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| **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** | |
| Public Meeting held January 27, 2011 | |
| Commissioners Present:  James H. Cawley, Chairman  Tyrone J. Christy, Vice Chairman  John F. Coleman, Jr.  Wayne E. Gardner  Robert F. Powelson | |
| Petition of Duquesne Light Company for  Approval of its Energy Efficiency and  Conservation and Demand Response Plan | Docket No. M-2009-2093217 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition of Duquesne Light Company (Duquesne or the Company) for Approval of its Energy Efficiency and Conservation and Demand Response Plan (Petition), filed on September 15, 2010, as clarified by the Company on December 15, 2010. As discussed further herein, the Petition proposes modifications to the Company’s Energy Efficiency and Conservation and Demand Response Plan (Plan), which was previously approved by this Commission. Also before the Commission are certain Petitions, Comments and Reply Comments.

# I. Background[[1]](#footnote-1)

Governor Edward G. Rendell signed Act 129 of 2008 (Act or Act 129) into law on October 15, 2008. The Act took effect thirty days thereafter on November 14, 2008. Act 129 has several goals including reducing energy consumption and demand. Among other things, the Act amended the Public Utility Code (Code), 66 Pa. C.S. §§ 101 *et seq*., to require the Commission to develop and adopt an Energy Efficiency and Conservation Program (EE&C Program) by January 15, 2009. The Commission’s EE&C Program is to include the following:

* A procedure for approving EE&C plans submitted by electric distribution companies (EDCs).
* A process to evaluate and verify the results of each plan and the program as a whole.
* A process through which recommendations can be made for the employment of additional consumption reduction measures.
* A cost recovery mechanism to ensure that measures approved are financed by the customer class that directly receives the energy and conservation benefits.

66 Pa. C.S. § 2806.1(a).

By Opinion and Order entered January 16, 2009, at Docket No. M-2008-2069887, *In re: Energy Efficiency and Conservation Program* (*Implementation Order*), the Commission established the standards that EE&C plans must meet and provided guidance on the procedures to be followed for submittal, review and approval of all aspects of EE&C plans. The *Implementation Order* stated at page 24:

Regarding approved plans, the Commission will permit EDCs and other interested stakeholders, as well as the statutory advocates, to propose plan changes in conjunction with the EDC’s annual report filing required by the Act at 66 Pa. C.S. § 2806.1(i)(1). The Commission will establish a deadline for the filing of annual reports by the EDCs following the approval of the EDCs’ plans in 2009. These annual reports are to be served on OCA, OSBA and OTS. The Commission will also post the annual reports on a web page dedicated to the EE&C program. The Commission and any interested party can make a recommendation for plan improvement or object to an EDC’s proposed plan revision within 30 days of the annual report filing. EDCs will have 20 days to file replies, after which the Commission will determine whether to rule on the recommended changes or refer the matter to an ALJ for hearings and a recommended decision. The Commission notes that, in addition to the above-described process, the Commission retains its statutory authority to conduct investigations and initiate statutory and regulatory compliance proceedings against jurisdictional utilities.

On June 30, 2009, Duquesne filed a Petition for Approval of its Energy Efficiency and Conservation Plan (June 2009 Plan). The matter was referred to Administrative Law Judge (ALJ) Fred R. Nene, who held Public Input hearings and evidentiary hearings. On August 31, 2009, Duquesne filed a Joint Petition for Partial Settlement (“Settlement”) of a portion of Duquesne’s Plan. The Settlement requested approval for Duquesne to start early three of its Energy Efficiency Early Start Programs.

On September 2, 2009, ALJ Nene certified the record to the Commission for consideration and disposition. By Commission Order entered on October 27, 2009 (*October 2009 Order*), Duquesne’s June 2009 Plan was approved in part, and rejected, in part. The Commission required Duquesne to submit a revised Plan within sixty days. On December 24, 2009, Duquesne filed its revised Energy Efficiency and Conservation Plan (December 2009 Plan). Comments and Reply Comments were filed. By order entered February 17, 2010 (*February 2010 Order*), the Commission approved Duquesne’s December 2009 Plan.

By Secretarial Letter issued June 24, 2010, the Commission provided updated guidance to EDCs regarding the 2010 Act 129 annual reporting requirement. Specifically, for the EE&C plan year ending May 31, 2010, the Commission required EDCs to submit their annual report and any proposed EE&C plan revisions by

September 15, 2010. The Commission would accept recommendations for plan improvements, or objections to proposed changes in the plans, for thirty days. Interested parties could submit replies to plan recommendations or objections to proposed changes during the next twenty days. At that time, the Secretarial Letter stated, the Commission would decide whether to refer the proceeding to the Office of Administrative Law Judge (OALJ) for hearing.

By Secretarial Letter issued September 1, 2010, the Commission provided guidance to EDCs regarding the format of revised EE&C plans, including a requirement that all changes to text and tables be reflected in a black-lined version of the EE&C Plan.

**II. Procedural History**

As stated above, Duquesne filed its Petition, proposed modifications to its EE&C Plan, and annual report, on September 15, 2010. On October 18, 2010, Pennsylvania Communities Organizing for Change (PCOC) filed a Petition to Intervene as well as Comments[[2]](#footnote-2) on Duquesne’s EE&C Plan. Also on October 18, 2010, the Association of Community Organizations for Reform Now (ACORN) filed a Petition to Withdraw from this proceeding.[[3]](#footnote-3) On November 4, 2010, Duquesne filed Reply Comments.

On December 15, 2010, Duquesne filed a clarification to its Petition. According to the Company, the Petition requested Commission approval of two additional energy efficiency measures.

These measures were described in the Attachment A as well as in a black-lined version of the Company’s Plan (Attachment B) of the September 15 filing. One proposed measure was to add a Refrigerator/Freezer Replacement program for low-income customers which was described in Exhibit A, but due to a clerical error was not described in the black-lined version of the Plan in Attachment B. To correct this error, Duquesne hereby submits a black-lined version of the Low-Income program portion of the Plan for Attachment B, with the description of the Refrigerator/Freezer Replacement program for its low income customers.

No Party responded to the Company’s clarification.

# III. Description of the Plan

## A. Description of the Existing Plan

Duquesne’s EE&C Plan combines both energy efficiency and conservation measures with demand response measures in programs that reduce consumption and demand for each customer class. Duquesne researched information about target markets and technology applications capable of producing cost-effective impacts at customer locations throughout Duquesne’s service territory. Duquesne analyzed this information about customer populations in the residential, commercial and industrial sectors. In addition, Duquesne solicited input from stakeholders in each of the three customer segments. As a result of Duquesne’s research and customer input, Duquesne developed programs that it believes will achieve the goals of Act 129. Duquesne MB at 3-4.

Duquesne’s Plan contains a portfolio of programs structured under its residential, commercial and industrial customer classes. The programs provide incentives for a full range of measures to assist residential, commercial and industrial energy customers of all sizes and in all key market segments. The programs put in place a baseline program design, with set incentive levels and forecasted conservation levels. Duquesne MB at 4.

Duquesne’s EE&C Plan contains the following programs:

* Residential Energy Efficiency Rebate Program
* Residential School Energy Pledge Program
* Residential Refrigerator Recycling Program
* Residential Solar Photovoltaic Program
* Commercial Umbrella Program and Subprograms, including:
  + Office Buildings
  + Retail
  + Healthcare
  + Government/Non-profit including education
    - Public Agency Partnership Program
* Industrial Umbrella Program and Subprograms, including:
  + Primary Metals
  + Chemical
  + Mixed Segments

In addition, Duquesne’s Plan includes the following demand reduction programs:

* Residential Direct Load Control for Air Conditioners and Electric Water Heaters Program
* Commercial and Industrial Direct Load Control Program for Small and Mid-sized Accounts (less than 300 kW)
* Commercial and Industrial Curtailable Load Program for Large Accounts (greater than 300 kW)

Duquesne MB at 4.

As part of Duquesne’s Plan, the Company has designed a surcharge and reconciliation mechanism for all customer segments. The surcharge has been designed in a manner that recovers the costs of the programs from the customers who have an opportunity to participate in those programs’ designs. Duquesne’s Plan contains five surcharges. The Residential surcharge is designed to recover costs on a cents per kilowatt-hour basis with a one-time reconciliation in June 2013. The Small and Medium Commercial and Industrial surcharges are designed to recover costs on a cents per kilowatt-hour basis with an annual reconciliation. The Large Commercial and Industrial surcharges are designed to recover costs through a combination of a fixed monthly surcharge and a demand-based surcharge with a one-time reconciliation in June 2013. Duquesne Plan at 10.

The Company believes its Plan will meet the Act 129 energy and demand reduction requirements at a total overall cost of approximately $78.2 million over the life of the Plan. This figure represents 2% of the Company’s combined revenues as of December 2006, multiplied by four to reflect the four-year duration of the Plan. The Plan is divided by program costs per customer class by year, with the proposed total amounts being approximately $13.2 million for 2009-2010; approximately $21.2 million for 2010-2011; approximately $21.7 million for 2011-2012; and approximately $22.1 million for 2012-2013. Duquesne MB at 5.

## B. Description of the Proposed Changes

As previously mentioned, Duquesne’s modified Plan proposes two changes. The first change involves the Residential Refrigerator Recycling Program (RRRP). The RRRP is patterned after exemplary appliance recycling programs[[4]](#footnote-4) to encourage residential customers in Duquesne’s service territory to turn in their older operating refrigerators to be recycled. This program, which is implemented by JACO Environmental (JACO), provides $35 for the removal of the old refrigerator. Based on recommendations by JACO and requests from Duquesne’s customers, Duquesne is requesting to expand the program by adding “Freezers” to the program offer. Duquesne notes that adding freezers to the program does not affect budgeting dollars already allocated to this program. Changes to the RRRP based on adding freezer recycling occur at EE&C Plan Section 3.2c, pages 30-33 of the Plan.

The second proposed change to Duquesne’s EE&C Plan includes Pennsylvania Technical Reference Manual (TRM) deemed savings measure additions. Duquesne notes that extensive collaborative work by the Bureau of Conservation, Economics & Energy Planning (CEEP), the Statewide Evaluator (SWE) and the EDC stakeholders in the TRM Technical Working Group (TWG) has resulted in the addition of many new deemed savings measures to the TRM. The TRM is updated annually through the development of Interim Protocols for the TRM. The updating process refines and improves deemed savings assumptions, adding new measures and streamlining program implementation processes. The collaborative process provides an opportunity for peer review of program measures under the guidance and oversight of the CEEP and the SWE. Measures proposed to be added to Duquesne’s approved EE&C Plan are as follows:

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| New Measure Affected Program  Furnace Whistle REEP  Night Light (LED) REEP  Night Light (limelight) REEP  Heat Pump Water Heater (EF 2.0-2.3) REEP  Electric Water Heaters (EF .93-.95) REEP  Refrigerator/Freezer Replacement[[5]](#footnote-5) LIEEP  Smart Strips REEP |

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Adding these new TRM approved measures offers Duquesne’s customers additional energy savings. All of the incentives in the Program are in the form of a rebate. The total incentive budget for the Residential Energy Efficiency Program (REEP) is $10.4 M and the incentive budget for LIEEP is $3.8 M for 2009-2013. Rebates on these products are offered on a first-come, first-serve basis. All rebates are tracked on a monthly basis against the total budget. To date, Duquesne submits that nothing has occurred to indicate oversubscription of rebates for a particular measure or rebate. In the event that certain measure rebates appear to becoming oversubscribed in relation their derived benefit, Duquesne will seek Commission approval to limit or remove the measure from its Plan.

Measures proposed to be added resulting from updates to the TRM affect the REEP and Low Income Energy Efficiency Program (LIEEP) and can be found at page 26 of the Plan.

# IV. Discussion

In Commission proceedings, the proponent of a rule or order bears the burden of proof. 66 Pa. C.S. § 332(a). To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

In this case, Duquesne is asking the Commission for approval to make changes to its approved EE&C Plan. Duquesne therefore bears the burden of proving, by a preponderance of the evidence, that the proposed modifications to its EE&C Plan results in an EE&C Plan that continues to satisfy the requirements of Act 129 and the prior related Orders of the Commission.

We note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. [Consolidated Rail Corporation v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) see also, generally, [University of Pennsyl­vania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

**A. Petitions to Withdraw and Intervene**

As previously mentioned, on October 18, 2010, ACORN filed a Petition to Withdraw and PCOC filed a Petition to Intervene, together with Comments to Duquesne’s modified Plan.

By way of background, on July 27, 2009, ACORN Petitioned to Intervene in this proceeding. This Petition was approved in a Pre-Hearing Order dated July 30, 2009, and subsequently ACORN has been an active participant in this proceeding, representing the interests of low-income households.

On April 1, 2010, ACORN dissolved its status as a corporate entity and ceased to exist as an organization. Therefore, ACORN is unable to continue participating in this proceeding. ACORN submits that no other Party to this proceeding will suffer harm as a result of ACORN’s withdrawal.

PCOC represents that it has a deep understanding of low-income communities and their unique utility related issues. It states that it petitioned to intervene in this proceeding to represent the specific interests of low-income households.

In its Reply Comments, Duquesne indicates that it does not object to PCOC intervening, or participating as an interested person in this proceeding, so long as it accepts the record as-is. R. Comments at 2.

As a result of ACORN being dissolved as a corporate entity, we shall approve its Petition to Withdraw. In addition, we shall approve PCOC’s Petition to Intervene in order that the interests of low-income households continue to be represented in this proceeding.

**B. Proposed Modifications to Duquesne’s EE&C Plan**

As previously described, Duquesne is proposing two modifications to its EE&C Plan, the inclusion of Freezers in its RRRP and the addition of seven savings measures to its TRM.

PCOC supports the inclusion of the Refrigerator/Freezer Replacement program as an additional measure to the Low Income Energy Efficiency Program. Comments at 4. No other Party has filed comments opposing Duquesne’s proposed modifications.

Based on our review of the information presented in the Petition, we find that the proposed revisions set forth in the Petition result in an EE&C Plan that continues to satisfy the requirements of Act 129 and the prior related Orders of the Commission. The revisions proposed in the Petition should enable Duquesne to meet or exceed the energy consumption and demand reduction requirements of the Act in a more cost-effective manner. Therefore, we find that the modifications described in the Petition should be approved.

**C. PCOC Proposed Changes**

PCOC strongly encourages the Company to include within its modified EE&C Plan specific measures targeted to multi-family properties providing affordable housing to low-income families. PCOC submits that targeting multi-family affordable housing provides an opportunity for the Company to accrue significant energy savings from a single project, while helping preserve affordable housing for low-income families. PCOC notes that multi-family affordable housing projects also provide an opportunity to leverage Act 129 funds with other available Federal weatherization funding, thereby both increasing the impact of the project and meeting Act 129’s mandate to coordinate its low-income Act 129 activities with other programs administered by the Commission or another Federal or state agency. Comments at 2-3.

Duquesne believes that its current EE&C Plan contains measures targeted to multi-family properties. Duquesne notes that its EE&C Plan incorporates multi-family property projects for low-income families in its LIEEP. Duquesne points out that the specific portions dealing with PCOC’s concerns regarding multi-family housing can be found in Program Description and Implementation Strategy sections, both on page 37 of its Plan. Duquesne further notes that it is currently in the implementation process, which involves partnering with public agencies to provide services designed to assist low-income households to conserve energy and reduce electricity costs. R. Comments at 2.

Duquesne submits that it is currently working on public agency partnerships to provide assistance to low-income participants in both single-family and multi-family housing. Duquesne notes that the partnerships that assist low-income multi-family housing are Action Housing, Housing Authority of Allegheny County, Beaver County Housing Authority, North Side Properties Management, I.W. Abel, and the Department of Community and Economic Development (DCED). In addition, Duquesne notes that it partners with Rebuilding Together Pittsburgh, the Hill House, Action Housing, and DCED to provide assistance to single-family low-income housing. R. Comments at 2.

Duquesne submits that the partnership with DCED addresses PCOC’s suggestion to utilize federal funding in addition to Act 129 funds to target the weatherization of multi-family housing. Duquesne points out that DCED reached out to all Pennsylvania EDCs with Act 129 programs to implement a state-wide partnership with weatherization agencies to service low-income customers, and Duquesne is participating in this partnership. For these reasons, Duquesne requests that the Commission accept its annual report and proposed modifications to its EE&C Plan as filed on September 15, 2010. R. Comments at 3.

We believe that Duquesne’s current EE&C Plan adequately addresses PCOC’s concerns regarding multi-family low-income properties and therefore we shall reject PCOC’s proposed changes.

**V. Conclusion**

We shall grant ACORN’s Petition to Withdraw as well as PCOC’s Petition to Intervene. In addition, we shall grant the Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation and Demand Response Plan filed on September 15, 2010. We find that Duquesne’s modified EE&C Plan conforms with the requirements of Act 129 and the prior related Orders of the Commission; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition of Duquesne Light Company for Approval of its

Energy Efficiency and Conservation and Demand Response Plan, filed on September 15,

2010, is granted.

2. That Duquesne Light Company is permitted to implement its Energy Efficiency and Conservation and Demand Response Plan, as filed on September 15, 2010, consistent with this Opinion and Order.

3. That the Petition to Withdraw, filed by the Association of Community Organizations for Reform Now on October 18, 2010, is granted.

4. That the Petition to Intervene filed by Pennsylvania Communities Organizing for Change on October 18, 2010, is granted.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: January 27, 2011

ORDER ENTERED: January 28, 2011

1. A description of : (1) Act 129; (2) the Commission’s various Act 129 proceedings; (3) Duquesne’s previous EE&C Plans; and (4) the Commission’s review and approval of Duquesne’s EE&C Plan was set forth in our Opinions and Orders at this Docket entered October 27, 2009, December 23, 2009, February 2, 2010, and February 17, 2010. [↑](#footnote-ref-1)
2. On October 18, 2010, PCOC re-filed its Petition and its Comments to correct an e-filing rejection of the documents it previously filed on October 15, 2010. [↑](#footnote-ref-2)
3. On October 18, 2010, ACORN re-filed its Petition to Withdraw to correct an e-filing rejection of the Petition it previously filed on October 15, 2010. [↑](#footnote-ref-3)
4. Based on the Pacific Gas & Electric 2008 ACEEE Exemplary Appliance Recycling Program. [↑](#footnote-ref-4)
5. This program is different than the recycling program noted in Duquesne’s first proposed change. This program involves complete replacement for low-income customers. [↑](#footnote-ref-5)