

August 31, 2009

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

**Re: Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan  
Docket No. M-2009-2093218**

Dear Secretary McNulty:

Enclosed for your review in the above-captioned proceeding, please find the Main Brief 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/ John C. Gerhard

John C. Gerhard, Esq.

Enclosures  
cc: Cert. of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of West Penn Power Company :  
d/b/a Allegheny Power for Approval of its :  
Energy Efficiency and Conservation Plan, :  
Approval of Recovery of Costs through a :                   Docket No. M-2009-2093218  
Reconcilable Adjustment Clause and :  
Approval of Matters Relating to the :  
Energy Efficiency and Conservation 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).

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Dated: August 31, 2009

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of West Penn Power Company :  
d/b/a Allegheny Power for Approval of :  
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through a Reconcilable Adjustment :  
Clause and Approval of Matters :  
Relating to the Energy Efficiency and :  
Conservation Plan :**

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MAIN BRIEF  
ON BEHALF OF THE PENNSYLVANIA  
ASSOCIATION OF COMMUNITY ORGANIZATIONS  
FOR REFORM NOW (“ACORN”)

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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 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 low income households receive energy efficiency services proportionate to low income households’ energy usage in the service territory; requiring low income programs coordinate 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”).

West Penn Power Company d/b/a Allegheny Power (“Allegheny” or “the company”) Energy Efficiency and Conservation Plan (“EE&C Plan”) filed on July 1, 2009 sufficiently addresses the specific low income requirements of Act 129 through its low income programs.<sup>1</sup>

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<sup>1</sup> Allegheny has three Act 129 programs directed to low income customers: Residential Low Income Home Performance Check Up Audit and Appliance Replacement Program, Residential Low Income Joint Utility Management Program, and Residential Low Income Air Conditioner Replacement Program. They will be collectively referred to in this Brief as “the low income programs.”

Allegheny's EE&C Plan focuses on low income families as defined by the Act. Allegheny's EE&C Plan provides sufficient program resources to low income households so it reasonably can be expected the required energy savings targets will be hit. Allegheny's EE&C Plan provides sufficient assurances its Act 129 activities will coordinate with federal, state, and Commission programs assisting low income households. Allegheny's EE&C Plan provides assurances that its LIURP and Act 129 funding will remain distinct from one another. Given these assurances, the Commission should approve the low income program segment of Allegheny'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, imposed new requirements on electric distribution companies, and 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, Allegheny initiated a stakeholder process in which interested parties in the service territory could participate in the EE&C Plan formulation process. The stakeholder process included ten meetings wherein Allegheny solicited stakeholder input and feedback. Allegheny relied on its experience designing and operating an energy efficiency program in Maryland as a starting point for its EE&C Plan in Pennsylvania. Allegheny Power Statement No. 2 at p. 3, lines 3-6. The Pennsylvania Utility Law Project participated in the stakeholder process, representing the interests of low income customers, and provided Allegheny with feedback regarding the Act’s requirements as they relate to low income households. On July 1, 2009, as required by and in

compliance with Act 129 and the Implementation Order, Allegheny filed its EE&C Plan. *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093218, (Filed on July 1, 2009) (“*Petition*”).

### III. DESCRIPTION OF ALLEGHENY’S PLAN

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

Allegheny’s EE&C Plan contains three programs directed to low income households: Residential Low Income Home Performance Check Up Audit and Appliance Replacement Program, Residential Low Income Joint Utility Management Program (“JUMP”), and Residential Low Income Air Conditioner Replacement Program. *Petition* at EE&C Plan, pp. 83-100. The Residential Low Income Home Performance Check Up Audit and Appliance Replacement Program performs a home energy audit, replaces qualifying appliances, and educates customers about energy consumption. *Id* at pp. 83-88. JUMP is a partnership between Allegheny and Columbia Gas Company wherein the two companies will work together to support comprehensive weatherization of houses, including electric and natural gas measures, no matter which company provides the initial point of contact. *Id* at pp. 89-94. The Residential Low Income Air Conditioner Replacement Program will target for removal and replacement old, inefficient room air conditioners. *Id* at pp. 95-100.

Allegheny’s budget for its low income programs is \$13,335,253, with 17,791 MWh of projected energy efficiency savings and 2,753 KW of projected demand response savings

through the end of program year 2012. *Petition* at EE&C Plan, Tables 2 and 5. Allegheny's low income program promises much for low income households.

#### IV. SUMMARY OF ARGUMENT

Act 129 requires Allegheny 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).

Allegheny's Plan substantially meets these provisions because it provides specific language detailing how each of the provisions will be met. First, although Allegheny's Plan does intend to target for enrollment into its low income programs families with income up to 200% FPIG, this is only true for one of their three programs, and the company is committed to separately accounting for energy savings for households with income up to 150% FPIG versus those for households with income from 151% to 200% FPIG. Second, Allegheny's Plan provides sufficient financial resources to the low income program so the Commission reasonably can be sure Allegheny will hit its low income energy savings targets. Third, Allegheny's Plan includes explicit language detailing how it will collaborate with other programs offering low income weatherization services. Fourth, Allegheny's Plan provides assurance that expenditures for Act 129 low income programs are in addition to and separate from expenditures made for the

company's LIURP program. Given these explicit assurances, the Plan meets Act 129's low income provisions and the Commission should approve the low income segment of the Plan.

## 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.

#### 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>2</sup> 66 Pa.C.S. §§ 2806.1(b)(1)(I)(B); 2806.1(b)(1)(I)(G). These special provisions supersede the more general equitable distribution standard applied to other parties:

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<sup>2</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.

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; the Order 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*)

Implementation Order at 22. In these statements, the Commission holds that 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 that 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.

Allegheny's Plan substantially meets Act 129's special provisions for low income savings by targeting sufficient energy savings to low income households. Allegheny projects 17,791 MWh of energy efficiency savings will accrue to low income households by the end of program year 2012. *Petition* at EE&C Plan, Table 2. The 17,791 MWh comprises 6.3 percent of the total 282,249 MWh saved from all residential programs (including low income) and 2.7 percent of total program savings of 645,589 MWh. *Id.* These savings substantially meet Act 129's special requirements for low income savings.

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

N/A.

5. *Low Income Program Requirements*

Act 129 at Section 2806.1(b)(1)(I)(G) requires Allegheny 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; coordinates 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 expenditures made for the company's LIURP program. Because Allegheny's EE&C Plan substantially meets these burdens, the Commission should approve Allegheny's Act 129 low income program.

**a. Allegheny'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. Allegheny'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 Act 129 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 specific, targeted savings to households that will be under such dire pressure from rate increases and that 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 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 that 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.” 1 Pa.C.S.A. § 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 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 their 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.” *Id.* at § 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 that 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 rest of the way Act 129 operates. 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. The Direct Testimony of Mr. Ian Phillips presents an interpretation in line with the Commission interpretation, with the goals of the statute, and with the specific goal of providing a discrete amount of energy savings to low income households. ACORN Statement No.1 at p. 20, lines 8-18.

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, that 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 that it is more appropriate to treat the required low income energy savings as a percentage of savings.

Allegheny's Plan substantially meets Act 129's special provisions for low income savings by targeting sufficient energy savings to low income households. Allegheny projects 17,791 MWh of energy efficiency savings will accrue to low income households by the end of program year 2012. *Petition* at EE&C Plan, Table 2. The 17,791 MWh comprises 6.3 percent of the total 282,249 MWh saved from all residential programs (including low income) and 2.7 percent of total program savings of 645,589 MWh. *Id.* These savings substantially meet Act 129's special requirements for low income savings.

**b. Allegheny's EE&C Plan defines low income household primarily 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. Allegheny's Plan provides assurances that its Plan will

target households with income at or below 150% FPIG, including specifically segregating the savings of households with income at or below 150% FPIG from those with income from 151% to 200% FPIG. *Petition* at EE&C Plan, p.89, fn 54. Since Allegheny will be submitting annual Act 129 progress reports, the Commission will have ample opportunity to ensure program services are being 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 energy savings targets.

“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>3</sup>

Allegheny’s EE&C Plan includes JUMP which will serve customers with incomes up to 200% FPIG. *Petition* at EE&C Plan, p. 89. This practice appears on its face to violate Act 129’s explicit requirements. However, the Plan offers sufficient assurance that this apparent facial violation will be corrected in practice. The Plan states that the reason for setting eligibility at 200% was to make the JUMP parameters consistent with Columbia Gas Company’s LIURP. *Id* at fn. 54. Allegheny’s Plan also provides assurances that energy savings of households with income at or below 150% FPIG will be segregated from those with income from 151% to 200% FPIG. *Id*. Given these assurances, the Commission can easily

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<sup>3</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.

ensure compliance with Act 129 low income requirements during its annual evaluation of Act 129 activities.

Despite a seeming facial violation of Act 129, Allegheny's Plan provides sufficient practical assurances that households with income at or below 150% FPIG will be appropriately targeted for energy savings pursuant to Act 129's requirements.

**c. Allegheny'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. Allegheny'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 Allegheny'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.

Allegheny's EE&C Plan provides a sufficient description of how it will coordinate its low income programs with other programs. The JUMP program is an excellent example of how Act 129 low income programs should coordinate with other programs serving low income customers. JUMP is an excellent collaboration that will leverage and conserve scarce resources. Additionally, Allegheny plans to access and educate customers on the availability of incentives, such as Federal Tax Credits for Energy Efficiency and stimulus funds. *Petition* at EE&C Plan, pp. 88, 94, and 100. Allegheny's Plan also commits the company to continue exploring new resources to promote, enhance, or expand services to customers. *Id* at p. 194. These types of activities provide a sufficient description of how Allegheny will coordinate its low income programs with other programs.

- d. Allegheny'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. Allegheny’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.

Allegheny’s low income programs have a total budget of \$13,335,253 through the end of the program year 2012. *Petition* at EE&C Plan, Table 5. The program costs are clearly allocated for recovery through Allegheny’s proposed cost recovery mechanism. *Id* at EE&C Plan, Calculations and Supporting Cost Documentation for Cost Recovery Mechanism, pp. 1-2, 12-14. Allegheny proposes to recover all of the costs of Act 129 programs through a EE&C Surcharge that will appear as a line item. *Id* at p. 177. This clearly characterizes these costs as separate from and in addition to the funding for LIURP.

Because Allegheny’s Plan assures its Act 129 funding is in addition to its LIURP program funding, the Plan meets Act 129’s special provisions regarding funding the low income program.

In summary, 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. Allegheny's Plan satisfactorily meets each of these statutory requirements. As such, the Commission should approve the Plan's low income program component.

6. *Issues Relating to Individual Conservation and Demand Reduction 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 two recommendations that can improve Allegheny's EE&C Plan. ACORN Statement No. 1 at p. 12, line 4 – p. 13, line 14.

An Incentive to Hire Low Income Workers: The first recommendation is that Allegheny should incorporate into its RFP process an incentive for conservation service providers that hire low income individuals into their workforce. 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 RFP process an incentive for conservation service providers that hire low income workers, Allegheny can help low income families better pay for electric service while helping all consumers reduce electric usage.

A Plan to Reduce the Use of Space Heaters in Low Income Households: The second recommendation is for Allegheny 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, Allegheny could achieve Act 129's goal of eliminating inefficient electrical devices, while simultaneously improving the well being of low income households and neighborhoods.

Because these two recommendations are economical, easy to implement, and directly in line with Act 129's goals, the Commission should require Allegheny 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 Allegheny's EE&C Plan substantially meets each of these legal requirements, the Commission should approve Allegheny's Low Income Energy Efficiency program.

VII. PROPOSED ORDERING PARAGRAPHS

**THEREFORE, IT IS ORDERED:**

1. The low income program section of Allegheny'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 Allegheny hits its low income energy savings targets.
3. Allegheny shall actively coordinate its Act 129 Low Income Energy Efficiency program with other federal, state, and Commission programs.
4. Funding for Allegheny's Act 129 Low Income Energy Efficiency program will be above and beyond existing funding for Allegheny's LIURP program.
5. Allegheny shall design and incorporate into its Energy Efficiency and Conservation Plan a plan to incentivize conservation service providers to hire low income workers.
6. Allegheny 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.

Respectfully submitted,

/s/ John C. Gerhard

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