PENNSYLVANIA PUC PUBLIC UTILITY COMMISSION

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE
M-2008-2069887

November 26, 2008

TO ALL INTERESTED PARTIES:

Re: *Energy Efficiency and Conservation Program and EDC Plans*
Docket No. M-2008-2069887

The Pennsylvania Public Utility Commission (PUC) hereby circulates the November 26, 2008 draft staff proposal and further questions relative to the first phase of the Act 129 of 2008 implementation plan. Comments on the draft proposal and the enclosed questions are due by **December 8, 2008**,[1] in anticipation of the working group meeting being held on December 10, 2009.

The November 26, 2008 draft staff proposal reflects the stakeholder comments submitted on November 3, 2008, regarding the individual aspects of the energy efficiency and conservation (EE&C) program required under Act 129 of 2008 at Sections 2806.1(a)(1)-(11). By soliciting comments on the draft staff proposal and the further questions, the Commission continues to seek stakeholder input before finalizing the Act 129 phase one implementation plan that must be adopted by January 15, 2009.

An original and fifteen copies of any written comments referencing the docket number M-2008-2069887 shall be submitted to the Pennsylvania Public Utility Commission, Attn.: Secretary, P.O. Box 3265, Harrisburg, Pa. 17105. In addition, we ask that an electronic copy of all comments be sent to the Commission's Act 129 e-mail account at ra-Act129@state.pa.us.

Regarding the December 10, 2008 stakeholder meeting we would like to invite any interested parties or stakeholders to attend in person or by telephone. We ask that anyone planning to attend to notify the Commission at ra-Act129@state.pa.us, indicating whether you are attending in person or telephone, no later than December 8, 2008.

If there are any questions regarding the draft staff proposal or the further questions, please contact Kriss Brown, kribrown@state.pa.us, 717-787-4518, or Louise Fink Smith, finksmith@state.pa.us, 717-787-8866, in the Commission's Law Bureau. Questions regarding the working group meeting should be directed to Tom Charles, thcharles@state.pa.us, 717-787-9504

Very truly yours,

James J. McNulty
Secretary

[1] The mail box rule does not apply.

Attachment A - Further questions
Attachment B - November 26, 2008 draft staff proposal

cc: Chairman's Office
Vice Chairman's Office
Commissioners' Offices
Karen Oill Moury, Director of Operations
Robert F. Wilson, Director, Fixed Utility Services
Paul Diskin, Manager, Energy, Fixed Utility Services
Mitchell A. Miller, Director, Bureau of Consumer Services
Bohdan R. Pankiw, Chief Counsel
Robert F. Young, Deputy Chief Counsel
Kriss Brown, Assistant Counsel
Louise Fink Smith, Assistant Counsel
Wayne L. Williams, Director, Conservation, Economics, and Energy Planning
Cal Birge, Conservation, Economics, and Energy Planning
June Perry, Director, Legislative Affairs
Tom Charles, Manager, Office of Communications
Veronica Smith, Chief Administrative Law Judge
Cheryl Walker Davis, Director, Office of Special Assistants
All parties that provided comments at Docket No. M-2008-2069887
Docket No. M-00061984, *Investigation of Conservation, Energy Efficiency Activities, & DSR by Energy Utilities& Ratemaking Mechanisms to Promote Such Efforts*

ATTACHMENT A

Additional Questions Related to the Commission's Energy Efficiency and Conservation Program at Docket No. M-2008-2069887

1. **Efficiency targets/Goals:**

    a) Should the Commission use the average usage during the 100 highest peak hours during the entire reference year, or the average usage during the 100 highest summer peak hours when calculating the peak demand reduction targets for each EDC?

    b) Does Act 129 require reductions down to a fixed level, or require a fixed amount of decrease? How should this be calculated? Should the consumption reduction requirements contained in Section 2806.1(c) be treated the same as the demand reduction requirements contained in Section 2806.1(d)?

2. **Program Design:**

    a) Statewide vs. EDC specific: Should the Commission encourage, by policy, a statewide approach to some programs that are likely to be effective across Pennsylvania? For example, should rebate programs be harmonized across the state? Should specific programs, such as Energy Audits, PJM load reduction programs, Home Performance With Energy Star, and Energy Star Homes be consistently available in all EDC service territories? If so, what programs should the EDCs implement consistently across the state?

    b) Can Act 129 programs have negative impacts on existing cost effective energy efficiency and demand side programs by 3rd parties? If so, how can this Commission avoid damaging existing 3rd party efforts when socializing Act 129 energy efficiency and demand side programs through non-bypassable charges to all customers, while increasing customer participation in these services?

    c) Should the Commission seek to harmonize Act 129 programs with other Federal, State, local, RTO or other group programs? If so, what specific programs should this Commission encourage EDCs to replicate, incorporate, or leverage as part of their compliance filings? How can this best be achieved?

3. **Total Resource Test**

    a) How can the Total Resource Cost Test that must be approved by the Commission under Sections 2806.1(a)(3) and 2806.1(b)(1)(i)(I) be simplified?

b) The Act defines "Total Resource Cost Test" (TRC test) as "a standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures." Under this definition, may the Commission limit consideration of monetary costs to the costs incurred by the EDC?

c) Can the TRC test include avoided environmental costs or other avoided societal costs?

d) If the Commission limits costs considered under the TRC test to those incurred by the EDC, should the Commission exclude costs not incurred by the EDC from the test?

e) If participant costs that are not paid by the EDC are included, should these costs be reduced by tax credits or credits under the AEPS Act received by the participants?

f) What elements of the "avoided monetary cost of supplying electricity" should be included in the TRC test?

g) Should these costs be valued at the "marginal costs for the periods when there is a load reduction" as required by the draft Implementation Order? What does this mean precisely?

h) Should the methodology for calculating the Net Present Value (NPV) and B/C ratio set forth in *The California Standard Practice Manual - Economic Analysis of Demand-Side Programs and Projects* (July 2002) be used, or is there a better alternative?

i) What discount rate should be used in the calculation of NPV? How frequently should it be reevaluated? Should it be established for each EDC service territory, or for the Commonwealth as a whole?

j) Should the elements used in the calculation of an EDC's total annual revenue be the same elements used to calculate the "avoided monetary cost of supplying electricity" under the TRC test?

k) The gas industry raised some interesting points on the net impact of displacing natural gas heating equipment (space and water) with electricity heating equipment. Should the TRC test include parameters to capture the consequences of net energy gains or losses in delivering alternative fuels to consumers?

4. Evaluation, Measurement and Verification:

a) Should the Commission use a statewide, independent evaluator hired by the Commission to review EDC compliance with Act 129, pursuant to 2806.1(b)(1)(i)(J)? What would be the advantages and disadvantages of consolidating this review process?

b) What programs lend themselves to a "deemed savings" approach, and what programs require more rigorous pre- and post-verification processes? How often should savings estimates be reviewed and how?

c) The Commission has a revised draft update to the 2005 Technical Reference Manual (TRM) that provides energy savings calculations for standard measures. The draft update is ready to be reviewed by interested parties. Should the Commission use a Secretarial Letter process to seek comments on this and subsequent updates to the TRM in the future? What timetable would be optimal for periodically updating the TRM?

d) In addition to the TRM for standard measures, should the Commission adopt a standard measure and evaluation protocol for determining the energy savings from the installation or adoption of non-standard or custom measures not addressed in the TRM? If so, what protocols should be adopted? Comments to date have included the following protocols: 1) International Performance and Measurement Verification Protocol; 2) ISO New England Protocol; and 3) DOE Energy Star Portfolio Manager.

e) Bow might the Commission simplify and streamline the monitoring and verification of data so as to maximize resources for program measures but enable a thorough evaluation of program results consistent with Act 129 requirements?

f) Should the Commission adopt standard data collection formats and data bases for the evaluation of program benefits and results that would be used across all EDC service territories?

5. Revenue Requirement:

a) The Act defines "Electric Distribution Company Total Annual Revenue" as amounts paid to the EDC for "generation, transmission, distribution and surcharges" by retail customers. What "surcharges" should be included in the calculation of an EDC's total annual revenue?

6. Cost Recovery Issues:

a) Can one class of customers have EE&C charges in excess of 2% of class revenues, due to an abundance of cost effective opportunities relative to other customer classes, while overall EE&C charges remain below 2% of revenues for the utility as a whole?

7. CSP Issues:

a) Does the definition of "Conservation Service Provider" (CSP) in the Act prohibit an affiliated company of an EDC from serving as a CSP to an EDC other than its affiliate?

b) Are there existing barriers to CSP market development that the Commission should address in the context of Act 129? For example, what data access, meter access or other barriers should the Commission accelerate resolution of in order to enhance Act 129 goal achievement?

c) How should the Commission ensure that EDC self supplied EE&C programs are more cost effective than similar services offered by CSPs? Should this Commission require EDCs to demonstrate in their implementation filing that their self supplied program is more cost effective than similar CSP provided services?

ATTACHMENT B

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA. 17105-3265

Public Meeting held _______________

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
Robert F. Powelson
Kim Pizzingrilli
Wayne E. Gardner

Energy Efficiency and Conservation Program — Docket No. M-2008-2069887

IMPLEMENTATION ORDER

BY THE COMMISSION:

The Commission has been charged by the Pennsylvania General Assembly ("General Assembly") with establishing an energy efficiency and conservation program. The energy efficiency and conservation program requires each electric distribution company ("EDC") with at least 100,000 customers to adopt a plan to reduce energy demand and consumption within its service territory. 66 Pa. C.S. § 2806.1. In order to fulfill this obligation, the Commission has commenced a stakeholder process with interested parties invited to address relevant issues. This Implementation Order will establish the standards each plan must meet and provide guidance on the procedures to be followed for submittal, review and approval of the EDC plans.

BACKGROUND AND HISTORY OF THIS PROCEEDING

Governor Edward Rendell signed Act 129 of 2008 ("the Act") into law on October 15, 2008. The Act took effect 30 days thereafter on November 14, 2008. Among other things, the Act created an energy efficiency and conservation program, codified in the Pennsylvania Public Utility Code at Sections 2806.1 and 2806.2, 66 Pa. C.S. §§ 2806.1 and 2806.2. This program requires an EDC with at least 100,000 customers to adopt a plan, approved by the Commission, to reduce electric consumption by at least one percent (1%) of its expected load for June 1, 2009 through May 31, 2010, adjusted for weather and extraordinary loads. This one percent (1%) reduction is to be accomplished by May 31, 2011. By May 31, 2013, the total annual weather-normalized consumption is to be reduced by a minimum of three percent (3%). Also, by May 31, 2013, peak demand is to be reduced by a minimum of four-and-a-half percent (4.5%) of the EDC's annual system peak demand in the 100 hours of highest demand, measured against the EDC's peak demand from June 1, 2007 through May 31, 2008. By November 30, 2013, the Commission is to assess the cost effectiveness of the program and set additional incremental reductions in electric consumption if the benefits of the program exceed its costs.

The Act requires the Commission to develop and adopt an Energy Efficiency and Conservation Program ("EE&C Program") by January 15, 2009, and sets out specific issues the EE&C Program must address. 66 Pa. C.S. § 2806.1(a). The Commission's EE&C Program is to include the following:

(1) A procedure for approving plans.

(2) A process to evaluate and verify the results of each plan and the program as a whole.

(3) A process to analyze the costs and benefits of each plan in accordance with a total resource cost test.

(4) A process to analyze how the program as a whole and each plan will enable the EDCs to meet or exceed the consumption reduction requirements.

(5) Standards to ensure that each plan uses a variety of measures that are applied equitably to all customer classes.

(6) A process through which recommendations can be made for the employment of additional consumption reduction measures.

(7) A procedure to require and approve the competitive bidding of all contracts with conservation service providers ("CSP").

(8) A procedure through which the Commission will review and modify, if necessary, all contracts with conservation service providers prior to execution.

(9) A procedure to ensure compliance with the requirements of Sections 2806.1(c) & (d).

(10) A requirement for the participation of conservation service providers in the implementation of all or part of a plan.

(11) A cost recovery mechanism to ensure that measures approved are financed by the customer class that directly receives the energy and conservation benefits.

On October 21, 2008, the Commission issued a Secretarial Letter seeking comments on each of the individual aspects of the EE&C Program outlined in Sections 2806.1(a)(1)-(11). 66 Pa. C.S. §§ 2806.1(a)(1)-(11). The Secretarial Letter was sent to all EDCs and the members of the DSR Working Group[1] at Docket No. M-00061984. Pursuant to an October 29, 2008 Secretarial Letter at Docket No. M-00061984, the comments were due November 3, 2008. The October 29th Secretarial Letter announced a special *en banc* hearing on alternative energy, energy conservation

[1] Demand Side Response.

and efficiency, and demand side response to be held on November 19, 2008. Presenters at this *en banc* hearing provided comments related to the EE&C Program. Comments in reply to those expressed at the November 19th *en banc* hearing were due no later than December 1, 2008.

The parties who filed comments in response to the October 21, 2008 Secretarial Letter were: The Industrial Users Groups ("IUG")[2]; Department of Environmental Protection ("DEP"); Duquesne Light Company ("Duquesne"); Office of Consumer Advocate ("OCA"); Office of Small Business Advocate ("OSBA"); Pennsylvania Utility Law Project ("PULP"); Citizens for Pennsylvania's Future ("PennFuture"); PECO Energy Company ("PECO"); PPL Electric Utilities Corporation ("PPL"); West Penn Power Company, d/b/a Allegheny Power ("Allegheny"); Pennsylvania Gas Association ("PGA"); Metropolitan Edison Company ("Met-Ed'), Pennsylvania Electric Company ("Penelec"), and Pennsylvania Power Company ("Penn Power"), (collectively, "FirstEnergy"); UGI Utilities Inc. – Electric Division ("UGI"); Energy Association of Pennsylvania ("EAP"); Reliant Energy, Inc., ("Reliant"); Retail Energy Supply Association ("RESA"); Augusta Systems, Inc. ("Augusta"); ClearChoice Energy ("ClearChoice"); Comverge, Inc. ("Comverge"); EnergyConnect, Inc. ("EnergyConnect"); Elster Integrated Solution ("Elster"); The E Cubed Company, LLC ("E Cubed"); eMeter Strategic Consulting ("eMeter"); Keystone Energy Efficiency Alliance ("KEEA"); The Reinvestment Fund ("TRF"); and Sensus Metering Systems ("Sensus").

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[2] Industrial Energy Consumers of PA, Duquesne Industrial Intervenors, Met-Ed Industrial Users Group. Penelec Industrial Customer Alliance, Penn Power Users Group, Philadelphia Area Industrial energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors.

The parties that participated at the November 19, 2008 *en banc* hearing were: Rep. Camille Bud George (D-Clearfield), Chairman, House Environmental Resources & Energy Committee; Acting Secretary John Hanger, DEP; Frank Jiruska, Director of Energy & Marketing Services, PECO; Nancy Krajovic, Major Commercial and Industrial Accounts Manager, Duquesne; Doug Krall, Manager, Regulatory Strategy, PPL; John Paganie, Vice President of Energy Efficiency, FirstEnergy; Paul H. Raab, Principal, energytools llc; Ron Edelstein, Director of Regulatory and Government Relations, Gas Technology Institute; Ritchie Hudson, Pennsylvania Chairman, RESA; Chris Kallaher, Director, Government and Regulatory Affairs, Direct Energy; Arthur Pearson, Director of Operations, E Cubed, on behalf of Joint Supporters; Arthur Pearson, on behalf of Donald D. Gilligan, President, National Association of Energy Service Companies; Greg Thomas, President, Performance System Development, on behalf of PA Home Energy; Edward V. Johnstonbaugh, Extension Educator, Renewable Energy, Penn State University, Westmoreland County Cooperative Extension; Jay Birnbaum, Senior Vice President and General Counsel, Current Group LLC; Robert Chiste, Chairman and CEO, Comverge; Carolyn Pengidore, President/CEO, ClearChoice; Tom Rutigliano, Program Manager, Mid-Atlantic Region, CPower Inc.; Ed Gray, Vice President of Regulatory Affairs, Elster; Glenn Garland, President, CLEAResult Consulting Inc.; Jeremy Kirsch, Vice President, Client Solutions, Positive Energy Inc.; Helen E. Perrine, Executive Director, Affordable Comfort Inc.; Doug Bloom, CEO, RealWinWin Inc.; Clif Payne, Executive Vice President, CMC Energy Services; Pamela C. Polacek, Counsel, McNees Wallace & Nurick LLC, on behalf of Industrial Energy Consumers of Pennsylvania (IECPA); William Lloyd Jr., State Small Business Advocate; Sonny Popowsky, State Consumer Advocate; Scott H. DeBroff, Chair, Energy & Telecommunications Practice Group, Rhoads & Sinon, on behalf of Wal-Mart Stores; Courtney Lane, Policy Analyst, PennFuture; Roger Clark, Manager for Technology and Policy, TRF; Liz Robinson, Executive Director, Energy Coordinating Agency.

Those who provided reply comments were: ______________________

An EE&C Program stakeholder meeting was held on December 10, 2008. Those in attendance were: ____________________________

DISCUSSION

In this section the Commission will outline its EE&C Program by addressing the issues delineated in Section 2806.1(a) of the Act. This EE&C Program becomes effective with the entry of this order.

A. Plan Approval Process

The Act requires the Commission to establish procedures for approving plans submitted by EDCs. 66 Pa. C.S. § 2806.1(a)(1). The Act further dictates that by July 1, 2009, all EDCs with at least 100,000 customers must develop and file an EE&C plan with the Commission for approval. 66 Pa. C.S. §§ 2806.1(b)(1) and 2806.1(l). The Commission is to conduct a public hearing on each plan that allows for submission of recommendations by the statutory advocates and the public regarding how the plan could be improved. 66 Pa. C.S. § 2806.1(e)(1). The Commission is to rule on each plan within 120 days of submission. 66 Pa. C.S. § 2806.1(e)(2). If the Commission disapproves a plan, it must describe in detail its reasons after which the EDC has 60 days to submit a revised plan. 66 Pa. C.S. § 2806.1(e)(2). The Commission then has 60 days to rule on the revised plan. *Id.*

Below is a description of the Commission's process for receipt, review and ruling on individual EDC EE&C plans. To begin with, the Commission notes that the plan approval process being established balances the desire to provide all interested parties an opportunity to be heard with the need to complete the process within the statutory time constraints. In addition, the Commission notes that these plans are evolutionary in nature as the Act provides for modification of plans after approval. See 66 Pa. C.S. §§ 2806.1(a)(6), 2806.1(b)(2) and 2806.1(b)(3). Finally, the Commission notes that while the process outlined below establishes a formal approval process, the Commission directs all covered EDCs to offer informal discussions with the statutory advocates and interested stakeholders during the pre-filing development of the plans.

All EDCs with at least 100,000 customers are required to file their plans by July 1, 2009.[3] The plans are to be served on OCA, OSBA and the Commission's Office of Trial Staff (OTS).

Each EDC filing must contain the following:

1. A detailed plan addressing each of the requirements in 66 Pa. C.S. § 2806.1(b)(1)(i).[4]

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[3] This list only includes those EDCs with at least 100,000 customers that must comply with Act 129. See 66 Pa. C.S. § 2806.1(l). The Commission will not accept voluntary plans proposed by other EDCs at this time due to the compressed time constraints of the approval process.

[4] In addition to meeting the requirements laid out in 66 Pa. C.S. §§ 2806.1(a), 2806.1(c) & 2806.1(d), and this Implementation Order, the plans must include the following:

a) Specific proposals to implement EE&C measures to at least achieve the required consumption reductions.

b) Specific proposals to obtain 10% of required consumption reductions from units of federal, state and local governments, to include municipalities, school districts, institutions of higher education and nonprofit entities.

c) An explanation of how quality assurance and performance will be measured, verified and evaluated.

d) A statement delineating the manner in which the plan will achieve the requirements of the program under 66 Pa. C.S. §§ 2806.1(a), 2806.1(c) & 2806.1(d).

e) Contract(s) with one or more CSPs selected by competitive bid to implement all or part of the plan as approved by the Commission.

f) Estimates of the cost of implementing the EE&C measures.

g) Specific measures for households at or below 150% of the federal poverty income guidelines, the number of which shall be proportionate to those households' share of the total energy usage in the service territory.

2. Sufficient supporting documentation and verified statements or testimony or both.
3. Approved contract(s) with one or more CSPs and a description of the competitive budding process used to select the CSPs.[5]
4. Description of the work and measures being performed by CSPs and by the EDC along with a justification for the allocation.
5. A budget showing total planned expenditures by program and customer class.
6. Tariffs and a Section 1307 cost recovery mechanism.
7. A forecast load for the period of June 1, 2009 through May 31, 2010.
8. A weather adjustment calculation that meets the requirements outlined in Section H of this Implementation Order.
9. An average of the 100 highest peak hours during the period of June 1, 2007 through May 31, 2008.
10. A description of the EDC's method for monitoring and verifying plan results.

The Commission will publish a notice of each proposed plan in the *Pennsylvania Bulletin* within 20 days of its filing. In addition, the Commission will post each proposed

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h) A proposed cost-recovery mechanism, in accordance with Section 1307, 66 Pa. C.S. § 1307, to fund the EE&C measures, to include administrative costs.
i) A demonstration that the plan is cost-effective through a total resource cost test approved by the Commission and that provides a diverse cross-section of measures for customers of all rate classes.
j) A statement delineating how an annual independent evaluation of cost-effectiveness will be accomplished, as well as a full review of the results of each five-year plan. Furthermore, to the extent practical, provide a description of how the plan will be adjusted as a result of these evaluations.
k) An analysis of the EDC's administrative costs associated with the implementation of the plan.

[5] A CSP is defined in the Act at 66 Pa. C.S. § 2806.1(m) as an "entity that provides information and technical assistance on measures to enable a person to increase energy efficiency or reduce energy consumption and that has no direct or indirect ownership, partnership or other affiliated interest with an" EDC.

plan on its website. An answer along with comments and recommendations are to be filed within 20 days of the publication of the notice in the *Pennsylvania Bulletin*. Each plan will be referred to an Administrative Law Judge ("ALJ"), who will hold a public input hearing(s) in the EDC's service territory and, if necessary, evidentiary hearings on any material issues of disputed facts. Such hearings are to be held on or before the 70th day after a plan is filed, after which, the ALJ will certify the record. The EDC will have 15 days following the last hearing to submit a revised plan or reply comments or both.

The Commission will approve or reject a plan at public meeting within 120 days of the EDC's filing. The Commission will provide a detailed rational for all rejected plans. Thereafter, the EDC will have 60 days from the entry date of the order to file a revised plan that addresses the identified deficiencies. This revised plan is to be served on OCA, OSBA and OTS, who, along with other interested parties have ten days to file comments on the revised plan, with reply comments due ten days thereafter. The Commission will approve or reject a revised plan at a public meeting within 60 days of the EDC's revised plan filing. This process will be repeated until a plan receives Commission approval.

B. Plan Effectiveness Evaluation Process

The Act requires the Commission to establish an evaluation process that monitors and verifies data collection, quality assurance and the results of each EDC plan and the program as a whole. 66 Pa. C.S. § 2806.1(a)(2). While Section 2806.1(b)(1)(i)(C) requires each EDC plan to explain how quality assurance and performance will be measured, verified and evaluated, it is apparent that Section 2806.1(a)(2) requires the Commission to monitor and verify this data. This evaluation process is to be conducted every year, as each EDC is to submit an annual report documenting the effectiveness of its plan, energy savings measurement and verification, an evaluation of the cost-effectiveness of expenditures and any other information the Commission requires. 66 Pa. C.S. § 2806.1(i)(1).

Below is a description of the Commission's evaluation process to monitor and verify data collection, quality assurance and results. Specifically, the Commission will utilize the Technical Reference Manual ("TRM") to fulfill the evaluation process requirements contained in the Act. The TRM was supported by participants and previously adopted by the Commission in the Alternative Energy Portfolio Standards Act ("AEPS") proceedings at Docket No. M-0051865 (order entered October 3, 2005). The TRM will, however, need to be updated and expanded to fulfill the requirements of the Act. As such, the Commission will expand the TRM to provide for additional energy efficient technologies, peak load reduction, conservation projects and rates/pricing designs.

The Commission also believes that a standardized format for the reporting of data is important. However, given that the EDCs will not be required to file their annual reports until 2010, we will address the annual report filing requirements in a subsequent order.

C. Cost – Benefit Analysis Approval Process

The Act requires that an analysis of the cost and benefit of each plan, in accordance with a total resource cost test ("TRC test"), be approved by the Commission. 66 Pa. C.S. § 2806.1(a)(3). The Act also requires an EDC to demonstrate that its plan is cost-effective using a total resource cost test approved by the Commission, and that it provides a diverse cross section of alternatives for customers of all rate classes. 66 Pa. C.S. § 2806.1(b)(1)(i)(I). The Act defines "total resource cost test" as "a standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures." 66 Pa. C.S. § 2806.1(m).

The Commission directs that EDCs shall evaluate the cost effectiveness of each of their energy efficiency or demand reduction programs using the TRC test, which represents the combination of the effects of a program on both participating and non-participating customers. The benefits calculated in the TRC test are the avoided supply costs, which shall include the reduction in transmission, distribution, generation and capacity costs valued at marginal cost for the periods when there is a load reduction. The avoided supply costs should be calculated using net program savings, savings net of changes in energy use that would have happened in the absence of the program. The persistence of savings over time must also be considered in the net savings.

The costs calculated in this test are the program costs paid by the utility and the participants, plus the increase in supply costs for the periods in which load is increased. Thus, all equipment, installation, operation and maintenance costs, cost of removal (less salvage value), and administrative costs, regardless of who pays for them, are included. Any tax credits should be considered a reduction to costs. The Commission is soliciting comments on what additional costs and benefits should be included in the TRC.

The results of the TRC test can be expressed as either a net present value ("NPV") or a benefit-cost ratio ("B/C ratio"). The NPV is the discounted value of the net benefits of this test over a specified period of time. The NPV is a measure of the change in the total resource costs due to the program. An NPV above zero indicates that the program is a less expensive resource than the supply option upon which the marginal costs are based. The B/C ratio is the ratio of the discounted total benefits of the program to the discounted total costs over some specific time period. The B/C gives an indication of the rate of return of this program to the utility and its ratepayers. A B/C ratio above one indicates that the program is beneficial to the utility and its ratepayers on a total resource cost basis. The methodology to calculate either the NPV or B/C ratio of the TRC is found in *The California Standard Practice Manual – Economic Analysis of Demand-Side Programs and Projects*, July, 2002, page 18.[6] The Commission is adopting this California Standard Practice Manual and will modify it as necessary to meet this Commonwealth's particular needs.

A discount rate must be established to calculate the net present value. The Commission is soliciting comments on what the discount rate should be. Specifically, the Commission would like comments related to what the rate should be based on, how frequently it should be re-evaluated, and whether it should be established for each EDC service territory or for the Commonwealth as a whole.

D. Process to Analyze How the Program and Each Plan will Enable EDCs to Meet Reduction Requirements

The Act requires the Commission to conduct an analysis of how the program, as a whole, and how the EDC's individual plan, in particular, will enable an EDC to meet or exceed the required consumption (66 Pa. C.S. § 28061(c)) and peak demand reductions (66 12a. C.S. § 2806.1(d)). 66 Pa. C.S. § 2806.1(a)(4). Each EDC plan must include specific proposals to implement measures to achieve or exceed the required reductions. 66 Pa. C.S. § 2806.1(b)(1)(i)(A). Each plan must also state the manner in which it will achieve or exceed the required consumption reductions. 66 Pa. C.S. § 2806.1(b)(1)(i)(D). Specifically, the Commission will conduct the evaluations using a savings approach reduction approach.

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[6] This manual can be found at http://www.clarkstrategicpartners.net/files/calif_standard_practice_manual.pdf.

Consumption is addressed at 66 Pa. C.S. § 2806.1(c), which requires the Commission to forecast each EDC's expected load for the period June 1, 2009, through May 31, 2010. In order to make this forecast, the Commission will need input from the EDCs and other interested parties. The Commission intends to complete these forecasts by ________. As such, the EDCs are to petition the Commission and serve the statutory advocates and interested stakeholders for such a forecast at least six months prior to the Commission's forecast completion date. The EDCs must include in the pleading all relevant information upon which the Commission will base the forecast.

Thereafter, within 45 days after May 31, 2011, and after May 31, 2013, the EDCs are to file with the Commission (at the forecast petition docket, and serving the parties to that docket) information documenting their consumption for June 1, 2010, through May 31, 2011, and for June 1, 2012, through May 31, 2013, respectively. To be in compliance with the Act, an EDC's 2010-2011 consumption must be at least 1% less than the forecasted 2009-2010 load; the 2012-2013 consumption must be at least 3% lower than the forecasted 2009-2010 load.[7] To the extent that an EDC alleges the need for weather-normalization or extraordinary load adjustments, such factors are to be fully explained in the consumption filings.

On or before November 30, 2013, and every five years thereafter, the Commission shall evaluate the costs and benefits of an EDC's EE&C plan relative to annual consumption using a TRC test or cost-benefit analysis as determined by the Commission. If the Commission determines that benefits exceed the costs, the Commission will adopt new incremental consumption reduction requirements.

[7] The failure to meet these reduction mandates will subject the EDC to a civil penalty of between one million and five million dollars that cannot be recovered in rates (66 Pa. C.S. § 2806.1(e)((2)(i)), and the Commission will engage a CSP, at the EDC's expense, to achieve the mandated reductions (66 Pa. C.S. § 2806.1(e)((2)(ii)).

Peak demand is addressed at 66 Pa. C.S. § 2806.1(d), which mandates that the 100 hours of highest demand for the period from June 1, 2007, to May 31, 2008, be calculated. This amount is the 2007-2008 peak demand. To be in compliance the EDC's 100 hours of highest demand, weather normalized, for the period June 1, 2012, through May 31, 2013, must be 4.5% less than the 2007-2008 peak demand.[8] On or before November 30, 2013, the Commission shall evaluate the peak demand aspects of an EDC's EE&C plan by comparing the cost of the an EDC's EE&C plan to the retail savings in energy and capacity benefits of an EDC's EE&C plan relative to peak demand or by other means chosen by the Commission. If the Commission determines that benefits exceed the costs, the Commission will adopt new incremental requirements for reductions in peak demand for the highest 100 hours or otherwise as may determined by the Commission. The new reductions shall be achieved by May 31, 2017, as measured against the EDC's peak demand for June 1, 2011, through May 31, 2012.

There are two possible measurement interpretations for this subsection. For consumption, for example, stated as simply as possible, if an EDC's forecasted load for June 1, 2009, through May 31, 2010, is 100 MWh, by May 31, 2011, that EDC must demonstrate that its plan conserved 1MWh of electricity.

TRF comments relative to measuring the performance in terms of savings or reductions generally support a reductions approach. With the reduction method, the EDCs are responsible for implementing EE&C measures that result in future sales (consumption and peak) being less than an earlier set of sales. TRF asserts that the goal of the Act is to reduce sales, not merely to slow down the increases in retail sales. Under a savings approach, TRF claims that the EDCs could "meet" the targets even while seeing energy consumption and peak demand grow.

[8] The failure to meet this reduction mandates will subject the EDC to a civil penalty of between one million and five million dollars that cannot be recovered in rates (66 Pa. C.S. § 2806.1(e)((2)(i)), and the Commission will engage a

DEP, PECO, and PPL believe that the correct interpretation is that the EDCs must demonstrate that the plan conserved 1 MWh of electricity. The Commission agrees with PECO, PPL, and DEP that the statute targets are intended to reflect energy and demand savings, as opposed to absolute reductions in consumption.[9] The absolute reduction approach advocated by TRF would, in effect, as even TRF acknowledges, penalize an EDC for economic growth in terms on new customers and business in its service territory.[10] Accordingly, each plan will be evaluated as to whether the consumption and demand reduction goals in the Act will be achieved based on the use of a TRM and other metrics resources to measure the effect of various energy efficiency and conservation measures.

However, after-the-fact measurement and verification remain critical to ensure that an EDC has properly implemented its EE&C plan, that the projected savings metrics remain accurate, that non-controllable factors such as economic growth and weather have not skewed results, and that the savings are the result of the EE&C plan. The Commission will analyze the program as a whole and individual EDC plan effectiveness in meeting or exceed the Act's mandatory savings through the initial review process as described in Section A above. In addition, the Commission will assess the program and individual plan effectiveness during the annual report review process described in Section F below.

CSP, at the EDC's expense, to achieve the mandated reductions (66 Pa. C.S. § 2806.1(e)((2)(ii)).

[9] See PECO Comments at 6; PPL Comments at 4 at this docket; and DEP En Banc Comments at transcript page __ on November 19, 2008, at Docket M-0061984.

[10] TRF Comments at 11-12.

E. Standards to Ensure that a Variety of Measures are Applied Equitably to all Customer Classes

The Act requires the Commission to establish standards to ensure that each plan includes a variety of measures and that each plan will provide the measures equitably to all customer classes. 66 Pa. C.S. § 2806.1(a)(5).[11] The Act defines "energy efficiency and conservation measures" at 66 Pa. C.S. § 2806.1(m).

There are clear requirements in the Act regarding proportions of funding for low-income customers (within a residential customer class) as well as for governments, schools, etc. (within a commercial customer class). Beyond those requirements, we believe that EDCs should develop plans to achieve the most energy savings per expenditure. The driving principle should be the most cost effective use of resources so that benefits can accrue to all customers, even if only by virtue of more reasonable provider of last resort contracts.

We agree that "equitable" does not mean "pro rata," especially when "cost-effective" is factored into the process. EDCs must offer a well-reasoned and balanced set of measures that are tailored to usage and to the potential for savings and reductions for each customer class. We believe that the overall limitation on cost recovery and the specific limitation tying costs to benefited class (discussed in Section J, below) will ensure that offerings will not be skewed toward any particular class or away from any particular class. There is no single set of measures that will fit all EDCs and the myriad mix of customer classes. It is entirely possible that the most cost effective EE and DR programs may not come proportionally from each customer class.

[11] The program must include "standards to ensure that each plan includes a variety of energy, efficiency and conservation measures and will provide the measures equitably to all classes of customers."

Most commenters agree that all classes of customers will, however, benefit the most from a general approach because it has the best potential to impact future energy prices. Further, there is no consensus as to what denominator (per capita, usage, revenue, potential for savings, etc.) to use if one were to attempt to require a proportionate distribution.

While we do not require a proportionate distribution of measures among customer classes, we shall require that each customer class be offered at least one EE and one DR program, but we will leave the initial mix and proportion of programs to the EDCs. The burden is on an EDC to explain and justify its distribution of measures among its customer classes if such distribution is challenged.

F. Process to Make Recommendations for Additional Measures

The Act requires the Commission to establish procedures through which recommendations can be made as to additional measures that will enable an EDC to improve its plan. 66 Pa. C.S. § 2806.1(a)(6). Furthermore, the Act permits the Commission to direct an EDC to modify or terminate any part of an approved plan if, after an adequate period for implementation, the Commission determines that a measure included in the plan will not achieve the required consumption reductions in a cost-effective manner. 66 Pa. C.S. § 2806.1(b)(2).

Below is the Commission's procedure for recommending additional measures that enable an EDC to improve its plan. Initially it must be noted that interested parties will have an opportunity to make recommendations during the initial plan approval process described above in Section A of this Implementation Order.

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 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.

G. Procedures to Require Competitive Bidding and Approval of Contracts with CSPs

The Act requires the Commission to establish procedures to require EDCs to competitively bid all contracts with conservation service providers. 66 Pa. C.S. § 2806.1(a)(7). The Act further requires the Commission to establish procedures to review all proposed contracts with conservation service providers prior to execution of the contract. 66 Pa. C.S. § 2806.1(a)(8). The Act gives the Commission power to order the modification of proposed contracts to ensure that plans meet consumption reduction requirements. *Id.* The Act also requires each EDC to include in its plan a contract with one or more CSPs selected by competitive bid to implement all or part of the plan as approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(E). This section of the Act establishes that CSPs can perform some or all functions of an EE&C plan, to include management of the entire plan.[12]

Below is the Commission's procedure for reviewing and approving proposed CSP bidding process. These are the minimum criteria:

- Develop list of PUC-approved and -registered CSPs.
- Require EDCs to issue requests for proposal ("RFPs") only to CSPs approved and registered by the PUC.
- Encourage efforts to acquire bids from "disadvantaged businesses" (*i.e.*, minority-owned, women-owned, persons-with-disability-owned, small companies, companies located in Enterprise Zones, and similar entities) consistent with the Commission's Policy Statements at 52 Pa. Code §§ 69.804, 69.807 and 69.808.
- Encourage the use of pay-for-performance contracts with CSPs.
- Require acquisition of at least three bids.
- Require submission of selection criteria to PUC for review and approval, to include:
    - Designation of and weighting of factors for the selection criteria.
    - Selection of overall best bid/proposal (*i.e.*, no requirement to select the lowest qualified bid) that consider:
        - Quality of prior performance,
        - Timeliness of performance,
        - Quality of the proposed work plan or approach,
        - Knowledge, background, and experience of the personnel to be utilized, and
        - Other factors as deemed relevant.

[12] As delineated in Section A above, an EDC must provide detailed justifications for why it did or did not use a CSP to perform EE&C plan functions.

If the Commission has not commented upon or disapproved the proposed RFP process within 15 days of it being submitted to the Commission for review, then the EDC is permitted to proceed with the RFP process without modification.

Below is the Commission's procedure for reviewing and approving proposed CSP contracts prior to execution. These are the minimum criteria:

- Review for satisfactory form and content, including:
    - Nature and type of services to be provided,
    - Assurance that the CSP's work product in the EDC's plan will meet the requirement for reduction in demand and consumption,
    - Legal issues, enforceability, and protection of ratepayer funds for poor performance or non-compliance and similar issues,
    - Adequate provisions and procedures for monitoring CSP and EDC performance quality and rate of progress, and
    - Certification that the proposed CSP is not an EDC affiliate.

If the Commission has not commented upon or disapproved the proposed contract within 45 days of it being submitted to the Commission for review, then the EDC is permitted to proceed with the contract without modification.

H. Procedures to Ensure Compliance with Consumption Reduction Requirements

The Act requires the Commission to establish procedures to ensure compliance with the consumption reduction requirements of the Act. 66 Pa. C.S. § 2806.1(a)(9). The consumption reduction requirements are outlined in the Act at Sections 2806.1(c) and (d). 66 Pa. C.S. §§ 2806.1(c) and (d). Both the one percent load reduction to be met by May

31, 2011, and the three percent load reduction to be met by May 31, 2013, are to be measured against the EDC's expected load as forecasted by the Commission for June 1, 2009, through May 31, 2010, with provisions made for weather adjustments and extraordinary loads the EDC must serve. 66 Pa. C.S. § 2806.1(c)(1). The four-and-a-half percent reduction of annual system peak demand in the 100 hours of highest demand to be met by May 31, 2013, is to be measured against the EDC's peak demand for June 1, 2007, through May 31, 2008. 66 Pa. C.S. § 2806.1(d)(1). Furthermore, the Act requires that a minimum of ten percent of all consumption reduction requirements are to come from units of the federal, state and local governments, including municipalities, school districts, institutions of higher education and nonprofit entities. 66 Pa. C.S. § 2806.1(b)(1)(i)(B).

Below are the Commission's procedures for ensuring compliance with the consumption reduction requirements of the Act. There are five main issues that the Commission must address to ensure compliance with the Act's requirements. First, the Commission must establish a procedure for properly forecasting the baseline for expected EDC consumption levels from June 1, 2009 through May 31, 2010. To accomplish this, the Commission is directing each covered EDC to provide a proposed expected load forecast with its plan for Commission approval. The Commission believes this is the appropriate procedure as each EDC has the data, expertise and experience to make such projections regarding its customers and their usage patterns.

Second, the Commission must establish a procedure to determine weather adjustments to the June 1, 2009 through May 31, 2010 load figures. Again, the Commission directs each covered EDC to propose, with its plan, a weather adjustment calculation based on the EDC's most recent rate proceeding where weather was an issue. However, any such proposal shall use a 30-year norm for the weather normalization calculation, consistent with the Commission's weather normalization allowances in recent history.[13]

Third, the Commission must define what would qualify as an extraordinary load. The Commission defines an extraordinary load to include loads that result from dramatic shifts in the economy or economic development in the EDCs service territory, to include both extraordinary reductions, as well as increases. Examples of such extraordinary loads are technological innovation that increases electric demand (*e.g.*, plug-in electric hybrid cars), regulation or legislation mandating changes in the use of electricity to serve a particular load, load resulting from discontinued self-generation that the EDC is required to serve, and any other load the Commission credits as being extraordinary and beyond the EDCs control.

Fourth, the Commission must establish a procedure for determining the 100 hours of highest peak demand in an annual period. To determine this, the Commission will take a weather-normalized average of the 100 highest peak hours during the summer months of June, July, and August in 2007and compare that to a weather-normalized average of the 100 highest peak hours during the same months in 2013. The Commission believes that focusing the EE&C program efforts on the summer peak period will provide the greatest benefit and be more cost effective.

Lastly, the Commission must determine whether the term retail customer includes all customers or just those in the EDC's default service plan. The Commission defines retail customer as all customers who receive an EDC's distribution service regardless of their electric supply source. The Commission believes that it was the intent of the General Assembly that all customers contribute to the reduction of load.

[13] (Cite to recent cases.)

I. Participation of Conservation Service Providers

The Act establishes a requirement for the participation of conservation service providers in the implementation of all or part of a plan. 66 Pa. C.S. § 2806.1(a)(10). The Act requires the Commission to establish, by March 1, 2009, a registry of approved persons qualified to provide conservation services to all classes of customers, that meet experience and other qualifying criteria established by the Commission. 66 Pa. C.S. § 2806.2(a). The Act further requires the Commission to develop a conservation service provider application and permits the Commission to charge a reasonable registration fee. 66 Pa. C.S. § 2806.2(b).

The Commission initiated a separate stakeholder process to establish the qualification requirements CSPs must meet to be included in a Commission registry of CSPs under Docket Number M-2008-2074154. The Commission chose to institute a separate proceeding due to the requirement that the CSP registry is to be in place by March 1, 2009.

J. EDC Cost Recovery

The Act directs the Commission to establish a cost recovery mechanism that ensures that approved measures are financed by the customer class that receives the direct energy and conservation benefit of the measure. 66 Pa. C.S. § 2806.1(a)(11). All EDC plans must include cost estimates for implementation of all measures. 66 Pa. C.S. § 2806.1(b)(1)(i)(F). Each plan must also include a proposed cost-recovery tariff mechanism, in accordance with Section 1307 (relating to sliding scale or rates; adjustments), to fund all measures and to ensure full and current recovery of prudent and reasonable costs, including administrative costs, as approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(H). In addition, each plan must include an analysis of administrative costs. 66 Pa. C.S. § 2806.1(b)(1)(i)(K). The Act dictates that the total cost of any plan must not exceed two percent of the EDC's total annual revenue as of December 31, 2006, excluding Low-Income Usage Reduction Programs established under 52 Pa. Code § 58 (relating to residential Low Income Usage Reduction Programs). 66 Pa. C.S. § 2806.1(g). Finally, all EDCs, including those subject to generation or other rate caps, must 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 its plan. 66 Pa. C.S. § 2806.1(k).

We view the matter of cost recovery as consisting of three main issues as set forth in the relevant provisions of Act 129. These issues are:

1) Determination of allowable costs,
2) Allocation of costs to customer classes, and
3) Cost recovery tariff mechanism.

Before delineating our requirements and procedures for the review and approval of the EDCs' cost recovery mechanisms, we will first discuss the comments of the various parties in light of these three issues.

1. Determination of Allowable Costs

The Act allows an EDC to recover all prudent and reasonable costs relating to the provision or management of its EE&C plan, but limits such costs to an amount not to exceed two percent of the EDC's total annual revenue as of December 31, 2006, excluding Low-Income Usage Reduction Programs established under 52 Pa. Code § 58.

In order to determine the level of costs that an EDC will be permitted to recover in implementing its EE&C program, it will first be necessary to ascertain the amount of the EDC's total annual revenues as of December 31, 2006. Accordingly, we will require all subject EDCs to confirm this information in their EE&C plans.[14] Pursuant to the Act, total annual revenues shall be defined as "[a]mounts paid to the electric distribution company for generation, transmission, distribution and surcharges by retail customers." 66 Pa. C.S. § 2806.1(m). We will then require each EDC to include a calculation of the total amount of EE&C costs it will be permitted to recover (exclusive of expenditures on Low-Income Usage Reduction Programs established under 52 Pa. Code § 58) based on the two percent limitation as set forth in the Act. This will represent the maximum level of spending on EE&C measures that will be recoverable under the EDC's plan.

We will next require each EDC to provide a careful estimate of the costs relating to all EE&C programs and measures as set forth in its plan. Such costs will include both capital and expense items relating to all program elements, equipment and facilities, as well as an analysis of all related administrative costs. More specifically, these costs would include, but not be limited to, capital expenditures for any equipment and facilities that may be required to implement the EE&C programs, as well as depreciation, operating and maintenance expenses, a return component based on the EDC's weighted cost of capital, and taxes. Administrative costs would include, but not be limited to, costs

[14] The records on file with the Commission indicate the following total annual revenues as of December 31, 2006:

Company	2006 Total Revenue
Duquesne Light Company	$723,299,451
Metropolitan Edison Company	$1,243,344,716
PECO Energy Company	$4,371,215,020
Pennsylvania Electric Company	$1,148,737,096
Pennsylvania Power Company	$332,989,436
PPL Electric Utilities Corporation	$3,402,953,852
West Penn Power Company	$1,130,243,686

relating to plan and program development, cost-benefit analysis, measurement and verification, and reporting. The EDC must also provide ample support to demonstrate that all such costs are reasonable and prudent in light of its plan and the goals of the Act, keeping in mind that the total level of these costs must not exceed the two percent limitation as previously determined.

We agree generally with PPL that the EDC should be permitted to recover both the ongoing costs of its plan, as well as costs incurred to design, create, and obtain Commission approval of the plan. However, all costs submitted for recovery in an EDC's plan will be subject to review by the Commission to determine whether the costs are prudent and reasonable, and are directly related to the development and implementation of the plan. Furthermore, we do not agree with PECO and Duquesne that EE&C measures and associated costs that are approved by the Commission should not be subject to after-the-fact scrutiny. In this regard, we note that the Act provides that:

> The Commission shall direct an [EDC] to modify or terminate any part of a plan approved under this section if, after an adequate period for implementation, the Commission determines that an energy efficiency or conservation measure included in the plan will not achieve the required reductions in consumption in a cost-effective manner under [66 Pa. C.S. §§ 2806.1(c) & (d)].

66 Pa. C.S. § 2806.1(b)(2). Thus, plan measures and their associated costs that may be tentatively approved, will, in fact, be subject to ongoing review and possible modification or termination if it is determined that such measures are not or have not been cost effective.

With regard to the two percent limitation provision of the Act, we agree with PPL that this limitation should be interpreted as an annual amount, rather than an amount for the full five-year period. Since the limitation is computed based on annual revenues as of

December 31, 2006, we believe it is reasonable to require that the resulting allowable cost figure be applied on an annual basis as well.

As to Duquesne's concern regarding the application of the two percent spending limitation to an EDC with customers on its system that have substantial load being served by EGSs, we recognize that such an EDC may be unfairly restricted in the amount of costs it is permitted to recover if it cannot consider the generation revenues of those customers in the application of the two percent limitation. However, the language of Act 129 specifically limits the total cost of a plan to two percent (2%) of the EDC's total annual revenue. See 66 Pa. C.S. § 2806.1(g). EDC total annual revenue is further defined in Act 129 as "[a]mounts paid *to* the [EDC] for generation, transmission, distribution and surcharges by retail customers." 66 Pa. C.S. § 2806.1(m) (emphasis added). While the Commission recognizes Duquesne's concern, the Commission must follow the language of the Act.

Finally, with respect to the recovery of revenues lost due to reduced energy consumption or changes in demand, we note that the Act clearly states that such revenue losses shall not be a recoverable cost under a reconcilable automatic adjustment clause. 66 Pa. C.S. § 2806.1(k)(2). The Act does provide, however, that "[d]ecreased revenue and reduced energy consumption may be reflected in revenue and sales data used to calculate rates in a distribution-base rate proceeding filed by an electric distribution company under [66 Pa. C.S. § 1308] (relating to voluntary changes in rates)." 66 Pa. C.S. § 2806.1(k)(3).

2. Allocation of Costs to Customer Classes

The Act requires that all approved EE&C measures be financed by the customer class that receives the direct energy and conservation benefit of such measures. Several of the parties filed comments addressing the issue of how to allocate the total allowable EE&C costs in order to ensure that this provision is met.

In order to ensure that all approved EE&C measures are financed by the customer classes that receive the benefit of such measures, it will be necessary to first assign the costs relating to each measure to those classes to whom it is targeted. Therefore, once the EDC has developed an estimate of its total EE&C costs as directed above, we will require it to allocate those costs to each of its customer classes that will benefit from the measures to which the costs relate. Those costs that can be clearly demonstrated to relate exclusively to measures that have been dedicated to a specific customer class should be assigned solely to that class. Those costs that relate to measures that are applicable to more than one class, or that can be shown to provide system-wide benefits, must be allocated using generally acceptable cost of service principles as are commonly utilized in base rate proceedings. Administrative costs should also be allocated using reasonable and generally acceptable cost-of-service principles. In this regard, the EDC will be required to include in its plan a class cost-of-service study for the limited purpose of allocating all costs expected to be incurred in the implementation of its EE&C plan.

With regard to the assignment of EE&C costs to low-income customers, the Act requires EE&C measures to be financed by the same customer class that will receive the direct energy and conservation benefits from them. 66 Pa. C.S. § 2806.1(a)(11). The Act does not provide for the exclusion of low-income customers from EE&C cost recovery as recommended by PULP, and in any event, it would be difficult to determine a way to exclude such customers from the allocation of EE&C costs within their particular customer class. Although we have great concern for the difficulties experienced by low-income customers in paying their energy bills, we do not believe that exempting such customers from contributing toward the recovery of fairly allocated EE&C costs is the appropriate way to address this concern. We point out that low-income customers will stand to benefit financially from well-designed EE&C measures implemented by the EDCs. Moreover, such customers can take advantage of the many programs currently available to help low-income and payment-troubled customers pay their energy bills.

3. Cost Recovery Tariff Mechanism

As noted above, the Act allows all EDCs, including those subject to generation or other rate caps, to recover on a full and current basis from customers, through a reconcilable adjustment clause under 66 Pa. C.S. § 1307, all reasonable and prudent costs incurred in the provision or management of its plan. The Act also requires that each EDC's plan include a proposed cost-recovery tariff mechanism, in accordance with 66 Pa. C.S. § 1307 (relating to sliding scale of rates; adjustments), to fund all measures and to ensure full and current recovery of prudent and reasonable costs, including administrative costs, as approved by the Commission

We will require each subject EDC to develop a reconcilable adjustment clause tariff mechanism in accordance with 66 Pa. C.S. § 1307 and include this mechanism in its EE&C plan. Such a mechanism shall be designed to recover, on a full and current basis from each customer class, all prudent and reasonable EE&C costs that have been assigned to each class as directed above. The mechanism shall be non-bypassable and shall be set forth in the EDC's tariff, accompanied by a full and clear explanation as to its operation and applicability to each customer class. We agree with OCA that there should be no need to adjust the mechanism more frequently than on an annual basis. Therefore, the tariff mechanism will be subject to an annual review and reconciliation in accordance with 66 Pa. C.S. § 1307(e). The annual review and reconciliation for each EDC's cost recovery mechanism will occur pursuant to a public hearing, if required due to petitions filed by interveners, and will include an evaluation of the reasonableness of all program costs and their allocation to the applicable customer classes. Such annual review and reconciliation will be scheduled to coincide with our review of the annual report on the EDC's plan submitted in accordance with 66 Pa. C.S. § 2806.1(i), and all calculations and supporting cost documentation shall be provided at the time that report is filed.

K. Conclusion

THEREFORE,

IT IS ORDERED:

1. That electric distribution companies with at least 100,000 customers will adhere to the schedule for submission of plans identified in this Implementation Order.

2. That this Implementation Order be published in the Pennsylvania Bulletin and served on the Office of Consumer Advocate, Office of Small Business Advocate, Office of Trial Staff, and all jurisdictional electric distribution companies.

BY THE COMMISSION

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: ________________

ORDER ENTERED: ________________