

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Act 129 Energy Efficiency and Conservation Program, Phase Two	: : : :	M-2012-2289411
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**COMMENTS OF EXELON ENERGY AND
CONSTELLATION NEWENERGY, INC.**

In this proceeding, the Pennsylvania Public Utility Commission (“Commission”) has begun the process of evaluating the cost-effectiveness of the Energy Efficiency & Conservation (“EE&C”) Programs for the Commonwealth’s largest electric distribution companies (“EDCs”), as required by Act 129¹, and determining whether additional incremental consumption and peak demand reduction targets will be adopted and, if so, what those incremental reduction targets shall be. Exelon Energy and Constellation NewEnergy, Inc. (“CNE”) (collectively, “Exelon”), by their undersigned counsel, hereby file these Comments on the Commission’s Secretarial Letter² issued in the above-referenced proceeding on March 1, 2012 and published in the Pennsylvania Bulletin on March 17, 2012.

I. INTRODUCTION & DESCRIPTION OF EXELON

In the event that the Commission or its Staff prepares a service list for this proceeding or otherwise requires additional information regarding the positions presented herein, Exelon identifies the following individuals:

¹ Act of Oct. 15, 2008, P.L. 1592, No. 129, codified under 66 Pa.C.S. §§ 2806.1 (2012).

² Secretarial Letter, Issued on March 1, 2012 in Docket No. M-2012-2289411 (“Secretarial Letter”).

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Exelon’s attorney is authorized to accept service on behalf of Exelon in this proceeding. Exelon requests that the Commission and all parties of record serve copies of all documents issued on both Exelon and its attorney. Particularly, Exelon respectfully requests that service (both electronic and paper) be made to its counsel of record, Divesh Gupta, while only electronic service be made to David I. Fein and Stephen Bennett.

Exelon Energy and CNE are indirect, wholly-owned subsidiaries of Exelon Corporation (“Exelon Corp.”), a holding company, headquartered at 10 South Dearborn Street, Chicago, Illinois, with operations and business activities in 47 states, the District of Columbia and Canada. Exelon Corp. owns Commonwealth Edison Company (“ComEd”), Baltimore Gas and

Electric Company (“BGE”) and PECO Energy Company (“PECO”). Together ComEd, BGE and PECO own electric transmission and electric and gas distribution systems that deliver electricity to approximately 6.6 million customers in central Maryland (BGE), Northern Illinois (ComEd) and southeastern Pennsylvania (PECO).

Exelon Energy is a competitive subsidiary of Exelon, licensed to provide retail service to electricity customers in Illinois, Pennsylvania, Michigan, and Ohio and to provide retail service to natural gas customers in Michigan, Ohio, and Pennsylvania. Currently, Exelon Energy has approximately 17,000 electricity accounts in Illinois and Pennsylvania and approximately 11,000 natural gas accounts in Ohio, Illinois, Michigan, Kentucky, and Pennsylvania.³ CNE is authorized to provide electricity and energy-related services to retail customers in Pennsylvania and thirteen other states, the District of Columbia and two Canadian provinces. CNE is an active participant in PJM Interconnection, L.L.C.’s (“PJM”) load response markets, bidding into those markets with customers’ capabilities to curtail load.

II. BACKGROUND

On October 15, 2008, House Bill 2200 was signed into law as Act 129 which, among other things, required EE&C programs for the Commonwealth’s largest EDCs and required the Commission to evaluate the costs and benefits of the EE&C programs by November 31, 2013. Act 129 further directed the Commission to set new incremental consumption and peak demand reductions, if the benefits of the program and plans exceed the costs.⁴ In accordance with these directives, the Commission, on March 1, 2012, issued its Secretarial Letter in which the Commission seeks “comments on a number of important topics that will be instrumental in

³ Exelon is not licensed to sell natural gas at retail in Illinois or Kentucky because such a license is not required.

⁴ 66 Pa.C.S. §§ 2806.1(c) and (d).

designing and implementing any future phase of EE&C Programs.”⁵ Exelon herein provides its general comments on Act 129 program design issues, in order to improve upon EDCs’ and the Commonwealth’s implementation of the Act’s EE&C directives.

III. COMMENTS

1. Act 129 EE&C curtailment programs should promote competition, both in their procurements for EE&C services, as well as in the marketplace for consumers’ participation in PJM load response programs.

In its October 26, 2009 order approving (with modifications) PPL Electric Utilities Corporation’s (“PPL Electric”) EE&C plan,⁶ the Commission stated that pursuant to Act 129, “any marketing by PPL [Electric should] be competitively neutral so as not to prefer the use of one [curtailment service provider (“CSP”)] over another,” and that “[n]o marketing advantage should be given to any CSP participating in the PPL [Electric] curtailment program.”⁷ These principles should apply to all EE&C plans across the Commonwealth, in order to promote both competition within procurements for EE&C services by demand response providers (“DR Providers”) as CSPs, as well as competitive opportunities for Pennsylvania customers to participate in all of PJM’s load response markets.

2. The Commission should require important improvements to EE&C programs to ensure that CSPs are not able to create an unfair marketing advantage, and hamper other demand response providers’ and consumers’ ability to participate in PJM’s load response programs independent from such CSPs.

CSPs should not be able to obtain an unfair marketing advantage, which advantage may hamper both other DR Providers ability to participate in PJM’s load response programs, as well

⁵ Secretarial Letter at p. 1.

⁶ *See Opinion and Order*, Commission Docket No. M-2009-2093216 (entered Oct. 26, 2009) (“Oct. 2009 Order”).

⁷ Oct. 2009 Order at p.84.

as the ability of customers to contribute to Act 129 targets if such customers already participate in PJM's load response programs. To explain, recall that the EE&C curtailment programs generally rely on PJM's existing economic load response ("ELR") program for measurement and identification of required curtailment time periods, essentially 'piggy-backing' on the existing PJM ELR program and taking advantage of PJM's substantial expertise and oversight. As part of this reliance, then, EDCs have had to have CSPs evidence that customers are registered in PJM's ELR program, in order to also be eligible to receive Act 129 EE&C incentives.

On the one hand, in order to meet this obligation for evidence, a CSP which has been awarded contracts by an EDC should not be able to approach another DR Provider or such DR Provider's customers directly and require that such customers be registered in the PJM ELR program *by the CSP directly, as the CSP's customer*, in order for these DR Provider's customers to take advantage of Act 129 EE&C incentives. Customers would then be in the unfortunate situation of making decisions including, but not limited to, (a) potentially defaulting on their existing contract with their existing DR Provider, (b) having to bear administrative burdens of participating in PJM's various load response programs (e.g., PJM's capacity market demand response program, as well as PJM's ELR program) through several different DR Providers, and/or (c) forgoing important economic savings that could be achieved by using only one DR Provider to participate in PJM's various load response programs.⁸ Meanwhile, this CSP's practices would clearly raise a competitive concern for the other DR Provider as these customers' existing service provider.

⁸ See, e.g., *Complaint of Viridity Energy, Inc.*, Federal Energy Regulatory Commission Docket No. ER12-54-000 (filed Mar. 29, 2012) at p.1 (the complainant explains that "[u]nder PJM's current Tariff, two end-use electricity customers who provide precisely the same capacity service to PJM at the same time and place can be compensated differently. A customer who registers with one [DR Provider] in PJM's capacity program, and uses that same [DR Provider] for energy and ancillary services, earns full compensation for the capacity service it provides to PJM. However, the same customer would lose a substantial part of that compensation simply by registering with one [DR Provider] for capacity, and a second [DR Provider] for energy and ancillary services."

On the other hand, and in stark contrast to the above approach, a CSP that is awarded contracts by an EDC can more appropriately agree to allow consumers to *remain* with their existing DR Providers (or continue to participate in PJM directly themselves), so long as consumers are able to provide evidence to the CSP that they are appropriately registered in PJM's ELR program. In this way, customers that wish to take advantage of Act 129 EE&C curtailment program incentives would not have to limit their choice of DR Providers only to the CSP that is awarded a contract by the EDC for a particular service territory; this significant aspect is particularly important for customers that have facilities in multiple EDCs' zones in the Commonwealth, and/or multiple locations throughout PJM. In addition, this alternative approach does not place other DR Providers in PJM at a marketing disadvantage to a CSP.

The Commission can ensure that consumers are afforded the broadest array of competitive choices, and that competition in PJM's load response programs is not hampered, by adopting one of two approaches. First, the Commission could require that, instead of Act 129 EE&C curtailment program payments being made from the EDCs to a CSP, and then from a CSP to customers, that EE&C curtailment program payments are structured as an additional incentive payment *directly* to a customer, for any customer that registers – either through *any* DR Provider or directly with PJM – in PJM's ELR program and abides the ELR program's requirements. This has the advantage of ensuring that customers directly receive *all* of the value of the Act 129 EE&C curtailment program payments, rather than relying on a CSP to distribute additional compensation, if any, to enroll customers in PJM's ELR program.

In the alternative, the Commission can require that all CSPs adhere to the second approach discussed above. Namely, the Commission can prohibit a CSP from demanding that customers enroll in PJM's ELR program through the CSP, and make clear that CSPs require only

that the customers show evidence that they have enrolled in PJM's ELR program, either through another DR Provider, or directly themselves.

IV. CONCLUSION

WHEREFORE, for all the foregoing reasons, Exelon Energy and Constellation NewEnergy, Inc. respectfully request that the Commission accepts their comments and consider them in its review of EDCs' Act 129 EE&C programs. The important improvements discussed herein will serve to promote competition not only in procurements for Act 129 EE&C services, but also in the marketplace for consumers' participation in PJM load response programs, more broadly.

Respectfully submitted,



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*On Behalf of Exelon Energy and
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