

COMMONWEALTH OF PENNSYLVANIA

Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

William R. Lloyd, Jr.
Small Business Advocate

(717) 783-2525
(717) 783-2831 (fax)

November 19, 2009

**TESTIMONY AT THE
TECHNICAL CONFERENCE**

Thank you for the opportunity to highlight comments the Office of Small Business Advocate (“OSBA”) previously submitted (at Docket No. I-2009-2099881) regarding compliance with Section 410(a) of the American Recovery and Reinvestment Act of 2009 (“Recovery Act”).

A. Requirements of the Recovery Act

Section 410(a) requires the Commission to “seek to implement . . . a general policy that ensures that utility financial incentives are aligned with helping their customers use energy more efficiently and that provide timely cost recovery and a timely earnings opportunity for utilities.”

The statutory language underscores two significant points. First, by specifying that the Commission is to “seek” to implement a “general” policy, the Recovery Act has given the Commission substantial latitude. Second, by specifying that natural gas distribution companies (“NGDCs”) and electric distribution companies (“EDCs”) be

given an earnings “opportunity” rather than an earnings “guarantee,” the Recovery Act has neither explicitly nor implicitly mandated revenue decoupling.

B. Legal Authority

Section 410(a) does not provide legal authority for the Commission to implement conservation measures and associated cost recovery mechanisms. Instead, such conservation measures and cost recovery mechanisms must find their authorization in state law. The OSBA’s Initial Comments identified and analyzed numerous provisions of the Public Utility Code which provide the necessary legal authority for conservation measures and related cost recovery.

1. EDCs

The most significant of these statutes is Section 2806.1 of the Public Utility Code, which requires EDCs to implement conservation plans.

Section 2806.1(k)(1) provides for the EDC’s full recovery of the costs of its conservation plan, provided that those costs are “reasonable and prudent.” Section 2806.1(k)(2) and (3) prohibit revenue decoupling. However, an EDC is permitted to reflect any anticipated conservation-related sales decline in calculating the revenue requirement in its next distribution base rate case.

The second most significant of these statutes is Section 2807(f) of the Public Utility Code, which requires EDCs to phase in smart meters and to offer time-of-use rates and real-time price plans.

Similar to Section 2806.1(k)(2) and (3), Section 2807(f)(4) prohibits revenue decoupling but allows anticipated revenue losses to be included in calculating an EDC’s claimed revenue requirement in a distribution base rate proceeding.

The explicit and detailed requirements and parameters in Section 2806.1 are evidence that the General Assembly intended that electric conservation plans adhere to Section 2806.1 if there is any conflict with the rules under another statute. Similarly, the detailed requirements and parameters in Section 2807(f) are evidence that the General Assembly intended Section 2807(f) to supersede any rules under other statutes with regard to smart meter or time-of-use/real-time pricing plans.

2. NGDCs

The General Assembly has not provided detailed requirements and parameters for gas conservation similar to those provided by Sections 2806.1 and 2807(f) for electric conservation. Therefore, any effort by the Commission to mandate conservation programs for NGDCs and any effort by NGDCs to establish such programs on a voluntary basis must rely on provisions such as Section 1319 or Section 1505(b) of the Public Utility Code. Under those sections, an NGDC is permitted to implement a conservation plan only after the Commission has determined that the plan is “prudent and cost-effective.” Furthermore, the NGDC is permitted to recover only those costs which are “prudent” and “reasonable.”

C. Decoupling

Section 410(a) does not require the Commonwealth to implement decoupling as a condition for receiving stimulus funds. In addition, the General Assembly has expressly prohibited revenue decoupling for EDCs. Furthermore, the General Assembly has provided no explicit statutory authority for NGDC revenue decoupling.

The Commission should not construe the absence of an express legislative ban on revenue decoupling for NGDCs as a “green light” to implement decoupling for those

utilities. First, revenue decoupling amounts to single-issue ratemaking. Nothing in the Public Utility Code states or implies that the regulatory ban on single-issue ratemaking should be set aside in order to implement revenue decoupling. Second, the advocates of decoupling for NGDCs have not proven that recovery would be limited to only those revenues lost because of conservation.

At most, the absence of revenue decoupling in the Commonwealth might inhibit utilities from implementing conservation plans on a *voluntary* basis. However, because of the legislatively-mandated requirements on EDCs (with both cost recovery from ratepayers and penalties on EDCs for non-compliance), the lack of revenue decoupling should have no impact upon achieving electric conservation. Similarly, a Commission *mandate* that NGDCs establish conservation plans should be sufficient to overcome any hypothetical inhibitions related to the absence of revenue decoupling.

An EDC (and presumably an NGDC) may reflect anticipated sales declines in the future test year in upcoming distribution rate cases. Therefore, the only “loss” to the utility (due to the absence of revenue decoupling) would arise from the lag between the point at which conservation measures begin to impact sales and the point at which new distribution rates take effect. Given a utility’s freedom to file distribution rate cases whenever it deems necessary, there is no reason to search for ways to implement revenue decoupling through the back door.

Thank you for the opportunity to testify before the Commission. I will be happy to answer any questions you may have.