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VIA ELECTRONIC FILING (E-FILING)

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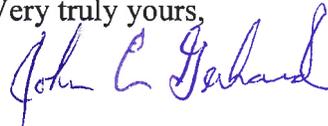
**Re: Metropolitan Edison Company Energy Efficiency and Conservation Plan
Pennsylvania Electric Company Energy Efficiency and Conservation Plan
Pennsylvania Power Company Energy Efficiency and Conservation Plan
Docket Nos. M-2009-2092222, M-2009-2112952, and M-2009-2112956**

Dear Secretary McNulty:

Enclosed for filing 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,



John C. Gerhard, Esq.
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Enclosures

cc: Honorable David A. Salapa (via Federal Express)
Cert. of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Metropolitan Edison Company Energy Efficiency and Conservation Plan	:	M-2009-209222
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Pennsylvania Electric Company Energy Efficiency and Conservation Plan	:	M-2009-2112952
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	:	
Pennsylvania Power Company Energy Efficiency and Conservation Plan	:	M-2009-2112956
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CERTIFICATE OF SERVICE

I hereby certify that I have today served a true copy of the foregoing document 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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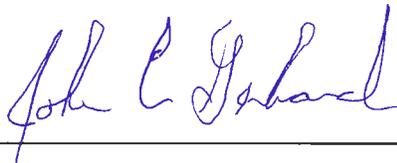
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**MAIN BRIEF ON BEHALF OF THE
PENNSYLVANIA ASSOCIATION OF COMMUNITY
ORGANIZATIONS FOR REFORM NOW (“ACORN”)**

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PROCEDURAL HISTORY	2
III.	DESCRIPTION OF FIRST ENERGY'S PLANS	4
IV.	SUMMARY OF ARGUMENT	5
V.	ARGUMENT.....	6
A.	ACT 129 CONSERVATION AND DEMAND REDUCTION REQUIREMENTS	6
1.	<i>Overall Conservation Requirements</i>	6
a.	2011 Requirements	6
b.	2013 Requirements	6
2.	<i>Overall Demand Reduction Requirements</i>	6
3.	<i>Requirements for a Variety of Programs Equitably Distributed</i>	6
4.	<i>10% Government/Non-Profit Requirement</i>	9
5.	<i>Low Income Program Requirements</i>	9
a.	First Energy's EE&C Plans provide insufficient information with which to determine whether low income savings targets and low income sector program funding are compliant with Act 129 requirements.....	10
b.	First Energy's EE&C Plans define low income household to include households with income at or below 150% FPIG.	15
c.	First Energy's Plans provide insufficient assurances that expenditures for Act 129 low income programs will be in addition to and separate from expenditures made for the companies' LIURP programs.	16
d.	First Energy's Plans provide insufficient assurance that the low income programs will be coordinated with other federal, state, and Commission programs.	18
6.	<i>Issues Relating to Individual Conservation and Demand Reduction Programs</i>	20
a.	Residential	20
b.	Commercial	20
c.	Industrial	20
7.	<i>Proposals for Improvement of EDC Plan</i>	20
a.	Residential	20
b.	Commercial	21
c.	Industrial	22
B.	COST ISSUES	22
1.	<i>Plan Cost Issues</i>	22
2.	<i>Cost Effectiveness/Cost-Benefit Issues</i>	22
3.	<i>Cost Allocation Issues</i>	22
4.	<i>Cost Recovery Issues</i>	22
C.	CSP ISSUES.....	22
D.	IMPLEMENTATION AND EVALUATION ISSUES.....	22
1.	<i>Implementation Issues</i>	22
2.	<i>QA Issues</i>	22
3.	<i>Monitoring and Reporting Issues</i>	22
4.	<i>Evaluation Issues</i>	22
E.	OTHER ISSUES.....	23
VI.	CONCLUSION.....	23
VII.	PROPOSED ORDERING PARAGRAPHS	23

TABLE OF AUTHORITIES

CASES

<i>Energy Efficiency and Conservation Program, Implementation Order</i> , Docket No. M-2008-2069887, (Order entered January 16, 2009)	2, 7, 13
<i>Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test, Order</i> , Docket No. M-2009-2108601, (Order Entered June 23, 2009)	3
<i>Implementation of Act 129 of 2008, Phase 2 – Registry of Conservation Service Providers, Final Order</i> , Docket No. M-2008-2074154, (Order Entered February 5, 2009).....	3
<i>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</i> , Docket No. M-00051865, (Order Entered June 1, 2009)	3
<i>Joint Petition for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company</i> , Docket Nos. M-2009-2092222, M-2009-2112952, and M-2009-2112956, (Filed on July 1, 2009).....	4, 5, 8, 9, 14, 16
<i>Smart Meter Procurement and Installation, Implementation Order</i> , Docket No. M-2009-2092655, (Order Entered June 24, 2009)	3

STATUTES

1 Pa.C.S.A. § 1921(a).....	10
1 Pa.C.S.A. § 1921(b).....	10, 15, 17, 18
1 Pa.C.S.A. § 1921(c)(1)	11
1 Pa.C.S.A. § 1921(c)(3)	11
1 Pa.C.S.A. § 1921(c)(4)	12
1 Pa.C.S.A. § 1921(c)(6)	12
1 Pa.C.S.A. § 1921(c)(8)	13
1 Pa.C.S.A. § 1921(c).....	11
1 Pa.C.S.A. § 1922(1).....	11
1 Pa.C.S.A. § 1933	7
66 Pa.C.S. § 2806.1(a)(5)	6
66 Pa.C.S. § 2806.1(b)(1)(I).....	2
66 Pa.C.S. § 2806.1(b)(1)(I)(B).....	7, 13, 14
66 Pa.C.S. § 2806.1(b)(1)(I)(G)	5, 7, 9, 10, 15, 16, 17, 18, 23
66 Pa.C.S. § 2806.1(c).....	13
66 Pa.C.S. § 2806.1(d)	13

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 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”).

The First Energy Companies’ (“First Energy”)¹ Energy Efficiency and Conservation Plans (“EE&C Plans” or “Plans”) filed on July 1, 2009 insufficiently address the specific low income requirements of Act 129. While First Energy’s EE&C Plans will focus on low income families as defined by the Act, it is unclear on the face of the Plans whether sufficient program

¹ The First Energy Companies (Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company) filed a joint petition seeking consolidated treatment of the three companies’ EE&C Plans, which were substantially similar.

resources are directed to low income households so it reasonably can be expected the required energy savings targets will be hit. First Energy's EE&C Plans provide insufficient assurances that its LIURP and Act 129 funding and energy savings will remain distinct from one another. First Energy's EE&C Plans also provide insufficient assurances that low income program activities will coordinate with federal, state, and Commission programs assisting low income households. Given the lack of these assurances, the Commission should require First Energy to revise and resubmit for approval its EE&C Plans' Low Income Program components.

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. 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 establishing the standards each plan must meet and providing 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, First Energy 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 three meetings. The Pennsylvania Utility Law Project participated in the stakeholder meetings, representing the interests of low income customers, and provided First Energy with feedback regarding the Act’s requirements as they relate to low income households. First Energy engaged the services of Black & Veatch Corporation as a 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, First Energy filed a joint petition seeking approval of its three EE&C Plans. *Joint Petition for*

Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company, Docket Nos. M-2009-2092222, M-2009-2112952, and M-2009-2112956, (Filed on July 1, 2009) (“Joint Petition”).²

III. DESCRIPTION OF FIRST ENERGY’S PLANS

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

First Energy’s EE&C Plans contain a program called the Low-Income Sector Program (“low income program”) that provides energy efficiency and weatherization services to low income households receiving electric service from First Energy. Joint Petition at Met Ed p. 53, Penelec p. 53, and Penn Power p.53. The low income program proposes to offer free services to low income households based on First Energy’s WARM program, the companies’ Commission mandated LIURP. Id. The low income program will provide expanded WARM services to households with income at or below 150% FPIG and also expand services to other low income households not qualified for WARM. Id.

First Energy’s Plans propose to fund a low income program for each of the companies. Metropolitan Edison Company’s (“Met Ed”) proposes funding its low income program at an average annualized budget of \$85,880 which comprises .36 percent of the total EE&C program annual budget. Joint Petition at Met Ed Appendix G, Table 5. Pennsylvania Electric Company’s (“Penelec”) proposes funding its low income program at an average annual budget of \$131,999 which comprises .59 percent of the total EE&C program annual budget. Joint Petition at Penelec

² Given that the Joint Petition covers three Plans, this Brief will cite to each Plan with the following citation convention: Joint Petition at Met Ed p. #, Penelec p. #, and Penn Power p. #.

Appendix G, Table 5. Pennsylvania Power Company's ("Penn Power") proposes funding its low income program at an annual average budget of \$40,432 which comprises .63 percent of the total EE&C program budget. Joint Petition at Penn Power Appendix G, Table 5.

IV. SUMMARY OF ARGUMENT

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

On its face, First Energy's Plans do not appear to meet each of these low income provisions, lacking specific language detailing how each and every provision will be satisfied. It is unclear whether First Energy's Plans properly calculate low income energy savings targets or whether sufficient funding is directed to low income programs such that it can be reasonably proposed the companies will hit their low income savings targets. Although First Energy's Plans do target for enrollment into low income programs families with income at or below 150% FPIG, the Plans also propose expanding WARM services, potentially expanding them to reach households with income above 150% FPIG. First Energy's Plans do not sufficiently ensure that expenditures and energy savings for Act 129 low income programs are in addition to and separate from expenditures made for the companies' LIURP programs; nor do First Energy's Plans provide a sufficient assurance that low income programs will be coordinated with other

federal, state, and Commission programs. Prior to approving First Energy's low income component, the Commission should require First Energy to amend its Plans to explicitly address each of the low income provisions in Act 129.

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.³ 66 Pa.C.S. §§

³ 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.

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:

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, in which is discussed the standards to ensure a variety of measures are applied equitably to all customer classes, provides an interpretation that supports this view:

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 low income customers and governmental entities receive special targeted savings. Only after these special provisions are

addressed should EDCs consider the equitable apportionment of programs among the classes of customers.

First Energy's Plans provide insufficient information with which to determine whether Act 129's special provisions for low income savings reasonably can be expected to be met. First Energy projects energy savings for its low income sector programs for each of its companies' Plans. The Met Ed Plan projects through program year 2013 its low income energy savings will be 1,962 MWh out of 241,124 KWh of total residential savings and out of 447,737 KWh of total EE&C Plan savings. Joint Petition at Met Ed, PUC Table 2, p. 18. The Penelec Plan projects through program year 2013 its low income energy savings will be 3,045 MWh out of 219,298 KWh of total residential savings and out of 447,100 KWh of total EE&C Plan savings. *Id.* at Penelec, PUC Table 2, p. 18. The Penn Power Plan projects through program year 2013 its low income energy savings will be 859 MWh out of 67,086 KWh of total residential savings and out of 145,693 KWh of total EE&C Plan savings. *Id.* at Penn Power, PUC Table 2, p. 18. The Plans are silent as to how these calculations were conducted and therefore it is impossible to determine whether the resulting proposed targets are sufficient.

During the Evidentiary Hearings, Company Witness, George L. Fitzpatrick, provided rebuttal testimony and two exhibits clarifying how the companies set their low income targets and their low income savings projections. Met-Ed/Penelec/Penn Power Statement No. 2-R. Exhibits GLF-4 and GLF-5, specifically, provide a line by line description of the companies' savings projections. However, the savings projections in these two exhibits vary significantly from those projections in the Plans. Exhibits GLF-4 and GLF-5 project WARM savings included in the Met Ed Plan will total 2,758 MWh. *Id.* at GLF-4 and GLF-5, line 7. The Met Ed Plan, however, states total low income savings will be 1,962 MWh. Joint

Petition at Met Ed, PUC Table 2, p. 18. Exhibits GLF-4 and GLF-5 project WARM savings included in the Penelec Plan will total 4,318 MWh. Met-Ed/Penelec/Penn Power Statement No. 2-R at GLF-4 and GLF-5, line 7. The Penelec Plan, however, states total low income savings will be 3,045 MWh. Joint Petition at Penelec, PUC Table 2, p. 18. Exhibits GLF-4 and GLF-5 project WARM savings included in the Penn Power Plan will total 1,330 MWh. Met-Ed/Penelec/Penn Power Statement No. 2-R at GLF-4 and GLF-5, line 7. The Penn Power Plan, however, states total low income savings will be 859 MWh. Joint Petition at Penn Power, PUC Table 2, p. 18. The initial vagueness of the Plans, coupled with these significant variations in energy savings projections between the Plans and the subsequent Exhibits GLF-4 and GLF-5, suggest the Commission, prior to approving First Energy's Plans, should require the companies to revise and resubmit their Plans with appropriate detail about the savings projections for their low income sector programs.

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

N/A.

5. *Low Income Program Requirements*

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

- a. **First Energy’s EE&C Plans provide insufficient information with which to determine whether low income savings targets and low income sector program funding are compliant with Act 129 requirements.**

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. First Energy’s EE&C Plans do not provide these explicit details and, therefore, require revision and clarification prior to Commission approval.

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. 1 Pa.C.S.A. § 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." *Id.* at § 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 money 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.

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 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 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, and 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. 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.

First Energy's Plans provide insufficient information with which to determine how the companies derived their low income targets and whether the budgets for their low income sector programs are adequate. The Met Ed Plan projects through program year 2013 its low income energy savings will be 1,962 MWh: that is only .81 percent of the 241,124 KWh total residential savings and only .44 percent of the 447,737 KWh total EE&C Plan savings. Joint Petition at Met Ed, PUC Table 2, p. 18. The Penelec Plan projects through program year 2013 its low income energy savings will be 3,045 MWh: that is only 1.39 percent of the 219,298 KWh total residential savings and only .68 percent of the 447,100 KWh total EE&C Plan savings. *Id.* at Penelec, PUC Table 2, p. 18. The Penn Power Plan projects through program year 2013 its low income energy savings will be 859 MWh: that is only 1.28 percent of the 67,086 KWh total residential savings and only .59 percent of the 145,693 KWh total EE&C Plan savings. *Id.* at Penn Power, PUC Table 2, p. 18. The Plans are silent regarding how these targets were derived, and, as discussed in Section V.A.3 above, the clarification provided in Company

Witness Fitzpatrick's Rebuttal Testimony did not actually clarify the situation. Finally, compared to other EDC Plans, these energy savings targets are undeniably low.

Prior to approving First Energy's low income sector programs, the Commission should require the companies to provide a clear discussion of how low income energy savings targets are calculated (including all assumptions that inform the calculations), how those savings will be accrued from specific low income programs, and how the funding levels of the low income programs are justified to meet those targets.

b. First Energy's EE&C Plans define low income household 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.⁴

⁴ 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

First Energy's Plan proposes to target for service in its low income programs households income qualified for participation in First Energy's WARM program, which means households with income at or below 150% FPIG. Joint Petition at Met Ed p. 53, Penelec p. 53, and Penn Power p. 53. However, First Energy's Plans also propose to expand WARM services to low income customers who might not otherwise qualify for WARM. This raises the strong likelihood that First Energy's low income programs will serve households with income exceeding 150% FPIG. Counting the energy savings from households with income exceeding 150% FPIG would violate Act 129's specific requirement to accrue energy savings from households with income at or below 150% FPIG. First Energy's Plans make no explicit assurances that this miscounting will not occur.

Prior to approving First Energy's EE&C Plans, the Commission should require the company to revise its Plans to include specific language assuring, for purposes of measurement and evaluation, low income energy savings will only be counted from households with income at or below 150% FPIG.

- c. **First Energy's Plans provide insufficient assurances that expenditures for Act 129 low income programs will be in addition to and separate from expenditures made for the companies' LIURP programs.**

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).

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.

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. First Energy's Plans do not provide 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.

An important conclusion flows from this requirement: energy savings from LIURP must be isolated from and not counted toward Act 129 low income energy savings goals. The clear purpose of requiring expenditures for Act 129 programs to be in addition to LIURP expenditures is to ensure *additional* energy savings are accrued to low income households over and above what is currently happening due to LIURP activities. The General Assembly understands that spending on the program is what drives the energy savings; by requiring additional spending on low income households, the General Assembly clearly intended that additional savings would occur.

This conclusion harmonizes with the way the rest of Act 129 operates. EDCs count toward their energy savings goals the energy savings generated by measures funded by Act 129 dollars. Only those energy savings caused by Act 129 spending are counted toward Act 129 goals, not the savings caused by other programs that happen to occur in the service territory. The same principal holds true for low income programs, which is clearly why the General Assembly required separate funding for LIURP and Act 129 programs. Act 129

seeks to drive new energy savings by spending new money, whether that spending occurs for low income households or other customers.

Prior to approving First Energy's Plans, the Commission should require the companies to revise their Plans so LIURP savings are not counted toward Act 129 goals and so expenditures for Act 129 programs are clearly in addition to those for LIURP.

d. First Energy's Plans provide insufficient assurance that the low income programs will be coordinated 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. First Energy's EE&C Plans do not provide 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 First Energy'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.

First Energy's EE&C Plans do not discuss how the low income programs will coordinate with other federal, state, and Commission programs. Given the number of other weatherization and conservation programs and the sheer amount of funding currently available for weatherization and conservation activities, it is a serious flaw in the Plans that they fail to address coordination with other programs. The Department of Community and Economic Development's annual Weatherization Assistance Program provides efficiency and conservation services to low income households. The American Reinvestment and Recovery Act (ARRA) provides significant resources – up to \$6,000 per household – with which efficiency and conservation services will be provided over the next few years. Other EDCs and natural gas distribution companies all operate LIURPs. First Energy's Plans are silent regarding any cooperation with these existing resources.

Prior to approving First Energy's Plans, the Commission should require the companies to revise their Plans to explicitly address how the companies' Act 129

programs will coordinate with existing federal, state, and Commission programs providing efficiency and conservation services to low income households.

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**

There are two easy, cost effective ways the companies' Plans could be improved: by introducing a low income recruitment incentive and by targeting space heaters for removal from homes.

- Recruitment Strategies: PECO is including in its RFP process for Conservation Service Providers a criteria favoring providers who recruit and hire unemployed and low income workers. PECO's EE&C Plan states:

In addition, PECO will 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.⁵

⁵ *Petition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and Conservation Plan and*

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 acquire good paying, solid jobs that will help them rise up out of poverty and better afford to pay for the utility service they do use. It would improve First Energy's Plans to include a similar approach. Additionally, First Energy may want to include language that favors Conservation Service Providers that seek out and hire unemployed building construction personnel who have relevant skill sets and who are suffering from the economic downturn.

- Space Heaters: PECO's Plan proposes to use PECO's Act 129 Low Income Program as a means to focus on the problem of inefficient, dangerous space heaters in use by low income households. In its Plan, PECO proposes to "increase emphasis on repair or replacement of non-working gas heating units to remove electric space heaters from use,"⁶ and "address the high percentage of supplemental electric heating that may be due to many factors, including inoperable central heating systems."⁷ Supplemental electric heating units are wasteful of energy and are extremely dangerous to the families and neighborhoods in which they are used, as these space heaters are often the cause of deadly fires. Reducing the use of these space heaters will reduce electric consumption and improve the physical well being of low income communities. First Energy's Plans would benefit from the addition of a space heater program like PECO's.

b. Commercial

Expedited Approval of its Compact Fluorescent Lamp Program, Docket No. M-2009-2093215, (Filed on July 1, 2009), *Volume II*, at 38.

⁶ *Id.* at 37.

⁷ *Id.* at 36.

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 requires First Energy to file EE&C Plans ensuring low income households achieve energy savings at least proportionate to their share of the energy burden in the service territory, defining low income household to include only those households with income at or below 150% of the FPIG, ensuring expenditures for Act 129 low income programs are in addition to and separate from expenditures made for the company's LIURP program, and requiring Act 129 low income programs to coordinate with other federal, state, and Commission programs. 66 Pa.C.S. § 2806.1(b)(1)(I)(G). Given that First Energy's EE&C Plans do not sufficiently meet these requirements, the Commission should require First Energy to revise its low income program sections and resubmit the Plans for approval.

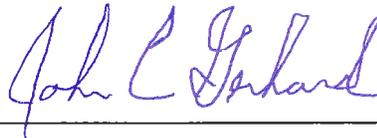
VII. PROPOSED ORDERING PARAGRAPHS

THEREFORE, IT IS ORDERED:

1. The Low Income Sector Programs contained in First Energy's Energy Efficiency and Conservation Plans, filed pursuant to Act 129, are not approved.
2. First Energy is directed to revise its EE&C Plans to achieve the following goals:
 - a. Provide clear calculations (including assumptions incorporated in the calculations) of low income energy usage in the service territory;
 - b. Provide clear calculations (including assumptions incorporated in the calculations) of low income energy savings targets so low income energy savings are proportionate to low income energy usage in the service territories;

- c. Provide a clear justification for the budget allocated to low income programs, particularly for how those budgets will accrue to low income households energy savings proportionate to those households' energy usage in the service territory;
- d. Count toward low income energy saving goals only those energy savings from households with income at or below 150% FPIG;
- e. Provide an assurance that funding of Act 129 low income programs will be above and beyond existing funding for LIURP programs.
- f. Provide an explicit plan for coordinating Act 129 low income programs with other federal, state, and Commission programs providing weatherization and energy efficiency and conservation services.
- g. Design and incorporate into its EE&C Plan a plan to incentivize conservation service providers to hire low income workers.
- h. Design and incorporate into its EE&C Plan a plan to reduce the use of portable electric space heaters in low income households.

Respectfully submitted,



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