

COMMONWEALTH OF PENNSYLVANIA



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September 21, 2009

James J. McNulty
Secretary
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RE: Metropolitan Edison Company Energy
Efficiency and Conservation Plan
Docket No. M-2009-2092222
Pennsylvania Electric Company Energy
Efficiency and Conservation Plan
Docket No. M-2009-2112952
Pennsylvania Power Company Energy
Efficiency and Conservation Plan
Docket No. M-2009-2112956

Dear Secretary McNulty:

Enclosed for filing is the Reply Brief of the Office of Consumer Advocate, in the above referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in black ink that reads "Aron J. Beatty".

Aron J. Beatty
Assistant Consumer Advocate
PA Attorney I.D. # 86625

Enclosure

cc: Honorable David A. Salapa
Office of Special Assistants

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Metropolitan Edison Company Energy Efficiency and Conservation Plan	:	Docket No.	M-2009-2092222
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Pennsylvania Electric Company Energy Efficiency and Conservation Plan	:	Docket No.	M-2009-2112952
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Pennsylvania Power Company Energy Efficiency and Conservation Plan	:	Docket No.	M-2009-2112956
	:		

REPLY BRIEF
OF THE
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I. INTRODUCTION

On September 11, 2009, the Office of Consumer Advocate (OCA) filed its Main Brief (M.B.) regarding its positions on the issues raised in this proceeding. The OCA submits that its Main Brief provides the Pennsylvania Public Utility Commission (PUC or Commission) with a comprehensive discussion of the issues in this proceeding. The OCA's Main Brief fully addresses and responds to many of the arguments raised by the FirstEnergy Companies (Met-Ed, Penelec, and Penn Power, collectively the Companies) and the other parties in their Main Briefs.

It is not the purpose of this Reply Brief to respond to all of the arguments contained in the Companies' or other parties' Main Briefs. The OCA will limit its reply to those issues requiring additional clarification and response. Thus, any failure of the OCA to address specific arguments contained in the Companies' or other parties' Main Briefs does not mean that the OCA agrees with the Companies' or the other parties' positions or that the OCA has revised its position.

II. PROCEDURAL HISTORY

No reply necessary.

III. DESCRIPTION OF EDC PLAN

No reply necessary.

IV. SUMMARY OF ARGUMENT

As explained in the OCA Main Brief and as further set forth in this Reply Brief, the OCA generally supports the FirstEnergy Companies' proposed EE&C Plans (Plans). Some areas of the Plans, however, are still in need of modification. Of particular importance, FirstEnergy must: 1) account for the costs of the statewide evaluator and consumer education within the applicable 2% cap (OCA M.B. at 41-42); 2) formalize an ongoing stakeholder process

that is broad and inclusive to assist in the implementation of the EE&C Plans (OCA M.B. at 44); 3) forego interest on cost-recovery over- or under-collections and on recovery of start-up costs (OCA M.B. at 37-38); 4) include the energy efficiency charge in distribution rates rather than as a separate line item on customers' bills (OCA M.B. at 39-41); 5) modify the low income programs in order to meet the required consumption reduction targets for low income customers (OCA M.B. at 22-28); 6) take advantage of any savings opportunities through participation in PJM RPM auctions as a result of the Companies' energy efficiency and demand response measures (OCA M.B. at 38-39); 7) study implementation of the program improvements recommended by OCA witness David Hill (OCA M.B. at 31-33); and 8) submit a detailed plan for the re-assignment of the monies incorrectly included in the Residential Direct Load Control program budget (OCA M.B. at 28-30).

V. ARGUMENT

A. Act 129 Conservation and Demand Reduction Requirements

No reply necessary.

1. Overall Conservation Requirements

No reply necessary.

a. 2011 Requirements

i. Met-Ed

As noted in the OCA's Main Brief, Met-Ed misstated the Commission-identified 2011 consumption reduction goal as 146,239 MWh rather than the Commission-approved goal of 148,650 MWh. See Met-Ed EE&C Plan at PUC Table 2, page 18. Met-Ed did not make this correction or address this issue in its Main Brief. The OCA submits that Met-Ed should be directed to correct the error in its EE&C Plan. See OCA M.B. at 12.

b. 2013 Requirements

i. Met-Ed

As noted in the OCA's Main Brief, Met-Ed misstated the 2013 consumption reduction goal as 438,718 MWh rather than the Commission-approved goal of 445,951 MWh. See Met-Ed EE&C Plan at PUC Table 2, page 18. Met-Ed did not make this correction or address this issue in its Main Brief. The OCA submits that Met-Ed should be directed to correct this error in its EE&C Plan. See OCA M.B. at 14.

The OCA also identified a calculation error in Met-Ed's PUC Table 2 (page 18 of the Plan). See OCA M.B. at 14; OCA Comments at 12-13; see also OCA St. 1 at 8. In short, there is an addition error in Met-Ed's 2013 MWh Cumulative Projected Savings column on page 18 of its EE&C Plan. Id. Met-Ed did not make this correction or address this issue in its Main Brief. The OCA submits that Met-Ed should be directed to correct this error in its EE&C Plan.

ii. Penelec

As noted in its Main Brief, the OCA identified a calculation error in Penelec's PUC Table 2 (page 18 of the EE& C Plan). See OCA M.B. at 14-15; OCA Comments at 12-13; see also OCA St. 1 at 8. In short, there is an addition error in Penelec's 2013 MWh Cumulative Projected Savings column on page 18 of its EE&C Plan. Id. Penelec's PUC Table 2 indicates the cumulative MWh savings for 2013 to be 447,100 MWh, but the correct cumulative MWh savings for 2013 is 442,782 MWh. Id. It should be noted that even with the calculation correction, Penelec should still meet its 2013 consumption reduction target of 431,979 MWh. Penelec did not make this correction or address this issue in its Main Brief. The OCA submits, however, that Penelec should be directed to correct this error in its EE&C Plan.

iii. Penn Power

The OCA also identified a calculation error in Penn Power's PUC Table 2 (page 18 of the EE&C Plan). See OCA M.B. at 15; OCA Comments at 12-13; see also OCA St. 1 at 8. There is an addition error in Penn Power's 2013 MWh Cumulative Projected Savings column on page 18 of its EE&C Plan. Id. Penn Power's PUC Table 2 indicates the cumulative MWh savings for 2013 to be 145,693 MWh, but the correct cumulative MWh savings for 2013 is 144,364 MWh. Id. It should be noted that even with the calculation correction, Penn Power should still meet its 2013 consumption reduction target of 143,188 MWh. Penn Power did not make this correction or address this issue in its Main Brief. The OCA submits, however, that Penn Power should be directed to correct this error in its EE&C Plan.

2. Overall Demand Reduction Requirements

No reply necessary.

3. Requirements for a Variety of Programs Equitably Distributed

No reply necessary. See OCA M.B. at 16-21.

4. 10% Government/Non-Profit Requirement

No reply necessary.

5. Low Income Program Requirements

As detailed in the OCA's Main Brief, the Companies' Plans do not appear to provide adequate reductions in low-income usage as required by Act 129. See OCA M.B. at 22-28. The Companies' filings show, at PUC Table 2, that the low income savings derived from programs specifically targeting low income customers to be less than 1% of the Companies' total savings. See OCA M.B. at 26. The following chart, included in the OCA's Main Brief (at 26),

demonstrates the low income reductions contained in the Plan and the savings that the OCA submits should have been targeted:

	Low income projected savings-2013 (per PUC Table 2 of each Company's filing)	Total system savings-2013 (per OCA St.1 at 8)	Low Income % of system savings (per OCA St. 1 at 33)	Target Savings (per census input, ME/PN/PP Exh. GLF-5)
Met-Ed	1,962 MWh	444,978 MWh	0.44%	5.5%
Penelec	3,045 MWh	442,782 MWh	0.69%	7.2%
Penn Power	859 MWh	144,364 MWh	0.60%	7.1%

Source: ME/PN/PP PUC Table 2; OCA Statement 1 at 8, 33; ME/PN/PP Exh. GLF-5.

The Companies' projections of low income program savings are important because Act 129's low income carve-out requires that each Company's Plan "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) (Emphasis added). Under Act 129, the number of low income 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). While the language of the Act uses the terms "measures" within the section, it also refers to "in proportion to usage." The OCA submits that the most effective way to implement this Section is to require each EDC to assure that a specified percentage of the overall savings to be achieved from its Plan are realized through programs and measures that are specifically directed to the low income customer segment.¹

¹ The Companies do not challenge this interpretation of the low income requirements contained in Act 129. The Companies contend, however, that the low income reductions targeted in their Plans will produce savings that are proportionate to total system usage. See ME/PN/PP M.B. at 24-25; ME/PN/PP Exhibits GLF-4 and GLF-5.

As the above table illustrates, the percentage of low income usage savings is well below the proportionate low income share of total system usage for each Company.² The OCA submits that the Companies' own filings demonstrate their insufficiency with regard to Act 129's low income savings requirements.

In their Main Brief, the Companies argue that they have provided evidence that each Plan meets the low income reduction target, even when using census data. ME/PN/PP MB at 25; ME/PN/PP Exh. GLF-5.³ As the OCA explained in its Main Brief, however, the Companies' calculation of low income savings is flawed because it is not based on "specific" low income energy efficiency measures and it improperly assumes that low income customers will access the general residential efficiency measures at the same rate as non-low income customers. See OCA MB at 25-26.

For example, the Companies include, as low income savings, a pro-rata percentage of savings from their programmable thermostat rebate measure. ME/PN/PP Exh. GLF-5. The OCA submits that, in this example, it is unreasonable to assume that low income customers will participate in a program for more expensive thermostats in the same manner that non-low income customers will participate. Low income customers do not have the financial resources to support the initial investment or to bear the incremental costs of more expensive equipment until a rebate arrives. The OCA submits that the Companies' across-the-board

² As the OCA explained in its Main Brief (at pages 23-24), the use of census data to identify the Companies' low income usage is more appropriate than the use of billing data. Even if billing data is used to calculate the percentage of low income customers, however, the Companies' Plans fall short of the low income reductions required by Act 129. See OCA M.B. at 23-24.

³ The Companies' exhibit GLF-5 attempts to show compliance with the low income carve-out using census data. In this exhibit, the Companies show compliance with Act 129 when existing low income usage reduction program (LIURP) savings are included in their calculation of low income savings. ME/PN/PP M.B. at 25; ME/PN/PP Exh. GLF-5. The OCA submits that the Act requires that any Act 129 expenditures "shall be in addition to" existing funding for low income usage reduction programs. Section 2806.1(b)(1)(i)(G). The OCA submits that the energy savings that are currently achieved through the existing WARM program, within the existing WARM funding, are not Act 129 programs. As such, the existing savings from WARM should not be attributed to the Companies' low income reduction obligations under Act 129.

assumption that low income customers will participate in the full suite of Residential programs in the same manner as non-low income customers is unreasonable. See ME/PN/PP Exh. GLF-5.

The OCA submits that under the language of Act 129, each Company must achieve savings in the low income sector that are proportionate to their usage compared to the system as a whole. The Companies cannot rely on the possible participation of low income customers in a general Residential program to meet the requirements of Section 2806.1(b)(1)(i)(G). The OCA submits that the Companies have not demonstrated compliance with this provision of the Act. For these reasons, and those contained in the OCA's Main Brief, the OCA submits that the Companies' Plans will not meet Act 129's low income requirements.

6. Issues Relating to Individual Conservation and Demand Reduction Programs

No reply necessary.

a. Residential

No reply necessary. See OCA M.B. at 28-30

b. Commercial

No reply necessary.

c. Industrial

No reply necessary.

7. Proposals for Improvement of EDC Plan

No reply necessary.

a. Residential

No reply necessary. See OCA M.B. at 31.

b. Commercial

No reply necessary. See OCA M.B. at 31-33.

c. Industrial

No reply necessary.

B. Cost Issues

1. Plan Cost Issues

No reply necessary.

2. Cost Effectiveness/Cost-Benefit Issues

No reply necessary. See OCA M.B. at 33-35.

3. Cost Allocation Issues

No reply necessary.

4. Cost Recovery Issues

a. Interest Costs

The OCA supports the Company's proposal to levelize its cost recovery over the term of the Plan. However, as discussed in the OCA's Main Brief, the OCA does not support the collection of interest on the Companies' start-up costs. See OCA M.B. at 37-38.

In its Main Brief, the Companies argue for the collection of interest on start up costs incurred through October 31, 2009. ME/PN/PP M.B. at 43. The OCA submits that it is not reasonable to charge interest to customers on this one cost component, without crediting customers with interest on over-collections in the early years of the Companies' Plans. It is the OCA's position that interest should not be paid or collected on any portion of these charges. To the extent any interest charges are allowed, they must be within the 2% statutory cap.

b. Statewide Evaluator Costs

The OCA submits that the costs of the statewide evaluator are part of the total cost of the Plan and must be accounted for within the applicable 2% cap. See OCA M.B. at 41-42; OCA St. 1 at 39. Based on Section 2806.1(g), the FirstEnergy Companies argue that the costs of the statewide evaluator are not part of their EE&C Plans and, thus, are excluded from the 2% spending cap. ME/PN/PP M.B. at 41-42. The Companies also argue that they cannot quantify with any certainty the cost of the statewide evaluator. *Id.* at 42.

The OCA submits that the FirstEnergy Companies' reading of Section 2806.1(g) is incorrect. The language of 2806.1(g) provides the following cost limitation:

Limitation on Costs.—The total cost of any plan required under this Section shall not exceed 2% of the electric distribution company's total annual revenue as of December 31, 2006. The provisions of this paragraph shall not apply to the cost of low-income usage reduction programs established under 52 Pa. Code Ch. 58 (relating to residential low income usage reduction programs).

66 Pa.C.S. § 2806.1(g).⁴ In addition, Section 2806.1(k)(1) provides that an electric distribution company, “shall recover on a full and current basis from customers, through a reconcilable adjustment clause under section 1307, all reasonable and prudent costs incurred in the provision or management of a plan provided under this section.” 66 Pa.C.S. §2806.1(k)(1). The Act allows for the recovery of reasonable and prudent costs “of a plan.” *Id.* The OCA submits that the Companies' reading of Act 129 to allow for recovery of prudent and reasonable evaluation costs outside the context of its Plans is not reasonable.

⁴ If the General Assembly had intended for other exclusions to the 2% spending cap besides low-income usage reduction program costs, it would have so stated. As a result, the Companies must include these costs in their four-year overall spending levels.

The statewide evaluator costs are a necessary component of the measurement, evaluation and verification needed to ensure that the Plan complies with Act 129. OCA witness Dr. David Hill testified that these evaluation costs are integral parts of the Companies' Plans, as follows:

[T]he costs of evaluating the Companies' approved energy efficiency plans... are core costs required to meet the energy efficiency goals of Act 129. Each utility will incur a variety of costs in order to meet its usage and load reduction obligations under the Act. While recognizing that there would be considerable costs to meet these goals, the Act capped the costs of the program at 2% of 2006 revenues. I see no reason to exclude the costs ... of evaluating the effectiveness of the plan, from the general cost recovery scheme detailed in the Act.

OCA St. 1 at 39.

The OCA submits that the Companies have not demonstrated that the statewide evaluator costs should be considered separate and apart from their obligations under the Act. As a result, all of the Companies' claimed costs must be collected within the statutory 2% cap.

C. CSP Issues

No reply necessary.

D. Implementation and Evaluation Issues

No reply necessary.

1. Implementation Issues

No reply necessary.

2. QA Issues

No reply necessary.

3. Monitoring and Reporting Issues

No reply necessary.

4. Evaluation Issues

No reply necessary. See OCA M.B. at 43-44.

E. Other Issues

1. On-going Stakeholder Process

In their Main Brief the Companies propose to hold ongoing stakeholder meetings on a quarterly basis, and to limit the participation of future stakeholder meetings to those participants in the current proceeding. ME/PN/PP M.B. at 27. The Companies argue that limiting participation to only those participants in this proceeding will provide reasonable assurance that confidential information exchanged in future stakeholder meetings will continue to be protected. Id.

The OCA submits that a continued stakeholder process that includes a broad group of interested stakeholders is vital to providing the most cost-effective Plans possible. For this reason, the OCA does not support limiting the stakeholder process to those parties currently engaged in this process. The OCA submits that it is unreasonable to assume that only those parties that have participated to this point can provide valuable input into the continuing stakeholder process. Potential CSPs, organizations, and other stakeholders that did not, and possibly could not, participate in the initial proceedings should not be banned from future participation in efforts to improve the Companies' Plans. The OCA further submits that the Companies' concerns regarding the protection of confidential information can be addressed by the parties as issues arise, as they were during the stakeholder process held in advance of the Companies' filing their Plans.

The OCA submits that the Commission should require the FirstEnergy Companies to continue the stakeholder process and meet with all interested stakeholders on a quarterly basis, with announcements of meeting dates, times and places well in advance of commencement thereof. See OCA M.B. at 44. Additional stakeholders will provide additional resources and information to assist the Companies in meeting the requirements of Act 129. Also, the more stakeholders involved in the processes, the more voices there will be to reach customers and encourage their participation in the Companies' programs.

VI. CONCLUSION

For the reasons discussed above, and those set forth in the Main Brief of the OCA, the OCA submits that the Commission should adopt the recommendations set forth in this Brief and the OCA Main Brief.

VII. PROPOSED ORDERING PARAGRAPHS

The OCA's Proposed Ordering Paragraphs are set forth at pages 45 and 46 of its Main Brief.

Respectfully submitted,



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Pennsylvania Power Company Energy Efficiency and Conservation Plan	:	Docket No.	M-2009-2112956
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I hereby certify that I have this day served a true copy of the foregoing document, Reply Brief of the Office of Consumer Advocate, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 21st day of September 2009.

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