

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17105-3265**

**ENERGY EFFICIENCY AND CONSERVATION PROGRAM  
IMPLEMENTATION ORDER**

**PUBLIC MEETING  
January 15, 2009  
2069887-LAW  
Docket No. M-2008-2069887**

**MOTION OF COMMISSIONER KIM PIZZINGRILLI**

The Commission has taken an important step today in meeting its obligations under Act 129 of 2008. The Act required that the Commission, by today's date, identify the standards and processes that govern the filing, content, and evaluation of electric distribution companies' (EDC) energy efficiency and conservation plans. This schedule, while aggressive, is reflective of the immediacy of the energy challenges the Commonwealth is addressing, and I appreciate the hard work by all involved in helping us comply with this timetable.

This implementation order resolves many important legal and policy issues raised by the stakeholders in the comments that have been filed with us since the Act took effect. We have identified the standards that the Commission will use in measuring consumption and demand reductions, evaluating plan implementation, analyzing the cost-effectiveness of plan components, and ensuring that measures are equitably available to all customer classes. EDCs may now begin to develop plans to be filed with the Commission by the July 1, 2009 deadline.

There was one issue identified by Duquesne Light Company that I believe requires additional action by the Commission. Duquesne commented that the cost limitation provision of Act 129 could be interpreted in a manner that makes compliance very difficult for it. This provision limits program budgets to 2% of the total annual EDC revenues as of December 31, 2006. Approximately half of Duquesne's retail customer load was receiving generation supply service from an electric generation supplier (EGS) at the end of 2006, including about 50% of its commercial and 85% of its industrial customers. No other EDC had nearly as active a retail market during this period. Duquesne will be limited to a substantially smaller program budget than the other EDCs if it must exclude all generation revenues collected by EGSs. If Duquesne does not meet its Act 129 targets, it would be subject to mandatory financial penalties that it cannot recover in rates.

I believe that the General Assembly intended the Act to be competitively neutral, and not disadvantage EDCs that had active retail electric markets. In ascertaining legislative intent, the Commission is to presume that the General Assembly did not intend a result that was impossible of execution, unreasonable or unconstitutional. 1 Pa.C.S. § 1922. I find that the Commission should interpret the definition of "electric distribution company total annual revenue" to include generation revenues collected by an EDC for an EGS that uses consolidated billing. This will bring Duquesne's program budget closer to a level of parity with the other companies, and ensure that it has a more meaningful opportunity to comply with the provisions of Act 129.

**THEREFORE, I MOVE THAT:**

1. The Implementation Order is adopted, as amended by this Motion.
2. The Law Bureau prepare an Implementation Order consistent with this Motion.

**January 15, 2009**  
**Date**

**KIM PIZZINGRILLI, COMMISSIONER**