**COMMONWEALTH OF PENNSYLVANIA**

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April 17, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17101

Re: Act 129 Energy Efficiency and
Conservation Program Phase Two
Docket No. M-2012-2289411

Dear Secretary Chiavetta:

Enclosed for filing please find the Office of Consumer Advocate's Comments in the above-captioned proceeding.

Sincerely,

Jennedy S Johnson

Jennedy S. Johnson
Assistant Consumer Advocate
PA. Attorney ID# 203098

Enclosures
155219

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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| Re: Act 129 Energy Efficiency and Conservation Program Phase II | : : | Docket No. M-2012-2289411 |

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE
ON PHASE II OF ACT 129 ENERGY EFFICIENCY AND
CONSERVATION PROGRAMS

## I. INTRODUCTION

The Office of Consumer Advocate (OCA) welcomes the opportunity to submit Comments on Phase II of the Act 129 Energy Efficiency and Conservation (EE&C) programs applicable to the Commonwealth's largest Electric Distribution Companies (EDCs). In its March 1, 2012 Secretarial Letter, the Commission requested comments on a number of topics to aid in designing and implementing any future phase of EE&C programs. The Commission also held a stakeholder meeting on March 16, 2012, which the OCA attended, to provide interested parties the opportunity to identify any questions regarding the topics and issues presented in the Secretarial Letter.

The OCA has supported the development of energy efficiency and demand response programs by Pennsylvania utilities for more than two decades. The passage of Act 129 presented Pennsylvania with the opportunity to further expand the Commonwealth's work on energy efficiency and demand response for the benefit of all customers. The OCA participated actively in the development of the Phase I EE&C Plans under Act 129 and has participated actively in the on-going EDC stakeholder groups that have continued to work on the implementation of these programs. The OCA's work in these areas has reaffirmed the OCA's support for these programs and the OCA looks forward to continuing to work on the Phase II Plans.

The OCA will provide Comments below on the key areas identified in the Commission's Secretarial Letter.[1] The Secretarial Letter has raised many important issues regarding the transition to, and implementation of, Phase II EE&C Plans. Of critical concern to the OCA is that the on-going programs remain active as we work toward the implementation of Phase II and that the stakeholders and EDCs have sufficient time to design and implement appropriate Phase II programs and Plans.

## II. COMMENTS

### A. Planning Timeline

A major concern to the OCA is the Commission's proposed procedural schedule for review and implementation of Phase II that is included in the Secretarial Letter. The Commission timeline contemplates only a six week period of time for the review of the key Baseline Study and Technical Potential Study. During this same six week period, the stakeholders will be reviewing the Tentative Implementation Order and preparing comments. The Commission timeline also provides only a 90 day period for the design of the programs and Plan in response to the Final Implementation Order. The new Plans are due on November 1, 2012, before the results of the evaluation of the demand response programs will be available.

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[1] The OCA was assisted in the preparation of these Comments by Geoffrey C. Crandall. Mr. Crandall is the principal and the Vice President of MSB Energy Associates, Inc and has over 35 years of experience in utility regulatory issues, including energy efficiency, conservation and load management resources program design and implementation, resource planning, restructuring, mergers, fuel, purchase power and gas cost recovery and planning analysis, and related issues. Mr. Crandall has provided expert testimony before more than a dozen public utility regulatory bodies throughout the United States and before the United States Congress on several occasions.

While the OCA understands the Commission's interest in trying to complete this process expeditiously and align with the currently scheduled end of the Phase I Plans, the OCA is concerned that the proposed schedule provides insufficient time for the EDCs and stakeholders to develop, review and present their recommendations. Additionally, the proposed timeline as currently set out would detract from the benefits of a robust stakeholder process that helped shape the Phase I Plans. It will be difficult to engage the stakeholders in a meaningful process in the short time period between the Final Implementation Order and the filing of any Phase II Plans.

The OCA would also note that the compressed timeline for review of the State Wide Evaluator's (SWE) Electricity Baseline and Market Potential Study results raises additional concerns. There is much to be gained from a careful review of these studies and the OCA submits that the schedule as proposed does not allow for a thorough analysis or discussion with the SWE on these critical studies. Moreover, the short procedural schedule will limit the ability of the stakeholders to include the lessons learned from Act 129 Phase I Plans into the Act 129 Phase II Plans. This is particularly true with respect to the demand response programs. An evaluation of these programs will not be concluded until November 2012, which is after the time by which the Phase II Plans must be filed.

To avoid these issues and to ensure that the Phase II Plans are both well-reasoned and appropriately focused, the OCA proposes that the schedule be extended by three months. The OCA recognizes that a delay in the procedural schedule will impact the end date for the Phase I Plans. To that end, the OCA recommends that the Commission extend the current Phase I Plans so that there is no disruption in existing programs. The OCA anticipates that a three month extension should be sufficient, which would result in any Phase II Plans beginning in September 2013.

The OCA submits that extending the existing programs for a three month period would not be unduly difficult. Contract extensions or addendums with the Conservation Service Providers (CSPs) may be required to modify the end date of the Phase I Plans. While the OCA recognizes that such modifications might need to be brought before the stakeholder groups and the Commission, such a filing could be addressed as a reasonable minor modification under the Commission's procedures.

Extending the Phase I Plans to September of 2013 will allow for a thorough review of the Baseline and Market Potential Studies, continuation of the robust stakeholder process, development of better-focused Phase II Plans following the Final Implementation Order, and sufficient time from a Final Order to implementation of each Plan. To further facilitate this approach, the OCA recommends that any savings accrued during the three month extension could be "banked" by the EDCs for application during the Phase II Plans (see Section G, below).[2]

The OCA provides the following proposed timeline that incorporates a three month extension:

[2] Further, the EDCs could continue to collect EE&C costs at the levels charged on May 31, 2013.

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| March 1, 2012<br><br>March 16, 2012<br><br>April 17, 2012 | • Release of Secretarial Letter seeking comments on future EE&C planning issues<br>• Commission stakeholder meeting<br><br>• Secretarial Letter Comment due date |
| May 1, 2012 | • Release of Statewide Evaluator's Pennsylvania Electricity Baseline Study Results<br>• Release of Statewide Evaluator's Pennsylvania Electricity Market Potential Study Results |
| May 10, 2012<br><br>June 19, 2012<br><br>July 6, 2012 | • Tentative Implementation Order on Public Meeting agenda<br>• Tentative Implementation Order Comment due date<br>• Tentative Implementation Order Reply Comment due date |
| August 2, 2012 | • Final Implementation Order on Public Meeting agenda |
| December 1, 2012 | • If necessary, EDCs file EE&C Plans |
| May 1, 2013 | • If necessary, Commission rules on EE&C Plans |
| September 1, 2013 | • EE&C Programs begin |

For these reasons, the OCA respectfully requests that the Commission modify its proposed timeline to allow three additional months for review of the SWE studies, evaluation of demand response options, and formulation of the Phase II EE&C Plans. Simultaneously, the Commission should extend the Phase I Plans by three months.

B. <u>Length of Second EE&C Program</u>

The Secretarial Letter states that the Commission seeks input from interested parties on the optimal length of any possible future EE&C Program and specifically discusses programs of three, four or five years in length. The OCA submits that the Phase II Plans should be sufficiently long to establish robust programs that consumers can depend on for a reasonable period of time. Phase II, however, should not be so long that changes in technologies and markets cannot be reviewed and new targets established to reflect these changes. For the reasons detailed below, the OCA suggests that a four-year program length most reasonably balances these two interests.

The OCA submits that a four year EE&C Plan length combined with a robust stakeholder process may provide the best framework for efficient program management. The four year term allows for the programs to operate over sufficient period of time so that their impacts and cost-effectiveness can reasonably be determined. When combined with a robust stakeholder process and the potential for efficient mid-course corrections, the four-year program should allow EDCs to adapt to any near term changes. At the same time, the four year Plan length should allow for new market developments to be captured in future planning. For example, it is the OCA's understanding that there are numerous, significant changes that are being experienced now in the marketplace as a result of recently implemented federal appliance and manufacturing standards. In addition, the United States' Environmental Protection Agency is continually updating the Energy Star program and the measures that are included therein. Further, federal agencies are now in the process of modifying home energy rating certifications, which will impact new construction practices. Finally, continued implementation of the Energy Independence and Security Act of 2007 (EISA) is having a profound impact on the manufacturing and availability of residential and commercial lighting technology in Pennsylvania and elsewhere. For these reasons, the OCA submits that evolving market conditions and government standards warrant consideration of a Plan of sufficient duration to provide certainty with respect to incentives and programs but that allows for response to new baselines and potentials from evolving technologies and markets. A four year cycle for the Phase II Plan will achieve these goals.

Accordingly, the OCA recommends that length of the EE&C Phase II Plans be four years and that each EDC conduct a robust stakeholder process throughout the term of the Plan.

C. Inclusion of a Demand Response Program

The Commission requested Comments on the inclusion of demand response programs as part of the Phase II EE&C Plans. In the Secretarial Letter, the Commission detailed a number of options. The OCA strongly supports inclusion of demand response programs in the Phase II Plans. The OCA submits that demand response programs can be beneficial to customers in many ways, especially by reducing the amount of peak load that must be served (thus avoiding costly increments of capacity resources), impacting high peak hour prices, and reducing customer bills. Whether individual demand response programs are cost effective depends on the nature of the demand response program and the value of the capacity resource and other costs that are being avoided. The OCA submits that identifying cost-effective demand response programs and the appropriate means of measuring and implementing demand response are of key importance.

The OCA submits that continuing the Demand Response portion of the Plan is essential to ensure that the value of the applications and devices installed to meet the demand reduction and savings goals under Phase I are not lost. To put it another way, cost-effective demand response programs, once implemented, must be sustained so that the continuing savings made possible by the initial investment in the programs can be realized. For example, if, as a part of a demand response program, an EDC installs an interrupting switch (a direct load control device for residential customers) on the customer's premises and a communication system to control that switch, those infrastructure costs are sunk whether the switch is used or not. The demand savings, on the other hand, can be achieved only when the switch is activated as part of a program. So the program to maintain and operate the switch and communication system must be funded in order achieve the ongoing benefits from these existing investments.

As part of the Phase I Plans, several EDCs have installed, at significant ratepayer expense, direct load control devices on residential customer air conditioning units. These devices will provide benefits for years to come if they are part of an on-going demand response program. The OCA submits that these benefits should not be lost by eliminating demand response programs from the Phase II Plans. The demand response programs should continue so that the full benefits of the initial investments can be realized for customers.[3]

While the OCA submits that demand response should be included in Phase II, the OCA also recognizes that certain implementation and compliance issues that arose in Phase I must be addressed by the Commission so that the most cost-effective demand response programs can be implemented. Perhaps the most difficult issue regarding the demand response programs has been the reference in Act 129 to the "100 hours of highest demand." 66 Pa.C.S. §2806.1(d)(1). The OCA submits that the Commission should address the practical problems arising from this provision to ensure that the most cost-effective demand response programs can be developed in Phase II. Of particular concern has been the issue of "predicting" the top 100 hours for compliance purposes. There is no way to know with any certainty what the top 100 hours will be in any given compliance period until after the summer is over. But, the EDC must

[3] It is also critical that demand response programs be properly evaluated for cost-effectiveness as these programs often have considerable up-front costs. In this evaluation, the benefits over the life of the program measure should be captured in determining cost-effectiveness. It would not be appropriate in this regard to evaluate the cost of a multi-year measure against the benefit of a single summer season.

show reductions in these unknown top 100 hours. This leads to a need for EDCs to "over comply" to attempt to ensure that the top 100 hours requirement is met. This need to over comply has cost consequences which may reduce the comparative benefits of a more properly designed demand response program.

If one recognizes that the goal of the top 100 hours requirement in the statute was to reduce load and, correspondingly, to reduce price, then measuring demand response in the top 100 hours may not be the optimal method to achieve this goal. The cost that can be avoided by demand response is a function of the load level, the available capacity resources and available transmission. Abnormally high temperatures and extreme weather can increase expected load (outside the highest 100 hours), as can higher levels of industrial activity. Power plant outages during near peak conditions (outside the highest 100 hours) may cause higher marginal production costs during non-peak periods. Similarly, the outage of transmission or distribution lines (due to storms, accidents or component failure) can increase local or regional costs by making lower cost supplies unavailable. In each of these examples, the cost of power and capacity could be higher than was anticipated during the top 100 hours targeted by the EDC.

The OCA submits that by exercising demand response programs during the hours of highest value, rather than a specified 100 hours, the cost effectiveness of the demand response programs could be enhanced. The OCA recommends that the Commission direct the EDCs to implement demand response to maximize the benefits of that demand response to consumers. Several states, including California, Colorado, Delaware, Illinois, Maryland and Ohio, require the implementation of demand response programs using this type of approach and some of these states can be looked to for guidance.[4]

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[4] For example, as noted below, in Consolidated Edison Company's program in New York, demand response is called when the day-ahead load forecasts reaches a specified level.

The Secretarial Letter recognizes that a new approach may be needed to demand response programs. With regard to the options that the Commission identified in its Secretarial Letter, the OCA would support an option that was not specifically included, but which is a variant of the Commission's options. The OCA's proposal would be first, to continue the existing demand response programs until the evaluation of the 2012 demand response programs is completed. Then, new targets can be set and new programs can be implemented. The OCA submits that demand response can continue to be cost effective and appropriate, but the actual evaluation of Phase I demand response will help to set the correct levels on a going-forward basis. Also, by temporarily extending the existing programs, the Commission would avoid the inefficiency, cost, and customer confusion of starting and stopping demand response programs. If the evaluation information is not available prior to the EDCs filing their Phase II EE&C Plans, the OCA recommends the demand response budgets and targets be continued at the existing 2012 levels. When the evaluation information becomes available, the OCA recommends that the Phase II EE&C Plan be amended to reflect the findings of the evaluation. If those findings suggest that the demand response programs should be changed, that new targets should be set, or that funding levels should be adjusted, then the Phase II programs can be revised accordingly.

With respect to the implementation of demand response programs on a going forward basis, the OCA submits that some modifications may be warranted. As mentioned earlier, there are several approaches used in other states that should be reviewed. For example, in Maryland, reductions are ramped up over time and made in per capita peak energy demand (measured in kW), while in California, reductions vary by utility based on a fixed percentage of the savings goals. The lessons learned in other states can be applied in Pennsylvania to develop an alternative approach. For example, the Commission could examine the top 100 hours from a prior historic period to determine how many megawatts of demand reduction capability an EDC should have available to it. As for calling the demand response and for compliance purposes, the Commission could use triggers—such as price or load—to determine when some or all of the demand response resources should be called. This will help to maximize the benefits of the demand response measures. An approach similar to this is used in New York by Consolidated Edison Company (Con Ed). In Con Ed in New York, the demand response is called when the day-ahead forecast is 96% or greater of forecasted summer system peak. Similarly, price could be used to trigger the demand response. In this way, adequate levels of demand response would be available to the EDC, the goal of impacting price and load could be achieved, but the difficulties of "predicting" the top 100 hours would be eliminated.

The OCA strongly supports continued inclusion of demand response programs in the Phase II Plans and requests that the Commission require EDCs to continue developing and implementing these programs.

### D. Aligning EDC Targets and Funding Using Dollars per MWh of Expected Reductions

The OCA agrees with the Commission's goal of setting each EDC's reduction targets to be consistent with and correlated to the amount of available funding for that EDC. Cost-effective energy efficiency programs should be implemented to the largest degree possible in order to maximize the benefits for consumers. To the extent that the General Assembly specified the maximum amount of funding available to develop and implement the EE&C programs, that factor should weigh into determining the EE&C targets. Smaller EDCs, those with lower rates in the base year, or those that had higher customer switching levels in the 2006 base year, have fewer total dollars available to support EE&C programs. These EDCs will likely face greater challenges in achieving statewide uniform savings targets, as was seen in the Phase I program development.

The Commission identified two options to alleviate this problem: 1) setting a uniform percentage reduction target for all EDCs and varying the funding level of each EDC to achieve the reduction target or 2) setting individual EDC reduction targets to fully utilize the EDC's available budget based on a $/kWh saved approach. While the OCA has some reservations (discussed below) about the $/kWh saved approach, the OCA recommends that the Commission pursue an approach that utilizes the full EE&C funding allowed by the statute.

The option of setting a uniform statewide reduction percentage and then adjusting each EDC's funding level may not be the optimal approach. To implement this approach, the reduction target would have to be tied to the lowest funding dollars available. EDCs having lower costs of conserved energy (i.e., the larger EDCs with greater economies of scale) would not fully utilize their available budgets, while the EDC with the highest cost of conserved energy would be the only one to use the full 2% funding amount. In effect, setting a uniform reduction percentage would reduce the effective revenue caps to less than the statutory 2% for all but the highest cost EDC. This approach could leave cost-effective energy efficiency opportunities untapped.

While the OCA supports an approach that aligns the individual EDC targets with the available budget under the statute, care must be taken in using an approach that sets this target using a uniform $/kWh saved calculation. Equalizing the dollars per kWh of reduction across the Commonwealth may not properly capture the work that some EDCs have done to maximize achievement of savings in Phase I, may not reflect the "carve outs" set forth in the statute, and could lead to cherry picking.

The OCA recommends that the Commission set reduction targets to fully utilize each EDC's available budget. The Commission may need to await the results of the Market Potential Study for each EDC to better determine the appropriate level of savings.

E. Inclusion of a Reduction Target Carve-Out for the Government, Educational and Non-Profit Sector

The OCA supports continuing the government, educational and non-profit sector carve-out. These sectors are unique and the customer base is generally considered by energy efficiency providers to be hard-to-reach. The organizational structure and decision making processes of these entities typically requires additional lead times and extensive internal coordination to select, acquire and ultimately install energy efficiency improvements. Further, buildings occupied by these customers are often older and less efficient and are expected to be in use for a long period of time. For example, prisons, university facilities, police and fire stations and government buildings are all typically long-lived buildings. In addition to their long-lived nature, a lot is expected from these facilities. It is common for many of these building to be in use twenty four hours a day, seven days a week and to be in service for many years. As a result, the operational characteristics of buildings in this market segment are not necessarily consistent with standard business/commercial operations. Further, this sector presents serious challenges as a result of the longer-lead time to effectuate energy efficiency improvement decisions and secure funding.

This customer segment, however, presents an opportunity to apply energy efficiency technologies to buildings that run long hours and experience heavy use. This means energy efficiency equipment such as lighting and HVAC improvements will typically save more energy in a shorter period of time resulting in quicker paybacks than would be seen in similar buildings operating with typical business schedules. Lost savings opportunity would be experienced if only the standard commercial energy efficiency programs were available to these customers. Therefore, the standard commercial and business programs should not be the only approach relied upon to promote energy efficiency to these customers.

Another important element of energy efficiency programs is marketing, promotion, customer awareness, and consumer education. Buildings occupied by educational, governmental and non-profit customers have good potential for use as demonstration sites to acquaint the public with new lighting, heating, ventilation, air conditioning and other energy efficiency technology and applications. Educational facilities are particularly well suited because the energy efficiency projects and installations at their demonstration site may also be integrated into their existing curriculum and classes as part of the learning experience. It is for these reasons that the OCA believes the government, educational and non-profit sector carve out must remain.

The OCA also requests that the Commission specifically consider non-profit, master-metered multifamily housing as part of this sector. Energy efficiency upgrades in multifamily rental housing are a cost-effective means to reduce energy consumption, maintain housing affordability, and create healthier, more comfortable living environments for moderate- and low-income families. These properties, particularly those that are master-metered under a commercial account, can present challenges for program design and delivery. In these properties, as the owners pay the utility bill, energy efficiency improvements will lower operating costs and thereby reduce the need for owners to raise rents. Allowing the savings from programs for non-profit, master-metered, multi-family housing units to be included in this sector should help to direct some much needed attention to this sector.

The Secretarial Letter identifies several options regarding methods to derive savings targets if the Commission decides to continue with a carve-out requirement for the educational, government and non-profit customer segments. The first option bases saving targets on the percentage of overall program savings for energy and peak reductions, *i.e.* the method used in Phase I. In the second option, each EDC would have a minimum budget amount that must be spent on measures purchased or installed for this sector. The third option derives target energy and capacity savings from the Market Potential Study that is to be completed by the Statewide Evaluator in 2012.

Theoretically, the third option would be the optimal approach if sufficient data is available from the Market Potential Study. It is the OCA's understanding, however, that it is often difficult to obtain sufficient detailed and disaggregated consumption and end use information on overall energy and peak demand use by governmental, educational and non-profit customers. The OCA is aware that in other states it has been difficult, for example, to acquire and track the energy bill for the entire state government. This is due in part to ownership and management of government-used properties. While some properties used by the government are owned by the government, others may be leased. If energy consumption data is not available for all of the government related properties, it would be difficult to quantify the magnitude of energy efficiency and peak reduction potential for buildings in this sector.

A key question will be whether or not the Statewide Evaluator has been able to acquire historic consumption information as well as develop comprehensive, reliable and reasonable estimates of energy and peak reduction potential for this sector. In order to do that, the SWE will need to have access to current, comprehensive baselines studies for the existing properties covered in the statewide energy assessment. If this information becomes available in

2012, the OCA recommends utilizing the information to establish savings estimates for the carve-out for these customer segments. If this information is unavailable or not sufficiently detailed, then OCA would recommend the continued use of the current 10% savings target which is now in place (*i.e.,* the first option).

F. Inclusion of a Low-Income Sector Carve-Out

The OCA submits that the Low-Income Sector carve-out must continue. Low-income customers face some of the same challenges with respect to energy efficiency programs as those in the government and non-profit sector, especially regarding financial constraints and limitations on implementation due to rental status. The low-income carve out must be tailored to meet the unique needs of the customers in this sector as well as to reach the most low-income customers. In addition to the current approach, the Commission lists additional options to address the carve out: structure the carve-out as a percentage of the overall EE&C Plan budget (labeled the second option), or structure the carve-out to be a percentage of energy savings (labeled the third option). The OCA supports the third option where the carve-out would be based on a percentage of energy savings to be achieved from this sector. The OCA submits that, in addition to resulting in the largest amount of participation, the third option is the best way to ensure that the needs of low income customers are addressed.

The OCA recognizes that in Phase I, the Commission did not adopt an interpretation of Act 129 that would require that a specific percent of the total savings be achieved from programs directed to the low income customer sector. It has been the OCA's view, however, that the General Assembly sought to establish a set aside for low income customers through Section 2806.1(b)(1)(i)(G) to ensure that low income customers receive a significant share of the benefits that energy efficiency can bring to all customers. The OCA submits that the most effective way to address low income customer needs is to require each EDC to ensure that a specific minimum percentage of the overall savings to be achieved from the Plan is realized through programs directed to the low income customer segment. This approach would parallel the set aside approach for the government/non-profit sector. *See*, 66 Pa.C.S § 2806.1(b)(1)(i)(B).

The language of Act 129 appears to contemplate that a requirement established through a proportion of usage could be utilized. The OCA respectfully submits that this approach should again be considered as a means of establishing the minimum percentage savings target.[5] Another approach would be to consider a specific percentage of savings after a review of the Market Potential Study. The Study may help to identify the specific needs of the sector.

The Commission has also questioned whether this sector should include customers with incomes up to 250% of the Federal Poverty Level. Extending the income level to 250% of the Federal Poverty level may have some benefits, particularly in reaching senior citizens and the disabled. The OCA submits, though, that it may be better if customers with incomes between 150% and 250% of the Federal Poverty Level are targeted with separate programs. The needs of this group of customers may be slightly different than those in the lower income levels. More targeted programs to the specific needs of this customer segment may be a more beneficial approach.

For these reasons, the OCA submits that the Low-Income carve out should remain as part of any Phase II EE&C Plans and that the set aside should be based on a percentage of the total savings goal. The OCA also recommends that in the program design for Phase II, the EDCs

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[5] The Act 129 Low Income Working Group did significant work on this issue as the Phase I programs were being implemented.

be required to pay specific attention to the needs and challenges of customers with incomes between 150% and 250% of FPL.

G. Transition Issues

The Commission requested Comments on three distinct issues relating to the transition from the end of the Phase I Plans into the beginning of the Phase II Plans. The issues are as follows: 1) whether an EDC that achieves more than its 3% reduction goal should receive "credit" toward the goals for Phase II; 2) whether an EDC that has met its Phase I goals without spending the entirety of its budget should continue its Phase I programs until the funds are exhausted; and 3) how the Commission should "operationalize" the Act 129 requirements that it adopt additional incremental reductions in consumption. The OCA will address each of these issues below.

Transition Issue 1

The first transition issue is whether the Commission should give consideration in Phase II for an EDC that exceeds its Phase I energy efficiency targets. The OCA submits that if an EDC exceeds its target of 3%, that EDC should be permitted to take credit for the incremental savings beyond the required minimum target level. The EDC should be allowed to "bank" the savings to apply to the energy savings targets established in Phase II. Managing an energy efficiency program can be a difficult task and is not an exact science as customers must voluntarily participate and often provide funds of their own. Also, implementation problems do arise from time to time with particular products, contractors, trade allies, etc. A utility that is implementing an Act 129 energy efficiency program in good faith should not be penalized for overachievement. The incremental savings in excess of the mandatory energy savings target should be credited to the EDC and allowed to be applied in a future program period. This positive performance above the target should be banked for application to the Commission's energy saving target goals that are independently derived for the Phase II period.

If an EDC accomplishes savings in excess of its Phase I savings target, the OCA does not, however, believe that the subsequent program budget should be adjusted in a downward manner to back out future program expenditures. There are many program developments that can impact the budget and make it more difficult for EDCs to meet their future savings targets. If the available Phase II budget is reduced, crucial resources that may be needed to accomplish the program savings targets in a future period may be eliminated. Budget and program flexibility is very important to the success of Act 129 programs. For that reason, the OCA would oppose the reduction of a future energy efficiency program budget based on an accomplishment of additional energy savings in excess of the savings targets from a prior phase.

Transition Issue 2

The second transition issue is whether an EDC that has met its Phase I goals without spending the entirety of its budget should continue Phase I programs until the funds are exhausted. The OCA submits that the EDC should continue the operation of the energy efficiency programs, including budget expenditures, to ensure that the Plan does not "go dark." If customers, retailers, contractors and trade allies are all motivated to participate in these programs and the programs are experiencing forward momentum, an abrupt disruption of these services would be counter-productive. Typically a significant amount of funding and effort is invested in the start-up phase and the initial development of energy efficiency programs. Once customers and trade allies become aware of these programs and are comfortable and willing to invest their own funds and participate in the programs, it is very important to maintain the continuity of the programs and services. If the programs are shut down abruptly, customers may well become irritated and disinterested in participating in that program, or a similar future program, for fear of a repeat experience. In such a case, money would have been wasted and program momentum lost.

The OCA submits that energy efficiency programs are proven, viable long-term energy resources. The benefits of the upfront costs of developing brochures, marketing materials websites and ads to build program awareness, as well as the good relationships with trade allies and contracts with implementation contractors are put in jeopardy by abrupt program termination or suspension. It would not be in the public interest to stop these programs based on a minor deviation between the projected and actual energy savings and the estimated budget. These programs have many moving parts and rely wholly on a non-coercive approach to gain the voluntary participation by customers. The savings targets and program budgets are an inexact science as they are all based on projections and assumptions regarding voluntary customer participation. Minimizing customer hassle, disruption, and uncertainty is crucial in accomplishing robust customer participation, energy savings and overall program success. Therefore, the OCA recommends that spending on the Phase I continue so long as the Plans have a Total Resource Cost Test ratio above 1.

Transition Issue 3

The third transition issue concerns the appropriate baseline for future energy efficiency reductions. Phase I energy efficiency reductions were measured against the forecast of expected loads during the June 1, 2009 through May 31, 2010 baseline period. In the OCA's view, the advantage of retaining the 2009-2010 baseline for Phase II is that all of the percentage reductions are cumulative, so the amount of energy saved (or targeted to be saved) can be calculated simply by multiplying the fixed 2009-2010 base by the percentage. The OCA believes, however, that the advantage of cumulative percentages is, at this time, outweighed by the staleness of the 2009-2010 baseline.

The OCA would note that the 2009-2010 baseline forecast may have declining relevance if economic growth changes, industries come (or go), and/or technologies change (both the technologies that define the end uses of energy as well as those that define savings potential). As such, the OCA recommends that the Commission update the baseline for each subsequent phase of Act 129 EE&C Plans. Updating the baseline will allow for the incorporation of updated load forecasts, meaning that it would reflect the latest information on the drivers of load, such as industry mix, economic activity, population and technologies. This gives a more accurate and relevant assessment of the end uses upon which the energy efficiency programs in subsequent phases will operate. This information is needed to update the assessment of technical, economic and achievable potential, which would be part of the SWE studies (like the one expected in May 2012).

H. Other Act 129 Program Design Issues

In this Section, the Commission seeks comments on any adjustments to the reconciliation requirements of EE&C Phase II programs. The OCA will Comment on the application of interest to over- or under-recoveries. As Plans were being developed in Phase I, the OCA supported a levelized approach to collection of the budget and reconciliation. Specifically, the OCA recommended that the budget be spread evenly over the duration of the Plan with no interest charged on any over- or under-collections. This approach helped to address the large up-front costs of implementing the various programs as well as the time it would take for the programs to "ramp-up." While these implementation issues are largely behind us, it remains difficult to predict participation and thereby expenditures for these programs, particularly in difficult economic times. At this time, the OCA would not object to a continuation of the methodology established for Phase I.

## III. CONCLUSION

The OCA appreciates the opportunity to provide its Comments on these important issues. The OCA submits that is critically important that on-going energy efficiency and demand response programs remain active as the Commission, EDCs and stakeholders work toward the implementation of Phase II, and that the stakeholders and EDCs have sufficient time to design and implement appropriate Phase II programs and Plans.

Respectfully Submitted,

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