SUPPLIER AGREES TO SELL AND THE ELECTRIC DISTRIBUTION COMPANY AGREES TO BUY A QUANTITY OF ELECTRIC ENERGY AT A SPECIFIED PRICE FOR A SPECIFIED PERIOD OF TIME UNDER TERMS AGREED TO BY BOTH PARTIES, AND WHICH follows A STANDARD INDUSTRY TEMPLATE WIDELY ACCEPTED IN THE INDUSTRY OR VARIATIONS THEREOF ACCEPTED BY THE PARTIES. STANDARD INDUSTRY TEMPLATES MAY INCLUDE THE EEI MASTER AGREEMENT FOR PHYSICAL ENERGY PURCHASES AND SALES AND THE ISDA MASTER AGREEMENT FOR FINANCIAL ENERGY PURCHASES AND SALES.

* * *

"DEFAULT SERVICE PROVIDER." AN ELECTRIC DISTRIBUTION COMPANY WITHIN ITS CERTIFIED SERVICE TERRITORY OR AN ALTERNATIVE SUPPLIER APPROVED BY THE PENNSYLVANIA PUBLIC UTILITY COMMISSION THAT PROVIDES GENERATION SERVICE TO RETAIL ELECTRIC CUSTOMERS WHO:

(1) CONTRACT FOR ELECTRIC POWER, INCLUDING ENERGY AND CAPACITY, AND THE CHOSEN ELECTRIC GENERATION SUPPLIER DOES NOT SUPPLY THE SERVICE; OR

(2) DO NOT CHOOSE AN ALTERNATIVE ELECTRIC GENERATION SUPPLIER.

* * *

SECTION 2. TITLE 66 IS AMENDED BY ADDING SECTIONS TO READ:

§ 2806.1. ENERGY EFFICIENCY AND CONSERVATION PROGRAM.

(A) PROGRAM.—THE COMMISSION SHALL, BY JANUARY 15, 2009, 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.
PROGRAM SHALL INCLUDE:

(1) PROCEDURES FOR THE APPROVAL OF PLANS SUBMITTED UNDER SUBSECTION (B).

(2) AN EVALUATION PROCESS, INCLUDING A PROCESS TO MONITOR AND VERIFY DATA COLLECTION, QUALITY ASSURANCE AND RESULTS OF EACH PLAN AND THE PROGRAM.

(3) AN ANALYSIS OF THE COST AND BENEFIT OF EACH PLAN SUBMITTED UNDER SUBSECTION (B) IN ACCORDANCE WITH A TOTAL RESOURCE COST TEST APPROVED BY THE COMMISSION.

(4) AN ANALYSIS OF HOW THE PROGRAM AND INDIVIDUAL PLANS WILL ENABLE EACH ELECTRIC DISTRIBUTION COMPANY TO ACHIEVE OR EXCEED THE REQUIREMENTS FOR REDUCTION IN CONSUMPTION UNDER SUBSECTIONS (C) AND (D).

(5) 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.

(6) PROCEDURES TO MAKE RECOMMENDATIONS AS TO ADDITIONAL MEASURES THAT WILL ENABLE AN ELECTRIC DISTRIBUTION COMPANY TO IMPROVE ITS PLAN AND EXCEED THE REQUIRED REDUCTIONS IN CONSUMPTION UNDER SUBSECTIONS (C) AND (D).

(7) PROCEDURES TO REQUIRE THAT ELECTRIC DISTRIBUTION COMPANIES COMPETITIVELY BID ALL CONTRACTS WITH CONSERVATION SERVICE PROVIDERS.

(8) PROCEDURES TO REVIEW ALL PROPOSED CONTRACTS PRIOR TO THE EXECUTION OF THE CONTRACT WITH CONSERVATION SERVICE PROVIDERS TO IMPLEMENT THE PLAN. THE COMMISSION MAY ORDER THE MODIFICATION OF A PROPOSED CONTRACT TO ENSURE THAT THE PLAN MEETS THE REQUIREMENTS FOR REDUCTION IN DEMAND AND CONSUMPTION UNDER SUBSECTIONS (C) AND (D).
(9) Procedures to ensure compliance with requirements for reduction in consumption under subsections (C) and (D).

(10) A requirement for the participation of conservation service providers in the implementation of all or part of a plan.

(11) Cost recovery to ensure that measures approved are financed by the same customer class that will receive the direct energy and conservation benefits.

(B) Duties of electric distribution companies.--

(1) (I) By July 1, 2009, each electric distribution company shall develop and file an energy efficiency and conservation plan with the commission for approval to meet the requirements of subsection (A) and the requirements for reduction in consumption under subsections (C) and (D). The plan shall be implemented upon approval by the commission. The following are the plan requirements:

(A) The plan shall include specific proposals to implement energy efficiency and conservation measures to achieve or exceed the required reductions in consumption under subsections (C) and (D).

(B) 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.

(C) The plan shall explain how quality assurance and performance will be measured, verified and evaluated.
(D) THE PLAN SHALL STATE THE MANNER IN WHICH THE
PLAN WILL ACHIEVE THE REQUIREMENTS OF THE PROGRAM
UNDER SUBSECTION (A) AND WILL ACHIEVE OR EXCEED THE
REQUIRED REDUCTIONS IN CONSUMPTION UNDER SUBSECTIONS
(C) AND (D).

(E) THE PLAN SHALL INCLUDE A CONTRACT WITH ONE
OR MORE CONSERVATION SERVICE PROVIDERS SELECTED BY
COMPETITIVE BID TO IMPLEMENT THE PLAN OR A PORTION OF
THE PLAN AS APPROVED BY THE COMMISSION.

(F) THE PLAN SHALL INCLUDE ESTIMATES OF THE COST
OF IMPLEMENTATION OF THE ENERGY EFFICIENCY AND
CONSERVATION MEASURES IN THE PLAN.

(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).

(H) THE PLAN SHALL INCLUDE A PROPOSED COST-
RECOVERY TARIFF MECHANISM, IN ACCORDANCE WITH SECTION
1307 (RELATING TO SLIDING SCALE OR RATES;
ADJUSTMENTS), TO FUND THE ENERGY EFFICIENCY AND
CONSERVATION MEASURES AND TO ENSURE FULL AND CURRENT
RECOVERY OF THE PRUDENT AND REASONABLE COSTS OF THE
PLAN, INCLUDING ADMINISTRATIVE COSTS, AS APPROVED BY
THE COMMISSION.

(I) THE ELECTRIC DISTRIBUTION COMPANY SHALL
DEMONSTRATE THAT THE PLAN IS COST-EFFECTIVE USING A
TOTAL RESOURCE COST TEST APPROVED BY THE COMMISSION
AND PROVIDES A DIVERSE CROSS SECTION OF ALTERNATIVES
FOR CUSTOMERS OF ALL RATE CLASSES.

(J) THE PLAN SHALL REQUIRE AN ANNUAL INDEPENDENT
EVALUATION OF ITS COST-EFFECTIVENESS AND A FULL
REVIEW OF THE RESULTS OF EACH FIVE-YEAR PLAN REQUIRED
UNDER SUBSECTION (C)(3) AND, TO THE EXTENT PRACTICAL,
HOW THE PLAN WILL BE ADJUSTED ON A GOING-FORWARD
BASIS AS A RESULT OF THE EVALUATION.

(K) THE PLAN SHALL INCLUDE AN ANALYSIS OF THE
ELECTRIC DISTRIBUTION COMPANY'S ADMINISTRATIVE COSTS.

(II) A NEW PLAN SHALL BE FILED WITH THE COMMISSION
EVERY FIVE YEARS OR AS OTHERWISE REQUIRED BY THE
COMMISSION. THE PLAN SHALL SET FORTH THE MANNER IN WHICH
THE COMPANY WILL MEET THE REQUIRED REDUCTIONS IN
CONSUMPTION UNDER SUBSECTIONS (C) AND (D).

(III) NO MORE THAN 2% OF FUNDS AVAILABLE TO
IMPLEMENT A PLAN UNDER THIS SUBSECTION SHALL BE ALLOCATED
FOR EXPERIMENTAL EQUIPMENT OR DEVICES.

(2) THE COMMISSION SHALL DIRECT AN ELECTRIC DISTRIBUTION
COMPANY 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 SUBSECTIONS (C) AND (D).

(3) IF PART OF A PLAN IS MODIFIED OR TERMINATED UNDER PARAGRAPH (2), THE ELECTRIC DISTRIBUTION COMPANY SHALL SUBMIT A REVISED PLAN DESCRIBING ACTIONS TO BE TAKEN TO OFFER SUBSTITUTE MEASURES OR TO INCREASE THE AVAILABILITY OF EXISTING MEASURES IN THE PLAN TO ACHIEVE THE REQUIRED REDUCTIONS IN CONSUMPTION UNDER SUBSECTIONS (C) AND (D).

(C) REDUCTIONS IN CONSUMPTION.--THE PLANS ADOPTED UNDER SUBSECTION (B) SHALL REDUCE ELECTRIC CONSUMPTION AS FOLLOWS:

(1) BY MAY 31, 2011, TOTAL ANNUAL WEATHER-NORMALIZED CONSUMPTION OF THE RETAIL CUSTOMERS OF EACH ELECTRIC DISTRIBUTION COMPANY SHALL BE REDUCED BY A MINIMUM OF 1%. THE 1% LOAD REDUCTION IN CONSUMPTION SHALL BE MEASURED AGAINST THE ELECTRIC DISTRIBUTION COMPANY'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 THAT THE ELECTRIC DISTRIBUTION COMPANY MUST SERVE.

(2) BY MAY 31, 2013, THE TOTAL ANNUAL WEATHER-NORMALIZED CONSUMPTION OF THE RETAIL CUSTOMERS OF EACH ELECTRIC DISTRIBUTION COMPANY SHALL BE REDUCED BY A MINIMUM OF 3%. THE 3% LOAD REDUCTION IN CONSUMPTION SHALL BE MEASURED AGAINST THE ELECTRIC DISTRIBUTION COMPANY'S EXPECTED LOAD AS FORECASTED BY THE COMMISSION FOR JUNE 1, 2009, THROUGH MAY 31, 2010, WITH PROVISION MADE FOR WEATHER ADJUSTMENTS AND EXTRAORDINARY LOADS THAT THE ELECTRIC DISTRIBUTION COMPANY MUST SERVE.

(3) BY NOVEMBER 30, 2013, AND EVERY FIVE YEARS THEREAFTER, THE COMMISSION SHALL EVALUATE THE COSTS AND BENEFITS OF THE PROGRAM ESTABLISHED UNDER SUBSECTION (A) AND
OF APPROVED ENERGY EFFICIENCY AND CONSERVATION PLANS
SUBMITTED TO THE PROGRAM. THE EVALUATION SHALL BE CONSISTENT
WITH A TOTAL RESOURCE COST TEST OR A COST-BENEFIT ANALYSIS
DETERMINED BY THE COMMISSION. IF THE COMMISSION DETERMINES
THAT THE BENEFITS OF THE PROGRAM EXCEED THE COSTS, THE
COMMISSION SHALL ADOPT ADDITIONAL REQUIRED INCREMENTAL
REDUCTIONS IN CONSUMPTION.

(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

(2) BY NOVEMBER 30, 2013, THE COMMISSION SHALL COMPARE
THE TOTAL COSTS OF ENERGY EFFICIENCY AND CONSERVATION PLANS
IMPLEMENTED UNDER THIS SECTION TO THE TOTAL SAVINGS IN ENERGY
AND CAPACITY COSTS TO RETAIL CUSTOMERS IN THIS COMMONWEALTH
OR OTHER COSTS DETERMINED BY THE COMMISSION. IF THE
COMMISSION DETERMINES THAT THE BENEFITS OF THE PLANS EXCEED
THE COSTS, THE COMMISSION SHALL SET ADDITIONAL INCREMENTAL
REQUIREMENTS FOR REDUCTION IN PEAK DEMAND FOR THE 100 HOURS
OF GREATEST DEMAND OR AN ALTERNATIVE REDUCTION APPROVED BY
THE COMMISSION. REDUCTIONS IN DEMAND SHALL BE MEASURED FROM
THE ELECTRIC DISTRIBUTION COMPANY'S PEAK DEMAND FOR THE
PERIOD FROM JUNE 1, 2011, THROUGH MAY 31, 2012. THE
REDUCTIONS IN CONSUMPTION REQUIRED BY THE COMMISSION SHALL BE
ACCOMPLISHED NO LATER THAN MAY 31, 2017.

(E) COMMISSION APPROVAL.--
(1) THE COMMISSION SHALL CONDUCT A PUBLIC HEARING ON EACH PLAN AND ALLOW FOR THE SUBMISSION OF RECOMMENDATIONS BY THE OFFICE OF CONSUMER ADVOCATE AND THE OFFICE OF SMALL BUSINESS ADVOCATE AND BY MEMBERS OF THE PUBLIC AS TO HOW THE ELECTRIC DISTRIBUTION COMPANY COULD IMPROVE ITS PLAN OR EXCEED THE REQUIRED REDUCTIONS IN CONSUMPTION UNDER SUBSECTIONS (C) AND (D).

(2) THE COMMISSION SHALL APPROVE OR DISAPPROVE A PLAN FILED UNDER SUBSECTION (B) WITHIN 120 DAYS OF SUBMISSION. THE FOLLOWING SHALL APPLY TO AN ORDER DISAPPROVING A PLAN:

(I) THE COMMISSION SHALL DESCRIBE IN DETAIL THE REASONS FOR THE DISAPPROVAL.

(II) THE ELECTRIC DISTRIBUTION COMPANY SHALL HAVE 60 DAYS TO FILE A REVISED PLAN TO ADDRESS THE DEFICIENCIES IDENTIFIED BY THE COMMISSION. THE REVISED PLAN SHALL BE APPROVED OR DISAPPROVED BY THE COMMISSION WITHIN 60 DAYS.

(F) PENALTIES.--

(1) THE FOLLOWING SHALL APPLY FOR FAILURE TO SUBMIT A PLAN:

(I) AN ELECTRIC DISTRIBUTION COMPANY THAT FAILS TO FILE A PLAN UNDER SUBSECTION (B) SHALL BE SUBJECT TO A CIVIL PENALTY OF $100,000 PER DAY UNTIL THE PLAN IS FILED.

(II) AN ELECTRIC DISTRIBUTION COMPANY THAT FAILS TO FILE A REVISED PLAN UNDER SUBSECTION (E)(2)(II) SHALL BE SUBJECT TO A CIVIL PENALTY OF $100,000 PER DAY UNTIL THE PLAN IS FILED.

(III) PENALTIES COLLECTED UNDER THIS PARAGRAPH SHALL BE DEPOSITED IN THE LOW-INCOME ELECTRIC CUSTOMER ASSISTANCE PROGRAM OF THE ENERGY DISTRIBUTION COMPANY FOR
THE RESPECTIVE SERVICE TERRITORY.

(2) THE FOLLOWING SHALL APPLY TO AN ELECTRIC DISTRIBUTION COMPANY THAT FAILS TO ACHIEVE THE REDUCTIONS IN CONSUMPTION REQUIRED UNDER SUBSECTION (C) OR (D):

(I) THE ELECTRIC DISTRIBUTION COMPANY SHALL BE SUBJECT TO A CIVIL PENALTY NOT LESS THAN $1,000,000 AND NOT TO EXCEED $20,000,000 FOR FAILURE TO ACHIEVE THE REQUIRED REDUCTIONS IN CONSUMPTION UNDER SUBSECTION (C) OR (D). ANY PENALTY PAID BY AN ELECTRIC DISTRIBUTION COMPANY UNDER THIS SUBPARAGRAPH SHALL NOT BE RECOVERABLE FROM RATEPAYERS.

(II) IF AN ELECTRIC DISTRIBUTION COMPANY FAILS TO ACHIEVE THE REQUIRED REDUCTIONS IN CONSUMPTION UNDER SUBSECTION (C) OR (D), RESPONSIBILITY TO ACHIEVE THE REDUCTIONS IN CONSUMPTION SHALL BE TRANSFERRED TO THE COMMISSION. THE COMMISSION SHALL DO ALL OF THE FOLLOWING:

(A) IMPLEMENT A PLAN TO ACHIEVE THE REQUIRED REDUCTIONS IN CONSUMPTION UNDER SUBSECTION (C) OR (D).

(B) CONTRACT WITH CONSERVATION SERVICE PROVIDERS AS NECESSARY TO IMPLEMENT ANY PORTION OF THE PLAN.

(G) LIMITATION ON COSTS.--THE TOTAL COST OF ANY PLAN REQUIRED UNDER THIS SECTION SHALL NOT EXCEED 2% OF THE ELECTRIC DISTRIBUTION COMPANY'S TOTAL ANNUAL REVENUE AS OF DECEMBER 31, 2006. THE PROVISIONS OF THIS PARAGRAPH SHALL NOT APPLY TO THE COST OF LOW-INCOME USAGE REDUCTION PROGRAMS ESTABLISHED UNDER 52 PA. CODE CH. 58 (RELATING TO RESIDENTIAL LOW INCOME USAGE REDUCTION PROGRAMS).

(H) COSTS.--THE COMMISSION SHALL RECOVER FROM ELECTRIC DISTRIBUTION COMPANIES THE COSTS OF IMPLEMENTING THE PROGRAM.
(I) REPORT.—THE FOLLOWING SHALL APPLY:

(1) EACH ELECTRIC DISTRIBUTION COMPANY SHALL SUBMIT AN ANNUAL REPORT TO THE COMMISSION RELATING TO THE RESULTS OF THE ENERGY EFFICIENCY AND CONSERVATION PLAN WITHIN EACH ELECTRIC DISTRIBUTION SERVICE TERRITORY. THE REPORT SHALL INCLUDE ALL OF THE FOLLOWING:

(I) DOCUMENTATION OF PROGRAM EXPENDITURES.

(II) MEASUREMENT AND VERIFICATION OF ENERGY SAVINGS UNDER THE PLAN.

(III) EVALUATION OF THE COST-EFFECTIVENESS OF EXPENDITURES.

(IV) ANY OTHER INFORMATION REQUIRED BY THE COMMISSION.

(2) BEGINNING FIVE YEARS FOLLOWING THE EFFECTIVE DATE OF THIS SECTION AND ANNUALLY THEREAFTER, THE COMMISSION SHALL SUBMIT A REPORT TO THE CONSUMER PROTECTION AND PROFESSIONAL LICENSURE COMMITTEE OF THE SENATE AND THE CONSUMER AFFAIRS COMMITTEE OF THE HOUSE OF REPRESENTATIVES.

(J) EXISTING FUNDING SOURCES.—EACH ELECTRIC DISTRIBUTION COMPANY SHALL, UPON REQUEST BY ANY PERSON, PROVIDE A LIST OF ALL ELIGIBLE FEDERAL AND STATE FUNDING PROGRAMS AVAILABLE TO RATEPAYERS FOR ENERGY EFFICIENCY AND CONSERVATION. THE LIST SHALL BE POSTED ON THE ELECTRIC DISTRIBUTION COMPANY'S INTERNET WEBSITE.

(K) RECOVERY.—

(1) AN ELECTRIC DISTRIBUTION COMPANY SHALL 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 A
PLAN PROVIDED UNDER THIS SECTION. THIS PARAGRAPH SHALL APPLY TO ALL ELECTRIC DISTRIBUTION COMPANIES, INCLUDING ELECTRIC DISTRIBUTION COMPANIES SUBJECT TO GENERATION OR OTHER RATE CAPS.

(2) EXCEPT AS SET FORTH IN PARAGRAPH (3), DECREASED REVENUES OF AN ELECTRIC DISTRIBUTION COMPANY DUE TO REDUCED ENERGY CONSUMPTION OR CHANGES IN ENERGY DEMAND SHALL NOT BE A RECOVERABLE COST UNDER A RECONCILABLE AUTOMATIC ADJUSTMENT CLAUSE.

(3) DECREASED 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 SECTION 1308 (RELATING TO VOLUNTARY CHANGES IN RATES).

(L) APPLICABILITY.--THIS SECTION SHALL NOT APPLY TO AN ELECTRIC DISTRIBUTION COMPANY WITH FEWER THAN 100,000 CUSTOMERS.

(M) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SUBSECTION:

"CONSERVATION SERVICE PROVIDER." AN ENTITY THAT PROVIDES INFORMATION AND TECHNICAL ASSISTANCE ON MEASURES TO ENABLE A PERSON TO INCREASE ENERGY EFFICIENCY OR REDUCE ENERGY CONSUMPTION AND THAT HAS NO DIRECT OR INDIRECT OWNERSHIP, PARTNERSHIP OR OTHER AFFILIATED INTEREST WITH AN ELECTRIC DISTRIBUTION COMPANY.

"ELECTRIC DISTRIBUTION COMPANY TOTAL ANNUAL REVENUE." AMOUNTS PAID TO THE ELECTRIC DISTRIBUTION COMPANY FOR GENERATION, TRANSMISSION, DISTRIBUTION AND SURCHARGES BY RETAIL CUSTOMERS.

"ENERGY EFFICIENCY AND CONSERVATION MEASURES."
(1) TECHNOLOGIES, MANAGEMENT PRACTICES OR OTHER MEASURES EMPLOYED BY RETAIL CUSTOMERS THAT REDUCE ELECTRICITY CONSUMPTION OR DEMAND IF ALL OF THE FOLLOWING APPLY:

(I) THE TECHNOLOGY, PRACTICE OR OTHER MEASURE IS INSTALLED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION AT THE LOCATION OF A RETAIL CUSTOMER.

(II) THE TECHNOLOGY, PRACTICE OR OTHER MEASURE REDUCES CONSUMPTION OF ENERGY OR PEAK LOAD BY THE RETAIL CUSTOMER.

(III) THE COST OF THE ACQUISITION OR INSTALLATION OF THE MEASURE IS DIRECTLY INCURRED IN WHOLE OR IN PART BY THE ELECTRIC DISTRIBUTION COMPANY.

(2) ENERGY EFFICIENCY AND CONSERVATION MEASURES SHALL INCLUDE SOLAR OR SOLAR PHOTOVOLTAIC PANELS, ENERGY EFFICIENT WINDOWS AND DOORS, ENERGY EFFICIENT LIGHTING, INCLUDING EXIT SIGN RETROFIT, HIGH BAY FLUORESCENT RETROFIT AND PEDESTRIAN AND TRAFFIC SIGNAL CONVERSION, GEOTHERMAL HEATING, INSULATION, AIR SEALING, REFLECTIVE ROOF COATINGS, ENERGY EFFICIENT HEATING AND COOLING EQUIPMENT OR SYSTEMS AND ENERGY EFFICIENT APPLIANCES AND OTHER TECHNOLOGIES, PRACTICES OR MEASURES APPROVED BY THE COMMISSION.

"PEAK DEMAND." THE HIGHEST ELECTRICAL REQUIREMENT OCCURRING DURING A SPECIFIED PERIOD. FOR AN ELECTRIC DISTRIBUTION COMPANY, THE TERM SHALL MEAN THE SUM OF THE METERED CONSUMPTION FOR ALL RETAIL CUSTOMERS OVER THAT PERIOD.

"QUALITY ASSURANCE." ALL OF THE FOLLOWING:

(1) THE AUDITING OF BUILDINGS, EQUIPMENT AND PROCESSES TO DETERMINE THE COST-EFFECTIVENESS OF ENERGY EFFICIENCY AND CONSERVATION MEASURES USING NATIONALLY RECOGNIZED TOOLS AND CERTIFICATION PROGRAMS.
INDEPENDENT INSPECTION OF COMPLETED ENERGY EFFICIENCY AND CONSERVATION MEASURES COMPLETED BY THIRD-PARTY ENTITIES TO EVALUATE THE QUALITY OF THE COMPLETED MEASURE.

"REAL-TIME PRICE." A RATE THAT DIRECTLY REFLECTS THE DIFFERENT COST OF ENERGY DURING EACH HOUR.

"TIME-OF-USE RATE." A RATE THAT REFLECTS THE COSTS OF SERVING CUSTOMERS DURING DIFFERENT TIME PERIODS, INCLUDING OFF-PEAK AND ON-PEAK PERIODS, BUT NOT AS FREQUENTLY AS EACH HOUR.

"TOTAL RESOURCE COST TEST." 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.

§ 2806.2. ENERGY EFFICIENCY AND CONSERVATION.

(A) REGISTRY.--THE COMMISSION SHALL, BY MARCH 1, 2009, ESTABLISH A REGISTRY OF APPROVED PERSONS QUALIFIED TO PROVIDE CONSERVATION SERVICES TO ALL CLASSES OF CUSTOMERS. IN ORDER TO BE INCLUDED IN THE REGISTRY, A CONSERVATION SERVICE PROVIDER MUST MEET EXPERIENCE AND OTHER QUALIFICATIONS DETERMINED BY THE COMMISSION.

(B) APPLICATION.--THE COMMISSION SHALL DEVELOP AN APPLICATION FOR REGISTRATION UNDER SUBSECTION (A) AND MAY CHARGE A REASONABLE REGISTRATION FEE.

SECTION 3. SECTION 2807(E) OF TITLE 66 IS AMENDED AND THE SECTION IS AMENDED BY ADDING SUBSECTIONS TO READ:

§ 2807. DUTIES OF ELECTRIC DISTRIBUTION COMPANIES.

* * *

(E) OBLIGATION TO SERVE.--[AN ELECTRIC DISTRIBUTION COMPANY'S] A DEFAULT SERVICE PROVIDER'S OBLIGATION TO PROVIDE ELECTRIC GENERATION SUPPLY SERVICE FOLLOWING [IMPLEMENTATION OF
RESTRUCTURING AND THE CHOICE OF ALTERNATIVE GENERATION BY A CUSTOMER] THE EXPIRATION OF A GENERATION RATE CAP SPECIFIED UNDER SECTION 2804(4) (RELATING TO STANDARDS FOR RESTRUCTURING OF ELECTRIC INDUSTRY) OR A RESTRUCTURING PLAN UNDER SECTION 2806(F) (RELATING TO IMPLEMENTATION, PILOT PROGRAMS AND PERFORMANCE-BASED RATES) IS REVISED AS FOLLOWS:

(1) WHILE AN ELECTRIC DISTRIBUTION COMPANY COLLECTS EITHER A COMPETITIVE TRANSITION CHARGE OR AN INTANGIBLE TRANSITION CHARGE OR UNTIL 100% OF ITS CUSTOMERS HAVE CHOICE, WHICHEVER IS LONGER, THE ELECTRIC DISTRIBUTION COMPANY SHALL CONTINUE TO HAVE THE FULL OBLIGATION TO SERVE, INCLUDING THE CONNECTION OF CUSTOMERS, THE DELIVERY OF ELECTRIC ENERGY AND THE PRODUCTION OR ACQUISITION OF ELECTRIC ENERGY FOR CUSTOMERS.

[(2) AT THE END OF THE TRANSITION PERIOD, THE COMMISSION SHALL PROMULGATE REGULATIONS TO DEFINE THE ELECTRIC DISTRIBUTION COMPANY'S OBLIGATION TO CONNECT AND DELIVER AND ACQUIRE ELECTRICITY UNDER PARAGRAPH (3) THAT WILL EXIST AT THE END OF THE PHASE-IN PERIOD.

(3) IF A CUSTOMER CONTRACTS FOR ELECTRIC ENERGY AND IT IS NOT DELIVERED OR IF A CUSTOMER DOES NOT CHOOSE AN ALTERNATIVE ELECTRIC GENERATION SUPPLIER, THE ELECTRIC DISTRIBUTION COMPANY OR COMMISSION-APPROVED ALTERNATIVE SUPPLIER SHALL ACQUIRE ELECTRIC ENERGY AT PREVAILING MARKET PRICES TO SERVE THAT CUSTOMER AND SHALL RECOVER FULLY ALL REASONABLE COSTS.]

(3.1) FOLLOWING THE EXPIRATION OF AN ELECTRIC DISTRIBUTION COMPANY'S OBLIGATION TO PROVIDE ELECTRIC GENERATION SUPPLY SERVICE TO RETAIL CUSTOMERS AT CAPPED RATES, IF A CUSTOMER CONTRACTS FOR ELECTRIC GENERATION SUPPLY
SERVICE AND THE CHOSEN ELECTRIC GENERATION SUPPLIER DOES NOT PROVIDE THE SERVICE OR IF A CUSTOMER DOES NOT CHOOSE AN ALTERNATIVE ELECTRIC GENERATION SUPPLIER, THE DEFAULT SERVICE PROVIDER SHALL PROVIDE ELECTRIC GENERATION SUPPLY SERVICE TO THAT CUSTOMER PURSUANT TO A COMMISSION-APPROVED COMPETITIVE PROCUREMENT PLAN. THE ELECTRIC POWER ACQUIRED SHALL BE PROCURED THROUGH COMPETITIVE PROCUREMENT PROCESSES AND SHALL INCLUDE ONE OR MORE OF THE FOLLOWING:

(I) AUCTIONS.

(II) REQUESTS FOR PROPOSAL.

(III) BILATERAL AGREEMENTS ENTERED INTO AT THE SOLE DISCRETION OF THE DEFAULT SERVICE PROVIDER WHICH SHALL BE AT PRICES WHICH ARE:

(A) NO GREATER THAN THE COST OF OBTAINING GENERATION UNDER COMPARABLE TERMS IN THE WHOLESALE MARKET, AS DETERMINED BY THE COMMISSION AT THE TIME OF EXECUTION OF THE CONTRACT; OR

(B) CONSISTENT WITH A COMMISSION-APPROVED COMPETITION PROCUREMENT PROCESS. ANY AGREEMENT BETWEEN AFFILIATED PARTIES SHALL BE SUBJECT TO REVIEW AND APPROVAL OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION UNDER CHAPTER 21 (RELATING TO RELATIONS WITH AFFILIATED INTERESTS). IN NO CASE SHALL THE COST OF OBTAINING GENERATION FROM ANY AFFILIATED INTEREST BE GREATER THAN THE COST OF OBTAINING GENERATION UNDER COMPARABLE TERMS IN THE WHOLESALE MARKET AT THE TIME OF EXECUTION OF THE CONTRACT.

(3.2) THE ELECTRIC POWER PROCURED PURSUANT TO PARAGRAPH (3.1) SHALL INCLUDE A PRUDENT MIX OF THE FOLLOWING:

(I) SPOT MARKET PURCHASES.
(II) SHORT-TERM CONTRACTS.

(III) LONG-TERM PURCHASE CONTRACTS, ENTERED INTO AS A RESULT OF AN AUCTION, REQUEST FOR PROPOSAL OR BILATERAL CONTRACT THAT IS FREE OF UNDUE INFLUENCE, DURESS OR FAVORITISM, OF MORE THAN FOUR AND NOT MORE THAN 20 YEARS. THE DEFAULT SERVICE PROVIDER SHALL HAVE SOLE DISCRETION TO DETERMINE THE SOURCE AND FUEL TYPE. LONG-TERM PURCHASE CONTRACTS UNDER THIS SUBPARAGRAPH MAY NOT CONSTITUTE MORE THAN 25% OF THE DEFAULT SERVICE PROVIDER'S PROJECTED DEFAULT SERVICE LOAD UNLESS THE COMMISSION, AFTER A HEARING, DETERMINES FOR GOOD CAUSE THAT A GREATER PORTION OF LOAD IS NECESSARY TO ACHIEVE LEAST COST PROCUREMENT. THIS SUBPARAGRAPH SHALL NOT APPLY TO CONTRACTS EXECUTED UNDER PARAGRAPH (5).

(3.3) THE COMMISSION MAY DETERMINE THAT A CONTRACT IS REQUIRED TO BE EXTENDED FOR A LONGER TERM OF UP TO 20 YEARS, IF THE EXTENSION IS NECESSARY TO ENSURE ADEQUATE AND RELIABLE SERVICE AT LEAST COST TO CUSTOMERS OVER TIME.

(3.4) THE PRUDENT MIX OF CONTRACTS ENTERED INTO PURSUANT TO PARAGRAPHS (3.2) AND (3.3) SHALL BE DESIGNED TO ENSURE:

(I) ADEQUATE AND RELIABLE SERVICE.

(II) THE LEAST COST TO CUSTOMERS OVER TIME.

(III) COMPLIANCE WITH THE REQUIREMENTS OF PARAGRAPH (3.1).

(3.5) EXCEPT AS SET FORTH IN PARAGRAPH (5)(II), THE PROVISIONS OF THIS SECTION SHALL APPLY TO ANY TYPE OF ENERGY PURCHASED BY A DEFAULT SERVICE PROVIDER TO PROVIDE ELECTRIC GENERATION SUPPLY SERVICE, INCLUDING ENERGY OR ALTERNATIVE ENERGY PORTFOLIO STANDARDS CREDITS REQUIRED TO BE PURCHASED UNDER THE ACT OF NOVEMBER 30, 2004 (P.L.1672, NO.213), KNOWN
AS THE ALTERNATIVE ENERGY PORTFOLIO STANDARDS ACT. THE
COMMISSION SHALL APPLY PARAGRAPH (3.4) TO COMPARABLE TYPES OF
ENERGY SOURCES.

(3.6) THE DEFAULT SERVICE PROVIDER SHALL FILE A PLAN FOR
COMPETITIVE PROCUREMENT WITH THE COMMISSION AND OBTAIN
COMMISSION APPROVAL OF THE PLAN CONSIDERING THE STANDARDS IN
PARAGRAPHS (3.1), (3.2), (3.3) AND (3.4) BEFORE THE
COMPETITIVE PROCESS IS IMPLEMENTED. THE COMMISSION SHALL HOLD
HEARINGS AS NECESSARY ON THE PROPOSED PLAN. IF THE COMMISSION
FAILS TO ISSUE A FINAL ORDER ON THE PLAN WITHIN NINE MONTHS
OF THE DATE THAT THE PLAN IS FILED, THE PLAN SHALL BE DEEMED
TO BE APPROVED AND THE DEFAULT SERVICE PROVIDER MAY IMPLEMENT
THE PLAN AS FILED. COSTS INCURRED THROUGH AN APPROVED
COMPETITIVE PROCUREMENT PLAN SHALL BE DEEMED TO BE THE LEAST
COST OVER TIME AS REQUIRED UNDER PARAGRAPH (3.4)(II).

(3.7) AT THE TIME THE COMMISSION EVALUATES THE PLAN AND
PRIOR TO APPROVAL, IN DETERMINING IF THE DEFAULT ELECTRIC
SERVICE PROVIDER'S PLAN OBTAINS GENERATION SUPPLY AT THE
LEAST COST, THE COMMISSION SHALL CONSIDER THE DEFAULT SERVICE
PROVIDER'S OBLIGATION TO PROVIDE ADEQUATE AND RELIABLE
SERVICE TO CUSTOMERS AND THAT THE DEFAULT SERVICE PROVIDER
HAS OBTAINED A PRUDENT MIX OF CONTRACTS TO OBTAIN LEAST COST
ON A LONG-TERM, SHORT-TERM AND SPOT MARKET BASIS AND SHALL
MAKE SPECIFIC FINDINGS WHICH SHALL INCLUDE THE FOLLOWING:

(I) THE DEFAULT SERVICE PROVIDER'S PLAN INCLUDES
PRUDENT STEPS NECESSARY TO NEGOTIATE FAVORABLE GENERATION
SUPPLY CONTRACTS.

(II) THE DEFAULT SERVICE PROVIDER'S PLAN INCLUDES
PRUDENT STEPS NECESSARY TO OBTAIN LEAST COST GENERATION
SUPPLY CONTRACTS ON A LONG-TERM, SHORT-TERM AND SPOT
MARKET BASIS.

(III) NEITHER THE DEFAULT SERVICE PROVIDER NOR ITS AFFILIATED INTEREST HAS WITHHELD FROM THE MARKET ANY GENERATION SUPPLY IN A MANNER THAT VIOLATES FEDERAL LAW.

(3.8) NOTWITHSTANDING SECTIONS 508 (RELATING TO POWER OF COMMISSION TO VARY, REFORM AND REVISE CONTRACTS) AND 2102 (RELATING TO APPROVAL OF CONTRACTS WITH AFFILIATED INTERESTS), THE COMMISSION MAY MODIFY CONTRACTS OR DISALLOW COSTS ONLY WHEN THE PARTY SEEKING RECOVERY OF THE COSTS OF A PROCUREMENT PLAN IS, AFTER HEARING, FOUND TO BE AT FAULT FOR THE FOLLOWING:

(I) NOT COMPLYING WITH THE COMMISSION-APPROVED PROCUREMENT PLAN; OR

(II) THE COMMISSION OF FRAUD, COLLUSION OR MARKET MANIPULATION WITH REGARD TO THESE CONTRACTS.

(3.9) THE DEFAULT SERVICE PROVIDER SHALL HAVE THE RIGHT TO RECOVER ON A FULL AND CURRENT BASIS, PURSUANT TO A RECONCILABLE AUTOMATIC ADJUSTMENT CLAUSE UNDER SECTION 1307 (RELATING TO SLIDING SCALE OF RATES; ADJUSTMENTS), ALL REASONABLE COSTS INCURRED UNDER THIS SECTION AND A COMMISSION-APPROVED COMPETITIVE PROCUREMENT PLAN.

(4) IF A CUSTOMER THAT Chooses AN ALTERNATIVE SUPPLIER AND SUBSEQUENTLY DESIRES TO RETURN TO THE LOCAL DISTRIBUTION COMPANY FOR GENERATION SERVICE, THE LOCAL DISTRIBUTION COMPANY SHALL TREAT THAT CUSTOMER EXACTLY AS IT WOULD ANY NEW APPLICANT FOR ENERGY SERVICE.

(5) (I) NOTWITHSTANDING PARAGRAPH [(3)] (3.1), THE ELECTRIC DISTRIBUTION COMPANY OR COMMISSION-APPROVED ALTERNATIVE SUPPLIER MAY, IN ITS SOLE DISCRETION, OFFER LARGE CUSTOMERS WITH A PEAK DEMAND OF 15 MEGAWATTS OR
GREATER AT ONE METER AT A LOCATION IN ITS SERVICE TERRITORY ANY NEGOTIATED RATE FOR SERVICE AT ALL OF THE CUSTOMERS' LOCATIONS WITHIN THE SERVICE TERRITORY FOR ANY DURATION AGREED UPON BY THE ELECTRIC DISTRIBUTION COMPANY OR COMMISSION-APPROVED ALTERNATIVE SUPPLIER AND THE LARGE CUSTOMER. THE COMMISSION SHALL PERMIT, BUT SHALL NOT REQUIRE, AN ELECTRIC DISTRIBUTION COMPANY OR COMMISSION-APPROVED ALTERNATIVE SUPPLIER TO PROVIDE SERVICE TO LARGE CUSTOMERS UNDER THIS PARAGRAPH. CONTRACT RATES ENTERED INTO UNDER THIS PARAGRAPH SHALL BE SUBJECT TO REVIEW BY THE COMMISSION IN ORDER TO ENSURE THAT ALL COSTS RELATED TO THE RATES ARE BORNE BY THE PARTIES TO THE CONTRACT AND THAT NO COSTS RELATED TO THE RATES ARE BORNE BY OTHER CUSTOMERS OR CUSTOMER CLASSES. IF NO COSTS RELATED TO THE RATES ARE BORNE BY OTHER CUSTOMERS OR CUSTOMER CLASSES, THE COMMISSION SHALL APPROVE THE CONTRACT WITHIN 90 DAYS OF ITS FILING, OR IT SHALL BE DEEMED APPROVED BY OPERATION OF LAW UPON EXPIRATION OF THE 90 DAYS. INFORMATION SUBMITTED UNDER THIS PARAGRAPH SHALL BE SUBJECT TO THE COMMISSION'S PROCEDURES FOR THE FILING OF CONFIDENTIAL AND PROPRIETARY INFORMATION.

(II) FOR PURPOSES OF PROVIDING SERVICE UNDER THIS PARAGRAPH TO CUSTOMERS WITH A PEAK DEMAND OF 20 MEGAWATTS OR GREATER AT ONE METER AT A LOCATION WITHIN THAT DISTRIBUTION COMPANY'S SERVICE TERRITORY, AN ELECTRIC DISTRIBUTION COMPANY THAT HAS COMPLETED ITS RESTRUCTURING TRANSITION PERIOD AS OF THE EFFECTIVE DATE OF THIS PARAGRAPH MAY, IN ITS SOLE DISCRETION, ACQUIRE AN INTEREST IN A GENERATION FACILITY OR CONSTRUCT A GENERATION FACILITY SPECIFICALLY TO MEET THE ENERGY
REQUIREMENTS OF THE CUSTOMERS, INCLUDING THE ELECTRIC
REQUIREMENTS OF THE CUSTOMERS' OTHER BILLING LOCATIONS
WITHIN ITS SERVICE TERRITORY. THE ELECTRIC DISTRIBUTION
COMPANY MUST COMMENCE CONSTRUCTION OF THE GENERATION
FACILITY OR CONTRACT TO ACQUIRE THE GENERATION INTEREST
WITHIN THREE YEARS AFTER THE EFFECTIVE DATE OF THIS
PARAGRAPH, EXCEPT THAT THE ELECTRIC DISTRIBUTION COMPANY
MAY ADD TO THE GENERATION FACILITIES IT COMMENCED
CONSTRUCTION OR CONTRACTED TO ACQUIRE AFTER THIS THREE-
YEAR PERIOD TO SERVE ADDITIONAL LOAD OF CUSTOMERS FOR
WHOM IT COMMENCED CONSTRUCTION OR CONTRACTED TO ACQUIRE
GENERATION WITHIN THREE YEARS. NOTHING IN THIS PARAGRAPH
REQUIRES OR AUTHORIZES THE COMMISSION TO REQUIRE AN
ELECTRIC DISTRIBUTION COMPANY TO COMMENCE CONSTRUCTION OR
ACQUIRE AN INTEREST IN A GENERATION FACILITY. THE
ELECTRIC DISTRIBUTION COMPANY'S INTEREST IN THE
GENERATION FACILITY IT BUILT OR CONTRACTED TO ACQUIRE
SHALL BE NO LARGER THAN NECESSARY TO MEET PEAK DEMAND OF
CUSTOMERS SERVED UNDER THIS SUBPARAGRAPH. DURING TIMES
WHEN THE CUSTOMER'S DEMAND IS LESS THAN THE ELECTRIC
DISTRIBUTION COMPANY'S GENERATION INTEREST, THE ELECTRIC
DISTRIBUTION COMPANY MAY SELL EXCESS POWER ON THE
WHOLESALE MARKET. AT NO TIME SHALL THE COSTS ASSOCIATED
WITH THE GENERATING FACILITY INTERESTS BE INCLUDED IN
RATE BASE OR OTHERWISE REFLECTED IN RATES. THE GENERATION
FACILITY INTERESTS SHALL NOT BE COMMISSION-REGULATED
ASSETS.

(6) A DEFAULT SERVICE PLAN APPROVED BY THE COMMISSION
PRIOR TO THE EFFECTIVE DATE OF THIS SECTION SHALL REMAIN IN
EFFECT THROUGH ITS APPROVED TERM. AT ITS SOLE DISCRETION, THE
DEFAULT SERVICE PROVIDER MAY PROPOSE AMENDMENTS TO ITS
APPROVED PLAN THAT ARE CONSISTENT WITH THIS SECTION, AND THE
COMMISSION SHALL ISSUE A DECISION WHETHER TO APPROVE OR
DISAPPROVE THE PROPOSED AMENDMENTS WITHIN NINE MONTHS OF THE
DATE THAT THE AMENDMENTS ARE FILED. IF THE COMMISSION FAILS
TO ISSUE A FINAL ORDER WITHIN NINE MONTHS, THE AMENDMENTS
SHALL BE DEEMED TO BE APPROVED AND THE DEFAULT SERVICE
PROVIDER MAY IMPLEMENT THE AMENDMENTS AS FILED.

(7) THE DEFAULT SERVICE PROVIDER SHALL OFFER RESIDENTIAL
AND SMALL BUSINESS CUSTOMERS A GENERATION SUPPLY SERVICE RATE
THAT SHALL CHANGE NO MORE FREQUENTLY THAN ON A QUARTERLY
BASIS. ALL DEFAULT SERVICE RATES SHALL BE REVIEWED BY THE
COMMISSION TO ENSURE THAT THE COSTS OF PROVIDING SERVICE TO
EACH CUSTOMER CLASS ARE NOT SUBSIDIZED BY ANY OTHER CLASS.

(F) SMART METER TECHNOLOGY AND TIME OF USE RATES.--

(1) WITHIN NINE MONTHS AFTER THE EFFECTIVE DATE OF THIS
PARAGRAPH, ELECTRIC DISTRIBUTION COMPANIES SHALL FILE A SMART
METER TECHNOLOGY PROCUREMENT AND INSTALLATION PLAN WITH THE
COMMISSION FOR APPROVAL. THE PLAN SHALL DESCRIBE THE SMART
METER TECHNOLOGIES THE ELECTRIC DISTRIBUTION COMPANY PROPOSES
TO INSTALL IN ACCORDANCE WITH PARAGRAPH (2).

(2) ELECTRIC DISTRIBUTION COMPANIES SHALL FURNISH SMART
METER TECHNOLOGY AS FOLLOWS:

(I) UPON REQUEST FROM A CUSTOMER THAT AGREES TO PAY
THE COST OF THE SMART METER AT THE TIME OF THE REQUEST.

(II) IN NEW BUILDING CONSTRUCTION.

(III) IN ACCORDANCE WITH A DEPRECIATION SCHEDULE NOT
TO EXCEED 15 YEARS.

(3) ELECTRIC DISTRIBUTION COMPANIES SHALL, WITH CUSTOMER
CONSENT, MAKE AVAILABLE DIRECT METER ACCESS AND ELECTRONIC
ACCESS TO CUSTOMER METER DATA TO THIRD PARTIES, INCLUDING
ELECTRIC GENERATION SUPPLIERS AND PROVIDERS OF CONSERVATION
AND LOAD MANAGEMENT SERVICES.

(4) In no event shall lost or decreased revenues by an
electric distribution company due to reduced electricity
consumption or shifting energy demand be considered any of
the following:

(I) a cost of smart meter technology recoverable
under a reconcilable automatic adjustment clause under
section 1307(b), except that decreased revenues and
reduced energy consumption may be reflected in the
revenue and sales data used to calculate rates in a
distribution rate base rate proceeding filed under
section 1308 (relating to voluntary change in rates).

(II) a recoverable cost.

(5) by january 1, 2010, or at the end of the applicable
generation rate cap period, whichever is later, a default
service provider shall submit to the commission one or more
proposed time-of-use rates and real-time price plans. the
commission shall approve or modify the time-of-use rates and
real-time price plan within six months of submittal. the
default service provider shall offer the time-of-use rates
and real-time price plan to all customers that have been
provided with smart meter technology under paragraph
(2)(iii). residential or commercial customers may elect to
participate in time-of-use rates or real-time pricing. the
default service provider shall submit an annual report to the
price programs and the efficacy of the programs in affecting
energy demand and consumption and the effect on wholesale
market prices.
(6) The provisions of this subsection shall not apply to an electric distribution company with 100,000 or fewer customers.

(7) An electric distribution company may recover reasonable and prudent costs of providing smart meter technology under paragraph (2)(II) and (III), as determined by the commission. This paragraph includes annual depreciation and capital costs over the life of the smart meter technology and the cost of any system upgrades that the electric distribution company may require to enable the use of the smart meter technology which are incurred after the effective date of this paragraph less operating and capital cost savings realized by the electric distribution company from the installation and use of the smart meter technology. Smart meter technology shall be deemed to be a new service offered for the first time under section 2804(4)(VI). An electric distribution company may recover smart meter technology costs:

(I) through base rates, including a deferral for future base rate recovery of current basis with carrying charge as determined by the commission; or

(II) on a full and current basis through a reconcilable automatic adjustment clause under section 1307.

(G) Definition.--As used in this section, the term "smart meter technology" means technology, including metering technology and network communications technology capable of bidirectional communication, that records electricity usage on at least an hourly basis, including related electric distribution system upgrades to enable the technology. The
TECHNOLOGY SHALL PROVIDE CUSTOMERS WITH DIRECT ACCESS TO AND USE OF PRICE AND CONSUMPTION INFORMATION. THE TECHNOLOGY SHALL ALSO:

(1) DIRECTLY PROVIDE CUSTOMERS WITH INFORMATION ON THEIR HOURLY CONSUMPTION.

(2) ENABLE TIME-OF-USE RATES AND REAL-TIME PRICE PROGRAMS.

(3) EFFECTIVELY SUPPORT THE AUTOMATIC CONTROL OF THE CUSTOMER'S ELECTRICITY CONSUMPTION BY ONE OR MORE OF THE FOLLOWING AS SELECTED BY THE CUSTOMER:

(I) THE CUSTOMER;

(II) THE CUSTOMER'S UTILITY; OR

(III) A THIRD PARTY ENGAGED BY THE CUSTOMER OR THE CUSTOMER'S UTILITY.

SECTION 4. SECTION 2811 OF TITLE 66 IS AMENDED BY ADDING A SUBSECTION TO READ:

§ 2811. MARKET POWER REMEDIATION.

* * *

(E.1) MARKET MISCONDUCT.--

(1) IF AN ELECTRIC DISTRIBUTION COMPANY OR ANY OF ITS AFFILIATED COMPANIES OR ANY COMPANY THAT AN ELECTRIC DISTRIBUTION COMPANY HAS PURCHASED GENERATION FROM IS FOUND GUILTY OF MARKET MANIPULATION, EXERCISING MARKET POWER OR COLLUSION BY THE FEDERAL ENERGY REGULATORY COMMISSION OR ANY FEDERAL OR STATE COURT OR, IF AN ELECTRIC DISTRIBUTION COMPANY OR ANY ONE OF ITS AFFILIATED COMPANIES OR ANY COMPANY THAT AN ELECTRIC DISTRIBUTION COMPANY HAS PURCHASED GENERATION FROM SETTLES A CLAIM OF MARKET MANIPULATION, EXERCISING MARKET POWER OR COLLUSION THAT IS BROUGHT BY A REGIONAL TRANSMISSION OPERATOR'S MARKET MONITORING UNIT, THE FEDERAL ENERGY REGULATORY COMMISSION OR ANOTHER ENTITY, THE
COMMISSION:

(I) SHALL DIRECT THE ELECTRIC DISTRIBUTION COMPANY TO TAKE ANY AND ALL REASONABLE ACTION TO QUANTIFY THE EFFECT OF THE MARKET MISCONDUCT UPON PENNSYLVANIA RATEPAYERS.

(II) FOLLOWING PUBLIC HEARING ON THE MATTER AND A FINDING OF PUBLIC INTEREST, MAY DIRECT THE ELECTRIC DISTRIBUTION COMPANY TO TAKE ANY AND ALL REASONABLE LEGAL ACTION, INCLUDING THE FILING OF A LAWSUIT AS MAY BE NECESSARY, TO RECOVER THE QUANTIFIED DAMAGES WHICH SHALL BE USED TO RECOMPENSE PENNSYLVANIA RATEPAYERS AFFECTED BY THE MARKET MISCONDUCT.

(2) IF THE ELECTRIC DISTRIBUTION COMPANY FAILS TO PURSUE REASONABLE ACTION TO QUANTIFY OR SEEK RECOVERY OF DAMAGES FOR PENNSYLVANIA RATEPAYERS AFFECTED BY MARKET MANIPULATION, THE EXERCISE OF MARKET POWER OR COLLUSION, THE COMMISSION IS AUTHORIZED, FOLLOWING NOTICE AND AN OPPORTUNITY OF THE ELECTRIC DISTRIBUTION COMPANY TO COMPLY OR CONTEST, TO ASSESS A CIVIL PENALTY, WHICH SHALL NOT BE RECOVERED IN RATES, OF NOT MORE THAN $10,000 PER DAY FOR FAILURE OR NEGLECT TO OBEY AN ORDER OF THE COMMISSION, THE CONTINUANCE OF THE FAILURE OR NEGLECT BEING A SEPARATE OFFENSE.

(3) ANY MONETARY DAMAGES RECOVERED BY THE ELECTRIC DISTRIBUTION COMPANY SHALL BE PAID TO AFFECTED PENNSYLVANIA RATEPAYERS IN THE FORM OF A CREDIT TO THEIR ELECTRIC BILLS OR AS REFUNDS.

(4) THE PROVISIONS OF THIS SUBSECTION SHALL BE HELD TO BE IN ADDITION TO AND NOT IN SUBSTITUTION FOR OR LIMITATION OF ANY OTHER PROVISIONS OF THIS TITLE.

* * *
SECTION 5. TITLE 66 IS AMENDED BY ADDING SECTIONS TO READ:

§ 2813. PROCUREMENT OF POWER.

EXCEPT AS PROVIDED UNDER THE ACT OF NOVEMBER 30, 2004 (P.L.1672, NO.213), KNOWN AS THE ALTERNATIVE ENERGY PORTFOLIO STANDARDS ACT, THE COMMISSION MAY NOT ORDER A DEFAULT SERVICE PROVIDER TO PROCURE POWER FROM A SPECIFIC GENERATION SUPPLIER, FROM A SPECIFIC GENERATION FUEL TYPE OR FROM NEW GENERATION ONLY.

§ 2814. ADDITIONAL ALTERNATIVE ENERGY SOURCES.

(A) ALTERNATIVE ENERGY SOURCES.--THE TERM "ALTERNATIVE ENERGY SOURCES" AS DEFINED UNDER SECTION 2 OF THE ACT OF NOVEMBER 30, 2004 (P.L.1672, NO.213), KNOWN AS THE ALTERNATIVE ENERGY PORTFOLIO STANDARDS ACT, SHALL ALSO INCLUDE LOW-IMPACT HYDROPOWER CONSISTING OF ANY TECHNOLOGY THAT PRODUCES ELECTRIC POWER AND THAT HARNESSES THE HYDROELECTRIC POTENTIAL OF MOVING WATER IMPOUNDMENTS IF ONE OF THE FOLLOWING APPLIES:

(1) (I) THE HYDROPOWER SOURCE HAS A FEDERAL ENERGY REGULATORY COMMISSION LICENSED CAPACITY OF 21 MEGAWATTS OR LESS; AND

(II) THE LICENSE FOR THE HYDROPOWER SOURCE WAS ISSUED BY THE FEDERAL ENERGY REGULATORY COMMISSION ON OR PRIOR TO JANUARY 1, 1984, AND HELD ON JULY 1, 2007, IN WHOLE OR IN PART BY A MUNICIPALITY LOCATED WHOLLY WITHIN THIS COMMONWEALTH OR BY AN ELECTRIC COOPERATIVE INCORPORATED IN THIS COMMONWEALTH.

(2) THE INCREMENTAL HYDROELECTRIC DEVELOPMENT:

(I) DOES NOT ADVERSELY CHANGE EXISTING IMPACTS TO AQUATIC SYSTEMS;

(II) MEETS THE CERTIFICATION STANDARDS ESTABLISHED BY THE LOW IMPACT HYDROPOWER INSTITUTE AND AMERICAN
RIVERS, INC., OR THEIR SUCCESSORS;

(III) PROVIDES AN ADEQUATE WATER FLOW FOR PROTECTION
OF AQUATIC LIFE AND FOR SAFE AND EFFECTIVE FISH PASSAGE;

(IV) PROTECTS AGAINST EROSION; AND

(V) PROTECTS CULTURAL AND HISTORIC RESOURCES.

(B) BIOMASS.--THE TERM "BIOMASS ENERGY" AS DEFINED UNDER
SECTION 2 OF THE ALTERNATIVE ENERGY PORTFOLIO STANDARDS ACT
SHALL ALSO INCLUDE THE GENERATION OF ELECTRICITY UTILIZING BY-
PRODUCTS OF THE PULPING PROCESS AND WOOD MANUFACTURING PROCESS,
INCLUDING BARK, WOOD CHIPS, SAWDUST AND LIGNINS IN SPENT PULPING
LIQUORS. ELECTRICITY FROM BIOMASS ENERGY UNDER THIS SUBSECTION
GENERATED INSIDE THIS COMMONWEALTH SHALL BE ELIGIBLE AS A TIER I
ALTERNATIVE ENERGY SOURCE. ELECTRICITY FROM BIOMASS ENERGY UNDER
THIS SUBSECTION GENERATED OUTSIDE THIS COMMONWEALTH SHALL BE
ELIGIBLE AS A TIER II ALTERNATIVE ENERGY SOURCE.

(C) INCREASE IN TIER I.--THE COMMISSION SHALL AT LEAST
QUARTERLY INCREASE THE PERCENTAGE SHARE OF TIER I ALTERNATIVE
ENERGY SOURCES REQUIRED TO BE SOLD BY AN ELECTRIC DISTRIBUTION
COMPANY OR ELECTRIC GENERATION SUPPLIER UNDER SECTION 3(B)(1) OF
THE ALTERNATIVE ENERGY PORTFOLIO STANDARDS ACT TO REFLECT ANY
NEW BIOMASS ENERGY OR LOW-IMPACT HYDROPOWER RESOURCES THAT
QUALIFY AS A TIER I ALTERNATIVE ENERGY SOURCE UNDER THIS
SECTION. NO NEW RESOURCE QUALIFYING AS BIOMASS ENERGY OR LOW-
IMPACT HYDROPOWER UNDER THIS SECTION SHALL BE ELIGIBLE TO
GENERATE TIER I ALTERNATIVE ENERGY CREDITS UNTIL THE COMMISSION
HAS INCREASED THE PERCENTAGE SHARE OF TIER I TO REFLECT THESE
ADDITIONAL RESOURCES.

§ 2815. CARBON DIOXIDE SEQUESTRATION NETWORK.

(A) ASSESSMENT.--

(1) BY APRIL 1, 2009, THE DEPARTMENT SHALL COMPLETE A
20080H2200B4526 - 76 -
STUDY TO IDENTIFY SUITABLE GEOLOGICAL FORMATIONS, INCLUDING SITES WITHIN OR IN PROXIMITY TO THE MEDINA, TUSCARORA OR ORISKANY SANDSTONE FORMATION FOR THE LOCATION OF A STATE NETWORK.

(2) BY JUNE 1, 2009, THE DEPARTMENT, IN CONSULTATION WITH THE COMMISSION, SHALL HIRE ONE OR MORE INDEPENDENT EXPERTS PURSUANT TO 62 PA.C.S. PT. I (RELATING TO COMMONWEALTH PROCUREMENT CODE), AS NECESSARY, TO CONDUCT AN ASSESSMENT OF THE FOLLOWING:

(I) ESTIMATES OF CAPITAL REQUIREMENTS AND EXPENDITURES NECESSARY FOR THE ESTABLISHMENT, OPERATION AND MAINTENANCE OF A STATE NETWORK.

(II) THE COLLECTION OF DATA TO ALLOW A SAFETY ASSESSMENT.

(III) AN ASSESSMENT OF ALL POTENTIAL RISK TO INDIVIDUALS, PROPERTY AND THE ENVIRONMENT ASSOCIATED WITH THE GEOLOGICAL SEQUESTRATION OF CARBON DIOXIDE IN A STATE NETWORK. THE ASSESSMENT, WHICH SHALL BE COMPLETED BY OCTOBER 1, 2009, SHALL INCLUDE AN ANALYSIS OF THE FOLLOWING:

(A) EXISTING FEDERAL AND STATE REGULATORY STANDARDS FOR THE STORAGE OF CARBON DIOXIDE.

(B) FACTORS CONTAINED IN THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY'S VULNERABILITY EVALUATION FRAMEWORK FOR GEOLOGIC SEQUESTRATION OF CARBON DIOXIDE (EPA 430-R-08-009, DATED JULY 10, 2008).

(C) THE DIFFERENT TYPES OF INSURANCE, BONDS, OTHER INSTRUMENTS AND RECOMMENDED LEVELS OF INSURANCE WHICH SHOULD BE CARRIED BY THE OPERATOR OF THE STATE NETWORK.
NETWORK DURING THE CONSTRUCTION AND OPERATION OF THE
STATE NETWORK.

(D) THE AVAILABILITY OF COMMERCIAL INSURANCE.

(E) MODELS FOR THE ESTABLISHMENT OF A
COMMONWEALTH FUND TO PROVIDE PROTECTION AGAINST RISK
TO BE FUNDED BY THE OPERATOR.

(B) TRANSMISSION OF STUDY AND ASSESSMENT.--

(1) THE DEPARTMENT SHALL SUBMIT THE STUDY CONDUCTED
UNDER SUBSECTION (A)(1) TO THE GOVERNOR, THE CHAIRMAN AND
MINORITY CHAIRMAN OF THE ENVIRONMENTAL RESOURCES AND ENERGY
COMMITTEE OF THE SENATE, THE CHAIRMAN AND MINORITY CHAIRMAN
OF THE ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE OF THE
HOUSE OF REPRESENTATIVES AND THE DEPARTMENT NO LATER THAN MAY
1, 2009.

(2) THE INDEPENDENT EXPERT SHALL SUBMIT THE FINAL
ASSESSMENT UNDER SUBSECTION (A)(2) TO THE GOVERNOR, THE
CHAIRMAN AND MINORITY CHAIRMAN OF THE ENVIRONMENTAL RESOURCES
AND ENERGY COMMITTEE OF THE SENATE, THE CHAIRMAN AND MINORITY
CHAIRMAN OF THE ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE
OF THE HOUSE OF REPRESENTATIVES AND THE DEPARTMENT NO LATER
THAN NOVEMBER 1, 2009.

(C) DEPARTMENT.--THE FOLLOWING SHALL APPLY:

(1) THE DEPARTMENT SHALL REVIEW THE ASSESSMENT SUBMITTED
UNDER SUBSECTION (A)(2) AND ALL GEOLOGIC SEQUESTRATION
REQUIREMENTS ASSOCIATED WITH A STATE NETWORK, INCLUDING
GEOLOGICAL SITE CHARACTERIZATION, MODELING AND VERIFICATION
OF FLUID MOVEMENT, CORRECTIVE ACTION, WELL CONSTRUCTION,
OPERATION, MECHANICAL INTEGRITY TESTING, MONITORING AND SITE
CLOSURE.

(2) FOLLOWING THE REVIEW UNDER PARAGRAPH (1), THE
DEPARTMENT MAY CONDUCT A PILOT PROJECT TO DETERMINE THE VIABILITY OF ESTABLISHING A STATE NETWORK IN THIS COMMONWEALTH.

(D) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SUBSECTION:

"CARBON DIOXIDE SEQUESTRATION." The storage of carbon dioxide in a supercritical phase within a geological subsurface formation such as a deep saline aquifer with suitable cap rock, sealing faults and anticlines that includes compression, dehydration and leak detection monitoring equipment and pipelines to transport carbon dioxide captured by an advanced coal combustion with limited carbon emissions plant to an underground storage site. The term shall not include use of the carbon dioxide for enhanced oil recovery.

"DEPARTMENT." The Department of Conservation and Natural Resources of the Commonwealth.

"STATE NETWORK." A carbon dioxide sequestration network established on lands owned by the Commonwealth, or lands on which the Commonwealth has acquired the right to store carbon dioxide, that have been designated by the Department of Conservation and Natural Resources for the storage of carbon dioxide.

SECTION 6. THIS ACT SHALL TAKE EFFECT IN 30 DAYS.