

August 31, 2009

James J. McNulty  
Secretary  
Pennsylvania Public Utility Commission,  
P.O. Box 3265,  
Harrisburg, PA 17105-3265

**Re: Petition of Duquesne Light Company For Approval of Its Energy Efficiency  
and Conservation and Demand Response Plan  
Docket No. M-2009-2093217**

Dear Secretary McNulty:

Enclosed for filing in the above-captioned proceeding, please find the Main Brief and Certificate of Service on behalf of the Pennsylvania Association of Community Organizations for Reform Now ("ACORN"). Parties of record have been served as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me directly.

Very truly yours,

/s/ Harry S. Geller

Harry S. Geller, Esq.  
*Counsel for ACORN*

Enclosures  
cc: Cert. of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company :  
For Approval of Its Energy Efficiency : M-2009-2093217  
and Conservation and Demand :  
Response Plan :

**CERTIFICATE OF SERVICE**

I hereby certify that I have today served a true copy of the Main Brief for the Pennsylvania Association of Community Organizations for Reform Now (ACORN) upon the parties of record in this proceeding listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**Via Electronic Mail and First Class Mail**

David T. Evrard, Esquire  
Tanya J. McCloskey, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048  
(717) 783-7152 (fax)  
[devrard@paoca.org](mailto:devrard@paoca.org)  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)

Shelby A. Linton-Keddie, Esquire  
Pamela C. Polacek, Esquire  
Barry A. Naum, Esquire  
McNees Wallace & Nurick LLC  
100 Pine Street, P.O. Box 1166  
Harrisburg, PA 17108-1166  
(717) 232-8000  
(717) 237-5300 (fax)  
[skeddie@mwn.com](mailto:skeddie@mwn.com)  
[ppolacek@mwn.com](mailto:ppolacek@mwn.com)  
[bnaum@mwn.com](mailto:bnaum@mwn.com)

Charles Daniel Shields, Esquire  
Adeolu A. Bakare, Esquire  
Office of Trial Staff  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-1976  
(717) 772-2677  
[chshields@state.pa.us](mailto:chshields@state.pa.us)  
[abakare@state.pa.us](mailto:abakare@state.pa.us)

Gary A. Jack Esquire  
Kelly L. Geer, Esquire  
Duquesne Light Company  
411 Seventh Avenue, 16-1  
Pittsburgh, PA 15219  
(412) 393-1541  
(412) 393-1418 (fax)  
[kgeer@duqlight.com](mailto:kgeer@duqlight.com)  
[gjack@duglight.com](mailto:gjack@duglight.com)

George Jugovic, Jr.  
Assistant Counsel  
Department of Environmental Protection  
400 Waterfront Drive  
Pittsburgh, PA 15222-4745  
(412) 442-4262  
(412) 442-4267 (fax)  
[gjugovic@state.pa.us](mailto:gjugovic@state.pa.us)

Sharon E. Webb, Esquire  
Office of Small Business Advocate  
1102 Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
(717) 783-2525  
(717) 783-2831 (fax)  
[swebb@state.pa.us](mailto:swebb@state.pa.us)

Charles E. Thomas, Jr., Esquire  
Thomas T. Niesen, Esquire  
Thomas, Long, Niesen & Kennard  
212 Locust Street  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
(717) 255-7615  
(717) 236-8278 (fax)  
[cthomasjr@thomaslonglaw.com](mailto:cthomasjr@thomaslonglaw.com)  
[tneisen@thomaslonglaw.com](mailto:tneisen@thomaslonglaw.com)

Carolyn Pengidore, President/CEO  
ClearChoice Energy  
180 Fort Couch Road, Suite 265  
Pittsburgh, PA 15241  
(724) 825-5391  
[Carolyn@ClearChoice-Energy.com](mailto:Carolyn@ClearChoice-Energy.com)

Scott Perry  
Aspassia V. Staevska  
Assistant Counsel  
Department of Environmental Protection  
RCSOB, 9<sup>th</sup> Floor  
400 Market Street  
Harrisburg, PA 17101-2301  
(717) 787-7060  
(717) 783-7911 (fax)  
[scperry@state.pa.us](mailto:scperry@state.pa.us)  
[astaevska@state.pa.us](mailto:astaevska@state.pa.us)

Kathryn G. Sophy, Esquire  
Jonathan Nase, Esquire  
Office of Special Assistants  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-1827  
(717) 783-6324 (fax)  
[ksophy@state.pa.us](mailto:ksophy@state.pa.us)  
[jnase@state.pa.us](mailto:jnase@state.pa.us)

Christopher A. Lewis, Esquire  
Christopher R. Sharp, Esquire  
Melanie J. Tambolas, Esquire  
Blank Rome, LLP  
One Logan Square  
Philadelphia, PA 19103  
(215) 569-5793  
(215) 832-5793 (fax)  
[Lewis@blankrome.com](mailto:Lewis@blankrome.com)  
[Sharp@blankrome.com](mailto:Sharp@blankrome.com)  
[Tambolas@blankrome.com](mailto:Tambolas@blankrome.com)

Daniel L. Frutchey, Esquire  
Equitable Distribution  
225 North Shore Drive  
Pittsburgh, PA 15212-5861  
(412) 395-3202  
(412) 395-3155  
[dfrutchey@eqt.com](mailto:dfrutchey@eqt.com)

Daniel Clearfield, Esquire  
Kevin J. Moody, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8<sup>th</sup> Floor  
P.O. Box 1248  
Harrisburg, PA 17108-1248  
(717) 237-7160  
(717) 237-6019 (fax)  
[dclearfield@eckertseamans.com](mailto:dclearfield@eckertseamans.com)  
[kmoody@eckertseamans.com](mailto:kmoody@eckertseamans.com)

Scott H. DeBroff, Esquire  
Alicia R. Petersen, Esquire  
Rhoads & Sinon LLP  
One South Market Square  
P.O. Box 1146  
Harrisburg, PA 17108-1146  
(717) 233-5731  
(717) 231-6626 (fax)  
[sdebroff@rhoads-sinon.com](mailto:sdebroff@rhoads-sinon.com)  
[apetersen@rhoads-sinon.com](mailto:apetersen@rhoads-sinon.com)

/s/ Harry S. Geller

---

Harry S. Geller, Esq.

Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
*Counsel for ACORN*

Dated: August 31, 2009



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## I. INTRODUCTION

On October 15, 2008, when Governor Edward Rendell signed House Bill 2200 into law as Act 129 of 2008 (“Act 129” or “the Act”), Pennsylvania leaped to the forefront of energy conservation and demand reduction activities in the country. The Act mandates significant reductions in retail electricity consumption through the installation and use of energy efficiency and demand reduction measures by ratepayers with the assistance of electric distribution companies (“EDCs”) and at the direction of the Pennsylvania Public Utility Commission (“Commission” or “PUC”). The resulting reductions in energy usage should yield monetary and environmental benefits for Pennsylvania’s citizens.

Act 129 recognizes that low income households, those households with income at or below 150% of the Federal poverty income guidelines (“FPIG”), can and must be part of this effort even though these households can not afford to purchase these measures. Act 129 includes specific, concrete language defining the meaning of “low income household;” requiring that low income households receive energy efficiency services proportionate to low income households’ energy usage in the service territory; requiring that low income programs be coordinated with federal, state, and Commission programs; and requiring funding for these services be in addition to and separate from existing funding of Commission mandated Low Income Usage Reduction programs (“LIURP”).

Duquesne Light Company’s (“Duquesne”) Energy Efficiency and Conservation and Demand Side Response Plan (“EE&C Plan”) filed on July 1, 2009 addresses the low income requirements of Act 129 within its Low Income Energy Efficiency Program (“LIEEP”). Duquesne’s LIEEP indicates that it will focus on low income families as defined by the Act. Duquesne’s EE&C Plan asserts that LIEEP will provide sufficient resources to serve low income

households and that the required proportion of energy savings will accrue to low income households. Duquesne's EE&C Plan asserts that LIEEP will coordinate with federal, state, and Commission programs assisting low income households. Duquesne's EE&C Plan provides assurances that its LIURP and Act 129 funding will remain distinct from one another.

Duquesne's EE&C Plan does not provide a plan for the hiring of low income workers by the Company nor incentives for its LIEEP partners or subcontractors to engage in such hiring; Duquesne's EE&C Plan does not provide a plan within LIEEP for the reduction, within its service territory, of the use of electric space heaters, and Duquesne's Plan provides no clear method of participation by stakeholders and/or parties to this proceeding in the follow-up for periodic program review or modification. Given this, the Commission, contingent upon modifications to the Plan as discussed below, should approve the LIEEP segment of Duquesne's Plan.

## II. PROCEDURAL HISTORY

On October 15, 2008, Governor Edward Rendell signed HB 2200 into law as Act 129 of 2008, with an effective date of November 14, 2008. 66 Pa.C.S. §§ 2806.1 et seq. The Act expanded the Commission's oversight responsibilities and imposed new requirements on electric distribution companies. Act 129 directed that by July 1, 2009 all electric distribution companies with at least 100,000 customers were to develop and file an EE&C Plan with the Commission for approval. 66 Pa.C.S. § 2806.1(b)(1)(I).

On January 15, 2009, the Commission issued an implementation order that established the standards each plan must meet and provided guidance on the procedures for submittal, review and approval of all aspects of EDC plans. *Energy Efficiency and Conservation Program*,

*Implementation Order*, Docket No. M-2008-2069887, (Order entered January 16, 2009) (“Implementation Order”). Subsequent to the entry of the Implementation Order, the Commission issued a series of orders detailing specific aspects of the EE&C Plan formulation process, including: an order establishing a registry of conservation service providers and specifying the minimum qualifications for entry onto the registry, *Implementation of Act 129 of 2008, Phase 2 – Registry of Conservation Service Providers, Final Order*, Docket No. M-2008-2074154, (Order Entered February 5, 2009); an order establishing the Technical Reference Manual (“TRM”) with standards to be used to measure and verify applicable demand side management and energy efficiency measures used by EDCs to meet the Act 129 consumption and peak demand reduction targets, *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources – Technical Reference Manual Update, Final Order and TRM*, Docket No. M-00051865, (Order Entered June 1, 2009); an order establishing a Total Resource Cost (“TRC”) test with which EDCs are to measure the costs and benefits associated with their EE&C Plans, *Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test, Order*, Docket No. M-2009-2108601, (Order Entered June 23, 2009); and an order outlining the technical and procedural requirements for EDCs’ Smart Meter procurement and installation activities required under Act 129, *Smart Meter Procurement and Installation, Implementation Order*, Docket No. M-2009-2092655, (Order Entered June 24, 2009).

As required by the Commission’s Implementation Order, Duquesne initiated a stakeholder process. Representatives of low income residents were able to participate in a number of the stakeholder meetings, representing the interests of low income customers, and providing Duquesne with feedback regarding the Act’s requirements as they relate to low income

households<sup>1</sup>. Duquesne engaged the services of MCR Performance Solutions, LLC (“MCR”), as consultant to help plan for and design the EE&C Plan. On July 1, 2009, as required by and in compliance with Act 129 and the Implementation Order, Duquesne filed its EE&C Plan.

*Petition Of Duquesne Light Company For Approval of an Energy Efficiency and Conservation and Demand Response Plan*, Docket No. M-2009-2093217, (Filed on July 1, 2009) (“*Petition*”).

### III. DESCRIPTION OF DUQUESNE’S PLAN

This Brief is concerned exclusively with the EE&C Plan’s impact on low income households and will therefore focus only on those parts of the Plan dealing with low income households.

Duquesne’s EE&C Plan employs a process to address low income households which is unique among all Pennsylvania electric distribution companies. The Duquesne Low Income Energy Efficiency Program (“LIEEP”) adopts a local government energy efficiency partnership strategy. The Plan proposes to implement LIEEP during program years 2009 through 2012. LIEEP will provide energy efficiency services at no cost to households whose income is at or below 150% of the federal poverty guidelines. LIEEP services will be provided to households located in either single or multi-family dwellings. Duquesne’s Plan adopts a local government energy efficiency partnership strategy. This is an implementation and delivery strategy which is unique compared to the Plans proposed by the other electric distribution companies, which base their Act 129 low income program on the generally recognized LIURP model.

Duquesne’s EE&C Plan does not provide a plan for the hiring of low income workers by the Company nor incentives for its local government agency partners or subcontractors to engage

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<sup>1</sup> The Pennsylvania Utility Law Project, representing ACORN in this proceeding, attended these pre-plan filing stakeholder meetings.

in such hiring; Duquesne's EE&C Plan does not provide a plan for the reduction, within its service territory, of the use of electric space heaters; and Duquesne's Plan provides no clear method of participation of stakeholders and/or parties to this proceeding in the follow-up for periodic program review or modification.

Duquesne's low income program has a budget of \$3,830,048 dedicated to "incentives" and \$1,094,299 dedicated to administration.<sup>2</sup> The low income program projects a cost-benefit ratio of 2.3.<sup>3</sup> Duquesne projects that its four year low income residential sector will achieve energy savings of 30,055,105 kWh and 12,254 kWh of demand reduction.<sup>4</sup> "LIEEP," the cornerstone of the Duquesne Act 129 low income plan, is projected to serve 8,500 households for each full year of program operation.<sup>5</sup>

#### IV. SUMMARY OF ARGUMENT

Act 129 requires Duquesne to file an EE&C Plan that: ensures low income households achieve energy savings at least proportionate to their share of the energy burden in the service territory; defines low income household to include only those households with income at or below 150% of the FPIG; requires Act 129 low income programs to coordinate with other federal, state, and Commission programs; and ensures expenditures for Act 129 low income programs are in addition to and separate from expenditures made for the company's LIURP program. 66 Pa.C.S. § 2806.1(b)(1)(I)(G).

Duquesne's Plan projects how each of the provisions will be met and therefore facially meets these low income provision requirements. First, Duquesne's Plan targets households with

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<sup>2</sup> Figure 20: Low-Income Sector Budget and Impacts, *Plan at 39*

<sup>3</sup> *Plan at 40.*

<sup>4</sup> Figure 20: Low-Income Sector Budget and Impacts, *Plan at 39*

<sup>5</sup> *Plan at 39.*

income up to 150% FPIG for enrollment into its low income programs.<sup>6</sup> Second, after determining that the cumulative low income energy usage within its service territory is 6.1% of the total energy usage, Duquesne's Plan projects an equivalent proportional low income energy savings of 6.1% which results in 8,579,118 kWh low income energy savings.<sup>7</sup> Finally, Duquesne proposes to use its Act 129 LIEEP measures and budget in a manner that is separate and apart from its LIURP Smart Comfort program measures and expenditures. Given these assurances that the Plan meets Act 129's low income provisions, the Commission should, subject to and contingent upon company commitments to incorporate practices aimed at hiring of low income workers, reducing the use of space heating within its service territory and developing a protocol for follow-up and participation by interested stake holders and parties during its periodic mid program evaluations, approve Duquesne's low income programs.

## V. ARGUMENT

### A. Act 129 Conservation and Demand Reduction Requirements

#### 1. *Overall Conservation Requirements*

N/A.

##### a. **2011 Requirements**

N/A.

##### b. **2013 Requirements**

N/A.

#### 2. *Overall Demand Reduction Requirements*

N/A.

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<sup>6</sup> *Plan at 38.*

<sup>7</sup> *Figure 19: Low-Income Territory Energy Use, Plan at 39.*

3. *Requirements for a Variety of Programs Equitably Distributed*

Act 129 requires the Commission to establish standards to ensure energy efficiency and conservation measures are provided equitably to all customer classes. 66 Pa.C.S. § 2806.1(a)(5). However, the equitable distribution standard does not apply to low income households because Act 129 has unique requirements for accruing energy savings to low income customers and to units of federal, state, and local government, including municipalities, school districts, institutions of higher learning, and nonprofit entities.<sup>8</sup> *Id* at §§ (b)(1)(I)(B); (b)(1)(I)(G). These special provisions supersede the more general equitable distribution standard applied to other parties:

Whenever a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted later and it shall be the manifest intention of the General Assembly that such general provision shall prevail.

1 Pa.C.S.A. § 1933.

The Commission's Implementation Order provides an interpretation that supports this view and discusses the standards to ensure a variety of measures are applied equitably to all customer classes:

There are clear requirements in the Act regarding proportionate measures for low-income customers (within a residential customer class) as well as for governments, schools, etc. (within a commercial customer class). *Beyond those requirements*, we believe that EDCs should develop plans to achieve the most energy savings per expenditure. The driving principle should be the most cost effective use of resources so that benefits can accrue to all customers, even if only by virtue of more reasonable energy market prices. (*emphasis added*)

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<sup>8</sup> For the sake of convenience, the entities referred to in Section 2806.1(b)(1)(I)(B) - federal, state, and local government, including municipalities, school districts, institutions of higher learning, and nonprofit entities – will be referred to collectively as “governmental entities” for the balance of this Brief.

Implementation Order at 22. In these statements, the Commission explicitly holds Act 129 has “clear requirements” for low income households and governmental entities. That is, the Commission recognizes Act 129 provides special provisions for low income and governmental groups. Only after making this determination about low income and governmental customers does the Commission look “beyond those requirements” to note that “each customer class be offered at least one energy efficiency and demand response program.” Id at 23. The plain words of the statute are soundly interpreted by the Commission to assure low income customers and governmental entities must receive special targeted savings. Only after these special provisions are addressed should EDCs consider the equitable apportionment of programs among the classes of customers.

Duquesne’s Plan has special provisions for low income savings that specifically target proportional energy savings to low income households. Duquesne projects that the low income proportional energy savings will achieve 30,055,105 kWh of energy savings to low income households by the end of program year 2012.<sup>9</sup>

4. *10% Government/Non-Profit Requirement*

N/A.

5. *Low Income Program Requirements*

Act 129 at Section 2806.1(b)(1)(I)(G) requires Duquesne to file an EE&C Plan that: ensures low income households achieve energy savings at least proportionate to their share of the energy burden in the service territory; defines low income households to include only those households with income at or below 150% of the FPIG; indicates that it intends to coordinate its low income program with other federal, state, and Commission programs; and ensures expenditures for Act 129 low income programs are in addition to and separate from

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<sup>9</sup> Figure 20: Low-Income Sector Budget and Impacts, *Plan at 39*

expenditures made for the company's LIURP program. Because Duquesne's EE&C Plan substantially meets these burdens, the Commission should, subject to and contingent upon company commitments to incorporate practices aimed at hiring of low income workers, reducing the use of space heating within its service territory and developing a protocol for follow-up and participation by interested stake holders and parties during its periodic mid program evaluations, approve Duquesne's Act 129 low income program.

- a. Duquesne's EE&C Plan targets to low income households energy savings at least proportionate to their share of the energy burden in the service territory.**

Act 129 reads in part, "The number of measures shall be proportionate to those households' share of the total energy usage in the service territory." 66 Pa.C.S. § 2806.1(b)(1)(I)(G). An EE&C Plan, in order to be legally sufficient, must provide explicit information detailing how a proportionate share of energy savings will accrue to low income households. Duquesne's EE&C Plan substantially complies with this requirement.

The sentence from Section 2806.1(b)(1)(I)(G), "The number of measures shall be proportionate to those households' share of the total energy usage in the service territory," is ambiguous on its face. The sentence employs two mathematical concepts: number, as in "number of measures," and proportion, as in "proportionate" to share of total energy usage. It is difficult, if not impossible, to conceive how the General Assembly expected EDCs to design programs where a number of measures (expressed as a whole number) would be proportionate to a share of energy usage (expressed as a percentage). To attempt this exercise would be nearly impossible and leads to absurd results.

“The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly.” 1 Pa.C.S.A. § 1921(a). “When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” *Id.* at § 1921(b). It is presumed, “the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.” *Id.* at § 1922(1). In this instance, where the words of the statute are not clear and free from all ambiguity, then the intent of the General Assembly must be ascertained using a number of criteria other than the plain meaning of the text. *Id.* at. § 1921(c).

To ascertain the General Assembly’s intent, one may look to “[t]he occasion and necessity for the statute.” *Id.* at § 1921(c)(1). The occasion and necessity for the statute is the persistent increasing cost of electric energy, a cost that may skyrocket over the next several years as the remaining generation rate caps expire and customers receive significant increases in their electric bills. Rate increases will pressure everyone’s financial situation but particularly those of low income households. Increasing electric bills will affect these families in unique and dire ways unlike the effect on more affluent households. Low income households have fixed incomes, little or no savings, family expenses that routinely outstrip family income, and little ability to change their situation. Quite simply, low income households will not be able to afford increased electric costs so will either go without electric or go without some other necessity, such as food, clothing, medical care, or prescription medicine. Moreover, even though low income households use less energy than their more affluent counterparts in the residential class, the cost of the energy they do use consumes a disproportionately larger portion of their household budget. Given this occasion and these necessities, the General Assembly intended to

direct targeted savings to households that will be under such dire pressure from rate increases and do not possess the financial resources with which to mitigate the impact of these increases.

To ascertain the General Assembly's intent, one also may look to "[t]he mischief to be remedied." 1 Pa.C.S.A. § 1921(c)(3). A clear way to mitigate the impact of increasing electric costs associated with rate cap expiration is to decrease electric consumption. Given electricity's essential nature in today's world, reducing usage is not easy. A principal way to achieve reductions is through the purchase and installation of energy efficiency and demand reduction measures. Unfortunately, low income families do not have the spare cash to buy energy efficiency and demand response measures that could reduce their electric consumption and mitigate the increase in electric costs. Thus, low income families are likely to face a unique challenge and will in all likelihood have to go without electric energy, placing family members at significant risk of negative health and welfare repercussions. Given this "mischief," it is reasonable that the General Assembly intended to direct specific, targeted savings to households that will be under such dire pressure from rate increases and do not possess the financial resources with which to mitigate the impact of these rate increases

To ascertain the General Assembly's intent, one also may look to "[t]he object to be attained." *Id.* at 1921(c)(4). The object to be attained in this instance is consumption reductions that result in lower electric bills for low income households. As was mentioned, low income families unaided will not be able to afford to purchase energy efficiency and demand response measures. It is reasonable that the General Assembly directed specific energy savings to low income families to compensate for families' financial inability to purchase energy savings measures on their own.

To ascertain the General Assembly's intent, one may look to "[t]he consequences of a particular interpretation." 1 Pa.C.S.A. § 1921(c)(6). The consequence of interpreting the statute on its face is that an absurdity will result. On its face, the sentence, "The number of measures shall be proportionate to those households' share of the total energy usage in the service territory," seems to imply the sheer number of measures must be proportionate to low income households' share of total energy consumption. This would mean EDCs must first determine the low income share of energy usage (a percentage). Then, the EDC would have to somehow figure out how that percentage should be converted to a raw number of measures. Not only does using the number of measures result in difficult conversions, but it is inconsistent with the way the rest of Act 129 works. Act 129 works with energy savings targets, not raw numbers of measures. The overall goals of Act 129 include targets of 1 percent and 3 percent energy savings reductions and 4.5 percent demand reductions. 66 Pa.C.S. §§ 2806.1(c) and (d). Governmental entities must receive 10 percent of overall savings. *Id.* at § 2806.1(b)(1)(I)(B). It is reasonable that the General Assembly intended savings targeted for low income customers would work in a similar way.

Finally, to ascertain the General Assembly's intent, one may look to "[l]egislative and administrative interpretations of such statute." 1 Pa.C.S.A. § 1921(c)(8). The Commission has issued an Act 129 Implementation Order providing an interpretation of Section 2806.1(b)(1)(I)(G):

There are clear requirements in the Act regarding proportionate measures for low-income customers (within a residential customer class) as well as for governments, schools, etc. (within a commercial customer class). Beyond those requirements, we believe that EDCs should develop plans to achieve the most energy savings per expenditure. The driving principle should be the most cost effective use of resources so that benefits can accrue to all customers, even if only by virtue of more reasonable energy market prices.

Implementation Order at p. 22. The Commission states clearly and explicitly that Act 129 has specific requirements for low income households and government entities, and the requirements are proportionate. Note, the Commission does not refer to number of measures but, rather, to proportionate measures.

The Commission groups these low income measures with those of governmental entities. Act 129 has a clear statement about governmental savings:

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.

66 Pa.C.S. § 2806.1(b)(1)(I)(B). The express words of the statute and the Implementation Order agree that governmental energy savings must be a percentage of the entire Plan savings. That is, governmental entities' energy savings must comprise 10% of all the savings under the Plan. Since the Commission is treating low income and governmental savings similarly, it makes sense to calculate those savings in a similar manner. Rather than trying to count individual measures and then compare them to a proportion of energy usage, the Commission's grouping of governmental and low income savings suggests it is more appropriate to treat the required low income energy savings as a percentage of savings.

Duquesne's Plan contains program activities projected to garner proportional energy efficiency savings for low income households. These targeted savings substantially comply with Act 129's special provisions requiring targeted low income savings. Because Duquesne's Plan targets specific proportional energy savings to low income households, the Commission should, subject to and contingent upon company commitments to incorporate practices aimed at hiring of low income workers, reducing the use of space heating within its service territory and developing a protocol for follow-up and participation by interested stake

holders and parties during its periodic mid program evaluations, approve the low income program as substantially meeting Act 129's special low income energy savings provisions.

**b. Duquesne's EE&C Plan defines low income to include households with income at or below 150% FPIG.**

Act 129 reads in part, "The plan shall include specific energy efficiency measures for households at or below 150% of the federal poverty income guidelines." 66 Pa.C.S. § 2806.1(b)(1)(I)(G). To be legally sufficient, an EE&C Plan must provide explicit information detailing how energy efficiency measures will be directed to low income households, specifically defined as those with income at or below 150% FPIG, and how these savings will be evaluated and measured for purposes of determining whether sufficient savings have accrued to low income households.

"When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S.A. § 1921(b). The words of Act 129 are clear and free from ambiguity: low income households are defined as those with income at or below 150% FPIG. Households with income above 150% FPIG are not low income for purposes of Act 129, no matter how these households may be treated or considered otherwise.<sup>10</sup>

The Plan provides assurances that Duquesne will target households with income at or below 150% FPIG. Since Duquesne will be submitting annual Act 129 progress reports, the Commission will have ample opportunity to ensure program services are

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<sup>10</sup> The Commission operates other "low income" programs in which households with income up to 200% FPIG may participate. See 52 Pa. Code Ch. 58 (relating to residential low income usage reduction programs). Also, the federal Weatherization Assistance Program, a program for low income households, serves households with income above 150% FPIG. The federal LIHEAP program also allows for families with higher income levels to receive services. However, Act 129 is explicit in defining "low income" to mean a household with income at or below 150% FPIG.

being sufficiently directed to households with income at or below 150% FPIG and that only savings from these households are used to assess progress toward low income savings targets.

**c. Duquesne’s Plan appropriately coordinates Act 129’s low income program with other federal, state, and Commission programs.**

Act 129 reads in part, “The electric distribution company shall coordinate measures under this clause with other programs administered by the commission or another federal or state agency.” 66 Pa.C.S. § 2806.1(b)(1)(I)(G). In order to be legally sufficient, an Act 129 EE&C Plan must provide explicit information detailing how coordination among programs will occur. Duquesne’s EE&C Plan provides this information.

“When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa.C.S.A. § 1921(b). The words of Act 129 are clear and free from ambiguity: “the electric distribution company shall coordinate measures under this clause with other programs administered by the commission or another federal or state agency.” 66 Pa.C.S. § 2806.1(b)(1)(I)(G). The only possible ambiguity in this mandate is the meaning of the word “coordinate.” Webster’s Online Dictionary defines “coordinate” as follows:

*transitive verb*

**1** : to put in the same order or rank

**2** : to bring into a common action, movement, or condition : harmonize  
<we need to *coordinate* our schedules>

**3** : to attach so as to form a coordination complex

*intransitive verb*

**1** : to be or become coordinate especially so as to act together in a smooth concerted way

**2** : to combine by means of a coordinate bond

Retrieved from <http://www.merriam-webster.com/dictionary/coordinate> on August 23, 2009.

Accordingly, Act 129's coordination requirement demands Duquesne's low income program come into common action with other programs, harmonize with other programs, and act together in a smooth concerted way with other programs. A mere referral of low income customers to other programs alone, with no other active effort by the EDC, certainly falls short of the statutory requirement to coordinate with other programs. Had the General Assembly intended for EDCs only to make referrals, the term "referral" would have been used. However, the word that was chosen, "coordinate," contemplates more active involvement by the EDC. Duquesne's LIEEP plan developed as contemplating a public agency partnership promises hope that such a coordinated effort will be addressed. However the plan fails to address the details of any coordinated efforts directed to achieve the hiring of low income unemployed workers, the reduction of inefficient and dangerous space heating within its service territory, or the coordinated efforts to include stake holders and parties to this proceeding in follow-up, input or reevaluation activities as the program unfolds.

**d. Duquesne's Plan provides assurance that expenditures for Act 129 low income programs will be in addition to and separate from expenditures made for the company's LIURP program.**

Act 129 reads in part, "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)." 66 Pa.C.S. § 2806.1(b)(1)(I)(G).

In order to be legally sufficient an EE&C Plan must provide an affirmative statement that funding for Act 129 programs will be in addition to expenditures made under LIURP programs. Duquesne's Plan provides this assurance.

“When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa.C.S.A. § 1921(b). The words of Act 129 are clear and free from ambiguity: “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).” 66 Pa.C.S. § 2806.1(b)(1)(I)(G). These clear words require no interpretation.

Duquesne’s Plan makes it clear Act 129 funding for the low income program is over and above and separate from the funding of the existing WRAP program. Duquesne’s low income Act 129 Plan is formulated as LIEEP. LIEEP is depicted in the EE&C Plan as separate and apart from its LIURP Warm Comfort program. The Plan designates a separate budget to its LIEEP funding. The Plan therefore facially meets Act 129’s special provisions regarding funding the low income program. As such, the Commission should, subject to and contingent upon company commitments to incorporate practices aimed at hiring of low income workers, reducing the use of space heating within its service territory and developing a protocol for follow-up and participation by interested stake holders and parties during its periodic mid program evaluations, approve Duquesne’s low income program.

In summary, the plain language of Act 129 at Section 2806.1(b)(1)(I)(G) requires EDCs to file EE&C Plans that: ensure low income households achieve energy savings at least proportionate to their share of the energy burden in the service territory; define low income household to include only those households with income at or below 150% of the FPIG; require Act 129 programs for low income households to coordinate with other federal, state, and Commission programs; and ensure expenditures for Act 129 low income programs are in addition to and separate from expenditures made for the company’s LIURP program.

Duquesne's Plan satisfactorily meets each of these statutory requirements. As such, the Commission should approve, subject to and contingent upon company commitments to incorporate practices aimed at hiring of low income workers, reducing the use of space heating within its service territory and developing a protocol for follow-up and participation by interested stake holders and parties during its periodic mid program evaluations, the Plan's low income program component.

6. *Issues Relating to Individual Conservation and Demand Programs*

a. **Residential**

N/A.

b. **Commercial**

N/A.

c. **Industrial**

N/A.

7. *Proposals for Improvement of EDC Plan*

a. **Residential**

The Direct Testimony of Ian Phillips provides several proposals to improve Duquesne's EE&C Plan. ACORN Statement No. 1 at p. 17, line 5 – p. 18, line 3.

- i. An Incentive to Hire Low Income Workers: Duquesne's EE&C Plan should incorporate provisions indicating that the company will initiate good faith efforts through its own actions, through its public agency partnership Memoranda of Understanding (MOU) and through its agency subcontracts to favor the hiring of unemployed and low income workers.

The Commission may take judicial note of the July 28, 2009 Pennsylvania Department of Labor and Industry, Center for Workforce Information and Analysis News Release which reports that, “The seasonally-adjusted unemployment rate in the seven-county Pittsburgh Metropolitan Statistical Area (MSA) rose one tenth of a percentage point in June to 7.6 percent, the highest rate for the MSA since November 1986.”<sup>11</sup>

Part of the driving force behind Act 129 is the desire to help Pennsylvanians, particularly low income Pennsylvanians, cope with the increasing cost of electricity. While Act 129’s principal focus is on reducing electric bills through efficiency and conservation, it is perfectly consistent with the intent of the statute to help low income customers afford electricity by helping them acquire jobs that will lift them out of poverty. By placing into its EE&C a process by which the company, its government agency partners and its subcontractors will hire low income workers, Duquesne can help low income families better pay for electric service while helping all consumers reduce electric usage.

PECO has within its EE&C Plan specific commitment to encourage in its RFP process that bidding CSPs investigate opportunities to hire low income, unemployed workers through various programs throughout the State, such as the Pennsylvania Employment, Advancement and Retention Network and Philadelphia Workforce Development Corporation. PECO will include an additional scoring category in its RFP evaluation process for those CSPs that have a plan to utilize the services of welfare-to-work employment agencies, or hire unemployed workers.<sup>12</sup> This strategy will enable PECO not only to provide energy efficiency services to low income households, but it may enable members of those households to

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<sup>11</sup> Press Release, Pennsylvania Department of Labor & Industry, Pittsburgh Unemployment Rate at 7.6% (July 28, 2009) at [http://www.dli.state.pa.us/landi/lib/landi/cwia/releases/pghmesa\\_pr.pdf](http://www.dli.state.pa.us/landi/lib/landi/cwia/releases/pghmesa_pr.pdf)

<sup>12</sup> *Petition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program*, Docket No. M-2009-2093215, (Filed on July 1, 2009), Volume II.

acquire good paying, solid jobs that will help them rise up out of poverty. It would be particularly meaningful in the metropolitan area, served by Duquesne, which is experiencing its highest unemployment rate since 1986. Previously employed building trades workers and other unemployed laborers may possess the required skills needed by the company, its partners and subcontractors.

There are strong public policy implications in the Commission promoting that other electric distribution companies, in addition to PECO, undertake low income hiring priority initiatives. These priorities should be included within Duquesne's Plan.

ii. A Plan to Reduce the Use of Space Heaters in Low Income Households:

The second recommendation is for Duquesne to include in its low income program activities a focused attempt to remove from low income households portable electric space heaters. Portable electric space heaters pose a serious threat to low income households physically and financially because portable electric space heaters are extremely dangerous to operate and extremely inefficient methods of heating. By targeting these portable electric space heaters for removal, Duquesne could achieve Act 129's goal of eliminating inefficient electrical devices, while simultaneously improving the well being of low income households.

This Act 129 endeavor would be particularly germane to Duquesne. Duquesne lags far behind other electric distribution companies regarding LIURP "heating jobs." Duquesne performed only 3 heating jobs last year and only 30 are projected for this year.<sup>13</sup> Since "Warm Comfort," the Duquesne LIURP program, is not adequately addressing

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<sup>13</sup>At 34, LIURP Electric Production, 2008 Report On Universal Service Programs And Collection Performance Of The Pennsylvania Electric Distribution Companies And Natural Gas Distribution Companies, The Pennsylvania

this critical need, it is fully appropriate for the Commission, as a matter of public safety in addition to the specific energy efficiency implications, to require that Duquesne include a space heating reduction component into its LIEEP program.

To fulfill its Act 129 responsibilities to coordinate energy efficiency programs, Duquesne is uniquely situated to direct efforts to reduce the use of space heating through joint LIURP audits with Equitable, Dominion and Columbia gas companies, the natural gas distribution companies which share its service territorial boundaries, and where feasible, by hardwiring baseboard heating into spaces that have been using space heating. Furthermore Duquesne should also, as part of its Act 129 LIEEP plan, direct efforts to reduce the use of space heating by prioritizing its focus on “all electric” premises.

- iii.     A Continued Follow-up Role for Stakeholders and Parties: The successful effectuation of Duquesne’s EE&C Plan is not assured simply upon approval. Act 129 is groundbreaking legislation. All EE&C plans are somewhat novel and innovative. They are all, to some degree, based upon best estimates. Each of the plans will require fine tuning and careful monitoring. This is especially so for the Duquesne LIEEP government and public agency partnership approach. By not adopting its own LIURP program as its Act 129 low income program model, Duquesne’s approach stands alone. This untested and unique approach will require monitoring, feedback and evaluation. It is safe to expect that a number of mid-course corrections and program modifications may be in order. Yet Duquesne provides no specificity within its plan concerning the method of follow-up and involvement it will develop for stakeholders and parties to this

proceeding. This failure of specificity is a serious deficiency and the Commission should require that it be corrected through a modification to Duquesne's EE&C Plan.

Because these three recommendations are economical, easy to implement, and directly in line with Act 129's goals, the Commission should require Duquesne to incorporate them into the Plan.

b. **Commercial**

N/A.

c. **Industrial**

N/A.

B. Cost Issues

1. *Plan Cost Issues*

N/A.

2. *Cost Effectiveness/Cost-Benefit Issues*

N/A.

3. *Cost Allocation Issues*

N/A.

4. *Cost Recovery Issues*

N/A.

C. CSP Issues

N/A.

D. Implementation and Evaluation Issues

1. *Implementation Issues*

N/A.

2. *QA Issues*

N/A.

3. *Monitoring and Reporting Issues*

N/A.

4. *Evaluation Issues*

N/A.

E. Other Issues

N/A.

VI. CONCLUSION

In conclusion, Act 129 at Section 2806.1(b)(1)(I)(G) requires EDCs to file EE&C Plans that: ensure low income households achieve energy savings at least proportionate to their share of the energy burden in the service territory; define low income household to include only those households with income at or below 150% of the FPIG; require Act 129 programs for low income households to coordinate with other federal, state, and Commission programs; and ensure expenditures for Act 129 low income programs are in addition to and separate from expenditures made for the company's LIURP program. Given that Duquesne's EE&C Plan substantially meets each of these legal requirements, the Commission should approve, subject to and contingent upon company commitments to incorporate practices aimed at hiring of low income workers, reducing the use of space heating within its service territory and developing a protocol for follow-up and participation by interested stake holders and parties during its periodic mid program evaluations, the Plan's low income program component.

VII. PROPOSED ORDERING PARAGRAPHS

**THEREFORE, IT IS ORDERED:**

1. The low income program section of Duquesne's Energy Efficiency and Conservation Plan, filed pursuant to Act 129, is hereby approved.
2. Only energy savings from households with income at or below 150% FPIG will be measured and used to determine whether Duquesne hits its low income energy savings targets.
3. Duquesne shall actively coordinate its Act 129 Low Income Energy Efficiency program with other federal, state, and Commission programs.
4. Funding for Duquesne's Act 129 Low Income Energy Efficiency program will be above and beyond existing funding for Duquesne's LIURP program.
5. Duquesne shall design and incorporate into its Energy Efficiency and Conservation Plan a plan to hire and to incentivize its partners and subcontractors to hire low income and unemployed workers.
6. Duquesne shall design and incorporate into its Energy Efficiency and Conservation Plan a plan to reduce the use of portable electric space heaters in low income households.
7. Duquesne shall design and incorporate into its Energy Efficiency and Conservation Plan a plan for follow-up and participation by interested stakeholders and parties to this proceeding during its periodic mid program evaluations.

Respectfully submitted,

/S/ Harry S. Geller

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Harry S. Geller, Esq.  
John C. Gerhard, Esq.  
*Counsel for ACORN*

Pennsylvania Utility Law Project  
118 Locust Street, Harrisburg, PA 17101  
Tel.: 717-236-9486  
Fax: 717-233-4088  
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