**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

 Public Meeting held October 15, 2009

Commissioners Present:

 James H. Cawley, Chairman

 Tyrone J. Christy, Vice Chairman, Statement, Concurring in part and dissenting in part

 Kim Pizzingrilli, Statement

 Wayne E. Gardner

 Robert F. Powelson, Statement, Partial Dissent

Petition of West Penn Power Company Docket No. M-2009-2093218

d/b/a Allegheny Power for Approval

of its Energy Efficiency and Conservation

Plan, Approval of Recovery of its Costs

through a Reconcilable Adjustment Clause

and Approval of Matters Relating to the

Energy Efficiency and Conservation Plan

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**OPINION AND ORDER**

**BY THE COMMISSION:**

# I. Introduction

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition of West Penn Power Company d/b/a Allegheny Power (Allegheny) for Approval of its Energy Efficiency and Conservation Plan (Plan), filed on July 1, 2009.

Specifically, Allegheny requests the Commission to: (1) approve the individual programs listed by Allegheny in its Plan; (2) approve the reconcilable cost recovery mechanism and tariffs submitted by Allegheny; (3) approve surcharge recovery to begin effective on one day’s notice upon Commission approval of the Plan, or portions of the Plan, within 120 days of the Plan submission date; (4) approve Allegheny’s annual reconciliation mechanism to ensure dollar-for-dollar recovery of all prudently incurred costs and to allow Allegheny to utilize regulatory accounting to properly match surcharge revenue with the program costs; (5) allow recovery of Allegheny’s internal administrative costs relating to development, provision and management of the Plan; and (6) in the event some part or a portion of Allegheny’s Plan is found deficient, the remainder of the Plan be approved for implementation and cost recovery via reconcilable surcharge. Petition at 13-14.

# II. Background

Governor Edward G. Rendell signed Act 129 of 2008 (Act or Act 129) into law on October 15, 2008. The Act took effect thirty days thereafter on November 14, 2008. Among other things, the Act amended the Public Utility Code (Code), 66 Pa. C.S. §§ 101 *et seq*., to require the Commission to develop and adopt an Energy Efficiency and Conservation Program (EE&C Program) by January 15, 2009. The Commission’s EE&C Program is to include the following:

(1) A procedure for approving energy efficiency and conservation (EE&C) plans submitted by electric distribution companies (EDCs).

(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 electric distribution companies 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 (CSPs).

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

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

(10) A requirement for the participation of CSPs 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.

66 Pa. C.S. § 2806.1(a)(1)-(11).

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 66 Pa. C.S. § 2806.1(a)(1)-(11). Pursuant to an October 29, 2008 Secretarial Letter at Docket No.  M-00061984, comments were due November 3, 2008. In addition, the Commission held a special *en banc* hearing on alternative energy, energy conservation and efficiency, and demand side response on November 19, 2008. Comments in reply to those comments expressed at the *en banc* hearing were due no later than December 1, 2008.

On November 26, 2008, the Commission circulated a draft staff proposal and further questions relative to the Act 129 implementation plan. Comments on the draft proposal were due December 8, 2008. An EE&C Program stakeholder meeting was held on December 10, 2008. Reply comments were due by December 19, 2008.

By Opinion and Order entered January 16, 2009, at Docket No. M-2008-2069887 (*Implementation Order*), the Commission established the standards that EE&C plans must meet and provided guidance on the procedures to be followed for submittal, review and approval of all aspects of EDC plans.

On January 30, 2009, the Energy Association of Pennsylvania (Energy Association) filed a Petition for Clarification and Reconsideration of the *Implementation Order.* On February 2, 2009, the Industrial Energy Consumers of Pennsylvania (IECPA) filed a Petition for Clarification of the *Implementation Order.* By Opinion and Order entered June 2, 2009, at Docket No. M-2008-2069887 (*Reconsideration Order*) the Energy Association’s Petition was denied and the IECPA’s was granted. In the *Reconsideration Order*, the Commission declined to extend the peak load reduction compliance period to the summer of 2013, June 1, 2013 through September 30, 2013, as requested by the Pennsylvania Energy Association. The Commission also declined to adopt the Pennsylvania Energy Association’s request that the Commission measure only an EDC’s capability to reduce peak demand, as opposed to an actual reduction of peak demand. Finally, the Commission granted the IECPA’s request to allow all parties, not just the EDCs, an opportunity to submit reply briefs in the plan approval proceedings.

Act 129 establishes a requirement for the participation of CSPs in the implementation of all or part of a plan. 66 Pa. C.S. § 2806.1(a)(10). The Commission was required to establish, by March 1, 2009, a registry of approved persons qualified to provide conservation services to all classes of customers. 66 Pa. C.S. § 2806.2(a). The Commission instituted a process at Docket No. M-2008-2074154 to establish the qualification requirements CSPs must meet to be included on the registry. On December 22, 2008, the Commission entered an order tentatively establishing the CSP Registry (*Tentative Order)*. The *Tentative Order* was to become final unless adverse comments were received on or before January 2, 2009. Adverse comments were timely received.

By Opinion and Order entered February 5, 2009, at Docket No.
M-2008-2074154 (*Final Order*), the Commission established the minimum experience and qualification requirements each CSP must meet to be included in the CSP registry.

In the *Implementation Order,* at 13, the Commission stated that it would utilize the Technical Reference Manual (TRM) to help fulfill the evaluation process requirements contained in the Act. The Commission noted, however, that the TRM may need to be updated and expanded to fulfill the requirements of Act 129. The Commission stated that it would update and expand the TRM at Docket No. M-00051865 to provide for additional energy efficient technologies. On February 20, 2009, the Commission issued a Secretarial Letter seeking comments on a proposed TRM update. Following the receipt of comments and reply comments, and a meeting with interested stakeholders, the Commission, on June 1, 2009, entered its Opinion and Order at Docket No. M-00051865 adopting the 2009 version of the TRM.[[1]](#footnote-1)

The *Implementation Order,* at 14, also noted that the Act requires an analysis of the costs and benefits of each EDC’s EE&C 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 requires that an EDC demonstrate that its plan is cost-effective using the TRC Test and that the EDC provide 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 a “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 stated in the *Implementation Order* that the TRC Test set forth in *The California Standard Practice Manual – Economic Analysis of Demand-Side Programs and Projects,* July 2002,[[2]](#footnote-2) (*California Manual*) provides a starting point but acknowledged that modifications might be necessary to meet any unique requirements of Act 129 and Pennsylvania’s electric industry. The Commission therefore instituted a separate proceeding at Docket No. M-2009-2108601 to review the *California Manual.* On May 29, 2009, the Commission circulated a TRC Test proposal and requested comments relative to TRC testing in Pennsylvania. By Opinion and Order entered June 23, 2009, at Docket No. M-2009-2108601, the Commission set forth the nature of the TRC Test to be used in Pennsylvania.

Finally, on April 21, 2009, the Commission issued a Request for Proposals, seeking an Act 129 Statewide Evaluator to assist in evaluating the EDCs’ EE&C programs. At its Public Meeting of June 25, 2009, the Commission selected GDS Associates Inc. Engineers and Consultants as the Act 129 Statewide Evaluator.

# III. Procedural History

As stated above, Allegheny filed its Plan on July 1, 2009. A Notice published in the *Pennsylvania Bulletin* on July 18, 2009, stated that the deadline for filing answers along with comments and recommendations addressing the Plan was August 7, 2009. Comments were timely filed by the Office of Consumer Advocate (OCA); the Office of Trial Staff (OTS); the Department of Environmental Protection (DEP); UGI Utilities, Inc.-Gas Division, UGI Penn Natural Gas, Inc., UGI Central Penn Gas, Inc., The Peoples Natural Gas Company d/b/a Dominion Peoples (collectively, the NGDCs); EnerNOC, Inc. (EnerNOC); West Penn Power Industrial Intervenors (WPPII); and National Fuel Gas Distribution Corporation (NFG).

The following parties intervened in this proceeding: DEP; OCA; the Office of Small Business Advocate (OSBA); OTS; NGDCs; EnerNOC; WPPII; Association of Community Organizations for Reform Now (ACORN); Comperio Energy LLC d/b/a ClearChoice Energy (ClearChoice); Direct Energy Business, LLC; the Pennsylvania State University (Penn State); Field Diagnostic Services, Inc. (Field Diagnostic); and Constellation New Energy (CNE).

The Plan was referred to Administrative Law Judge (ALJ) Katrina L. Dunderdale, who held public input hearings at Butler, Pennsylvania on July 31, 2009. ALJ Dunderdale also held evidentiary hearings on August 19-20, 2009. Main briefs were filed on August 31, 2009, by the following parties: OSBA; Allegheny; OCA; OTS; WPPII; NGDCs; EnerNOC; DEP; Charles Evans Hunnell (individual); Field Diagnostic; ClearChoice; ACORN; and Penn State. Reply briefs were filed on September 10, 2009, by the following parties: Penn State; OTS; OCA; Allegheny; EnerNOC; WPPII; NGDCs; OSBA; ClearChoice; and ACORN. The Independent Oil and Gas Association of Pennsylvania (IOGA) filed an Amicus Curiae Brief on September 10, 2009. DEP and Field Diagnostic indicated that they would not be filing reply briefs.

On September 10, 2009, ALJ Dunderdale certified the record to the Commission for consideration and disposition.

# IV. Description of the Plan

## A. Requirements of Act 129

Act 129 requires that an EDC’s plan reduce electric consumption by at least 1% of its expected consumption for June 1, 2009, through May 31, 2010, adjusted for weather and extraordinary loads. This 1% reduction is to be accomplished by May 31, 2011. 66 Pa. C.S. § 2806.1(c)(1). By May 31, 2013, the total annual weather‑normalized consumption is to be reduced by a minimum of 3%. 66 Pa. C.S. § 2806.1(c)(2). Also, by May 31, 2013, peak demand is to be reduced by a minimum of 4.5% of the EDC’s annual system peak demand in the 100 hours of highest demand, measured against the EDC’s peak demand during the period of June 1, 2007, through May 31, 2008. 66 Pa. C.S. § 2806.1(d)(1).

Act 129 also establishes the following plan requirements:

(1) The plan shall include specific proposals to implement energy efficiency and conservation measures to achieve or exceed the required reductions in consumption.

(2) A minimum of 10% of the required reductions in consumption shall be obtained from units of federal, state and local government, including municipalities, school districts, institutions of higher education, and nonprofit entities.

(3) The plan shall explain how quality assurance (QA) and performance will be measured, verified and evaluated.

(4) The plan shall state the manner in which the plan will achieve the requirements of the program and will achieve or exceed the required reductions in consumption.

(5) The plan shall include a contract with one or more conservation service providers selected by competitive bid to implement the plan or a portion of the plan.

(6) The plan shall include estimates of the cost of implementation of the energy efficiency and conservation measures in the plans.

(7) The plan shall include specific energy efficiency measures for households at or below 150% of the federal poverty income guidelines. The number of measures shall be proportionate to those households’ share of the total energy usage in the service territory. The EDC shall coordinate these measures with other programs administered by the Commission or another federal or state agency. The expenditures of an EDC under this clause shall be in addition to those made under the Commission’s Regulations at 52 Pa. Code Chapter 58.

(8) The plan shall include a proposed cost-recovery tariff mechanism to fund the EE&C measures and to ensure full and current recovery of the prudent and reasonable costs of the plan, including administrative costs.

(9) The EDC shall demonstrate that the plan is cost-effective, using a TRC Test approved by the Commission, and provides a diverse cross section of alternatives for customers of all rate classes.

(10) The plan shall require an annual independent evaluation of its cost-effectiveness and a full review of the results of each five-year plan and, to the extent practical, how the plan will be adjusted on a going-forward basis as a result of the evaluation.

(11) The plan shall include an analysis of the EDC’s administrative costs.

66 Pa. C.S. § 2806.1(b)(1)(i)(A)-(K).

The Act permits an EDC to recover, on a full and current basis from customers, all reasonable and prudent costs incurred in the provision or management of an EE&C plan. The costs, however, are limited to 2% of the EDC’s total annual revenue as of December 11, 2006. 66 Pa. C.S. § 2806.1(g) and (k). The Act also provides that the Commission is to recover from EDCs its costs of implementing the EE&C Program. 66 Pa. C.S. § 2806.1(h).

## B. The Plan

Allegheny proposes to meet the energy efficiency and conservation requirements of Act 129 with a portfolio of twenty-two EE&C and demand response (DR) programs and rate offerings, including eleven for the residential sector, six for the small commercial and industrial sector, four for the large commercial and industrial sector, and one for government, school and non-profit customers. Included in Allegheny’s Plan are measures or programs that target customers in each of the Company’s customer segments. Most of the measures target the major energy‑consuming systems in households and businesses. These systems include, but are not limited to: heating, ventilating, and air conditioning (HVAC); refrigeration; clothes washing and drying appliances; and lighting. Allegheny’s EE&C and DR measures and programs have been designed with a sufficiently broad scope and variety to provide opportunity for all of Allegheny’s customers to participate and benefit. Many of the measures and programs provide customers with rebates or other direct incentives that not only encourage participation but also foster positive behavioral changes that in turn create lasting economic, environmental, and social benefits. Plan at 11.

It is important to point out that Allegheny's programs and rate offerings depend heavily on smart meter technology and thus, the Plan is fundamentally interrelated with the installation and use of smart meters. To be viable, nine of the twenty‑two programs/rate offerings in Allegheny's EE&C Plan depend directly on the installation of smart meters and smart meter infrastructure. Moreover, based on the anticipated participation levels for the Company's non-smart meter related programs, which estimate the maximum savings one can reasonably expect from these programs, the energy and peak reduction goals cannot be met without the assistance of the smart meter-related programs. Allegheny MB at 3; *see* Plan at 12‑15.

Combined, these EE&C and DR programs are estimated to reduce total energy consumption by 209,956 MWh by the end of the 2010 program year (May 31, 2011), which represents 100.3% of the mandated reduction established by the Commission.[[3]](#footnote-3) In addition, Allegheny’s proposed programs are estimated to reduce total consumption by 645,859 MWh and peak demand by 216 MW by the end of the 2012 program year (May 31, 2013). These estimated reductions represent 102.8% and 137.5%, respectively, of the mandated 2013 reductions established by the Commission.[[4]](#footnote-4) Plan at 28.

The total cost of the Plan is estimated to be $94,249,872. This is based on total annual revenues of $1,178,130,105 as of December 31, 2006, and the Commission’s interpretation of 66 Pa. C.S. § 2806.1(g), that the 2% limitation on the cost of the Plan is an annual amount.[[5]](#footnote-5) Thus, annual program expenditures, including administrative costs and intangible transition charge, are capped at $23,562, 602. Plan at 177.

The programs are summarized below:

1. The *Residential Energy Star and High Efficiency Appliance Program* provides rebates to residential customers for the purchase of certain appliances that meet or exceed Energy Star or other efficiency ratings.
2. The *Residential Compact Fluorescent Lighting (CFL) Rewards Program* provides rebates and point of sale discounts to customers for the purchase and installation of single and multi-pack CFLs.
3. The *Residential HVAC Efficiency Program* encourages residential customers to purchase a high efficiency central air conditioner or heat pump.
4. The *Residential Home Performance Program* provides a holistic approach to educating customers on energy efficiency and conservation, and to improving overall home performance by providing customers with energy efficiency education, three energy audit measures, including an on-line audit, a check-up audit and a comprehensive audit, and standard energy efficiency and conservation measures.
5. The *Residential Low‑Income Home Performance Check-up Audit and Appliance Replacement Program* provides home energy check‑up audits and appliance replacement, including standard energy efficiency measures, to low income customers with household incomes up to 150% of the federal poverty income guidelines. The program will be available to ratepayers who own or rent their residence, including customers residing in multi-family buildings and mobile homes.
6. The *Low-Income Joint Utility Usage Management Program* will initially be a partnership with Columbia Gas, in Pennsylvania, to leverage resources and respective program dollars to provide comprehensive energy saving measures and weatherization services to low‑income customers.
7. The *Residential Low‑Income Room Air Conditioner Replacement Program* provides replacement of room air conditioners as an add-on to Allegheny’s existing Low‑Income Usage Reduction Program (LIURP).
8. *Residential Efficiency Rewards* is a rate offering that encourages residential customers to lower their energy consumption from historical levels, through a credit/discount on their bill based on their actual reduction in their energy use.
9. The *Commercial HVAC Efficiency Program* encourages small commercial and industrial and governmental/non-profit customers to purchase high efficiency split system or packaged air conditioners and high efficiency unitary heat pump units.
10. The *Commercial Lighting Efficiency Program* provides rewards for installing T8 lamps (reducing the number of lamps per fixture by one or two fewer lamps and installing high-efficiency electronic ballasts), T5 fixtures (replacing High‑Intensity Discharge (HID) lights), LED exit sign installations and occupancy sensors (wall plates controlling interior lighting).
11. The *Governmental/Non-Profit Lighting Efficiency Program* provides rewards for installing T8 lamps (reducing the number of lamps per fixture by one or two fewer lamps and installing high-efficiency electronic ballasts), LED exit sign installations, LED traffic signals and CFLs.
12. The *Custom Technology Applications Program* focuses on reducing energy and demand in the small to medium sector of commercial and industrial and governmental/non-profit customers. The program will provide incentives to customers for improving the energy efficiency for specific processes and applications, including applications involving new technologies and renewable energy.
13. The primary purpose of the *Programmable Controllable Thermostat (PCT) Program* is to automate demand response through direct load control of central air conditioners for residential and small commercial and industrial and governmental/non-profit customers.
14. The *Pay Ahead Smart Service Rate* is a billing option that provides customers with a better understanding of their electric usage, by providing them with information regarding their energy consumption relative to their prepaid account balance, to support their energy use awareness and support their energy efficiency initiatives. The program will not be used as a means to disconnect service for delinquent accounts.
15. The *Commercial and Industrial Drives Program* provides rewards for installing variable speed drives to replace mechanical throttling devices. Rewards are available for installation of new variable speed drive applications.
16. The *Custom Applications Program* provides energy auditing services and custom rewards for highly specialized processes and applications targeting Allegheny’s 550 highest-consuming Pennsylvania customers.
17. The *Customer Load Response Program* is focused on reducing kW demand by providing load management services to small and large commercial and industrial and governmental/non-profit customers. Under this program, Allegheny will act as a “Curtailment Service Provider” and call events to meet a portion of the demand reduction requirements during peak load hours. In addition, Allegheny also would act as a Curtailment Service Provider with PJM Interconnection, L.L.C. (PJM) to leverage and enroll customer’s load curtailment into PJM’s capacity markets.
18. The *Distributed Generation Program* is focused on reducing kW demand of small and large commercial and industrial and governmental/non-profit customers by deploying customer-owned standby generation during peak load hours.
19. Under the *Contracted Demand Response Program*, a third party would be contracted to market, recruit, contract, and reconcile demand response contracts with participating customers. The contracted Curtailment Service Provider would be responsible for calling events and dispatching demand resources to meet a portion of the demand response requirements during peak load hours. This program would be used in conjunction with the Customer Load Response Program.
20. The *Critical Peak Rebate (CPR) Rate* encourages customers to lower their demand during peak load hours by offering a rate discount/rebate based on their actual demand, which can occur during predefined or notified peak hours.
21. The *Time of Use (TOU) with Critical Peak Pricing Rate* reflects the cost of serving customers during different time periods, but does not change as frequently as hourly pricing. TOU encourages customers to lower their demand and energy consumption during on-peak periods by charging a higher price that reflects the higher cost of serving customers, and charging lower prices during other periods that reflect the lower cost of serving customers.
22. The *Hourly Pricing Option (HPO) Rate* reflects the different cost of energy during each hour and encourages customers to lower their demand and energy consumption during high priced periods and/or shift usage to low priced periods.

Plan at 16‑22.

Allegheny’s EE&C programs targeted at the governmental and non‑profit sector are projected to achieve 38,903MWh in consumption reductions by May 31, 2011. Plan at 28. This amounts to 18.6% of the mandated 209,956 MWh overall plan consumption reduction target for the year ending May 31, 2011, or an increase of 8.6% over the 10% governmental and non-profit requirement in Act 129. These same EE&C programs are projected to achieve 63,997 MWh in consumption reductions by May 31, 2013. *Id*. This amounts to 10.2% of the mandated 628,160 MWh overall plan consumption reduction target for the year ending May 31, 2013, or an increase of 0.2% over Act 129's requirements.

Allegheny’s Customer Management group, reporting to the Executive Director of Customer Services, is responsible for portfolio development and evaluation, implementation, measurement and verification, and reporting. Customer Management is also responsible for budgeting, tracking, and reporting of Plan financials. Plan quality assurance/quality control will be the responsibility of Customer Management in conjunction with the Allegheny Audit Services group. All applicable Sarbanes-Oxley Controls and Business Practices will be followed, and a review and/or audit will be completed annually. Allegheny will build quality control checks into each program and measure at key customer touch points. Allegheny will meet and/or exceed the evaluation, measurement, and verification (EM&V) requirements of the Technical Reference Manual (TRM). Plan at 164, 171-172.

Allegheny believes the most cost effective method for program implementation is to contract with vendors for specific services to leverage similar activities across the Plan portfolio of programs and measures. Allegheny will leverage its contracts with vendors for its Maryland EE&C Plan to ensure best pricing for like services. Allegheny has also contracted with EDS to provide consulting services primarily for the development of its DR programs. Allegheny has executed a contract with Roth Brothers, Inc., a registered CSP, to complete a market assessment of the load resources that are available from the commercial and industrial customer base. Plan at 157-159.

The Plan also addresses the eleven plan requirements set forth above. These requirements, and the Plan’s responses, will be discussed in the remainder of this Opinion and Order.

# V. Discussion

 In Commission proceedings, the proponent of a rule or order bears the burden of proof. 66 Pa. C.S. § 332(a). To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *Se-Ling Hosiery v. Marqulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

 We note that any issue that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC,* 485 A.2d 1217 (Pa. Cmwlth. 1984).

## A. Act 129 Conservation and Demand Reduction Requirements

### 1. Overall Conservation Requirements

The *Implementation Order*, at 8, noted that both the 1% consumption reduction, to be met by May 31, 2011, and the 3% consumption reduction, to be met by May 31, 2013, are to be measured against the EDC’s expected consumption as forecasted by the Commission for June 1, 2009, through May 31, 2010. 66 Pa. C.S. § 2806.1(c)(1) and (2). Each EDC that was required to file an EE&C plan was required to file its consumption forecast for the period of June 1, 2009, through May 31, 2010 by February 9, 2009.

In *Energy Consumption and Peak Demand Reduction Targets,* Docket No. M-2008-2069887 (Order entered March 30, 2009) (*Reduction Target Order*), the Commission approved Allegheny’s forecast of 20,938,650 MWh, its proposed 1% reduction of 209,387 MWh as of May 31, 2011, and its proposed 3% reduction of 628,160 MWh as of May 31, 2013.

The plan must include specific proposals to achieve or exceed these required reductions in consumption. 66 Pa. C.S. § 2806.1(b)(1)(i)(A) . The Commission is required to analyze how the program and individual plans will enable the EDC to achieve or exceed the requirements for reductions in consumption. 66 Pa. C.S.
§ 2806.1(a)(4). The Commission is also required to develop procedures to ensure compliance with these requirements. 66 Pa. C.S. § 2806.1(a)(9).

#### a. 2011 Requirements

Allegheny’s Plan proposes energy efficiency and conservation measures that are estimated to produce total energy savings of 209,956 MWh by the end of the 2010 program year (May 31, 2011), which is 100.3% of the established goal. Plan at 28.

##### Positions of the Parties

 The OCA asserts that Allegheny’s heavy reliance on smart meters and smart meter dependent programs is flawed and may prevent the Allegheny from achieving the mandated consumption reduction targets. OCA MB at 11 and RB at 3; *see* OCA St. No. 1 at 4. NGDCs assert that its recommended measures will enable Allegheny to meet or exceed the mandated consumption reduction targets in a more cost effective manner. NGDCs MB at 9 and RB at 4; *see* NGDCs St. No. 1 at 12.

 Allegheny asserts that its Plan will achieve a 1% reduction in energy consumption by the end of the 2010 program year. Allegheny MB at 22; Plan at 28. Allegheny points out that the reductions attributable to its EE&C programs are based on the TRM deemed savings calculations and rate offering savings that are based on benchmarking studies and other resources. Allegheny MB at 22; Allegheny St. No. 2 at 7 and 8.

##### Disposition

The Commission agrees with Allegheny that its Plan, as submitted, can meet the 1% energy consumption reduction target by May 31, 2011, as mandated by the Act. We will address the OCA’s and the NGDCs’ assertions later in this Order. At this point, however, we would note that the Commission agrees with the OCA that Allegheny’s reliance on the rapid deployment of smart meters and the associated network infrastructure does add an element of increased risk to its Plan. As Allegheny bears the sole risk of significant penalties if it fails to meet the mandated targets, we will not direct Allegheny to modify its Plan at this time. Though, the Commission will closely monitor this element of Allegheny’s Plan during the first annual plan review in 2010 and its review and monitoring of Allegheny’s Smart Meter Procurement and Installation Plan.

#### b. 2013 Requirements

Total energy savings expected at the end of the 2012 program year (May 31, 2013) total 645,859 MWh, or 102.8% of the required consumption reduction for Allegheny. Plan at 28.

##### Positions of the Parties

 The OCA asserts again that Allegheny’s heavy reliance on smart meters and smart meter dependent programs is flawed and may prevent the Allegheny from achieving the mandated consumption reduction targets. OCA MB at 12; *see* OCA St. No. 1 at 4. NGDCs assert again that its recommended measures will enable Allegheny to meet or exceed the mandated consumption reduction targets in a more cost effective manner. NGDCs MB at 10 and RB at 4; *see* NGDCs St. No. 1 at 12.

Allegheny asserts that its Plan will achieve a 3.1% reduction in energy consumption by the end of the 2013 program year. Allegheny MB at 22; Plan at 28. As noted above, Allegheny points out that the reductions attributable to its EE&C programs are based on the TRM deemed savings calculations and rate offering savings that are based on benchmarking studies and other resources. Allegheny MB at 22; Allegheny St. No. 2 at 7 and 8.

##### Disposition

Again, the Commission agrees with Allegheny that its Plan, as submitted, can meet the 3% energy consumption reduction target by May 31, 2013, as mandated by the Act. As noted above, we will address the OCA’s and the NGDCs’ assertions later in this Order. We again note that this Commission agrees with the OCA that Allegheny’s reliance on the rapid deployment of smart meters and the associated network infrastructure does add an element of increased risk to its Plan. As Allegheny bears the sole risk of significant penalties if it fails to meet the mandated targets, we will not direct Allegheny to modify its Plan at this time. Though, the Commission will closely monitor this element of Allegheny’s Plan during the annual plan reviews and its review and monitoring of Allegheny’s Smart Meter Procurement and Installation Plan.

### 2. Overall Demand Reduction Requirements

The *Implementation Order*, at 9, noted that the 4.5% reduction in peak demand, to be met by May 31, 2013, is to be measured against the EDC’s historical peak load for June 1, 2007, through May 31, 2008. 66 Pa. C.S. § 2806.1(d). Each EDC that was required to file an EE&C plan was required to file, by February 9, 2009, certain peak load data for the period June 1, 2007, through May 31, 2008. To be in compliance with this directive, each EDC must demonstrate that its Plan produced demand savings during the 100 hours of highest demand for the period June 1, 2012, through September 30, 2012, equal to at least 4.5% of the average of the 100 highest peak hours during the period from June 1, 2007 to September 30, 2007. *Implementation Order* at 29. *See also*, *Reconsideration Order* at 4‑8.

In the *Reduction Target Order*, the Commission approved Allegheny’s calculation of its average historical peak loads for the top 100 hours as 3,496 MW and its proposed 4.5% reduction of 157 MW as of May 31, 2013.

The Plan must include specific proposals to achieve or exceed the required reductions in consumption. 66 Pa. C.S. § 2806.1(b)(1)(i)(A). The Commission is required to analyze how the program and individual plans will enable the EDC to achieve or exceed the requirements for reductions in consumption. 66 Pa. C.S.
§ 2806.1(a)(4). The Commission is also required to develop procedures to ensure compliance with these requirements. 66 Pa. C.S. § 2806.1(a)(9).

Allegheny’s Plan projects cumulative peak demand savings of 216 MW by May 31, 2013, equivalent to 137.5% of the reduction target of 157 MW or a demand reduction of 6.2% of the baseline. Plan at 28.

#### Positions of the Parties

 The OCA asserts that Allegheny’s heavy reliance on smart meters and smart meter dependent programs is flawed and may prevent the Allegheny from achieving the mandated demand reduction targets. OCA MB at 12; *see* OCA St. No. 1 at 4. NGDCs assert again that its recommended measures will enable Allegheny to meet or exceed the mandated demand reduction targets. NGDCs MB at 10 and RB at 4; *see* NGDCs St. No. 1 at 12.

Allegheny asserts that its Plan will achieve a 6.2% reduction in energy demand by the end of the 2012 program year. Allegheny MB at 22, Plan at 28. As noted above, Allegheny points out that the reductions attributable to its EE&C programs are based on the TRM deemed savings calculations and rate offering savings that are based on benchmarking studies and other resources. Allegheny MB at 22; Allegheny St. No. 2 at 7 and 8.

#### Disposition

The Commission agrees with Allegheny that its Plan, as submitted, can meet the 4.5% peak demand reduction target by September 30, 2012, as mandated by the Act and the *Implementation Order*. As noted above, we will address the OCA’s and the NGDCs’ assertions later in this Order. We again note that this Commission agrees with the OCA that Allegheny’s reliance on the rapid deployment of smart meters and the associated network infrastructure does add an element of increased risk to its Plan. As Allegheny bears the sole risk of significant penalties if it fails to meet the mandated targets, we will not direct Allegheny to eliminate the proposed programs that rely on smart meter deployment, except where otherwise directed in this Opinion and Order. In recognizing this increased risk, the Commission strongly encourages Allegheny to develop an alternate “back‑up” plan that is less reliant on smart meter deployment. Such an alternate plan would be a readily available option that can be implemented on short notice, after Commission approval, should any unforeseen circumstances delay or disrupt Allegheny’s smart meter deployment. The Commission will closely monitor this element of Allegheny’s Plan during the annual plan reviews and its review and monitoring of Allegheny’s Smart Meter Procurement and Installation Plan.

### 3. Requirements for a Variety of Programs Equitably Distributed

The Commission’s EE&C 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.” 66 Pa. C.S.
§ 2806.1(a)(5). Each EDC is required to demonstrate that its plan “provides a diverse cross section of alternatives for customers of all rate classes.” 66 Pa. C.S.
§ 2806.1(b)(1)(i)(I).

Each EE&C plan is to include at least one energy efficiency program and one demand response program for each customer class. Furthermore, each EDC plan is to provide a “reasonable mix” of energy efficiency and demand response programs for all customers. *Implementation Order*,at 22- 23. Allegheny has developed a portfolio of twenty‑two programs and rate offerings for all customer classes – residential, residential low‑income, small commercial and industrial, large commercial and industrial, and governmental/nonprofit. Plan at 16.

#### Positions of the Parties

The OCA concludes that Allegheny’s Plan is designed to provide a variety of programs to all customer classes in an equitable manner as specified in Section 2806.1(a)(1)(5) of the Act. OCA MB at 14; *see* OCA St. No. 1 at 4.

Penn State argues that the decision by Allegheny to classify Tariff 37 “similarly as” Tariff 39, Schedule 30 (Large) customers is inequitable, inappropriate, and inconsistent with both Act 129 and Allegheny’s recent post-2010 default service proceeding to the extent that it results in Tariff 37 being included with Tariff 39, Schedules 20, 22, 30 (Small) and 30 (Large) in the Lighting Efficiency and Distributed Generation programs. Penn State MB at 6-11; *see* Penn State St. No. 1 at 4 and 8. Penn State asserts that Penn State should be removed from participation in Allegheny’s Lighting Efficiency and Distributed Generation programs, by removing Tariff 37 from the cost recovery of this program. Penn State MB at 8.

Allegheny counters that its Plan meets the diversity requirement by providing a diverse cross section of alternative programs available for all rate classes. Allegheny MB at 22. Allegheny notes that five programs are available to more than one customer class and that it offers eleven programs each to residential and non‑residential customer classes. Allegheny MB at 23 (citing Allegheny St. No.2 at 8‑9). Allegheny contends that Penn State's argument is without merit. Allegheny notes that the plain language in the Act is clear that the diversity requirement is applicable on a customer class basis, not on an individual customer tariff or individual customer location basis. Allegheny also notes that the record evidence shows that Penn State, as a large non-residential user, has access to a wide array of EE&C Plan programs. Allegheny RB at 7 (citing Allegheny St. No. 3‑R at 9 and Plan at 26).

#### Disposition

We conclude that Allegheny’s Plan meets the requirements of the Act to provide a variety of measures to all customer classes in an equitable manner. The record evidence shows that Allegheny’s Plan provides five programs that are available to more than one customer class and that it offers at least eleven programs each to residential and non‑residential customer classes. Plan at 26; Allegheny St. No. 2 at 8‑9. We also find that the diversity requirement in Act 129 is applicable on a customer class basis, not on an individual customer tariff location basis. As such, we reject Penn State’s request that we direct Allegheny to remove Penn State from the Plan’s Lighting Efficiency Program by removing Tariff 37 from the cost recovery of that program.

### 4. Ten Percent Government/Non-Profit Requirement

The Act requires that “a minimum of 10% of the required reductions in consumption . . . shall be obtained from units of federal, state and local government, including municipalities, school districts, institutions of higher education and nonprofit entities.” 66 Pa. C.S. § 2806.1(b)(1)(i)(B).

Allegheny’s Government/School/Non-Profit Lighting Efficiency Program, targeted at approximately 19,700 governmental/nonprofit customers, provides incentives for installing: T8 lamps, including high efficiency electronic ballasts; LED exit signs; LED traffic signals; and CFLs. These measures are expected to achieve a reduction in energy consumption of 18.6% of the May 31, 2011 consumption reduction target, and 10.2% of the May 31, 2013 consumption reduction target. The cumulative peak demand savings are estimated to be 8 MW by May 31, 2013, or 5.1% of the required demand reduction target. The estimated budget for this lighting efficiency program is $5,602,059. Other programs, similar to those offered to residential, commercial and industrial customers, will be made available to governmental and institutional customers as well. Plan at 150-156.

#### a. Positions of the Parties

DEP argues that prescriptive rebate programs are an inefficient use of energy conservation dollars and prevent governments from obtaining significant, long lasting energy consumption reductions. DEP asserts that lighting upgrades are a short term fix and that a whole building approach is required to obtain long lasting energy savings. DEP MB at 6‑7; DEP St. No. 1 at 13-14.

Allegheny asserts that its Plan targets a variety of measures to government, schools, and non‑profits and that these customers also are eligible for all programs offered to small commercial and industrial customers. Allegheny notes that it will track government and non‑profit customer participation in all programs to ensure that 10% of the total energy reductions come from these customers. Allegheny MB at 23‑24 (citing Allegheny St. No. 1 at 13‑14). Allegheny responds to DEP’s assertions by noting that it proposes the Custom Technology Applications Program that provides an opportunity for government and other commercial and industrial customers to participate in whole-building approaches, as well as individual-measure programs to achieve additional savings and participation. Allegheny St. No. 2-R at 17.

#### b. Disposition

We find Allegheny’s approach to the governmental/nonprofit sector to be satisfactory and in substantial compliance with the Act at this time. The lighting efficiency program described above is expected to achieve slightly more than 10% of Allegheny’s total energy consumption reduction target as required; however, the program is not, on its own, expected to achieve a 10% reduction of the total peak demand reduction requirement. *See* Plan at 28. Allegheny has indicated in its Plan that eleven other programs will be available for governmental and institutional customers, which has the potential to increase this sector’s portion of the required peak demand reduction. *See* Plan at 150‑156. Furthermore, Allegheny asserts that it will track the participation by government and nonprofit customers in all programs to ensure that it meets the requirement that 10% of total consumption and peak demand targets are obtained from this group of customers. Allegheny St. No. 1 at 14.

DEP’s criticism of prescriptive rebate programs is unpersuasive as it failed to demonstrate how Allegheny could meet its mandated targets without such programs. In addition, DEP failed to acknowledge that Allegheny’s proposal offers programs that contain a whole-building approach, such as the Custom Technology Applications Program. We appreciate DEP’s suggestions to improve Allegheny’s Plan, however, this Commission is charged with determining whether Allegheny’s Plan can meet the mandates of Act 129 in a cost effective manner, under tight budgetary constraints. The Commission appreciates DEP’s desire for long‑term energy savings, however, the Commission must determine whether Allegheny’s Plan can meet or exceed the more near‑term targets established in the Act. *See* 66 Pa. C.S. § 2806.1(e)(1). The Commission also notes that these plans are heavily reliant on estimates and can be revised annually as more reliable data becomes available. *See* *Implementation Order* at 23‑24. Therefore, if Allegheny’s actual implementation of its Plan demonstrates that DEP’s concerns are being realized, the Commission will reassess this issue if raised during an appropriate annual plan review.

### 5. Low Income Program Requirements

Act 129 provides:

The plan shall include specific energy efficiency measures for households at or below 150% of the federal poverty income guidelines. The number of measures shall be proportionate to those households’ share of the total energy usage in the service territory. The electric distribution company shall coordinate measures under this clause with other program administered by the commission or another federal or state agency. The expenditures of an electric distribution company under this clause shall be in addition to expenditures made under Pa. Code Ch. 58 (relating to residential low income usage reduction programs).

66 Pa. C.S. § 2806.1(b)(1)(i)(G).

 Allegheny’s Plan proposes a total of twenty‑two energy efficiency and conservation and demand response programs, of which, three are targeted to residential low-income customers. Plan at 33‑34. The three programs targeted to low-income customers are the Residential Low Income Home performance Check‑Up Audit & Appliance Replacement Program, the Residential Low Income Joint Utility Usage Management Program and the Residential Low Income Room Air Conditioner Replacement Measure Program. Plan at 83‑99.

#### Positions of the Parties

The OCA questions whether Allegheny’s Plan meets the low-income requirements of the Act. OCA MB at 16. Initially, the OCA questions whether Allegheny correctly calculated the low-income households’ share of Allegheny’s total energy usage. The OCA notes that Allegheny initially calculated the low-income customer’s share of total energy usage based on the number of customers participating in its universal service programs. OCA MB at 17 (citing Allegheny St. No. 2‑R at 27 and 29). Based on this data, low-income customers accounted for 2.1% of Allegheny’s total energy usage. OCA MB at 17 (citing Allegheny St. No. 2‑R at 29). The OCA points out that Allegheny then estimated the low-income customer’s share of total energy usage by using census data. Based on this data, low-income customers accounted for 4.8% of Allegheny’s total energy usage. *Id*. The OCA argues that Allegheny should be required to obtain 4.8% of its total energy savings from low-income customers. OCA MB at 18.

Initially, ACORN stated that Allegheny’s Plan substantially complies with the Act’s low-income requirements. ACORN MB at 9. However, ACORN went on to assert that it would be more appropriate to treat the required low-income savings as a percentage of total energy savings, similar to how the government/nonprofit savings are counted. ACORN MB at 13; *see* ACORN St. No. 1 at 19. Finally, ACORN stated that it supports the OCA’s recommendation. ACORN RB at 6.

Allegheny asserts that its Plan comports with the low-income requirements of Act 129. Allegheny MB at 24‑25. Allegheny asserts that its Plan will obtain 2.7% of its total energy savings from low-income customers, while between 2.1% and 4.8% of its total energy usage comes from low-income customers. Allegheny MB at 24 (citing Allegheny St. No. 2‑R at 28‑29). Allegheny further noted that its Plan devotes 14.1% of its total Plan budget to low-income targeted programs. Allegheny MB at 24 (citing Allegheny St. No. 2‑R at 30 and Plan at 40).

#### Disposition

66 Pa. C.S. § 2806.1(b)(i)(G) reads in pertinent part as follows:

(G) The plan shall include specific energy efficiency measures[[6]](#footnote-6) for households at or below 150% of the Federal poverty income guidelines. The number of measures shall be proportionate to those households’ share of the total energy usage[[7]](#footnote-7) in the service territory . . . .

Despite the torturous exercise in statutory construction that has been undertaken by some parties to explain this provision, the express language is quite clear and its interpretation does not require the use of higher mathematics. Its implementation, however, is another matter.

According to Section 2806.1(b)(i)(G), the number of energy efficiency measures that must be dedicated to low-income customers is calculated by first determining the percentage of total energy usage that is attributable to the low-income customer group. This percentage is the percentage of the Act 129 plan’s total energy efficiency measures that must be dedicated to low-income customers. In other words, if an EDC’s plan contains forty measures, and the low-income customer group’s share of total energy usage for the service territory is 5%, then the plan must have two measures dedicated to increasing energy efficiency for low income customers.

While the term “energy efficiency and conservation measures” is defined at Section 2806.1(m), there is no information as to how measures should be quantified for apportionment to the low income customer group. There also is no indication about the time frame for implementation of this requirement over the five-year life of the EDC’s plan.

Full implementation of Section 2806.1(b)(i)(G) will take some time. The usage data referred to in the Act is not readily available. At this time, EDCs do not maintain information on energy usage by customer income level that can be used to determine the share of total energy usage in the service territory that is attributed to low-income customers. As such, we are forced to use estimates and the tools at hand in order to achieve the goals of Act 129. At this time, the best way to evaluate a plan’s compliance with this requirement is to review the method used by the EDC to calculate the low-income customer share for reasonableness and any census or other demographic data used in the calculation for relevance and reliability.

Therefore, to ensure EDCs will be able to meet this requirement, the Commission will convene a working group that will be charged with developing implementation standards for compliance with Section 2806.1(b)(i)(G). The working group will be composed of representatives from EDCs, consumer advocates, community‑based organizations and other interested parties. Specifically, the working group will be charged with identifying the standardized data to be used to determine the proper proportion for low-income households. If necessary, the working group may address other matters that require clarification before the annual reconciliation process. The group shall provide its recommendations for consideration by the Commission no later than February 16, 2010.

Allegheny’s Plan has three of twenty-two programs, or 13.6% of total programs, that specifically target low-income customers.  *See* Plan at 83‑99.  This 13.6% proportionate share of programs targeted at low-income customers far exceeds the estimated 4.8% share of total energy use attributable to low-income customers in Allegheny’s service territory. We thus believe that Allegheny’s Plan substantially complies with the Act’s low‑income requirements.

### 6. Issues Relating to Individual Conservation and Demand Reduction Programs

In the course of this proceeding, several parties raised issues concerning the specifics of certain programs in Allegheny’s Plan. Although all issues have been considered, we will address only those which may have a significant and meaningful impact on the design and effectiveness of a particular program or its components.

#### a. Residential

Allegheny’s Plan sets forth eight energy efficiency programs and three rate offerings targeting all of its approximately 618,000 residential customers. Plan at 33 and 46. In the aggregate, these programs, inclusive of three low-income programs, represent potential energy savings of 282,249 MWh, or 44.9% of required consumption reductions by the end of the 2012 program year. Peak demand reductions for the residential sector total 52.3 MW or 33.4% of mandated peak demand reductions. Program costs for this sector, including low‑income, total $53,722,623. Plan at 28, 29 and 180.

* 1. **Reliance on Smart Meter Deployment**

Allegheny's programs and rate offerings depend heavily on smart meter technology and thus, the Plan is fundamentally interrelated with the installation and use of smart meters. To be viable, nine of the twenty‑two programs/rate offerings in Allegheny's EE&C Plan depend directly on the installation of smart meters and smart meter infrastructure. Moreover, based on the anticipated participation levels for the Company's non-smart meter related programs, which estimate the maximum savings one can reasonably expect from these programs, the energy and peak reduction goals cannot be met without the assistance of the smart meter-related programs. Allegheny MB at 3; *see* Plan at 12‑15.

 **(a) Positions of the Parties**

The OCA submits that it is inappropriate to include Automated Meter Infrastructure (AMI) in Allegheny’s proposal for EE&C and DR programs, because there are two different time frames and processes relating to the development of EE&C Plans and Smart Meter Technology Procurement and Installation Plans (SMIP). Specifically, OCA witness, Geoffrey C. Crandall stated the following:

The EE&C Plan was to be filed first on July 1 and the Commission was provided a very tight time frame to review the Plans. The Smart Meter Technology Procurement and Installation Plan was not to be filed until August and there is no specific time frame for Commission review. The Act also appears to contemplate a deployment schedule for the smart meters over a long period of time, including a depreciation schedule not to exceed 15 years. Early deployment of smart meters would be provided ***upon request from a customer*** (emphasis added) that agrees to pay the cost of the smart meter at the time of the request. The Act also contemplates that rate filings for time of use rate options will be made in 2010, well after approval of the EE&C Plans by the Commission. AP does recognize these points when it indicates that it intends to file a Smart Meter Implementation Plan in August 2009 and rate filing in 2010.

OCA St. No. 1 at 7‑8.

Under cross-examination by the OCA, Allegheny witness, Edward C. Miller Jr., acknowledged that the deployment of Smart Meters will be a massive undertaking and has been projected to require a capital outlay of $548 million. Tr. at 159. The OCA asserts that Allegheny’s programs that rely on smart meter deployment are collectively expected to provide approximately 50% of Allegheny’s peak demand reductions and 3.9% of its total energy savings. OCA MB at 19 (citing OCA St. No. 1 at 6‑7). Finally, the OCA points out that Allegheny failed to include the total cost of its smart meter deployment in its TRC analysis of the smart meter dependent programs. The OCA asserts that the TRC Test for these programs, and the Plan as a whole, cannot be properly determined without the inclusion of the smart meter costs, which could compromise the cost‑effectiveness of the Plan. OCA MB at 24 (citing OCA St. No. 1 at 9‑10).

The OCA submits that Allegheny’s Plan should not be approved due to its heavy reliance on smart meter deployment. The OCA further requests that this Commission require Allegheny to redirect the funding for smart meter dependent programs to other programs. OCA MB at 25.

DEP suggests that early deployment of smart meters and implementation of time of use rates and real time price plans are key components to a successful EE&C program. DEP commends Allegheny for its forward thinking by committing itself to deploying smart meters on an expedited time frame. DEP St. No. 1 at 25.

Allegheny responds by noting that the OCA appears to overlook the actual interrelation of smart meters and Allegheny’s Plan that is evident with the Act’s implementation schedules. Allegheny asserts that the Act’s tight dovetail between the EE&C plans and smart meter plans indicates the interrelated nature of such plans. Allegheny MB at 35. Finally, Allegheny asserts that the record evidence shows that, if the nine smart meter related programs are removed, as the OCA requests, Allegheny would not be able to meet all the targets and requirements of the Act by simply expanding or scaling‑up the remaining thirteen programs. Allegheny MB at 36.

Allegheny witness Cohen testified that:

The importance of AMI and DR programs and rate offerings in the Allegheny Power service territory cannot be overstated. AMI will enable Allegheny Power to establish a durable capability to promote energy efficiency and conservation, lower ratepayer energy costs over the long term, lower bills for many customers across each of the company’s customer segments, and improve customer service.

Allegheny St. No. 4 at 9.

In a similar vein, Allegheny witness Miller testified that:

The nine EE&C and DR programs that rely on or are fully enabled by Smart Metering Infrastructure account for over 50% of the required demand reductions amounts. Without these programs, Allegheny will fall woefully short of reaching its reduction goals. Moreover, Allegheny Power’s non‑AMI programs cannot simply be expanded to “cover” the reductions that would otherwise be dependent on the AMI related programs. Just as any of the programs and measures have limits on the reductions they can be expected to achieve, there is a ceiling on the reductions the non-AMI programs as a whole can reasonably be expected to achieve.

Allegheny St. No. 2-R at 3.

Mr. Cohen also acknowledges that Allegheny will be significantly challenged by its reliance on Smart Meter deployment.

A significant challenge to Allegheny Power in implementing AMI is the scale of financial investment required to deploy enabling technologies during an economic downturn. I note that the deployment of advanced meters and other enabling technologies requires very significant outlays of capital on the part of utilities. AMI involves changing out 100 percent of residential and small commercial meters, replacing them with more expensive meters, installing a system-wide communications network, developing a new meter data management system, and rewriting software and business operations protocols to make optimal use of the new data and operational capabilities.

Allegheny St. No. 4 at 10.

##### (b) Disposition

In its *Implementation Order* entered June 24, 2009, at Docket No. M‑2009‑2092655, the Commission set forth a process for approving SMIPs, concluding with an anticipated Initial Decision to be issued on or before January 29, 2010, followed by a period for filing Exceptions and Reply Exceptions and issuance of a final decision.

In its testimony, Allegheny noted that it will be filing its SMIP on or before August 14, 2009, and that the EE&C programs and rate offerings that rely on smart meter technology leverages such technology to obtain energy savings. Allegheny St. No. 2‑R at 4‑5. Allegheny further stated that by leveraging smart meters it can obtain the benefit of smart meter related programs and include them within the Plan budget, while the costs for smart meter deployment are included in the SMIP budget. *Id*. at 5. Significantly, Allegheny included the EE&C Plan‑related common costs associated with these smart meter reliant programs in its EE&C Plan, including utility administration costs, evaluation, measurement and verification (EM&V), and other costs in the cost‑effectiveness testing of its Plan. *Id*.

We believe that Allegheny’s Plan recognizes and adequately accounts for the timing issue relating to the procurement and installation of smart meter technology, as required by the Act, assuming Allegheny’s SMIP schedule does not slip. We point out that the implementation timeline of the proposed demand response programs that rely on the deployment of smart metering technology are expected to align with the smart meter installation timeline. *See, e.g.*, Plan at 72, regarding the PCT Program.

We also believe that Allegheny’s exclusion of smart meter costs from its EE&C Plan is appropriate, only to the extent that such costs are directly related to its approved smart meter plan. We do not agree that any of the costs directly associated with the smart meters and their deployment should be a part of the Plan’s TRC Test analysis, any more than the costs associated with Allegheny’s other distribution assets should be a part of such an analysis. Smart meter technology is a legislatively‑mandated distribution system asset, the costs for which are recoverable under a completely separate section of the Code. *See* 66 Pa. C.S. § 2807(f). All reasonable and prudent costs incurrent by an EDC in the provision or management of an EE&C plan are recoverable on a full and current basis from customers, through a reconcilable adjustment clause under Section 1307. 66 Pa. C.S. § 2806.1(k). Whereas, EDCs may recover reasonable and prudent costs of providing smart meter technology, less operating and capital cost savings, through base rates or on a full and current basis through a reconcilable automatic adjustment clause under Section 1307. 66 Pa. C.S. § 2807(f)(7). The Commission recognizes that the actual allocation of costs associated with Allegheny’s EE&C Plan, its SMIP and even its default service plan,[[8]](#footnote-8) will depend on the facts when they become known. As such, the Commission reserves the right to direct the allocation of reasonable and prudent costs incurred in implementing, the EE&C Plan, the SMIP and default service plan, between these plans as the costs become known, through the appropriate procedural mechanism.[[9]](#footnote-9)

For all the above stated reasons, the Commission declines to modify Allegheny’s Plan as requested by the OCA. As noted previously, the Commission recognizes that Allegheny’s reliance on the rapid deployment of smart meters and the associated network infrastructure, as well as associated rates, does add an element of increased risk to its Plan. As Allegheny bears the sole risk of significant penalties if it fails to meet the mandated targets, we will not direct Allegheny to modify its Plan at this time. Nevertheless, the Commission will closely monitor this element of Allegheny’s Plan during the first annual plan review in 2010 and its review and monitoring of Allegheny’s Smart Meter Procurement and Installation Plan. If, however, Allegheny finds its strategy to be unworkable, we expect to see a revised Plan which addresses any apparent deficiencies. As stated above, the Commission strongly encourages Allegheny to develop an alternate “back‑up” plan that is less reliant on smart meter deployment.

**(2) Pay Ahead Smart Service Rate**

Allegheny proposes a Pay Ahead (Smart) Service Rate program as part of its residential energy efficiency and conservation measure offerings. This rate offering is targeted on a voluntary basis to residential customers with a smart meter. Plan at 74.

1. **Positions of the Parties**

The OCA asserts that pre‑paid services raise significant public policy concerns, whether they are voluntary or not, and should not be addressed in this proceeding. OCA MB at 26. The OCA states that Allegheny failed to demonstrate that pre‑paid services are effective energy efficiency measures, noting that Allegheny admits that this offering is more of a billing management service than an energy efficiency service. *Id*. (citing OCA St. No. 1 at 11 and Plan at 19). The OCA states further that Allegheny has failed to address the requirements of 52 Pa. Code § 56.17 (Advanced payments). OCA MB at 26; *see* OCA St. No. 1 at 13. In addition, the OCA states that Allegheny failed to provide complete data with regard to costs and benefits of the program; therefore, one cannot properly analyze the TRC Test for this program. OCA MB at 27 (citing OCA St. No. 1 at 12). Finally, the OCA submits that the studies relied upon by Allegheny to support the estimated energy savings attributable to the program are flawed or inapplicable to Allegheny’s program. OCA MB at 27‑31 (citing OCA St. No. 1 at 12‑14; Tr. 57‑59 and 197‑198; and Allegheny St. No. 4‑R at 8, 10, and 14). The OCA requests that the Pay Ahead (Smart) Service Rate be removed from Allegheny’s Plan.

Allegheny states that its Plan reveals that the Pay Ahead (Smart) Service Rate measure is a cost-effective means to reduce consumption and demand. Allegheny MB at 37 (citing Plan at 74‑77). Regarding 52 Pa. Code § 56.17, Allegheny asserts that as participation in this program is voluntary, this regulation does not apply. Allegheny MB at 37. Section 56.17 addresses when advance payment may be required by a utility. 52 Pa. Code § 56.17.

**(b) Disposition**

The Commission shares some of the OCA’s concerns regarding the savings the Pay Ahead (Smart) Service Rate measure can obtain, as well as, the policy concerns relating to continuous service. At this time, however, we will permit Allegheny to include this measure within its Plan. This Commission is charged with determining whether Allegheny’s Plan can meet the mandates of Act 129 in a cost effective manner, under tight budgetary constraints. 66 Pa. C.S. § 2806.1(a)(3) and (4). The Commission notes that these plans are heavily reliant on estimates and can be revised annually as more reliable data becomes available. *See* *Implementation Order* at 23‑24. Therefore, if Allegheny’s actual implementation of its Plan demonstrates that OCA’s concerns are being realized, the Commission will reassess this issue at a future date. With that said, the Commission directs Allegheny to implement this Pay Ahead (Smart) Service Rate measure in such a manner that it complies with all termination and reconnection of service mandates in the Public Utility Code at 66 Pa. C.S. §§ 1401‑1418 and in this Commissions regulations.

#### b. Small Commercial/Industrial

Allegheny’s Plan includes twelve programs designed for its small commercial and industrial customers. Taken together, these programs are expected to achieve cumulative energy savings of 222,734 MWh, or 35.5% of consumption reduction targets. In addition to energy savings, these programs are expected to achieve a combined reduction of 51 MW, or 32.3% of peak demand reduction targets. Plan at 28. Program costs for this sector total $19,460,085. Plan at 180.

Significant proposals, if any, to change Allegheny’s proposed programs and measures targeting commercial customers are addressed in other sections of this Order.

#### c. Large Commercial/Industrial

Allegheny’s Plan identifies nine programs for large commercial and industrial customers. These programs are estimated to achieve cumulative energy savings of 76,878 MWh by May 31, 2013, or 12.2% of required consumption reductions. Combined peak demand reductions for these programs are projected to be 102 MW or 65% of the established requirement. Total program costs for this sector total $15,465,105. Plan at 28, and 180.

#####  (1) Distributed Generation

The purpose of Allegheny’s Distributed Generation Program is to provide demand response with participating customers by deploying customer-owned standby generation during peak load hours. Cumulative peak demand savings for this program are estimated to be 28.5 MW. The Cumulative TRC for this program is estimated to be 0.4 *See* Plan at 144-148.

* + - * 1. **Positions of the Parties**

DEP argues that using distributed generation to reduce peak demand is not permitted under Act 129. The definitions of both “energy efficiency and conservation measures” and “peak demand” indicate that the only acceptable strategies to reduce peak demand is to reduce overall consumption or shift consumption to non-peak hours. “Energy efficiency and conservation measures” is defined in relevant part as “the technology, practice or other measure [that] *reduces consumption of energy* or peak load by the retail customer.” “Peak demand” is defined as “[t]he highest *electrical requirement* during a specified period.” 66 Pa. C.S. § 2806.1(m) (emphasis added). DEP argues that, given these definitions, reducing consumption of electricity during the highest specified period cannot occur by generating electricity with a behind the meter source, other than solar energy, because it is specifically listed as an energy efficiency and conservation measure. DEP MB at 8.

DEP’s argument continues that grid demand reduction that is merely replaced by higher emitting distributed generation has negative air impacts and is an unacceptable strategy for Pennsylvania. DEP’s regulations were written at a time when emergency generators were used only as back-up sources of power, not as distributed generation resources. As such, many of those generators fall outside DEP’s regulatory control and are not required to have permits or emission controls. DEP MB at 8; *see* DEP St. No. 1 at 23‑24.

Accordingly, DEP argues that the increased use of emergency generators will negatively impact Pennsylvania’s air quality. Because those resources will be deployed when ozone levels are the highest, the detrimental impact to human health could be quite significant and should be avoided. DEP MB at 9‑10.

DEP submits that the implementation of this program:

could result in adverse environmental impacts by allowing diversion of demand from power plants where stringent controls exist to less-well controlled distributed generation units. More frequent use of these small, less stringently controlled distributed generation units may result in an increase in per unit emissions. Moreover, there is a high concentration of these units in areas where ozone and particulate matter concentrations are already most likely to exceed health standards during peak hours. Grid demand reduction that is merely replaced by higher emitting distributed generation has negative air impacts, and is an unacceptable strategy for Pennsylvania.

DEP St. No. 1 at 23-24.

During cross-examination, DEP witness Guttman testified that DEP is opposed to distributed generation even if the resource has met all of the air permitting standards, including biomass and other alternative energy resources. Tr. at 309.

WPPII asserts that Act 129 does not eliminate distributed generation for use in meeting the mandated energy reduction targets. WPPII RB at 10. WPPII points out that the Act is silent with respect to the myriad of energy efficiency and conservation proposals that an EDC may offer. WPPII notes that, while the Act does list examples of specific energy efficiency and conservation measures, that list is not an exclusive one. *Id*. WPPII points out that DEP’s environmental concerns are addressed by noting that the participating customer will be required to comply with all federal, state, and local requirements. WPPII RB at 11‑12 (citing Allegheny St. No. 2‑R at 23).

Allegheny witness Miller’s testimony in support of the Distributed Generation Program stated:

Distributed generation (“DG”) resources have been deployed by other utilities and have been proven to control peak system loading supporting system reliability. While DG will likely produce emissions, most notably carbon dioxide and nitrogen oxides, the power it displaces might have produced more. The critical dependency is that while the emissions from DG are easily quantified, the reductions in emissions from displaced power production are more difficult to determine. They depend upon which power plants would have produced the power. If the DG displaces new, clean power sources, then DG may not reduce overall emissions. However, if DG displaces power from older and dirtier plants, then it is likely there will be a net reduction in overall emissions . . . With the limited number of DG installations in the proposed program and the small number of hours that DG will operate, the Company’s program will have a relatively small environmental impact . . . As technology evolves and becomes highly dispatchable and reliable, effective demand response DG could include renewable resources including solar generation, wind generation, fuel-cell generation, etc.

Allegheny St. No. 2-R at 21-22.

#####  Disposition

Act 129 does not eliminate distributed generation for use in meeting energy and demand reduction goals. Rather, Act 129 is silent with respect to the use of distributed energy resources. The Act does not dictate how EDCs must meet the reduction goals, only that they must. The Act appropriately leaves these matters to the discretion of the EDCs, pursuant to the Commission’s review.

The definition of “peak demand” explicitly states that, for an EDC, “the term shall mean the sum of the metered consumption for all retail customers over that period.” 66 Pa. C.S. § 2806.1(m). It is undeniable that the use of distributed energy resources during peak hours will reduce a company’s metered consumption during those periods. Because on-site generation is generally located “behind the meter,” distributed energy resources also reduce the metered consumption of the retail customer, which is one of the qualifying factors for “energy efficiency and conservation measures,” as defined by the Act.

Program administrators will be required to comply with all federal, state, and local requirements relating to distributed generation. Under this approach, a distributed generation program can reduce peak demand in full compliance with both Act 129 and current Commonwealth regulations.

Moreover, back-up generators can be an effective type of demand response programming. Back-up generation is a low cost piece in achieving demand reduction. So long as the units operate within the terms of their permits.

DEP’s concern with the environmental impact of distributed generation, as proposed in the Plan, is without merit. First, these systems will be dispatched by Allegheny for demand response activities only during relatively brief periods. Second, Allegheny will explore the use of alternative fuels including renewable resources. Third, DEP offers unsubstantiated allegations such as these systems *could* result in adverse environmental impacts and *may* result in an increase in emissions. Finally, DEP objects to distributed generation *even if DEP’s standards are met*.

The Commission will support a strategy of targeting eligible commercial and industrial customers who have existing backup generation resources, or are interested in having grid-connected generating units installed at their facilities, in order to realize energy savings and peak demand reductions. Act 129 does not dictate how EDCs must meet these goals, only that they must meet them. Since the Act appropriately leaves these matters to the discretion of the EDCs, pursuant to the Commission’s review, we only encourage the EDCs to be cognizant of this issue.

The Commission, however, is rejecting Allegheny’s Distributed Generation Program, for reasons unrelated to DEP’s environmental concerns. Specifically, we are rejecting this program due to the fact that, as proposed, it is costly, has an extremely low TRC and is not needed to meet the mandated peak demand target. Specifically, the Commission is concerned with the administrative costs associated with this program, which account for 32.7% of total costs of this program.[[10]](#footnote-10) In addition, the administrative costs are almost half as much as the incentive costs.[[11]](#footnote-11) The Commission believes that a distributed generation program with lower administrative costs related to the overall program and incentive cost would be more appropriate in a program funded by the ratepayers. The high estimated costs relative to the estimated demand savings is evident by a cumulative TRC of 0.4. See Plan at 148. Finally, this particular program, and its associated costs, are not needed to meet Allegheny’s demand reduction target. With this program, Allegheny is projected to obtain a 6.2% demand reduction in program year 2012, 1.7% above the 4.5% requirement. Plan at 36.

The Commission strongly supports demand response programs, such as distributed generation. Therefore, we encourage Allegheny to submit a revised distributed generation program that addresses the concerns identified above with its revised Plan.

**(2) Demand Response Programs**

Allegheny’s Plan proposes a Customer Load Response Program that will assist customers with the transition to market prices, load shaping, participation in PJM energy and capacity markets, and advanced metering. As part of this program, Allegheny will be responsible for marketing materials, contract preparation, load curtailment, and reconciliation. In addition, Allegheny will (either directly or through contracted services) develop online user tools. Plan at 139‑142.

In addition, Allegheny’s Plan proposes a Contracted Demand Response Program to be implemented from June 2012 through September 2012. This program is focused on reducing demand for commercial and industrial, as well as government and nonprofit customers. Under this program a demand response contractor will assist customers by providing load curtailment services directly to customers. This contractor will also be required to function as a curtailment service provider in the PJM load management program. Under this program, customers will be given incentives to curtail electric consumption during the 100 hours of highest demand from June 1, 2012 through September 31, 2012. This program will be implemented only if the EE&C Plan requires additional demand reduction to meet the demand reduction targets. Plan at 116‑119.

1. **Positions of the Parties**

ClearChoice asserts that competition in demand response programs is vital to the public’s interest by providing, in essence, low cost power from the demand side resources into the wholesale electric market to mitigate prices for energy, capacity and ancillary services. ClearChoice MB at 10; *See also*, ClearChoice St. No. 1 at 7. ClearChoice concludes that promoting competition among demand response providers will support the Commonwealth’s policy of promoting competition in the electric generation market. *Id*. ClearChoice recommends that Allegheny open its Customer Load Response Program and Contract Demand Response Program to participation by any PJM curtailment service provider. ClearChoice MB at 12. ClearChoice also recommends that the marketing of these programs be performed in a competitively neutral manner, so as not to promote the use of one curtailment service provider over another. *Id*. In addition, ClearChoice recommends that Allegheny provide customer information to curtailment service providers offering Allegheny’s demand response programs and that these curtailment service providers have access to Allegheny’s online tools. *Id*.

EnerNOC asserts that, while Allegheny’s load response program will obtain reasonable participation, it does not adequately target small to medium commercial and industrial customers. EnerNOC MB at 14. EnerNOC also asserts that Allegheny should pursue at least one CSP‑run load response program. EnerNOC MB at 12. EnerNOC asserts that Allegheny’s demand response programs only run for one year. EnerNOC argues that customers will not participate in a one‑year program. EnerNOC MB at 10. EnerNOC strongly disagrees with ClearChoice’s representation that Allegheny’s Customer Load Response Program is somehow discriminatory in nature and requires correction. This is not the case, as EnerNOC would contend that Allegheny’s program design is just the opposite. EnerNOC RB at 11.

WPPII stated its support for Allegheny’s Customer Load Response Program, as long as it is voluntary, does not count customer participation in the EE&C Plan without assistance from the EE&C Plan and does not prohibit customers from participating in separate PJM load response programs. WPPII MB at 7. WPPII further supports Allegheny’s proposal to allow customers to choose their own PJM curtailment service provider and still participate in the Customer Load Response Program. *Id*.

Allegheny asserts that EnerNOC’s proposed modifications are not warranted. Allegheny responds by noting that its load response program is intended to last more than one year, from 2010 through the 2012 plan years. Allegheny also asserts that, in developing this program it assumed a 50‑hour per year customer participation level; however, it does not favor restricting the program to this level, as it will need flexibility to meet the peak demand reduction target. In addition, its program will target both small and large commercial and industrial customers with demand greater than 300 kW initially and expand to other commercial and industrial customers in the future. Finally, Allegheny notes that it contracted with a CSP to complete a demand response market study and will decide whether to pursue additional contracted demand response based on that study. Allegheny MB at 43‑44 (citing Allegheny St. No. 2‑R at 36‑38); *see also* Allegheny RB at 32.

Allegheny proposes three areas of amendment in consideration of ClearChoice’s issues. First, customers may participate in the Allegheny EE&C Plan load response program and also participate in the PJM load response programs utilizing the Company or a third party as the customer’s PJM Curtailment Service Provider. Second, Allegheny agrees to convene a collaborative working group of itself, ClearChoice, and other interested third party PJM curtailment service providers whose work shall be completed by February 26, 2009. Last, online user tools developed for Allegheny’s EE&C Plan will be available to all customers participating in the Company’s programs. Allegheny RB at 2.[[12]](#footnote-12)

**(b) Disposition**

Based on the evidence before us, we are unable to approve Allegheny’s Contract Demand Response Program as currently filed. Allegheny proposes two commercial and industrial customer demand response programs – the Customer Load Response Program and the Contract Demand Response Program. The Customer Load Response Program is proposed to be implemented by an Allegheny selected curtailment service provider that will have the benefit of various administrative, operational, marketing and incentive support, and will be implemented beginning in the 2010 program year. *See* Plan at 139. The Contract Demand Response Program, however, is proposed to enable other competitive curtailment service providers to help Allegheny achieve its demand response requirements, but only in the event its Customer Load Response Program does not provide sufficient demand response needed to achieve the Act 129 requirements. *See* Plan at 116‑119. Furthermore, the Commission finds it significant that the Contract Demand Response Program has no funding and is only slated to be implemented in the summer of 2012. *Id*.

Allegheny is directed to immediately form a working group consisting of curtailment service providers and other interested parties to develop a plan to implement its Contract Demand Response Program in parallel with its Customer Load Response Program. The working group is also to develop an implementation strategy to ensure that undue advantage is not given to participating curtailment service providers, including measures that assure timely access to data, and equitable incentives for each of these demand response programs. Finally, Allegheny is to provide access to its EE&C Plan online user tools to all of its customers participating in the Company’s programs. The Commission believes that implementing these two demand programs in parallel will enhance Allegheny’s ability to achieve its Act 129 demand reduction targets. In addition, the Commission believes that such parallel implementation will provide Allegheny with a hedge against any risk of delay in implementing its smart meter deployment plan.

###  7. Proposals for Improvement of EDC Plan

The Commission’s EE&C Program must include “procedures to make recommendations as to additional measures that will enable an electric distribution company to improve its plan and exceed the required reductions in consumption.” 66 Pa. C.S. § 2806.1(a)(6). Several Parties offered recommendations that they argue will improve Allegheny’s Plan.

#### Residential

##### Incandescent Light Bulb Recycling

##### Allegheny’s Compact Fluorescent Lighting Rewards Program provides rebates to customers for the purchase and installation of single and multi‑pack CFLs. Under this program, mail‑in and point‑of‑sale rebates, as well as product markdowns will be offered. Plan at 16, and 51‑55.

#####  Positions of the Parties

The OCA recommends that Allegheny offer an incandescent light bulb recycling component to its CFL Rewards program. OCA MB at 33. The OCA posits that an incandescent light bulb recycling component will increase consumer awareness of efficient lighting technology, stimulate participation in the CFL program, and accelerate the Energy Independence and Security Act initiatives to eliminate incandescent light bulbs. The OCA further asserts that, the sooner existing lighting is purged and replaced with high efficient equipment, the sooner customers will obtain energy and cost savings. OCA St. No. 1 at 17‑18.

Allegheny asserts that adding an incandescent light bulb recycling program is neither necessary nor economical. Allegheny MB at 37. Allegheny points out that adding such a component to its CFL program would increase the cost of the program without providing any additional benefit. *Id*. (citing Allegheny St. No. 2‑R at 9).

#####  Disposition

The Commission declines to require Allegheny to add an incandescent light bulb recycling component to its CFL Rewards program. The OCA has failed to demonstrate that such a component can be added within the limited budget or that it would be cost effective.

##### (2) Fuel Switching Programs

**(a) Positions of the Parties**

The NGDCs advocate the inclusion of three fuel switching programs into Allegheny's Plan, two of which are targeted at residential customers, a Space Heating Conversion Program and a Water Heating Program. The Space Heating Conversion Program is designed as an addition to the Residential HVAC Efficiency Program, wherein Allegheny would pay an incentive of $3,500 for every customer who installs a natural gas furnace with annual fuel use efficiency (AFUE) greater than 92%. Under the Water Heating Program, Allegheny would pay an incentive of $700 for every customer who installs a natural gas water heater with an AFUE greater than 62%. The NGDCs reason that, if Allegheny does not consider these program modifications, the program runs the risk of biasing the consumer’s decision in favor of the installation of electric appliances, even when a more efficient option is available. NGDCs St. No. 1 at 29 and 31.

The Independent Oil and Gas Association of Pennsylvania[[13]](#footnote-13) (IOGA) supports NGDCs’ position that natural gas substitution measures that have demonstrated sustainable, long-term electric usage reduction opportunities are energy efficiency and conservation measures under the Act. IOGA RB at 1. IOGA asks this Commission to affirm this position. IOGA RB at 8.

DEP asserts that Allegheny’s Plan has the potential to unintentionally promote fuel switching from a combustion appliance to an electric appliance. DEP further asserts that fuel switching completely controverts the purpose of the Act and must be prohibited. DEP MB at 7; *see* DEP St. No. 1 at 24‑25.

Allegheny submits that fuel switching should not be included in its initial EE&C Plan for three reasons. First, the Commission in its prior Act 129 orders indicated that it is premature to include fuel switching programs in the EDC Plans. Second, the NGDCs proposals are flawed in that they are based on incomplete analyses. Lastly, the NGDCs proposals lack the necessary implementation details. Allegheny MB at 29‑35 (citing Tr. at 275, 278‑281, 283 and 285‑286, and NGDCs St. No. 1 at 30 and 32). In addition, Allegheny asserts that its residential HVAC Efficiency Program is targeted at replacing older heat pumps with high efficiency heat pumps, with the incentive based solely on the incremental cost of the high efficiency heat pump over the current minimum standard efficiency heat pump. Allegheny RB at 20. *See also* Allegheny St. No. 2‑R at 31‑32. Based on this fact, Allegheny asserts that DEP’s and NGDCs’ concerns about gas to electric fuel switching are unfounded. Allegheny MB at 21.

**(b) Disposition**

Some parties have urged us to require EDCs to utilize switching from use of electric power to natural gas as an energy efficiency or demand reduction measure. Some EDCs have included such measures as part of their plans. The NGDCs, for example, argue that this is contemplated by Act 129 and should be part of EDC plans. We have addressed this issue before, as discussed below, but believe a look at Act 129 is in order.

Act 129 does not expressly address switching between electric power and natural gas; however, it does state the following in defining “Energy efficiency and conservation measures”:

(1) Technologies, management practices or other measures employed by retail customers that reduce electricity consumption or demand if all of the following apply:

(i) The technology, practice or other measure is installed on or after the effective date of this section at the location of a retail customer.

(ii) The technology, practice or other measure reduces consumption of energy or peak load by the retail customer.

(iii) The cost of the acquisition or installation of the measure is directly incurred in whole or in part by the electric distribution company.

(2) Energy efficiency and conservation measures shall include solar or solar photovoltaic panels, energy efficient windows and doors, energy efficient lighting, including exit sign retrofit, high bay fluorescent retrofit and pedestrian and traffic signal conversion, geothermal heating, insulation, air sealing, reflective roof coatings, energy efficient heating and cooling equipment or systems and energy efficient appliances and other technologies, practices or measures approved by the commission.

 66 Pa. C.S. § 2806.1(m) (Definitions). Although the definition does not mention natural gas *per se*, we believe it is reasonable to assume that some uses of gas may be energy efficient. Nonetheless, it is premature to require EDCs to include fuel switching or fuel substitution in their plans at this time.

We addressed this issue in our order regarding the Technical Reference Manual (TRM)[[14]](#footnote-14) where we stated:

The Commission recognizes that fuel switching is a complicated topic that will require additional time and effort to fully address. As the TRM will provide vital guidance to EDCs in developing their EE&C plans, which are due to be filed by July 1, 2009, there is not enough time to convene a working group to address all the related issues, fuel switching will not be included in this TRM. The Commission will convene a fuel switching working group in the near future to identify, research and address issues related fuel switching. Depending on the outcome of this working group, fuel switching may be incorporated into a future version of the TRM.[[15]](#footnote-15)

We initiated the fuel switching working group at that time and directed that it report back to us with recommendations by June 1, 2010.[[16]](#footnote-16) In order to address this issue in a more timely manner, we will direct the working group to accelerate its efforts so that it will submit a recommendation to revise the TRM and TRC with regard to fuel switching programs by March 31, 2010. The fuel switching working group will need time to develop and make its recommendations. At this juncture, it would be imprudent to mandate that EDCs implement such programs in absence of the working group’s report and recommendations. With regard to those EDCs, such as Allegheny, which have not included fuel switching measures in their plans, the suggestions that we order the EDCs to include fuel switching programs as part of their EE&C plans is rejected.

 Furthermore, we agree with Allegheny that, as its HVAC Efficiency Program is not designed to target or promote gas to electric fuel switching, we will not modify that portion of Allegheny’s Plan at this time. While Allegheny’s HVAC Efficiency Program is not designed to target or promote fuel switching, we agree that there is a risk that fuel switching may occur. As the magnitude of this risk and any other associated potential issues are not a part of the record evidence, we will refer this issue to the fuel switching working group to address. In addition, we direct that Allegheny’s EM&V contractors track appropriate data, in coordination with the Statewide Evaluator, relating to the Residential HVAC Efficiency Program. Such appropriate data shall include at least the following: (1) type of appliance being replaced (natural gas or electric); (2) the availability of natural gas at the customer’s location or immediate area; and,(3) whether heat pumps or electric water heaters were installed in areas where natural gas is available. This information, as well as other data obtained through the Statewide Evaluator, will be helpful to the fuel switching working group as it studies market potential and the potential impacts of fuel switching programs.

##### (3) Incentive to Hire Low Income Workers

1. **Positions of the Parties**

ACORN recommends that Allegheny’s RFP process should incorporate an incentive for CSPs to hire low‑income individuals. ACORN St. No. 1 at 12. ACORN posits that it is consistent with the intent of Act 129 to help low‑income customers afford electricity by helping them acquire jobs that will lift them out of poverty. ACORN MB at 19.

**(b) Disposition**

Act 129 does not mandate that the CSP bidding process include evaluation criteria regarding a willingness to employ low-income workers. On the other hand, there is nothing in the Act that would prohibit an EDC from actively seeking to employ low‑income individuals, assuming there is no issue with the qualifications or experience of the successful candidates. Mandating such a standard, however, would present a number of difficulties, not the least of which involves whether the Commission has jurisdiction over the hiring practices of EDC contractors. In addition, the definition of “low-income” would be at issue. Finally, it would be difficult to impossible for the Commission to enforce a standard involving private and subjective information. For these reasons, the Commission will not require Allegheny to include incentive provisions in CSP RFPs to hire low-income workers.

##### (4) Low-Income Space Heater Program

1. **Positions of the Parties**

ACORN recommends that Allegheny include in its low‑income program efforts to remove portable electric space heaters. ACORN asserts that portable electric space heaters pose a serious physical and financial threat to low‑income households. ACORN further asserts that portable space heaters are extremely dangerous to operate and are inefficient methods of heating. ACORN argues that by targeting portable electric space heaters, Allegheny could achieve the Act’s goals of eliminating inefficient electrical devices, while at the same time improving the well being of low‑income customers. ACORN MB at 19; *see also* ACORN St. No. 1 at 13.

In its Reply Brief, Allegheny stated that it will incorporate into its Act 129 and LIURP programs that include home audits and involve weatherization of low‑income households a message that weatherization will allow homeowners to minimize the use of space heaters. Allegheny also agreed to consider adding an incentive toward removal of space heaters to the program in the future, subject to budgetary constraints. Finally, Allegheny agreed to continue to coordinate and work with state agencies to identify low‑income customers so they may be enrolled into and receive services from its low‑income residential customer programs. Allegheny RB at 1‑2.

1. **Disposition**

The Commission need not micro-manage each plan to see that the use of space heaters is reduced in the Commonwealth. We believe other measures in Allegheny’s Plan offer sufficient incentives for people to reduce their use of space heaters and to switch to more economical, safe, and energy efficient means of heating their homes and businesses. In addition, Allegheny has agreed to expand its education regarding the use of space heaters directed at low‑income customers and to expand its program offerings directed at portable space heaters in the future as its budget permits. For these reasons, the Commission will not, at this time, direct Allegheny to expand its program offerings related to this issue, other than what it has agreed to in its Reply Brief. Allegheny is directed to file an amended Plan consistent with the changes as outlined in its Reply Brief.

 **(5) HVAC Efficiency Improvements**

1. **Positions of the Parties**

Field Diagnostic asserts that Allegheny’s proposed HVAC programs would benefit from the following: (1) inclusion of measures for improving HVAC efficiency short of full replacement; (2) establishing guidelines, protocols and procedures for HVAC tune‑ups; and (3) Inclusion of incentives for HVAC‑specific diagnostic testing that utilizes automated diagnostic systems. Field Diagnostic MB at 7. Field Diagnostic posits that HVAC efficiency improvement is the single best means to reduce customer energy use in every customer class. Field Diagnostic MB at 8 (citing Field Diagnostic St. No. 1 at 3‑16). Field Diagnostic further asserts that by optimizing an HVAC system, a customer can realize an average energy savings of twenty to twenty‑five percent per HVAC unit, leading to a seven to twelve percent reduction in a customer’s entire energy usage. Field Diagnostic MB at 8 (citing Field Diagnostic St. No. 1 at 8‑13). Field Diagnostic posits that failure to provide a financial incentive for diagnostic testing of existing HVAC systems could render the HVAC measures useless. Field Diagnostic MB at 12 (citing Field Diagnostic St. No. 1 at 27 and 28). Finally, Field Diagnostic asserts that it is important that uniform standards be developed for existing whole‑house programs. Field Diagnostic MB at 13 (citing DEP St. No. 1 at 18 and 19).

Allegheny responds by noting that Field Diagnostic’s proposed HVAC modifications are not necessary. Specifically, Allegheny states that HVAC tune‑ups can be a recommendation resulting from an energy audit that is a part of its Home Performance Program. Allegheny MB at 42 and RB at 21 (citing Allegheny St. No. 2‑R at 30). Furthermore, Allegheny plans to monitor the recommendations provided under this audit program to determine if incentives for HVAC tune‑ups and diagnostic testing should be added to its plan. Allegheny RB at 21 (citing Allegheny St. No. 2‑R at 30). Finally, Allegheny noted that there are no established guidelines, protocols or procedures for diagnostic testing of HVAC performance. Allegheny RB at 21 (citing Field Diagnostic St. No. 1 at 15).

1. **Disposition**

The Commission declines to direct Allegheny to include a specific HVAC tune‑up program in its Plan, beyond what it proposed in its Reply Brief. Field Diagnostic failed to demonstrate that such a program would be cost effective and could be implemented within the budgetary constraints. With that said, the Commission looks forward to seeing the results of Allegheny’s monitoring of its energy audit programs and encourages Allegheny to pursue an HVAC tune‑up program if it is cost effective.

#### b. Commercial

Significant proposals to change Allegheny’s proposed programs and measures targeting commercial customers are addressed in other sections in this Order.

#### c. Industrial

Significant proposals to change Allegheny’s proposed programs and measures targeting industrial customers are addressed in other sections in this Order.

## B. Cost Issues

### 1. Plan Cost Issues

Each EE&C plan must include an analysis of the EDC’s administrative costs, 66 Pa. C.S. § 2806.1(b)(1)(i)(K), as well as an estimate of the total cost of implementing the measures in the plan. 66 Pa. C.S. § 2806.1(b)(1)(i)(F). The total cost of the plan cannot exceed 2% of the EDC’s total annual revenue as of December 31, 2006. 66 Pa. C.S. § 2806.1(g). In addition, Act 129 states “no more than 2% of funds available to implement a plan under this subsection shall be allocated for experimental equipment or devices.” 66 Pa. C.S. § 2806.1(b)(1)(iii).

Allegheny’s total annual revenues for calendar year 2006 were approximately $1.2 billion ($1,178,130,105); 2% of this amount is approximately $23.5 million ($23,562,602). Plan at 177. Allegheny proposes the following annual portfolio budget: Program year 2009 $10,038,426; Program year 2010 $25,848,630; Program year 2011 $29,634,093; and Program year 2012 $28,728,723. Plan at 37. Allegheny projects an aggregated total Plan cost of $94.25 million. Plan at 178.

**a. The Two Percent Cost Cap**

Section 2806.1(g) of the Act requires that the total cost of any EE&C Plan may not exceed 2% of the EDC’s total annual revenues as of December 31, 2006. 66 Pa. C.S. § 2806.1(g). Section 2806.1(m) of the Act defines EDC total annual revenue as amounts paid to the EDC for generation, transmission, distribution, and surcharges by retail customers. 66 Pa. C.S. § 2806.1(m). In the *Implementation Order*, this Commission also directed that EDC total annual revenue is “to include all amounts paid to the EDC for generation service, including generation revenues collected by an EDC for an EGS that uses consolidated billing.” *Implementation Order* at 35. Allegheny’s total annual revenues for calendar year 2006 were approximately $1.2 billion ($1,178,130,105), and 2% of this amount is approximately $23.5 million ($23,562,602). Plan at 177.

#### (1) Positions of the Parties

WPPII’s states that the Commission must follow the plain language of Act 129 limiting total EE&C plan expenditures to 2% of Allegheny’s 2006 revenues. Specifically, WPPII decries the PUC’s interpretation, which permits Allegheny and other EDCs to accrue expenses equal to this 2% figure in each year of their plans, as opposed to a total plan cost equivalent to this amount. WPPII further maintains that it has raised this legal argument in this proceeding simply to preserve the right to appeal the *Implementation Order’s* interpretation at a later date, if necessary, and does not advocate that the Commission should reject Allegheny’s Plan on this basis. WPPII RB at 12.

DEP asserts that the funding cap advocated by the industrial interveners would make the conservation and demand reductions specified in Act 129 impossible to achieve. DEP believes that the correct interpretation of this section is to limit EDC’s Act 129 expenditures to 2% of the EDC’s 2006 revenues in any year. DEP MB at 14‑15.

Allegheny opines that under principles of statutory construction the 2% total cost limitation interpretation of Act 129 is an unlawful interpretation that produces an absurd result, as the statutory consumption and demand reduction targets would not be achievable under a total spending limitation of $23.5 million. Allegheny MB at 46; *see* Allegheny St. No. 3‑R at 7.

#### (2) Disposition

A few parties raise the issue as to whether the Act 129 provision limiting an EDC’s EE&C plan costs to 2% of 2006 revenues is an annual plan expenditure limit or a total four‑year plan expenditure limit. Specifically, the relevant portion of Section 2806.1(g) of the Act states that “the total cost of any plan required under this section shall not exceed 2% of the electric distribution company’s total annual revenue as of December 31, 2006.” 66 Pa. C.S. § 2806.1(g). The Commission previously addressed this issue in the *Implementation Order*. The Commission stated the following:

With regard to the two percent limitation provision of the Act, we agree with PPL that this limitation on the “total cost of any plan” should be interpreted as an annual amount, rather than an amount for the full five-year period. Since the statutory limitation in this subsection 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. In addition, we note that the plans are subject to annual review and annual cost recovery under the Act, 66 Pa. C.S. §§ 2806.1(h) and (k). Finally, based upon the information presented in the comments and experience in other states, it appears that the statutory goals for consumption and demand savings are not likely to be achievable if the two percent limit was read as applicable to the entire multi-year EE&C program.

*Implementation Order* at p. 34 (footnotes omitted).

This Commission’s rational for interpreting the 2% cost limitation as an annual amount, as outlined in the *Implementation Order*, points out the ambiguousness of this section. Therefore, we may consider the consequences of a particular interpretation to determine the intent of the General Assembly. *See* 1 Pa. C.S. § 1921(c). The evidence contained in Allegheny’s EE&C Plan proceedings provides substantial support for our previous conclusion that the statutory goals for consumption and demand savings are not achievable if the 2% limit applied to the entire multi‑year EE&C program. The evidence of record shows that Allegheny’s Plan slightly exceeds the statutory consumption and demand targets with a budget that spends almost the entire 2% annual cost cap. As the Plan covers four years, the Commission would have to reduce the planned expenditures by about three‑fourths of the current amount if we were to adopt a 2% cap for an entire multi‑year EE&C plan. Such a reduction in spending would result in a corresponding reduction in consumption and demand energy savings, making it impossible for Allegheny to meet the statutorily imposed consumption and demand targets, unless its shareholders contribute what amounts to almost three‑fourths of the necessary funding to avoid a penalty of up to $20,000,000. Such a result could raise an unconstitutional taking issue. The Commission does not believe that the General Assembly intended such a result. As such, it is clear to this Commission that the intent of the General Assembly was that each plan would be able to meet the mandated energy reduction targets within the legislatively imposed spending limits.

Furthermore, as the General Assembly declared in the preamble of Act 129, “[i]t is in the public interest to adopt energy efficiency and conservation measures and to implement energy procurement requirements designed to ensure that electricity obtained reduces the possibility of electric price instability, promotes economic growth and ensures affordable and available electric service to all residents.” As the EE&C Plan under review in this proceeding is in the public interest, the costs of such a Plan must be borne by the public as a whole. As such, the Commission stands by its interpretation propounded in the *Implementation Order*: that Section 2806.1(g) of the Act must be interpreted as an annual cost limit, not a multi‑year plan cost limit. As such, the Commission approves Allegheny’s Plan budget as may be modified in other sections of this Opinion and Order.

**b. Exclusion of Statewide Evaluator from Limitation on Costs**

Act 129 requires the Commission to establish an evaluation process that monitors and verifies data collection, quality assurance, and the results of each EDC’s EE&C plan as well as the program as a whole, in accordance with the TRC Test. 66 Pa. C.S. § 2806.1(a)(2). While the Act requires each EDC’s plan to explain how quality assurance and performance will be measured, verified and evaluated,[[17]](#footnote-17) it requires the Commission to monitor and verify EDC data collection, quality assurance processes, and performance measures, by customer class. 66 Pa. C.S. § 2806.1(a). This evaluation is to be conducted every year, as each EDC must submit an annual report by July 15th, 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). Each EDC must also identify necessary adjustments to its plan based on the results of the annual and five-year reviews. 66 Pa. C.S. § 2806.1(b)(2).

The Act further requires that, by November 30, 2013, and every five years thereafter, the Commission must evaluate the costs and benefits of the program as a whole as well as the costs and benefits of the individual EE&C plans submitted by the EDCs to the Commission. This evaluation applies to reductions in consumption as well as reductions in peak demand, and it must be consistent with the TRC Test. If the benefits of the program exceed the costs, the Commission must adopt additional required incremental reductions in consumption. 66 Pa. C.S. § 2806.1(c)(3) and (d)(2).

In order to audit program results and to confirm the specific energy reduction target requirements specified in Act 129, the Commission retained the services of a statewide evaluator who will monitor and verify EDC data collection, quality assurance processes, and performance measures, by customer class as required by Section 2806.1(a)(2) and (3). 66 Pa. C.S. § 2806.1(a)(2) and (3). Section 2806.1(h) of Act 129 states that the Commission shall recover from the EDCs its costs of implementing the overall EE&C program. 66 Pa. C.S. § 2806.1(h). The cost of the statewide evaluator falls into this category.

1. **Positions of the Parties**

Allegheny proposes to include the cost of the statewide evaluator in its administrative costs under the 2% cap. Allegheny calculated administrative costs by estimating costs associated with specific activities, utilizing price quotations and by using actual charges year‑to‑date to establish program development costs. Administrative costs include start-up costs such as information technology (IT), database and web portal development, and program development. IT, database, and web portal development costs were estimated based on IT requirements that were identified specific to the proposed EE&C and DR programs. Other administrative costs include costs for the statewide evaluator and program development costs, with this component based on actual charges year‑to‑date. Plan at 240.

1. **Disposition**

The costs of the individual EDC’s plans are limited by the Act to 2% of the EDC’s total annual revenue as of December 31, 2006. 66 Pa. C.S. § 2806.1(g). However, the statewide evaluator expense, while necessary to the implementation of the overall program administered by the Commission, is not a cost component of the EDCs’ individual plans. Since the EDCs have no control over the level of this expense, it is appropriate that the EDCs not be required to include the cost of the statewide evaluator within the 2% limitation on the cost of their individual plans.

Furthermore, Section 2806.1(k)(1) states that each EDC shall recover all reasonable and prudent costs incurred in the provision or management of its EE&C plan on a full and current basis through a reconcilable surcharge. 66 Pa. C.S. § 2806.1(k)(1). Therefore, the cost recovery of the statewide evaluator should be reconciled separately and added to the EE&C Surcharge.

We conclude that the expense related to the statewide evaluator is not a cost component of Allegheny’s individual Plan. Rather, it is a cost component of the overall program instituted by the Commission. Accordingly, we find that Allegheny’s recovery for its respective share of the statewide evaluator cost will not be subject to the 2% spending cap on Allegheny’s Plan.

**c. Inclusion of Smart Meter Costs**

Allegheny claims that its EE&C Plan does not include any smart meter costs, however, the Plan relies on smart meter deployment to meet the energy consumption and peak demand savings targets. Allegheny notes that several of the proposed measures and programs in its Plan are enhanced by and/or rely on the installation of smart meters and smart metering infrastructure as well as new rate structures and tariffs. The Company believes that smart meters, smart metering infrastructure and a set of complementary designed rates and tariffs are essential to meet the mandated consumption and demand reduction targets of Act 129. Plan at 12.

**(1) Positions of the Parties**

The OCA asserts the Company has not included the full costs of these programs in either its TRC Test or in its expenditure budgets. Importantly, even prior to adding the meter deployment costs, Allegheny’s budgeted expenditures are already at or near the 2% spending limitation. When the full cost of these metering programs are included, Allegheny’s Plan will far exceed the 2% spending limitation required by the Act. OCA St. 1 at 10.

 Allegheny states that it did not include smart meter-related costs in its EE&C Plan filing. Rather, in accordance with the cost recovery provisions of Act 129, smart meter costs were included in the Company's Smart Meter Installation Plan (SMIP) filing made with the Commission on August 14, 2009. Allegheny asserts that the plain language of Act 129 contains separate cost recovery provisions for SMIP costs versus EE&C Plan costs. Specifically, Section 2807(f)(7) provides an independent cost recovery mechanism for smart meter-related costs under the SMIP that is separate and distinct from the cost recovery mechanism for EE&C measures under Section 2806.1(b)(1)(i)(H). Allegheny asserts that its decision to exclude smart meter costs from its EE&C Plan is entirely lawful and appropriate. Allegheny MB at 46 (citing Allegheny St. No. 2-R at 3-6).

**(2) Disposition**

Costs directly attributable to Allegheny’s approved SMIP are not to be included in its EE&C Plan costs. As discussed above, smart meter and EE&C Plans are identified in different sections of the Act and full recovery of both is authorized through separate proceedings. As stated previously in this Order, we believe that Allegheny’s exclusion of smart meter costs from its EE&C Plan is appropriate, only to the extent that such costs are directly related to its approved smart meter plan. We do not agree that any of the costs directly associated with smart meters or their deployment should be a part of the Plan’s TRC analysis, any more than the costs associated with Allegheny’s other distribution assets should be a part of such an analysis. Smart meter technology is a legislatively‑mandated distribution system asset, the costs for which are recoverable under a completely separate section of the Code. *See* 66 Pa. C.S. § 2807(f). All reasonable and prudent costs incurrent by an EDC in the provision or management of an EE&C plan are recoverable on a full and current basis from customers, through a reconcilable adjustment clause under Section 1307. 66 Pa. C.S. § 2806.1(k). Whereas, EDCs may recover reasonable and prudent costs of providing smart meter technology, less operating and capital cost savings, through base rates or on a full and current basis through a reconcilable automatic adjustment clause under section 1307. 66 Pa. C.S. § 2807(f)(7). The Commission reiterates the recognition that the actual allocation of costs associated with Allegheny’s EE&C Plan, its SMIP and even its default service plan,[[18]](#footnote-18) will depend on the facts when they become known. As such, the Commission reserves the right to direct the allocation of reasonable and prudent costs, incurred in implementing the EE&C Plan, the SMIP and default service plan, between these plans as the costs become known, through the appropriate procedural mechanism.[[19]](#footnote-19)

### 2. Cost Effectiveness/Cost-Benefit Issues

Each EDC must demonstrate that its plan is cost effective using a total resource cost test approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(I). In addition, the Commission’s EE&C Program must include an analysis of the cost and benefit of each plan, in accordance with a total resource cost test approved by the Commission. 66 Pa. C.S. § 2806.1(a)(3).

####  a. Positions of the Parties

Allegheny noted that the overall cost‑benefit ratio for its Plan is 4.1. *See* Plan at amended Table 1. The OCA submits that the cost-effectiveness of the Plan cannot be determined due to the fact that Allegheny does not include all smart meter costs in the calculation of the Plan’s TRC Test. OCA MB at 37. Allegheny responded that it properly excluded the smart meter costs from the cost calculations for its EE&C Plan and properly included those costs in its SMIP filing made with the Commission on August 14, 2009. Allegheny RB at 24.

**b. Disposition**

The creation of the cost effectiveness analyses using the Commission‑approved TRC Test required the use of many assumptions regarding current and future energy prices. Given that such forecasting is very assumption‑dependent, the intention of the TRC Test was to ensure that all EDCs were using the same basic methodology to calculate the costs and benefits of their EE&C plan to eliminate potential discrepancies in calculations across companies. In some scenarios, companies used marginal deviations from the TRC Order methodology to more accurately reflect the circumstances affecting their particular plans. Where these deviations did not lead to material differences in the resulting cost effectiveness analysis, our disposition is that the Plan’s TRC Test should be approved. Furthermore, any such differences may be resolved by a stakeholder group as prescribed by the *TRC Test Order*:

Many issues involved in the EE&C plans, program implementation, and operation of the TRC Test will be ongoing. As will be seen, several specific issues are identified below which will require additional consideration and discussion. Accordingly, we have determined to convene a stakeholder group to address these issues, as well as future issues which will undoubtedly arise as the plans move forward. A future Secretarial letter will announce details of the stakeholder group.[[20]](#footnote-20)

Allegheny submitted an amended filing to ensure that their cost effectiveness test was in full agreement with the Commission approved *TRC Test Order*.[[21]](#footnote-21) While their amended filing resulted in slight changes to the overall TRC calculations, the Plan and the components therein still passed the Commission’s TRC Test with a cost‑benefit ratio of 4.1.[[22]](#footnote-22) Therefore, we accept Allegheny’s amended cost effectiveness test and find that the Plan absent the Distributed Generation Program meets the TRC Test. The Commission, however, notes that Allegheny’s TRC Test results are based on estimates; as such, the Plan’s cost effectiveness will be reviewed annually per the Act. *See* 66 Pa. C.S. § 2806.1(b)(1)(i)(J) and (i). To that end, we will require Allegheny to provide an updated TRC analysis of its Plan as part of its annual report. Given that Allegheny will be providing the Commission with information on the actual cost‑effectiveness of its Plan as part of its annual report, requiring Allegheny to provide a TRC analysis as part of the annual reporting process is not unreasonable. These annual TRC analyses will facilitate appropriate Plan modifications on a more timely manner.

Furthermore, in the *TRC Test Order*, we directed that a stakeholder group be convened by Commission staff to address various issues arising in the total resource cost test process. One such issue is whether to make adjustments to gross energy savings through the use of a net-to-gross (NTG) ratio. Three common factors, among others, addressed through the NTG are “free riders,” “take-back effect,” and “spillover effect,” sometimes referred to as “free drivers.” The concept of free riders is that a number of customers may take advantage of rebates or cost savings available through conservation programs even though they would have installed the efficient equipment on their own, without any incentive from the company. Since there is no specific data available for Act 129 programs, the Commission determined that there would be no NTG adjustment made for the first year of program implementation. The Commission also proposed that the EDCs be directed to study the degree to which these factors that affect the NTG adjustment are present, and such studies would be coordinated and overseen by the Statewide Evaluator. Specifically, we direct that the TRC working group review the assumptions regarding penetration rates, rebate levels, and free ridership associated with CFL programs.

### 3. Cost Allocation Issues

With regard to cost recovery, the Commission’s EE&C Program is required to “ensure that measures approved are financed by the same customer class that will receive the direct energy and conservation benefits.” 66 Pa. C.S. § 2806.1(a)(11).

**a. Penn State’s Request to have its Tariff Excluded from Specific Programs**

Allegheny’s Plan allocates a portion of its costs for several programs to Tariff No. 37, the Tariff applicable to Penn State. The programs, for which costs are allocated to Tariff No. 37, include the Lighting Efficiency and Distributed Generation Demand Response programs. Plan Appendix at 11.

#### (1) Positions of the Parties

Penn State submits that University Park is served under Allegheny’s Tariff 37, a tariff service separate from all other customers. Penn State opines that Tariff 37 should be removed from the Lighting Efficiency and Distributed Generation Programs. Penn State opposes inclusion in the lighting program for two reasons. To begin with, Penn State asserts it has already made large investments in the replacement of lighting, leaving few opportunities to participate in this program. Next, Penn State asserts that the allocation of the lighting program costs to Tariffs 39 and 37 results in an unreasonable mix of previously defined and established tariffs that have a high potential for rate subsidization by Tariff 37 or Tariff 39 ratepayers. Penn State St. No. 1 at 5, 7-8.

Penn State also opposes inclusion in the Distributed Generation Program. Penn State contends that participation in this program would cause an unlawful non‑compliance with the University’s air permit. Furthermore, Penn State argues that the University has evaluated the possibility of participating in similar programs in the past year with existing generators between 100kW and 2000kW and concluded that this is considered an unlawful act according to the air permit associated with each generator. Penn State St. No. 1 at 8. As such, Penn State asserts that no costs associated with the Distributed Generation Program should be allocated to Tariff 37. *Id*.

Allegheny asserts that the record evidence shows that Penn State has the potential to participate in and benefit from these programs, given that the Penn State facilities for lighting are typical of those served under Rate Schedules 20 and 30 and that the Penn State facilities for distributed generation are typical of those served under Rate Schedule 30. Moreover, the individual treatment proposed by Penn State for both programs is contrary to the portfolio approach of the Company's Plan, which accepts that not every customer will participate in each and every program. To account for this, Allegheny has provided a cost allocation method that attributes programs to each of the various tariffs/rate schedules under which a customer is most likely to participate in a Plan program. As such, Allegheny asserts that Penn State's Tariff 37 should not be excluded from these program costs. Allegheny MB at 41-42 (citing Allegheny St. No. 3‑R at 9); *see also* Allegheny St. No. 2‑R at 24.

WPPII is in agreement with Allegheny’s position on this issue. WPPII echoes Allegheny’s direct testimony that by “permitting Penn State’s service under Tariff No. 37 to exempt itself from certain programs sets a dangerous precedent for other customers to claim individualized treatment, which is contrary to the portfolio approach of program offerings.” WPPII RB at 4 (citing Allegheny St. No. 2‑R at 24). WPPII further states that in attempting to distribute costs equitably among customers, Allegheny has allocated the costs of a program to customers who are most likely (not guaranteed) to have an application that allows them to participate in a program. WPPII RB at 4‑5 (citing Allegheny St. No. 2-R at 24). Lastly WPPII asserts that, if the Commission is inclined to grant Penn State’s request, WPPII respectfully requests an opportunity for all customers to opt-out of participation in, and cost responsibility for, individual programs. WPPII RB at 5.

On or about September 28, 2009, Penn State filed a Motion to Strike Section II.B, pages 3‑5 of the WPPII Reply Brief. In its Motion, Penn State asserts that in its Reply Brief, WPPII, for the first time, argues in opposition to Penn State asking the Commission to reject what WPPII characterizes as Penn State’s request to “opt‑out” of the Lighting Efficiency and Distribution Generation programs. Penn State asserts that WPPII stated this position for the first time in a reply brief without giving Penn State an opportunity to offer responsive testimony or to cross-examine the ten WPPII members. Penn State argues that, without such an opportunity, it could not provide a meaningful response to WPPII’s position. For these reasons, Penn State requests that this Commission strike Section II.B, pages 3‑5 of WPPII’s Reply Brief.

####  (2) Disposition

We deny Penn State’s Motion to Strike for the following reasons. While we agree that parties should not be permitted to introduce new arguments at the reply brief stage of a proceeding, thus, precluding other parties from providing responsive testimony or conducting cross-examination, we believe that Penn State did have an opportunity to respond to and challenge the evidence relied upon by WPPII. In addition, we do not believe WPPII’s position and arguments are materially different from those of Allegheny.

We believe that Penn State has mischaracterized the actions of WPPII herein in that the relevant issue was not raised initially at the reply brief stage of the proceeding. In Allegheny’s Main Brief, at pages 41‑42, the utility makes the argument that Penn State’s tariff should not be excluded from these programs. Specifically, Allegheny points out that Penn State has the potential to participate in and benefit from these programs, given that its facilities for lighting are typical of those served under Rate Schedule 30. Allegheny MB at 41.

Additionally, in Allegheny St. No. 2-R at 24, lines 18-21, Mr. Miller testified that “permitting Penn State’s service under Tariff No. 37 to exempt itself from certain programs sets a dangerous precedent for other customers to claim individual treatment, which is contrary to the portfolio approach to program offerings.” In addition, Penn State St. No. 1 at 7, lines 2-7 states that “[u]niversity park and tariff 37 should not be included in these programs and should not be apportioned the cost of these programs. Penn State does not oppose the inclusion of Tariff 37 in the remaining three proposed programs . . . .” Indeed, the Commission reads Penn State’s own witness testimony as clearly requesting that it be permitted to “opt out” of certain programs while choosing to fund other programs.

It is clear that the relevant arguments were addressed in testimony and that Penn State had ample opportunity to respond thereto. The above illustrates that, while WPPII may have used different words, it was not raising a new or novel issue or argument and was relying upon evidence of record, which Penn State had ample opportunity to challenge on cross-examination and respond to in its briefs. While Allegheny used the terms “exempt itself” the Commission believes such a term is synonymous with the term “opt‑out.” Finally, as WPPII’s position is synonymous with that of Allegheny’s we note that our disposition of this particular issue can rest solely on the evidence and arguments presented by Allegheny.

Penn State’s desire to be exempt from payment of costs associated with one or more programs, for which it is eligible to participate, is not warranted. We expect there will be customers of Allegheny who, for one reason or another, will choose not to participate in an EE&C program offered by Allegheny, or choose to participate in one program and not another. To be reasonable, however, we cannot permit individual customers to “opt out” or “exempt themselves” from one or more programs or measures and their associated costs offered under the Plan. Similarly, we could not permit an option for customers to “opt out” or “exempt themselves” from costs associated with power purchase agreements or transmission facilities appropriately assigned to customers’ rate classes and tariffs. Therefore, we will not exclude Penn State’s Tariff 37 from these programs as these program costs were appropriately assigned to the customer class that includes Penn State’s Tariff 37. Significantly, Act 129 charges this Commission with ensuring “that measures approved are financed by the same customer *class* that will receive the direct energy and conservation benefits.” 66 Pa. C.S. § 2806.1(a)(11) (emphasis added). We believe that Allegheny classified Penn State in the appropriate rate class and appropriately allocated the program costs targeted at the customer class for which Penn State was appropriately assigned.

**b. Government/Nonprofit Rate Classification**

The various EE&C programs proposed by Allegheny have a target market of residential (including low-income), commercial, industrial, and government, school and nonprofit customers. Plan at 180. With the exception of the Tariff No. 39[[23]](#footnote-23) residential customer class and Tariff No. 37, Allegheny does not have retail rate schedules available specifically for commercial, industrial, government, school or nonprofit customers. Allegheny’s Tariff No. 39 non-residential rate schedules are available based upon customer size (i.e., minimum monthly billing demand) and service voltage. Accordingly, government, school and nonprofit customers are served on suitable non‑residential Tariff 39 rate schedules based on the size of their electrical load. Plan at 182.

1. **Positions of the Parties**

The OSBA recommends that government/nonprofit customers be treated as a separate class for cost recovery purposes. The OSBA contends it is possible that small commercial and industrial customers will be unduly burdened with paying for the energy conservation targets for government and nonprofit entities. The OSBA further argues that the combining of government/nonprofit customers with small commercial and industrial customers for cost recovery purposes appears to be in conflict with 66 Pa. C.S. § 2806.1(b)(1)(i)(B), which treats the government/nonprofit group as a separate class which must produce an explicitly mandated share of the total energy reductions. OSBA MB at 15. Furthermore, the OSBA asserts that there is a potential problem with how Allegheny proposes to meet the requirement to obtain 10% of all consumption reductions from government and nonprofit entities. The OSBA asserts that Allegheny appears to allocate these costs to the various rate classes under which these customers take service, which are likely to be primarily small commercial and industrial customers. The OSBA further asserts that Allegheny does not offer any information about the relative size of government/nonprofit customers, noting that it is certainly possible that small business customers will be unduly burdened with paying for Act 129’s government/nonprofit customer energy savings requirements. OSBA St. No. 1 at 4.

Allegheny contends that it does not have a separate customer class specific to government/school/nonprofit customers to which it can assign program cost. Thus, Allegheny allocates such program cost to rate Schedules 20 and 30, both of which include government/school/nonprofit customers. Allegheny MB at 49-50 (citing Allegheny St. No. 2‑R at 9, 14‑15).

1. **Disposition**

We reject the contention that units of government, school districts, institutions of higher education and nonprofit entities must be treated as a separate class for purposes of the cost recovery mechanism. Section 2806.1(a)(10) simply requires energy efficiency/demand reduction measures to be financed by the same customer class that receives the direct energy and conservation benefits of those measures. 66 Pa. C.S. § 2806.1(a)(10). If, as here, prior to the effective date of Act 129, a utility did not have a separate rate class that only included units of government, school districts, institutions of higher education and nonprofit entities, we do not believe the General Assembly intended to mandate that the utility re-write its tariff to create such a rate class. Such an undertaking would impose costs on utilities (and their ratepayers) without enhancing energy efficiency or reducing energy consumption. A more reasonable interpretation of Section 2806.1(a)(10) under these circumstances is that the costs of measures benefitting governments, school districts, institutions of higher education and non-profit entities must be assigned in a reasonable manner to the rate class(es) in which those customers are embedded. We find that Allegheny assigned the costs associated with government/school/nonprofit targeted programs in a reasonable manner by assigning such costs to rate Schedules 20 and 30, at both rate schedules include government/school/nonprofit customers.

### 4. Cost Recovery Issues

Act 129 provides that an EDC “shall 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 [an EE&C] plan.” 66 Pa. C.S. § 2806.1(k). The Act states:

The plan shall include a proposed cost-recovery tariff mechanism, in accordance with Section 1307 (relating to sliding scale or rates; adjustments), to fund the energy efficiency and conservation measures and to ensure full and current recovery of the prudent and reasonable costs of the plan, including administrative costs, as approved by the commission.

1. a. C.S. § 2806.1(b)(1)(i)(H).

**a. Annual Prudency and Reasonableness Review**

In the *Implementation Order*, this Commission directed the following:

We agree with the OCA that there should be no need to adjust the [recovery] 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 intervenors, 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 the report is filed.

*Implementation Order* at 38.

####  Positions of the Parties

The OTS contends that an ongoing prudency review is necessary to ensure continued compliance with the directives from the *Implementation Order* and that this requirement will assist the Commission in determining whether the Company’s program costs remain reasonable and whether the proposed cost recovery mechanism remains appropriate. OTS RB at 3.

The OSBA opines that Allegheny’s Plan appears to result in unnecessary subsidization of participating customers. The OSBA recommends that the reasonableness of Allegheny’s proposed subsidies be reviewed as part of an annual reconciliation proceeding. OSBA MB at 12 (citing OSBA St. No. 1 at 4-5).

Allegheny avers that the Commission already addressed the program cost issue by specifying in its *Implementation Order* that EDC Plan measures and costs that are tentatively approved will be subject to ongoing review and, if need be, modification. Thus, the Commission need not address this issue further. Allegheny MB at 48 (citing Allegheny St. No. 3-R at 3-4).

####  (2) Disposition

The Commission believes that the issues described by the OTS and the OSBA are adequately addressed in the *Implementation Order*. First, 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. § 2086.1(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 the OCA, the OSBA and the OTS. The Commission also will post the annual reports on a web page dedicated to the EE&C program. The Commission and any interested party can make a recommendation for plan improvement or object to an EDC’s proposed plan revision within thirty days of the annual report filing. EDCs will have twenty days to file changes or the matter will be referred 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. *Implementation Order* at 23-24.

Second, consistent with the *Implementation Order*, we required each subject EDC to develop a reconcilable adjustment clause tariff mechanism in accordance with 66 Pa. C.S. § 1307 and to 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. When the EE&C plans to be offered by EDCs will benefit both shopping and non-shopping customers, the cost recovery mechanism shall be non-bypassable and shall be structured such that it will not affect the EDC’s price to compare. The mechanism 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. 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 intervenors, 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 documentation shall be provided at the time the report is filed. *Implementation Order* at 37-38. Therefore, the Commission will not make requirements above and beyond those already stipulated in the *Implementation Order* regarding the issues raised by the OTS and the OSBA at this time. The Commission, however, reserves the right to direct the allocation of reasonable and prudent costs incurred in implementing, the EE&C Plan, the SMIP and default service plan, between these plans as the costs become known.

**b. PUC Assessment Charge**

Allegheny proposes to include with the levelized surcharge for each schedule and program the addition of a PUC assessment fee associated with any increased gross‑revenue attributable to recovery costs related to its Plan. Plan at 276.

1. **Positions of the Parties**

The OCA asserts that recovery of PUC assessment fees as part of the Section 1307 cost recovery mechanism should not be permitted. The OCA submits that PUC assessments are not related to the costs of the provision and management of Allegheny’s Plan. Furthermore, the OCA contends that the PUC assessment charge is traditionally recovered through the Company’s base rates and that PUC assessments are not directly attributable to Act 129 and are influenced by many factors outside of Act 129. OCA MB at 40; *see* OCA St. No. 1 at 23.

Allegheny opines that the assessment is recoverable under Act 129, which entitles the Company to recover all reasonable and prudent costs incurred in the provision or management of its EE&C Plan. Allegheny RB at 29-30. Allegheny argues that revenues should be grossed-up to account for the Commission assessment factor because such additional revenues would not be required absent the existence of Act 129. In other words, Allegheny takes the position that the need for the gross-up is related to the costs for the provision and management of the Company’s EE&C Plan and should be recoverable through the cost recovery mechanism established for its Plan. Allegheny St. No. 3-R at 7.

1. **Disposition**

The Commission agrees with the OCA that any increase in PUC assessment fees due to increased revenue from collection of costs related to an EE&C plan are not directly incurred or attributable to the provision or management of an EE&C plan. Any increases in these fees cannot be directly attributable to Allegheny’s provisioning and management of its EE&C Plan and are affected by many factors totally unrelated to the EE&C Plan. Allegheny appears to acknowledge this fact by not including these cost within the 2% cost limit and recovering them in addition to the 2% cost limit amount.[[24]](#footnote-24) If these costs were directly related to the provisioning and management of its Plan, Allegheny would be required to include them within the 2% cost limit.

Furthermore, the Commission believes that the amount of increase in PUC assessment fees attributable to Allegheny’s EE&C Plan is too speculative. As pointed out by the OCA, these costs are affected by multiple factors unrelated to an EE&C Plan. Regarding the PUC assessment fee, EDC revenues only determine each EDC’s proportionate share of the total PUC assessment of EDCs.[[25]](#footnote-25) We note that all seven of the large EDCs will see a similar increase in gross‑revenues due to their EE&C Plan cost recovery, thus, each EDC’s proportion of the total EDC assessment is not likely to change. In addition, not all other factors related to an EDC’s gross‑revenues will be constant during the time period that the EE&C plans will be implemented. An EDC’s gross‑revenue may increase or decrease depending on the number of customers who shift to EGSs for service, the weather, the economy, and the success of the EDC’s EE&C plan.

Finally, as Allegheny is recovering its EE&C Plan costs through a levelized rate mechanism, its receipt of revenue to cover its claimed increase in PUC assessment fees will not be coincident and could result in an over recovery. For all the above reasons, we agree with the OCA that these costs should not be recovered through the EE&C Plan 1307 cost recovery mechanism. Such costs are appropriately recovered through base rates.

As such, the Commission directs Allegheny to resubmit its budget and cost recovery mechanism, along with appropriate tariffs that do not include a gross‑up for any increase in PUC Assessment fees.

**c. Commercial and Industrial Demand Charge**

As proposed by Allegheny, cost recovery for certain large commercial and all industrial customers under Rate schedules 30 (small), 30 (large), 40, 41, 44, 46 and Tariff No. 37 would be accomplished by a per kWh energy surcharge and a per kW (or kVa ) demand surcharge. For these rate schedules the EE&C costs would be differentiated into an energy‑related portion and a demand-related portion based upon the load factor calculated from the energy and demand savings projections for each program. Allegheny St. No. 3 at 11.

1. **Positions of the Parties**

WPPII asserts that there are three primary methods of cost allocation for commercial and industrial customers: a kWh energy charge, a kW demand charge, or a monthly customer charge. WPPII MB at 10. WPPII posits that a kWh charge is inappropriate as it would assign a greater cost burden on an EDC’s largest customers, regardless of the actual benefit these customers receive from EE&C measures. *Id*. WPPII asserts that this method would result in an inequitable intra‑class distribution of costs, in that the large customers will be subsidizing the EE&C benefits to smaller customers. *Id*.

Next, WPPII asserts that a monthly customer charge may be the most appropriate option for large commercial and industrial customers. WPPII MB at 11. WPPII argues that this approach would require each customer in the class to contribute the same amount to the EE&C Plan costs associated with that class. *Id*. WPPII goes on to acknowledge that such an approach may disproportionately impact smaller customers in that class. *Id*.

WPPII goes on to assert that a per kW demand charge is another viable cost recovery mechanism, noting that while this method will not provide a true cost causation based mechanism, it would not penalize energy‑intensive industrial customers. WPPII MB at 11. WPPII recommends that Allegheny utilize a demand charge mechanism based on a customer’s PJM Peak Load Contribution (PLC). WPPII MB at 14. The PJM PLC is determined by using the customer’s electric demand during the top five PJM peak hours in the prior year. WPPII MB at 11. WPPII notes that using the PJM PLC to determine the kW surcharge for large commercial and industrial customers would encourage these customers to employ efficiency and demand control measures, furthering the energy and demand reduction goals of Act 129. WPPII MB at 11 and 12 (citing Tr. at 218‑219, testimony by Allegheny witness Raymond E. Valdes). WPPII also notes that a PJM PLC based demand charge provides a consistent and reliable customer charge as it is determined only once per year. WPPII MB at 12 (citing Tr. at 218‑219, testimony by Allegheny witness Raymond E. Valdes).

WPPII requests further that Allegheny modify its EE&C Plan cost recovery methodology through the removal of the energy charge mechanism and employment of either a customer charge approach that directly assigns costs based on actual participation in EE&C programs, a flat per kW demand charge, or a hybrid approach, as proposed by other Commonwealth EDCs. WPPII MB at 14.

Allegheny states that it will withdraw its proposed energy and demand rate design for the large commercial and industrial customer group (Tariff No. 39, rate schedules 30 (large), 40, 41, 44, and 46 and Tariff No. 37) and instead achieve full cost recovery via a per demand charge based upon the customers’ billed demand for the current billing period. Allegheny RB at 2.

In its Reply Brief, WPPII notes that “the implementation of a per demand charge for large commercial and industrial customers will not impact the cost allocation of other customer classes.” WPPII RB at 3 (quoting the Reply Testimony of Allegheny witness Raymond E. Valdes; Allegheny St. No. 3‑R at 13). WPPII goes on to state that it will not oppose the remainder of Allegheny’s Plan if Allegheny employs a demand charge for large commercial and industrial customers based on monthly billing. WPPII RB at 3.

**(2) Disposition**

The Commission is persuaded by WPPII’s proposal for Allegheny to recover its EE&C Plan costs for large commercial and industrial customers utilizing a demand charge based on a customer’s PJM Peak Load Contribution. Although WPPII supported the recovery of the Plan costs associated with large commercial and industrial customers via an Act 129 Compliance Rider on a demand charge based on monthly billing demand, WPPII initially recommended utilizing the PJM PLC. WPPII appropriately points out that the PLC is based on PJM’s top five peak hours during the prior year and is established once on an annual basis. Furthermore, the Commission believes that WPPII correctly avers that utilizing the PLC would encourage large commercial and industrial customers to engage in efficiency and load control measures that would further the energy and demand reduction goals of Act 129. In addition, as confirmed by Allegheny’s own witness, Raymond E. Valdes,[[26]](#footnote-26) because the PLC is determined once annually, a demand charge based on the PLC will provide a consistent charge to customers and a consistent and reliable cost recovery for Allegheny.[[27]](#footnote-27) The Commission finds this evidence to be compelling and will, therefore, direct Allegheny to adopt an EE&C Plan demand charge based on a customer’s PJM Peak Load Contribution as the cost recovery mechanism for its large commercial and industrial customers.

**d. Applied Interest to Over/Under‑Collections**

Allegheny proposes to recover all program costs via a separately stated non-bypassable line item bill surcharge entitled EE&C Surcharge. The EE&C Surcharge is designed on a levelized basis over the 43-month period beginning on or before November 1, 2009, and running through May 31, 2013. The surcharge will be subject to an annual reconciliation mechanism. Allegheny states, the implementation of a levelized surcharge helps mitigate the peaks and valleys that may otherwise occur if the surcharge had not been designed on a levelized basis. Plan at 177‑186.

1. **Positions of the Parties**

The OTS states revenues and Plan expenditures will be reconciled annually with the recovery, or refund, of the difference between these revenues and costs deferred until the end of the Plan period. The OTS does not oppose the proposed levelized rates as this structure will protect ratepayers from rate fluctuations as program costs accelerate and will provide the Company with sufficient funds to finance its proposed programs. However, the OTS maintains that interest must be applied on any over/under‑collections at the end of the Plan period. The current treatment of interest allows for interest on under-collections to be computed at the legal rate of interest, currently 6%, and interest on over-collections is calculated at the legal rate of interest plus 2% for a rate of 8%. The OTS further maintains that these interest costs should be excluded from the Company’s total allowable recoverable EE&C Plan costs, which is not to exceed 2% of 2006 annual revenues. OTS MB at 6-7. The OTS further asserts that the application of an interest component to a cost recovery mechanism pursuant to Section 1307 of the Code is appropriate in this proceeding. The OTS asserts that the application of the legal rate of interest and the legal rate of interest plus 2% to under‑collections and over‑collections respectively is supported by the Code and the Commission’s Regulations. OTS MB at 11; *see* OTS St. No. 1 at 11-19.

The OSBA asserts that, by proposing to *exclude* interest on under‑collections, Allegheny would be precluded from recovering all of its reasonable costs. As such, Allegheny would not be collecting the interest costs it incurs when it under-collects its energy efficiency costs. Moreover, Allegheny’s proposal would fail to compensate ratepayers when they over pay and, in effect, provide free financing to Allegheny. OSBA MB at 19.

 The OCA contends that Plan expenditures will vary, perhaps significantly on a year by year basis. To provide more stability for customer rates, the Company is proposing to recover the same levelized amount each year from customers. This will allow the Company the flexibility to spend each year based on program ramp‑up needs, program success and market conditions to maximize Plan implementation without undue volatility in customer rates. The OCA supports this approach to cost recovery, particularly for residential customers to avoid any undue volatility and confusion in rates. OCA St. No. 1 at 22-23.

 The OCA also supports the Company’s proposal not to charge interest on any under- or over-collections that may occur as a result of the levelized rate recovery. The spending constraints in the Act do not contemplate any interest charges. In other words, the OCA submits that Allegheny can spend up to $94.25 million, not $94.25 million plus interest. OCA MB at 37-38.

Allegheny asserts that asymmetrical interest is applied to discourage a utility from deliberately over‑collecting in an environment where revenues are designed to match costs during an annual period. However, Allegheny’s cost recovery proposal does not seek to match revenues with costs within each individual year. Rather, the Company, at the request of various stakeholders as part of the stakeholder process, has proposed a levelized rate design for its EE&C Surcharge. As pointed out by Allegheny witness, Mr. Valdes in his testimony, the import of a levelized surcharge is that the over‑ and under‑collections is essentially deliberate and pre-planned. To charge interest to either the Company or customers in the context of a levelized rate is a virtual absurdity, given that the surcharge is not even trying to match revenues and expenditures in an annual period. Moreover, the Commission historically has applied only symmetrical interest under a Section 1307(e) automatic adjustment clause. Allegheny MB at 51-52 (citing Allegheny St. No. 3‑R at 12‑13; Tr. at 221‑222; OTS Exh. 1 at 10‑11; and Allegheny St. No. 3 at 13).

**(2) Disposition**

Act 129 does not address whether over/under‑collections are subject to interest. The *Implementation Order* and case law also are silent on this issue. The Act does require recovery of “all reasonable and prudent costs incurred in the provision or management of a plan under this section” on a full and current basis through a reconcilable adjustment clause under Section 1307 of the Code. 66 Pa. C.S. § 2806.1(k)(1). With no statutory directive or case law requirement to impose interest, we conclude that over/under‑collections related to EE&C Plans are not subject to interest.

As such, the Commission is approving Allegheny’s levelized cost recovery plan, except were modified in other sections of this Opinion and Order. By way of further explanation of our decision, each EE&C plan covers four years. Section 2806.1(g) of Act 129, states that “[t]he total cost of any plan required under this section shall not exceed 2% of the electric distribution company’s total annual revenue as of December 31, 2006.” 66 Pa. C.S. § 2806.1(g). As the EE&C plans cover four years and the 2% of total annual revenues can reasonably be interpreted as an annual cost limit, the “total cost” of any four year plan cannot exceed the aggregate of the four annual 2% limit amounts. The contrary interpretation would not be reasonable because it would either not allow sufficient funds to accomplish the objectives of the act or would require EDC shareholders to fund the majority of the funding.

 Section 2806.1(k) of Act 129 directs that the EDCs “shall 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 a plan provided under this section.” 66 Pa. C.S. § 2806.1(k). This section directs that the EDCs are to recover the total reasonable and prudent costs of a four year plan, which is of course limited by Section 2806.1(g). While this section mentions recovery on a full and current basis (probably to preclude long-term deferral of EDC cost recovery), we note that while the EDC will be receiving some funds early, as complete reconciliation will occur at the end of the four year plan period. At that time the Commission will direct what the amount of refunds or collections for over or under recovery will be, and the period in which the reconciliation will occur.

Furthermore, section 1307(e)(3) of the Public Utility Code permits the Commission, for good cause, to extend the time period under which EDCs refund or collect over or under collections for an annual automatic adjustment clause. See 66 Pa. C.S. § 1307(e)(3). The Commission finds that there is sufficient good cause in the record and in the structure of Act 129. All stakeholders supported the levelized cost recovery as it would prevent rate volatility. The delay only involves a minor one, possibly two year delay. Such levelized rates are in accordance with common ratemaking principles and tools, such as cost normalization.

1. **Surcharge as a Separate Line Item on Customer Bill**

Allegheny Power proposes to recover all program costs via a separately stated non-bypassable line item bill surcharge entitled EE&C Surcharge. Plan at 177.

1. **Positions of the Parties**

The OCA submits that the Company’s surcharge will be confusing to customers because it is an incomplete presentation of the energy efficiency and demand reduction initiatives. OCA St. No. 1 at 24-25. The OCA states that if the Company wishes to place costs on the bill as a separate line item it should also recognize the benefits on the bill as well. OCA St. No. 1 at 25. Without understanding the corresponding benefits, customer reaction to the Company’s energy efficiency programs may be negative. OCA MB at 39. The OCA recommends that the Company include its EE&C Plan costs in the non-bypassable distribution rates and treat these expenses the same as any other normal, on-going expense. OCA MB at 39 (citing OCA St. No. 1 at 25).

The OSBA states that costs associated with the conservation programs are not distribution costs; rather, they are subsidies to a subset of customers to encourage participation in conservation programs. The Electricity Generation Customer Choice and Competition Act (“Competition Act”) mandates unbundled charges for transmission, distribution and generation and requires that rates and rate structures be set for each service primarily on a cost-of-service study. Folding the conservation surcharge into the distribution rates would violate this mandate.Further, OSBA witness, Mr. Knecht pointed out that, for small commercial and industrial customers, the EE&C program costs are material and may result in a significant rate increase. Customers will likely (albeit incorrectly) view this as a distribution rate increase because the charge will be buried in the distribution rate. This confusion may complicate the requirement to move distribution rates to cost‑of‑service. OSBA MB at16 (citing OSBA St. No. 1 at 7).

Allegheny supports the use of a separate line item for the following reasons: (1) the EE&C Surcharge is not a distribution charge and, therefore, should not be camouflaged as such; (2) appearance of the EE&C Surcharge as a separate line item will dovetail better with the Company's communication efforts regarding its Plan; and (3) generally speaking, Section 1307-type rates are separately stated on customers' bills. In short, what these reasons reveal is that the use of a separate line item provides customers with greater transparency, as it is clearer which costs on the customer's bill are specific to EE&C Plan costs. Allegheny St. No. 3‑R at 5.

1. **Disposition**

Consistent with the current Commission-approved approach regarding Section 1307(e) cost recovery mechanisms such as the Universal Service Funding Mechanism (“USFM”) and the Universal Service Program Long Term Evaluator, the EE&C program costs should be included in the distribution rate on customers’ bills. The Electricity Generation Customer Choice and Competition Act (“Competition Act”) states that:

there are certain public purpose costs, including programs for low-income assistance, energy conservation and others, which have been implemented and supported by public utilities’ bundled rates. The public purpose is to be promoted by continuing universal service and energy conservation policies, protections and services, and full recovery of such costs is to be permitted through a nonbypassable rate mechanism.

66 Pa. C.S. § 2802(17). This interpretation is consistent with our regulations concerning billing format, 52 Pa. Code § 54.4(3), and billing information, 52 Pa. Code § 56.15. Past practice recognizes distribution rates as the appropriate vehicle to incorporate rolled up cost-centers or to recover the costs of providing service that is not otherwise classified as transmission or generation. We find that the costs associated with an EE&C program is such a cost and, therefore, should be included within a company’s distribution rate for billing purposes. Accordingly we deny Allegheny’s proposal for a separate line item surcharge. We direct Allegheny to incorporate recovery of its approved EE&C costs as an addition to its currently approved distribution rates.

We will, however, make an exception for both the large and small commercial and industrial customer classes. We are persuaded by the reasoning of the OSBA that the EE&C program costs are material and may result in a significant rate increase. Commercial and industrial customers will likely (albeit incorrectly) view this as a distribution rate increase if the charge is included within in the distribution rate. In the current economic environment, the itemization and identification of costs is increasingly critical for sophisticated business operators. Therefore, we will accept Allegheny’s proposal to list its EE&C Surcharge as a separate line item on small and large commercial and industrial customers’ bills.

## C. CSP Issues

The Commission’s EE&C Program must include a requirement for the participation of CSPs in the implementation of all or part of a plan. 66 Pa. C.S.
§ 2806.1(a)(10). The Commission is required to establish procedures requiring EDCs to competitively bid all contracts with CSPs. 66 Pa. C.S. § 2806.1(a)(7). The Commission is also required to establish procedures to review all proposed contracts with CSPs prior to execution of the contract. 66 Pa. C.S. § 2806.1(a)(8). The Commission has the authority to order the modification of a contract to ensure that plans meet consumption reduction requirements. *Id.*

Consequently, each EDC must 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). The *Implementation Order*, at 25*,* noted that, due to the aggressive design and implementation schedule set forth in Act 129, EDCs were not expected to have all bids for and contracts with CSPs completed by the July 1, 2009 plan filing. However, the Commission stated that each filed plan was expected to include at least one contract with a CSP. The *Implementation Order* established the criteria that the Commission will use in approving request for proposals (RFP) procedures and standard form contracts for CSPs.

**Conservation Service Provider Contract**

Allegheny has employed a CSP to perform a market assessment of the demand response potential in Allegheny’s commercial, industrial and government customer base. Plan at 140. Allegheny included a contract with Roth Brothers Inc.[[28]](#footnote-28) as part of its Plan. Plan at 232‑238.

1. **Disposition**

The Commission finds that Allegheny’s Plan, as amended, complies with the Act and the Commission’s *Implementation Order* with regard to CSPs. Its Plan contains a contract with Roth Brothers Inc., a registered conservation service provider.

 **EE&C Plan Implementation by Allegheny**

Allegheny’s EE&C Plan calls for Allegheny to perform the functions of a PJM curtailment service provider in its Customer Load Response and Contracted Demand Response programs. Allegheny St. No. 2-R at 39-41. Allegheny has contracted with Roth Bros. Inc, a registered CSP, to complete an assessment of the demand response market for Allegheny’s small/large commercial, small/large industrial, governmental, education, nonprofit and municipal customer segments. Allegheny asserts that this study will help the Company to better understand and quantify customer interest and required incentives and to assist with program design details. Moreover, Allegheny identifies five future RFP’s to be issued to acquire additional CSPs. Plan at 166‑167.

###  Positions of the Parties

ClearChoice argues that EDCs would have an unfair competitive advantage if serving as a curtailment service provider. Furthermore, they assert that the Act precludes all EDCs and their affiliates from performing any CSP function. ClearChoice states that the Pennsylvania legislature continued to express their interest in having a competitive market for conservation services within Act 129, by expressly excluding EDCs and their affiliates from acting as CSPs. ClearChoice asserts that allowing Allegheny or their contracted agent to perform this function makes the prohibition in Act 129 meaningless. ClearChoice St. No. 1 at 8.

As noted earlier, EnerNOC strongly disagrees with ClearChoice’s representation that Allegheny’s Customer Load Response Program is somehow discriminatory in nature and requires correction. This is not the case, as EnerNOC would contend that Allegheny’s program design is just the opposite. EnerNOC RB at 11.

As described above, Allegheny proposes three areas of amendment in consideration of ClearChoice’s issues. First, customers may participate in the Allegheny EE&C Plan load response program and also participate in the PJM load response programs utilizing the Company or a third party as the customer’s PJM Curtailment Service Provider. Next, Allegheny agrees to convene a collaborative working group of itself, ClearChoice, and other interested third party PJM curtailment service providers whose work shall be completed by February 26, 2009. Last, online user tools developed for Allegheny’s EE&C Plan will be available to all customers participating in the Company’s programs. Allegheny RB at 2.

###  Disposition

As noted above, ClearChoice, in a letter dated September 16, 2009, states that it does not object to Allegheny’s Plan as amended in Allegheny’s Reply Brief. While ClearChoice withdrew its objection to Allegheny’s Plan, it raised a significant statutory interpretation issue that the Commission believes is necessary to address at this time. In essence, ClearChoice has asserted that an EDC cannot act in the role of a CSP for implementing any portion of its EE&C plan. ClearChoice RB at 9; *see also* Tr. at 235‑236. ClearChoice relies upon Section 2806.1(b)(1)(i)(E) for this assertion, which states that each “plan shall include a contract with one or more conservation service providers selected by competitive bid to implement the plan or a portion of the plan as approved by the commission.” 66 Pa. C.S. § 2806.1(b)(1)(i)(E). ClearChoice posits that, as the definition of CSP excludes any CSP that has a “direct or indirect ownership, partnership or other affiliated interest with an electric distribution company,” EDCs are precluded from implementing any of the plan measures. Tr. at 241. The Commission believes this is too narrow of an interpretation of the Act.

When the Act is read in its entirety, the General Assembly clearly delineated its intent to place the responsibility for developing and implementing these EE&C plans in the hands of the EDCs. To begin with, Section 2806.1(b) of the Act is entitled “Duties of electric distribution companies.” 66 Pa. C.S. § 2806.1(b). Chief among these duties is the requirement of the EDC to “develop and file an energy efficiency and conservation plan . . . to meet the requirements of subsection (a) and the requirements for reductions in consumption under subsections (c) and (d).” 66 Pa. C.S. § 2806.1(b)(1)(i). Significantly, this section requires EDCs to submit a plan that “shall include specific proposals to implement energy efficiency and conservation measures to achieve or exceed the required reduction in consumption under subsection (c) and (d).” 66 Pa. C.S. § 2806.1(b)(1)(i)(A). If the General Assembly had intended to require implementation of all plan measures by CSPs, it would have specifically stated that the plans shall include specific proposals for CSPs to implement energy efficiency and conservation measures to achieve or exceed the required reductions, but did not. The General Assembly clearly knew how to reference CSPs and their role, as it listed CSPs in subsection (E). *See* 66 Pa. C.S. § 2806.1(b)(1)(i)(E).

The most persuasive indication of the General Assembly’s intent in regard to the question of whether an EDC can implement its plan is contained in the penalty provisions of the Act. Specifically, this section of the act states that the penalty provisions “shall apply to an electric distribution company that fails to achieve the reductions in consumption required under subsection (c) or (d).” 66 Pa. C.S. § 2806.1(f)(2). This subsection of the Act further states that “the electric distribution company shall be subject to a civil penalty not less than $1,000,000 and not to exceed $20,000,000 for failure to achieve the required reductions in consumption under (c) or (d).” 66 Pa. C.S. § 2806.1(f)(2)(i). It is inconceivable to this Commission that the General Assembly would place all the liability for achieving the mandated energy savings targets on the EDCs and then not allow them to implement any portion of an EE&C plan. In determining the intent of the General Assembly, it is presumed that the General Assembly did not intend an absurd, impossible or unreasonable result. 1 Pa. C.S. § 1922(1).

## D. Implementation and Evaluation Issues

### 1. Implementation Issues

Allegheny’s proposed Plan management and implementation strategies are contained in its Plan at pages 157‑167. Allegheny will perform contract management oversight, provide customer service center support, and direct marketing to large commercial and industrial customers. Allegheny asserts that the most cost‑effective method for program implementation is to contract for specific services to leverage similar activities across all offered programs and measures. Plan at 157.

#### a. Positions of the Parties

No parties directly contested Allegheny’s proposed Plan management and implementation strategies.

#### b. Disposition

The Commission approves Allegheny’s proposed Plan management and implementation strategies as filed, except where we have modified Allegheny’s management and implementation of particular programs and measures in other portions of this Order.

### 2. Quality Assurance Issues

The Commission’s EE&C Program is to include an evaluation process, including a process to monitor and verify data collection, quality assurance, and results of each plan and the program. 66 Pa. C.S. § 2806.1(a)(2). Consistent with this requirement, each EDC’s plan is to “explain how quality assurance and performance will be measured, verified and evaluated.” 66 Pa. C.S. § 2806(b)(1)(i)(C).

#### a. Positions of the Parties

Allegheny notes that its proposed quality assurance and quality control approach is to build quality control checks into each program and measure at key customer contact points. Allegheny MB at 57. Allegheny summarizes its quality assurance and quality control for specific programs and measures in its Plan at pages 171‑175.

#### b. Disposition

The Commission approves Allegheny’s proposed quality assurance and quality control approach as filed, except where we have modified Allegheny’s quality assurance and quality control approaches for particular programs and measures in other portions of this Order.

### 3. Monitoring and Reporting Issues

As stated above, the Commission’s EE&C Program is to include an evaluation process, including a process to monitor and verify data collection, quality assurance, and results of each plan and the program. 66 Pa. C.S. § 2806.1(a)(2). Consistent with this requirement, each EDC’s plan is to “explain how quality assurance and performance will be measured, verified and evaluated.” 66 Pa. C.S.
§ 2806(b)(1)(i)(C). Each EDC is also required to submit an annual report to the Commission relating to the results of its EE&C plan. 66 Pa. C.S. § 2806.1(i)(1).

Allegheny plans to comply with all reasonable requirements established by the Commission. Allegheny plans to provide to the Commission its first annual report by July 15, 2010, per the *Implementation Order*. Allegheny’s Plan also recognizes that the statewide evaluator RFP mentions quarterly reports, which, along with all other reasonable statewide evaluator requests, Allegheny will provide. Allegheny intends to use and modernize its customer information system to collect data and create reports. In addition, Allegheny is considering obtaining the services of qualified vendors to develop, build, and deploy an EE&C Plan data tracking system. Plan at 169‑170.

#### a. Positions of the Parties

The OCA supports a very formalized monitoring and input process where stakeholders meet on at least a quarterly basis with the EDC concerning implementation and program issues, education or promotional material, etc. OCA St. No. 1 at 20‑21. The OCA requests that this process be formalized in the Commission’s Order. OCA MB at 41-42.

The OSBA notes that the procedure required under 66 Pa. C.S. § 1307(e) is consistent with the OSBA’s recommendation to subject EE&C plans to a thorough review each year and to make adjustments in the plan each year on a going-forward basis. OSBA MB at 21-22; *see* OSBA St. No. 1 at 5 and 7.

DEP asserts that Allegheny’s Plan should include a process to involve stakeholders in analyzing program data and subsequent changes to the Plan. DEP requests that Allegheny be required to provide detailed reports on the implementation and performance of the Plan to stakeholders on a monthly basis. DEP MB at 11‑12; *see* DEP St. No. 1 at 27.

Allegheny proposes reporting and tracking systems that follow the reporting requirements outlined in the Commission’s *Implementation Order* and has committed to comply with all reasonable reporting requirements, including those of the statewide evaluator. Allegheny MB at 57 (citing Plan at 169‑170). Allegheny agrees to meet with stakeholders as required, or at least twice per year, to review the Plan implementation, program participation and effectiveness, as well as to evaluate discuss and recommend additional programs or changes to existing programs. Allegheny RB at 3.

#### b. Disposition

The Commission finds that the tracking and reporting elements of Allegheny’s Plan substantially complies with the Act and the *Implementation Order*. Regarding a continuing stakeholder process as requested by several parties, the Commission believes that using a collaborative process during the development of the Plan was beneficial for the Company and other interested parties. Similarly, we believe the use of a collaborative process during the implementation of the Plan will be beneficial for expeditiously identifying and resolving issues that arise during the period covered by the Plan. Consequently, we will require the Company to meet with stakeholders as needed, but no less than twice annually, until May 31, 2013, unless otherwise ordered by the Commission.

We are mindful, however, that the Company is the party that bears the risk of penalties in the event of non-compliance with the mandates of Act 129. We will not micro-manage the Company’s compliance efforts. The Company therefore shall be responsible for determining the topics to be covered in stakeholder meetings and all other aspects of the on-going stakeholder process.

### 4. Evaluation Issues

As stated above, the Commission’s EE&C Program is to include an evaluation process, including a process to monitor and verify data collection, quality assurance, and results of each plan and the program. 66 Pa. C.S. § 2806.1(a)(2). Consistent with this requirement, each EDC’s plan must require an annual independent evaluation of its cost-effectiveness as well as a full review of each five-year plan. To the extent possible, the plan must also state how it will be adjusted on a going-forward basis as a result of the evaluation. 66 Pa. C.S. § 2806.1(b)(1)(i)(J).

#### Positions of the Parties

The OCA recommends that a firewall be established between Allegheny and its third party evaluator. The OCA is concerned that, if Allegheny has the ability to unilaterally dismiss the EM&V contractor, then the results of the process and impact evaluation may lack necessary independence and credibility. The OCA suggests that dismissal of an EM&V contractor should only be permitted for just cause and with the consent of the Commission. OCA MB at 43 (citing OCA St. No. 1 at 28).

DEP notes that the process that by which EDC plans may be modified outside of the annual review process was not specified in the Commission’s *Implementation Order*. DEP recommends that the Commission establish criteria for when a plan can be changed without Commission approval. DEP suggests the following criteria for plan changes outside the annual review process: (1) no program can be eliminated without Commission approval; (2) up to 10% of the annual budget for a customer class can be shifted within the same customer class without Commission approval; and (3) any shifting of money from one customer class to another must have Commission approval. DEP MB at 12; *see* DEP St. No. 1 at 28.

Allegheny states that it will meet or exceed the EM&V requirements of the Pennsylvania TRM. The Company will adjust its EM&V procedures based on the recommendations of its EM&V contractor, the statewide evaluator, other interested parties, and key stakeholders. Allegheny does not believe a firewall is necessary between it and its EM&V evaluator. Allegheny MB at 58 (citing Allegheny St. No. 2‑R at 14).

#### Disposition

We agree with Allegheny that no firewall is needed between it and its program evaluator; however, we agree that the evaluator must be completely autonomous from program implementation. *See* 66 Pa. C.S. § 2806.1(b)(1)(i)(J). If Allegheny believes that it has cause to dismiss its program evaluator, it must first discuss the reasons for dismissal with the Bureau of Conservation, Economics and Energy Planning. The Commission will be monitoring the actions of the EDC evaluator through the statewide evaluator. The statewide evaluator will work closely with the EDC evaluators to approve research methodologies, data collection, standard reporting forms, survey design, including sample size, and generally monitoring the EDC evaluator’s work. We believe this provides more than adequate protection from conflict of interests between the EDC and its evaluator.

Regarding DEP’s concerns about plan adjustments outside the annual review process, an EDC cannot shift program funds within a customer class, or between customer classes without prior Commission approval. Doing so would constitute a modification of the EDC’s approved plan. The General Assembly authorized the Commission, not the EDC, to make decisions in regard to modifying an approved Act 129 plan.

Section 2806.1(b)(2) expressly states that the “Commission shall direct” an EDC to modify or terminate any part of its approved plan if, after an adequate period for implementation, “the Commission determines that an energy efficiency or conservation measure will not achieve the required reductions in consumption in a cost-effective manner.” 66 Pa. C.S. § 2806.1(b)(2). Section 2806.1(b)(3) sets forth the action an EDC is required to take in response to a Commission direction to modify or terminate part of the approved plan. Specifically, the EDC is required to submit a revised plan describing the actions to be taken, to offer substitute measures, or to increase the availability of existing measures in the plan to achieve the reductions in consumption. 66 Pa. C.S. § 2806.1(b)(3).

Because the EDC’s Act 129 plan will be approved by Commission order, procedures for rescission and amendment of Commission orders must be followed to amend that order and to assure due process for all affected parties. *See* 66 Pa. C.S. § 703(g) (relating to fixing of hearing: rescission and amendment of orders). Accordingly, if an EDC believes that it is necessary to modify its Act 129 plan, the EDC may file a petition requesting that the Commission rescind and amend its prior order approving the plan. *See* 52 Pa. Code §§ 5.41 (relating to petitions generally) and 5.572 (relating to petitions for relief).

The EDC’s petition should explain the specific reasons supporting its requested modifications to its approved plan, i.e., the shifting of funds between programs or customer classes, the discontinuation of a program, etc. The petition should also contain a request to modify its cost recovery mechanism. Evidence supporting the modification of the plan and the cost recovery mechanism shall be submitted with the petition. The petition shall be served on all parties participating in the EDC’s Act 129 plan proceeding. If the EDC believes that the need for modification of its plan is immediate, the EDC can request expedited consideration of its petition.

## E. Other Issues

1. **Alternative Calculation of Energy Savings**

####  Positions of the Parties

DEP objects to Allegheny’s claim to energy savings from energy usage reductions achieved through the use of government monies, such as Pennsylvania’s recently enacted Alternative Energy Investment Act[[29]](#footnote-29) (Act 1) and the American Recovery and Reinvestment Act (ARRA). The Plan “jeopardizes the Commonwealth’s ability to obtain future funding under ARRA and thwarts the very purpose of Act 1 and Act 129 by using tax dollars to subsidize EDC EEC Plans.” DEP St. No. 1 at 5.

Allegheny responds that, with the exception of its proposed Join Utility Usage Management Program, the Plan does not include any funding opportunities as an offset of program costs. Allegheny St. No. 2-R at 15. Mr. Miller testified to the following regarding the relationship between energy savings and ARRA funding:

The ARRA funding is not offsetting existing program obligations or expenses as this is a new program designed to leverage the ARRA funding (and the services that it provides) with additional Company and gas utility funding in providing comprehensive weatherization services to customers. The Company plans to include 100% of the electricity savings for Company programs in which the customer participates, regardless of the customer receiving any additional funding from other sources.

Allegheny St. No. 2-R at 16.

1. **Disposition**

In determining whether an EDC may take credit for all energy savings for measures that also are funded in part by ARRA and/or Act 1, we note that Act 129 specifically provides, in pertinent part, that an EE&C measure may be funded “in whole or in part” by the EDC. 66 Pa. C.S. § 2806.1(m). Neither Act 1 nor Act 129 provides that it is mutually exclusive of the other. In implementing ARRA, the U.S. Department of Energy (DOE) clearly contemplated that ARRA funds could be used in conjunction with other funding. We shall not accept DEP’s proposition to prorate or otherwise distribute the energy savings from EE&C projects that receive funding from state or federal sources outside an EDC’s respective Act 129 plans.

Even if a particular measure is funded in part by ARRA and/or Act 1, so long as a portion of the measure is attributable to Act 129, an EDC may take credit for all the energy savings attributable to that measure. We addressed this very issue in our *TRC Test Order*, finding that:

EDCs will be able to fully include a measure’s benefits in the TRC Test if any portion of the measure is attributable to Act 129. For the purposes of TRC testing, if the end-use customer is a recipient of an incentive/rebate from an Act 129 program, even if the customer is also a recipient of an Act 1 incentive or rebate for the same equipment or service, we conclude that the entire savings of that equipment or service can also be claimed by the EDC for TRC testing purposes.

*TRC Test Order* at 25. We remain convinced that the public interest will best be served by taking advantage of all the incentives or rebates available. Rather than pit one government program against another, the programs should complement each other and, optimally, produce a greater saving than the programs would generate working in isolation.

We did not, however, expressly mention ARRA funding when we said that an EDC could fully include the benefits of an Act 129 EE&C measure that is also partially funded by Act 1funds. To extent that the ARRA funded benefits are consistent with the rationale underlying our decision relative to Act 1, we expressly provided that ARRA incentive payments should be considered benefits in TRC testing. *TRC Test Order* p. 23. Furthermore, since Act 129 funding is fixed, any additional funds, whether from Act 1, ARRA, or elsewhere, will be used to supplement, not replace, funds from the EDC. The decision not to require proration of benefits clearly does not violate the guidelines for ARRA funding. We find that this result is a necessary, reasonable, consistent, and logical application of the express provisions of our *TRC Test Order*.

Further, given that Allegheny has developed its Plan based on the Commission’s express decision in the *TRC Test Order*, changing the attribution of energy savings from these projects could seriously compromise the ability of Allegheny to comply with its EE&C goals. Additionally, the cost and complexity of prorating the energy savings among multiple programs would be cost-prohibitive and non-productive. We see no reason to change that determination.

Accordingly, Allegheny will be able to fully include a measure’s energy savings and demand reductions if any portion of the measure is attributable to Act 129. For the purposes of Act 129 energy savings and demand reduction requirements and any other or ancillary aspect of Act 129 evaluations, if the end-use customer is a recipient of an incentive/rebate from an Act 129 program, even if the customer is also a recipient of an Act 1 incentive or rebate or ARRA funding for the same equipment or service, we conclude that the entire savings of that equipment or service can also be claimed by Allegheny for Act 129 compliance.

### VI. Conclusion

For the reasons set forth above, we will grant in part and deny in part the Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, consistent with this Opinion and Order.

Pursuant to Section 2806.1(e)(2)(ii) of the Act, West Penn Power Company d/b/a Allegheny Power shall file with this Commission and serve on all parties of record in this proceeding a revised Energy Efficiency and Conservation Plan consistent with the modifications directed in this Opinion and Order, within sixty (60) days of the entry of this Opinion and Order. 66 Pa. C.S. §2806.1(e)(2)(ii). Interested parties will have ten days to file comments on the revised portions of the plan, with reply comments due ten days thereafter. The Commission will approve or reject the revised plan at a public meeting within 60 days of the Company’s revised portions of the plan filing. See *Implementation Order* at 12‑13. West Penn Power Company d/b/a Allegheny Power is permitted to implement any portion of its Plan that was approved without modification by this Opinion and Order; **THEREFORE;**

**IT IS ORDERED:**

1. That the Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan is granted in part and denied in part consistent with this Opinion and Order.

2. That West Penn Power Company d/b/a Allegheny Power’s Energy Efficiency and Conservation Plan is approved in part and rejected in part by this Opinion and Order.

3. That a working group, composed of affected EDC representatives, consumer advocates, community‑based organizations and other interested parties, be convened to identify the standardized data to be used in determining the proper proportion for low‑income households and clarify other matters affecting the annual reconciliation process.

4. That the working group referenced above shall provide its recommendations to the Commission no later than February 16, 2010.

5. That West Penn Power Company d/b/a Allegheny Power shall participate in the working group referenced in Ordering Paragraph 3.

6. That West Penn Power Company d/b/a Allegheny Power shall implement its Pay Ahead (Smart) Service Rate measure in a manner that complies with the Public Utility Code and Commission Regulations.

7. That the issue of unintended fuel switching from gas to electric is referred to the fuel switching working group to explore and address.

8. That the fuel switching working group accelerate its efforts so that it submits a recommendation to revise the TRM and TRC with regard to fuel switching programs by March 31, 2010.

9. That West Penn Power Company d/b/a Allegheny Power track, through its Evaluation, Measurement and Verification contractors, data related to gas to electric fuel switching as outlined in this Opinion and Order.

10. That the TRC working group review the assumptions regarding penetration rates, rebate levels, and free ridership associated with compact fluorescent lighting programs.

11. That West Penn Power Company d/b/a Allegheny Power provide an updated TRC analysis of its Energy Efficiency and Conservation Plan as part of its annual report to the Commission.

12. That West Penn Power Company d/b/a Allegheny Power will incorporate into its Act 129 and Low‑Income Usage Reduction Programs that include home audits and/or weatherization of low‑income households a message that weatherization will help to minimize the use of space heaters.

13. That West Penn Power Company d/b/a Allegheny Power shall submit with its revised Energy Efficiency and Conservation Plan a separate Energy Efficiency and Conservation Plan budget and cost recovery mechanism, along with appropriate tariffs that exclude Public Utility Commission assessment fees.

14. That West Penn Power Company d/b/a Allegheny Power shall submit with its revised Energy Efficiency and Conservation Plan a separate Energy Efficiency and Conservation Plan cost recovery mechanism for its large commercial and industrial customers, along with appropriate tariffs, that is based on a demand charge utilizing a customer’s PJM Interconnection, L.L.C. Peak Load Contribution.

15. That West Penn Power Company d/b/a Allegheny Power file a Tariff that includes the Energy Efficiency and Conservation Plan costs within the currently approved distribution rates on customers’ bills for residential class customers only.

16. That West Penn Power Company d/b/a Allegheny Power shall meet with stakeholders as needed, but no less than twice annually, until May 31, 2013, for a collaborative exchange concerning the implementation of its Energy Efficiency and Conservation Plan.

17. That, prior to dismissing its program evaluator, West Penn Power Company d/b/a Allegheny Power must discuss the reasons for dismissal with the Commission’s Bureau of Conservation, Economics and Energy Planning.

18. That the Commission strongly encourages West Penn Power Company d/b/a Allegheny Power to develop an alternative “back‑up” Energy Efficiency and Conservation Plan that is less reliant on smart meter deployment.

19. That the Distributed Generation Program proposed by West Penn Power Company d/b/a Allegheny Power in its Energy Efficiency and Conservation Plan is rejected as filed.

20. That West Penn Power Company d/b/a Allegheny Power is encouraged to submit with its revised Energy Efficiency and Conservation Plan a revised distributed generation program that addresses the Commission’s concerns contained in this Opinion and Order.

21. That the Contract Demand Response Program proposed by West Penn Power Company d/b/a Allegheny Power in its Energy Efficiency and Conservation Plan is rejected as filed.

22. That West Penn Power Company d/b/a Allegheny Power is directed to immediately form a working group consisting of curtailment service providers and other interested parties to develop a plan to implement its Contract Demand Response Program in parallel with its Customer Load Response Program.

23. That the Contract Demand Response Program working group is to develop an implementation strategy to ensure that undue advantage is not given to participating curtailment service providers, including measures that assure timely access to data, and equitable incentives for each demand response program.

24. That West Penn Power Company d/b/a Allegheny Power is directed to file, as part of its revised Energy Efficiency and Conservation Plan, a revised Contract Demand Response Program that addresses the Commission’s concerns as contained in this Opinion and Order.

25. That any directive, requirement, disposition or the like contained in the body of this Opinion and Order that is not the subject of an individual Ordering Paragraph, shall have the full force and effect as if fully contained in this part.

26. That a copy of this Opinion and Order be served on all of the parties of record and on Steven Pincus, Assistant General Counsel for the PJM Interconnection, L.L.C.

27. That West Penn Power Company d/b/a Allegheny Power shall file with this Commission and serve on all parties of record in this proceeding a revised Energy Efficiency and Conservation Plan consistent with the modifications directed in this Opinion and Order, within sixty (60) days of the entry of this Opinion and Order.

Interested parties will have ten days to file comments on the revised portions of the Energy Efficiency and Conservation Plan, with reply comments due ten days thereafter. The Commission will approve or reject the revised portions of the Energy Efficiency and Conservation Plan at a public meeting within 60 days of the Company’s revised plan filing.

28. That West Penn Power Company d/b/a Allegheny Power is permitted to implement any portion of its Energy Efficiency and Conservation Plan that was approved without modification by this Opinion and Order.



 **BY THE COMMISSION,**

 James J. McNulty

 Secretary

(SEAL)

ORDER ADOPTED: October 15, 2009

ORDER ENTERED: October 23, 2009

1. *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources – Technical Reference Manual Update,* Docket No. M‑00051865 (Order entered June 1, 2009) (*TRM Order*). [↑](#footnote-ref-1)
2. This manual can be found at: <http://www.clarkstrategicpartners.net/files/calif_standard_practice_manual.pdf>. [↑](#footnote-ref-2)
3. See page 3 of the *Energy Consumption and Peak Demand Reduction Targets* Order (*Reduction Targets Order*) at Docket No. M‑2009‑2069887, Entered March 30, 2009. [↑](#footnote-ref-3)
4. *Reduction Targets Order* at 5. [↑](#footnote-ref-4)
5. *Implementation Order* at 34. [↑](#footnote-ref-5)
6. The term “energy efficiency measure” is not separately defined, but the term “energy efficiency and conservation measures” is defined at 66 Pa. C.S. § 2806.1(m). [↑](#footnote-ref-6)
7. Absent a specific definition, “energy usage” may be construed to mean “electric usage” for Act 129 purposes. [↑](#footnote-ref-7)
8. Relating to time‑of‑use and real‑time pricing plans. [↑](#footnote-ref-8)
9. Such as the appropriate 1307 mechanism. [↑](#footnote-ref-9)
10. Total administrative costs for this program are $962,463, while total program costs are $2,942,711. Plan at 147. [↑](#footnote-ref-10)
11. Incentive costs are projected to be $1,934,045. Plan at 147. [↑](#footnote-ref-11)
12. In a letter dated September 16, 2009, ClearChoice noted that it does not object to Allegheny’s Plan as amended in Allegheny’s Reply Brief. [↑](#footnote-ref-12)
13. IOGA filed its *Amicus Curiae* Reply Brief on September 10, 2009. The Commission notes that IOGA had multiple opportunities, since October 2008, to participate in the development of this monumental energy efficiency and conservation program, as well as the development of the individual EDC plans, but only chose to participate through an *amicus* reply brief. Commission Regulations allow for such a filing, but the *amicus* takes the record (and the arguments in this instance) as established by the Parties. 52 Pa. Code § 5.502(e). [↑](#footnote-ref-13)
14. *TRM Order,* Docket No. M‑00051865 (entered June 1, 2009). [↑](#footnote-ref-14)
15. *TRM Order* at 9. [↑](#footnote-ref-15)
16. *TRM Order* at 19. [↑](#footnote-ref-16)
17. 66 Pa. C.S. § 2806.1(b)(1)(i)(C). [↑](#footnote-ref-17)
18. Relating to time‑of‑use and real‑time pricing plans. [↑](#footnote-ref-18)
19. Such as the appropriate 1307 mechanism. [↑](#footnote-ref-19)
20. *TRC Test Order*, entered on June 23, 2009 at Docket No. M-2009-2108601, Stakeholders’ Group, at 7. [↑](#footnote-ref-20)
21. Plan at 187. [↑](#footnote-ref-21)
22. Amended Plan at 4-8 (Tables 1, 7A-7E). [↑](#footnote-ref-22)
23. Tariff 39 includes all rate schedules except for service provided to Pennsylvania State University main campus, which receives service pursuant to Tariff 37. [↑](#footnote-ref-23)
24. Plan at 177, which states that the annual reconciliation of forecasted revenue billed to actual revenue billed will be exclusive of gross‑receipts tax (GRT) and the PUC assessment fee. Thus, if added onto the recovery rate, GRT and the PUC assessment fee will be above the 2% cost recovery cap of $94.2 million. [↑](#footnote-ref-24)
25. 66 Pa. C.S. § 510(b)(4). [↑](#footnote-ref-25)
26. *See* Tr. at 218‑219. [↑](#footnote-ref-26)
27. Whereas a demand charge based on monthly billing demand will vary each month. [↑](#footnote-ref-27)
28. Roth Brothers Inc. CSP registration application was approved on March 23, 2009, at Docket No. A‑2009‑2094104. [↑](#footnote-ref-28)
29. 73 P.S. §§ 1649.101‑1649.711. [↑](#footnote-ref-29)