**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

 Public Meeting held October 22, 2009

Commissioners Present:

 James H. Cawley, Chairman

 Tyrone J. Christy, Vice Chairman, Statement

 Kim Pizzingrilli, Statement

 Wayne E. Gardner

 Robert F. Powelson, Statements

Petition of Duquesne Light Company for Docket No. M-2009-2093217

Approval of its Energy Efficiency and

Conservation and Demand Response Plan,

Approval of its 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 Duquesne Light Company (Duquesne or Company) for Approval of its Energy Efficiency and Conservation and Demand Response Plan, Approval of its Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matter Relating to the Energy Efficiency and Conservation Plan (Plan), filed on June 30, 2009. Specifically, Duquesne requests approval of its Plan, the Plan budget and customer surcharges for recovery of Plan costs, to be effective December 1, 2009.

# II. Background

## A. Act 129

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. Act 129 has several goals including reducing energy consumption and demand. 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 Act’s 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) of the Code, 66 Pa. C.S. §§ 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, *In re: Energy Efficiency and Conservation Program* (*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 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 Energy Association. The Commission also declined to adopt the 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, *In re: Implementation of Act 129 of 2008 Phase 2-Registry of Conservation Service Providers (Final CSP 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 TRM was previously adopted by the Commission in the Alternate Energy Portfolio Standards proceedings at Docket No. M-00051865. 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 (*TRM* Order) adopting the 2009 version of the TRM.[[1]](#footnote-2)

The *Implementation Order,* at 14, also noted that the Act requires that the Commission’s EE&C Program include an analysis of the costs and benefits of each EDC’s plan, in accordance with a total resource cost test (TRC Test) approved by the Commission. 66 Pa. C.S. § 2806.1(a)(3). The Act requires an EDC to demonstrate that its plan is cost-effective using the TRC Test, and that the plan provides a diverse cross section of alternatives for customers of all rate classes. 66 Pa. C.S. § 2806.1(b)(1)(i)(I). The Act defines 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-3) (*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 *In re: Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test (TRC Test Order),* 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, Duquesne filed the Plan on June 30, 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. On July 7, 2009, the Office of Consumer Advocate (OCA) filed its Notice of Intervention and Public Statement. The Office of Trial Staff (OTS) filed a Notice of Appearance on July 8, and the Office of Small Business Advocate (OSBA) filed its Notice of Intervention and Public Statement on July 17, 2009. Petitions to Intervene were filed by the Department of Environmental Protection (DEP), Duquesne Industrial Interveners (DII), Equitable Gas Company (Equitable), Pennsylvania Association of Community Organizations for Reform Now (ACORN), ClearChoice Energy (ClearChoice), Columbia Gas of Pennsylvania, Inc. (Columbia), Field Diagnostic Services, Inc. (FDSI), Direct Energy Business, LLC (Direct Energy), The Peoples Natural Gas Company d/b/a Dominion Peoples (Peoples), EnerNOC, Inc. (EnerNOC), Constellation New Energy, Inc. (Constellation) and the National Association of Energy Service Companies (NAESCO).

Comments were filed by DEP, DII, The E Cubed Company, LLC, EnerNOC, Envinity, Keystone Energy Efficiency Alliance, National Association of Energy Service Companies, the OCA, the OTS, and Pa. Home Energy.

The Plan was referred to Administrative Law Judge (ALJ) Fred R. Nene, who held Public Input hearings at the Allegheny County Courthouse in Pittsburgh, Pennsylvania on August 5, 2009. ALJ Nene also held evidentiary hearings on August 19, 2009.

On August 31, 2009, Duquesne filed a Joint Petition for Partial Settlement (“Settlement”) of a portion of Duquesne’s Plan on behalf of Duquesne, OCA, OTS, DII, ClearChoice Direct Energy, Equitable, Columbia and Dominion Peoples (collectively, the “Joint Petitioners”). The Settlement requested approval for Duquesne to start early three of its Energy Efficiency Early Start Programs.

Main briefs were filed by Duquesne, OCA, OTS, OSBA, DII, Equitable, Peoples and Columbia (collectively the “NGDCs”), DEP, EnerNOC, ACORN, and ClearChoice on August 31, 2009. Reply Briefs were filed by Duquesne, OCA, OTS, OSBA, DII, NGDCs and EnerNOC. The Independent Oil and Gas Association of Pennsylvania (IOGA) filed an Amicus Curiae Brief on September 10, 2009.

On September 2, 2009, ALJ Nene 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. Duquesne’s Plan

Duquesne’s EE&C Plan combines both energy efficiency and conservation measures with demand response measures in programs that reduce consumption and demand for each customer class. Duquesne researched information about target markets and technology applications capable of producing cost-effective impacts at customer locations throughout Duquesne’s service territory. Duquesne analyzed this information about customer populations in the residential, commercial and industrial sectors. In addition, Duquesne solicited input from stakeholders in each of the three customer segments. As a result of Duquesne’s research and customer input, Duquesne developed programs that it believes will achieve the goals of Act 129. Duquesne MB at 3-4.

 Duquesne is proposing a portfolio of programs structured under its residential, commercial and industrial customer classes. The programs provide incentives for a full range of measures to assist residential, commercial and industrial energy customers of all sizes and in all key market segments. The programs put in place a baseline program design, with set incentive levels and forecasted conservation levels. Duquesne MB at 4.

 Duquesne’s EE&C Plan is recommending Commission approval of the following programs:

* Residential Energy Efficiency Rebate Program
* Residential School Energy Pledge Program
* Residential Refrigerator Recycling Program
* Residential Solar Photovoltaic Program
* Commercial Umbrella Program and Subprograms, including:
	+ Office Buildings
	+ Retail
	+ Healthcare
	+ Government/Non-profit including education
		- Public Agency Partnership Program
* Industrial Umbrella Program and Subprograms, including:
	+ Primary Metals
	+ Chemical
	+ Mixed Segments

In addition, Duquesne is recommending Commission approval of the following demand reduction programs:

* Residential Direct Load Control for Air Conditioners and Electric Water Heaters Program
* Commercial and Industrial Direct Load Control Program for Small and Mid-sized Accounts (less than 300 kW)
* Commercial and Industrial Curtailable Load Program for Large Accounts (greater than 300 kW)

Duquesne MB at 4.

As part of Duquesne’s Plan, the Company has designed a surcharge and reconciliation mechanism for all customer segments. The surcharge has been designed in a manner that recovers costs of the programs from the customers who have an opportunity to participate in those programs designs. Duquesne’s plan proposes to implement five surcharges. The Residential surcharge is designed to recover costs on a cents per kilowatt-hour basis with a one-time reconciliation in June 2013. The Small and Medium Commercial and Industrial surcharges are designed to recover costs on a cents per kilowatt-hour basis with an annual reconciliation. The Large Commercial and Industrial surcharges are designed to recover costs through a combination of a fixed monthly surcharge and a demand-based surcharge with a one-time reconciliation in June 2013. Duquesne Plan at 10.

The Company believes its Plan will meet the Act 129 energy and demand reduction requirements, at a total overall cost of approximately $78.2 million over the life of the Plan. This figure represents 2% of the Company’s combined revenues as of December 2006, multiplied by four to reflect the four-year duration of the Plan. The Plan is divided by program costs per customer class by year, with the proposed total amounts being approximately $13.2 million for 2009-2010; approximately $21.2 million for 2010-2011; approximately $21.7 million for 2011-2012; and approximately $22.1 million for 2012-2013. Duquesne MB at 5.

# 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). 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.

*Implementation Order* at 8 and 29.

In *Energy Consumption and Peak Demand Reduction Targets,* Docket No. M-2008-2069887 (Order entered March 30, 2009) (*Reduction Target Order*), the Commission approved Duquesne’s forecast of 14,085,512 MWh, its proposed 1% reduction of 140,855 MWh as of May 31, 2011, and its proposed 3% reduction of 422,565 MWh as of May 31, 2013. *Reduction Target Order* at 3.

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

Duquesne’s Plan proposes cumulative energy savings of 245,985 MWh by the program year ending May 31, 2011, which is 175% of the established goal. Plan at 13.

##### (1) Positions of the Parties

The OCA asserts that Duquesne’s Plan with its designed reductions exceeds the Act’s requirements. OCA MB at 11. NGDCs submit that their recommendations relating to ‘fuel switching’[[3]](#footnote-4) will enable Duquesne to meet or exceed its overall Act 129 requirements more cost effectively. NGDC St. No. 1; Exh. NGDC-2.

##### (2) Disposition

Pursuant to our review of the specific measures submitted by Duquesne, and as discussed below, we agree with Duquesne and the OCA that Duquesne’s Plan, as modified by this Opinion and Order, can meet the 1% consumption reduction targets by May 31, 2011, as mandated by the Act and the *Implementation Order.* We will, therefore, maintain the energy consumption reduction targets approved in the *Reduction Targets Order.*

#### b. 2013 Requirements

Cumulative energy savings expected by the program year ending May 31, 2013, total 576,356 MWh, which is equivalent to 136% of the required consumption reduction for Duquesne. Duquesne Plan at 13.

##### (1) Positions of the Parties

The OCA asserts that Duquesne’s Plan with its designed reductions exceeds the Act’s requirements. OCA MB at 12. NGDCs submit that their recommendations relating to fuel switching will enable Duquesne to meet or exceed its overall Act 129 requirements more cost effectively. NGDC St. No. 1; Exh. NGDC-2.

**(2) Disposition**

Pursuant to our review of the specific measures submitted by Duquesne, and as discussed below, we agree with Duquesne and the OCA that Duquesne’s Plan, as modified by this Opinion and Order, can meet the 3% consumption reduction targets by May 31, 2013, as mandated by the Act and the *Implementation Order.* We will, therefore, maintain the energy consumption reduction targets approved in the *Reduction Targets Order.*

### 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 Duquesne’s calculation of its average historical peak loads for the top 100 hours as 2,518 MW and its proposed 4.5% reduction of 113 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).

The Plan projects peak demand savings of 198 MW by May 31, 2013, which is 175% of the reduction target of 113 MW. Duquesne Plan at 13.

####  Positions of the Parties

The OCA asserts that Duquesne’s Plan with its designed peak demand reductions exceeds the Act 129 goal. OCA MB at 12. NGDCs submit that their recommendations relating to fuel switching will improve Duquesne’s ability to meet or exceed its overall demand reduction requirements. NGDC St. No. 1; Exh. NGDC-2.

#### b. Disposition

Pursuant to our review of the specific measures submitted by Duquesne, and as discussed below, we agree with Duquesne and the OCA that its Plan, as modified by the Opinion and Order, can meet the 4.5% peak demand reduction target by September 30, 2012, as mandated by the Act and the *Implementation Order.*  We will, therefore, maintain the energy and consumption peak demand reduction targets approved in the *Reduction Target Order*.

### 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 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.  Duquesne’s Plan includes seventeen different programs distributed across all of its customer classes. Duquesne Plan, Table 4.

#### Positions of the Parties

DII believes Duquesne’s Plan conforms to the minimum requirements of the Commission’s *Implementation Order*, but DII indicates it will reserve final judgment until final actual performance of the Plan. DII MB at 6-7. The NGDCs suggest improvements to the Plan involving fuel switching, which can be incorporated in a way that reduces energy demand and consumption of several classes of customers. NGDC MB at 10.

The OCA states that Duquesne’s Plan provides at least one energy efficiency and one demand response program for each class of customers, and offers multiple programs for each customer class. OCA MB at 12-13; Duquesne Plan at 13. The OCA also states that, since the Commission does not require a proportionate distribution of measures and since Duquesne has surpassed the requirement of program distribution, the Plan is “balanced and cost-effective.” OCA MB at 14-15.

Duquesne believes that its Plan adheres to the requirements for a variety of programs equally distributed and offers 23 different programs distributed across all customer classes. Duquesne MB at 6; DLC Exh. No. 1; Plan at 165-169. Duquesne is “confident in its proportion of energy efficiency and demand response programs because of the planning process, benchmarking data, and experiences gained from other energy service providers throughout the nation. Duquesne MB at 6.

#### Disposition

The Commission’s *Implementation Order* states the following with regard to an equitable distribution of program measures:

Furthermore, there is no consensus as to what denominator (per capita, usage, revenue, potential for savings, etc.) to use if one were to require a proportionate distribution.

We will not require a proportionate distribution of measures among customer classes. However, we direct that each customer class be offered at least one energy efficiency and one demand response program. While we will leave the initial mix and proportion of energy efficiency and demand response programs to the EDCs, we expect the EDCs to provide a reasonable mix of energy efficiency and demand response programs for all customers. The burden is on an EDC to explain and justify its distribution of measures among its customer classes if such distribution is challenged.

Duquesne’s Plan offers five energy efficiency programs for the residential class, six for the commercial class, and four for the industrial class. The Plan also offers one demand response program for each class. Plan at 13. We agree with the OCA that the Plan meets and exceeds the requirements of, and conforms to, the Commission’s *Implementation Order* and that the Plan’s measures are equitably distributed among customer classes.

### 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).

Duquesne has been working directly with regional local governments and executed memoranda of understanding with several key local public agencies to develop specific programs for these sectors. The cumulative energy and peak demand savings for the governmental and nonprofit subsectors, within the commercial sector, are 26,920 MWh for the program year ending May 31, 2011; and 62,814 MWh and 20.2 MW for the program year ending May 31, 2013. These projected energy and peak demand reductions exceed the mandated 10% reductions and reflect 19.1%, 14.9% and 17.9% of the reduction targets, respectively. Duquesne Plan at 13, 77.

The Commercial Sector Umbrella Energy Efficiency Program Plan (CSUP), to be implemented during program years 2009 through 2012, provides the payment of incentives to offset the higher cost of high-efficiency equipment. Customers will have access to CSUP incentive applications through a link on Duquesne’s Act 129 website. The Education Segment Program helps colleges and primary schools to assess the potential for energy-efficiency project implementation, cost and energy savings, and provides measure installation and verification of savings. Duquesne’s Health Care Energy Efficiency Program (HEEP) is a long-term energy management program for medical office buildings and acute care facilities. Duquesne Plan at 40-41, 48.

The objective of Duquesne’s Public Agency Partnership Program (PAPP), within the commercial sector, is to engage local governments and jurisdictional agencies in a partnership to implement an Energy Efficiency Action Plan. Partnerships are established through execution of a memorandum of understanding by and between Duquesne and selected local government agencies. The memorandum of understanding puts in place dedicated contacts and establishes a working group comprised of Duquesne and agency representatives that identify and evaluate energy efficiency project opportunities within the agencies. The working group also defines project scopes of service and establishes project agreements to co-fund projects. A key element of the PAPP is co-funding by Duquesne and the Partnership agency. Duquesne Plan at 77.

#### Positions of the Parties

DEP postulates that prescriptive rebate programs are an inefficient use of energy conservation dollars and prevent governments from attaining significant, long lasting energy consumption reductions. DEP MB at 3, 4. DEP prefers a whole building approach to energy savings.

As stated by DEP witness, Maureen Guttman:

Because lighting consumes up to 35% of all electricity in a commercial building, lighting efficiency and control upgrades are usually the most cost effective measure to improve energy consumption. The generally quick payback period makes lighting upgrades an integral component of overall building retrofits by offsetting investments in more costly technology that provides longer payback periods. However, lighting upgrades are by nature a short term fix. Deeper and longer lasting energy savings are achieved through the additional measures required in a whole building approach...The EDC’s proposal to “cherry pick” lighting retrofits alone will make it very difficult for governments to obtain ESCO contracts. These ESCO contracts are often the only way governments can finance these important energy conservation measures. By eliminating the ability of governments to take advantage of these contracts, the EEC plan actually contravenes the very purpose of Act 129.

DEP St. No. 1 at 14-15.

Duquesne witness Thomas Crooks testified as follows with regard to addressing governmental/non-profit reduction mandates:

As reflected in Duquesne Light’s program plan, to achieve governmental/non-profit impacts Duquesne Light will implement local government energy efficiency partnerships (Partnerships). The Partnerships are created under a Memorandum of Understanding (MOU) between Duquesne Light and a government agency (such as cities and counties) wherein the parties agree to develop and implement an Energy Efficiency Action Plan (“Action Plan”). The Action Plan addresses efficiency gain in all governmental departments and jurisdictional agencies…Operated under the Commercial and Industrial Sector Umbrella Programs, seven market segment focused sub-programs are tailored to meet segment specific needs and opportunities. These programs are designed to be implemented either by Duquesne or specialized Conservation Service Providers (CSPs). Duquesne implemented programs incorporate program designs with a successful track record of engaging local governments and specific key accounts. Programs implemented by CSPs target those customer segments with known barriers to program participation employing benchmark program designs to engage and enroll customers using specialized CSP services.

Duquesne St. No. 2 at 6, 9.

In its Reply Brief, Duquesne points out that the Plan includes both prescriptive rebates and custom incentives tailored to site-specific/customer-specific needs and opportunities; the Plan does not impair a government/school/non-profit’s ability to obtain significant long-term energy consumption through participating in “guaranteed” or “shared savings” contracts because prescriptive and custom incentive payments can be provided to the shared savings or guaranteed savings contractors who can incorporate the funds into their business model, product and service offerings. Duquesne RB at 5.

#### Disposition

We disagree with DEP’s characterization of the EE&C programs proposed for governmental/non-profit customers as merely lighting rebate programs. Under the PAPP, the working group comprised of Duquesne and agency representatives will develop an individual Energy Efficiency Action Plan for each government agency. The CSUP provides incentives to offset the higher cost of high-efficiency equipment when compared to standard efficiency equipment. *See* Duquesne Plan at 40. We do not believe that the CSUP offerings will impede customers in seeking other avenues for achieving energy efficiency, including a “shared savings” approach. We believe the Plan’s objective and the objective of Act 129 is to meet or exceed the mandated consumption reductions with limited funding, and there is no need to require implementation of all-encompassing program components as long as these reductions are achieved. Thus, we find Duquesne’s EE&C programs for this sector to be adequate for meeting its Act 129 requirements.

### 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 programs 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).

Duquesne submits that it adhered to the Act’s Low Income Program Requirements in its Low Income Energy Efficiency Program (LIEEP). Duquesne states that LIEEP is an income-qualified program that provides services designed to assist low-income households to conserve energy and reduce electricity costs. This program adopts the local government energy efficiency partnership strategy that leverages local agency staff to reach, pre-screen and enroll participants. Duquesne and the agency share or co-fund the specified program costs. DLC Exhibit No. 1, Duquesne Plan at 36-39; 49-51; Study at 70-73.

Duquesne witness Crooks described the Company’s method of complying with the low-income household requirement as follows:

Program planning described herein is based on an interpretation that the terms “number of energy efficiency measures” mean energy efficiency program energy savings impacts. Accordingly, low income program plans are adjusted to reflect the percentage of Act 129 mandated reductions equivalent to the low income segment energy use percentage of Duquesne Light’s total territory energy use.

Duquesne St. 2 at 5.

 Duquesne calculated the percentage of low-income usage to total system usage and determined it to be approximately 6.1%. Duquesne Plan § 9.1.3 at 113. The Company then endeavored to design programs in its Plan to achieve at least 6.1% of its energy consumption and peak load reductions from the low-income sector. Duquesne Plan § 9.1.3 at 113. Under the Plan, the Company will seek to achieve consumption reductions of 30,055 MWh by May 31, 2013, from the low-income sector, which is 7.1% of the overall required savings. Plan § 9.1.3, Figure 48 at 114.

#### a. Positions of the Parties

 The OCA states that the language of the Act uses the terms “measures” within the section but also refers to “in proportion to usage.” The OCA submits that the most effective way to implement this Section is to require each EDC to assure that a specific percentage of the overall savings to be achieved from the Plan are realized through programs and measures directed to the low-income customer segment. This approach would parallel the set aside approach for the government/non-profit sector. *See*, 66 Pa.C.S § 2806.1(b)(1)(i)(B).

The OCA submits that the Company’s methodology for determining the low income set aside requirement, and its Plan for meeting the requirement, are reasonable and in compliance with the Act. The OCA supports the Company’s efforts in this regard. OCA MB at 18.

#### b. Disposition

 66 Pa. C.S. § 2806.1(b)(1)(i)(G) reads, in pertinent part, as follows:

(G) The plan shall include specific energy efficiency measures[[4]](#footnote-5) 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[[5]](#footnote-6) in the service territory….

We note that in the Act 129 proceedings now before us the interpretation of 66 Pa. C.S. § 2806.1(b)(1)(i)(G) has been contentious. The express language of this subsection is quite clear, and its interpretation does not require complicated explanations. Its implementation, however, is another matter.

According to Section 2806.1(b)(1)(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)(1)(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. For now, 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.

Under Act 129, energy usage must be used to determine the proportionate share of measures that must be provided for low-income customers. Section 2806.1(b)(1)(i)(G) states that “the number of measures must be proportionate to those households’ share of the total energy usage in the service territory.” *See* 66 Pa. C.S. § 2806.1(b)(1)(i)(G).

 Again, the difficulty with this provision lies in its implementation. There is no information kept on energy usage or EDC revenue 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. While we will use estimates and the tools at hand in order to achieve the goals of Act 129 today, we will develop the tools necessary to reach full compliance for the next group of EE&C plans.

So we are not forced to use substitute data in the future, the Commission will convene a working group that will be charged with developing implementation standards for deploying proportional energy efficiency and conservation measures to low-income customers. 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 to the Commission no later than February 16, 2010.

Duquesne’s Plan contains a total of 1 of 18 programs, or 5.5%, that are targeted towards low-income consumers. Duquesne estimates that 6.1% of its energy is attributable to low-income customers. Although this figure is slightly higher than the number of measures targeted towards low-income customers, those customers are also free to participate in three other residential programs. On this basis, we find that the Company’s Plan includes a “number of measures” proportionate to the low-income households’ share of total energy usage at this time. However, the Company is directed to track low-income participation in the programs not specifically targeting those customers.

Additionally, since low-income customers are eligible to participate in Duquesne’s other EE&C programs for residential customers, their participation in these programs can be tracked and reported and the information can be counted toward achieving the Section 2806.1(b)(1)(i)(G) energy reduction goal for this customer class. To aid this Commission in ensuring compliance with Act 129, we will direct Duquesne to track instances in which low-income customers participate in residential and other programs that are not specifically directed toward low-income customers. We will also direct that the information collected shall be included in the Companies’ annual report to the Commission.

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

In the course of this proceeding, several parties have raised issues concerning the specifics of certain programs in Duquesne’s Plan. We will address these issues in the course of discussion on these programs.

#### Residential

Duquesne’s Plan includes peak demand reductions for the residential sector totaling 74.6 MW for programs regarding energy efficiency, residential/schools, refrigerator recycling, solar photovoltaic incentives and low-income energy efficiency. Combined, these programs represent 66% of mandated peak demand reductions and 37.6% of Duquesne’s total EE&C Plan reductions. The majority of these reductions are expected from the Residential Energy Efficiency Rebate Program (REEP) with a projected impact of 54.9 MW. Duquesne Plan at 25, 113.

The Plan also includes an Air Conditioner Cycling Program (ACCP) to achieve the benefits of demand response by cycling off central air conditioners and electric water heaters for residential customers. The ACCP is expected to achieve an on-peak demand reduction of 18.6 MW, or 16.4% of the mandated reduction, and energy savings of 1,389 MWh. Duquesne Plan at 34-36.

##### (1) Calculation of Energy Savings

###### (a) Positions of the Parties

DEP objects to Duquesne’s full inclusion of the energy savings of a customer who receives Duquesne Act 129 funding if that customer also receives government monies, such as Pennsylvania’s recently enacted Alternative Energy Investment Act (Act 1) and the American Recovery and Reinvestment Act (ARRA). DEP St. No. 1 at 5. DEP asserts that, unless steps are taken to ensure that Duquesne does not put any money into ARRA funded projects, Duquesne, will likely take credit for energy conservation benefits derived from ARRA funding no matter how small its contribution might be. DEP strongly opposes any program that allows EDCs to account for that portion of energy usage reductions not proportionately related to private funds. DEP St. No. 1 at 8.

Duquesne argues that the issue of permitting an EDC to include all energy savings derived from projects that may have State or Federal funding associated with them has previously been decided by the Commission, finding that credit will be given to reductions no matter how funded or by whom. Duquesne points out that 66 Pa. C.S.

§ 2806.1(a)(3) requires EDCs to implement energy efficiency and conservation programs that are cost-effective in accordance with a TRC Test approved by the Commission. Duquesne MB at 7-8.

Duquesne contends that nothing prohibits it from taking credit for energy usage reductions that may be accomplished, in part, through the use of Federal or State funds. Additionally, Duquesne points out that its Plan does not propose that any Federal or State funds replace Act 129 funds through the surcharge nor does its Plan restrict the sources of funds that customers can use. Tr. at 228; Duquesne MB at 8.

###### (b) Disposition

 Although the DEP challenged Duquesne’s ability to account for the full benefits of co-funded measures, the DEP did not propose specific adjustments to Duquesne’s energy or peak demand savings estimates or challenge the ability of Duquesne’s EE&C Plan to meet the energy or demand reductions required under Act 129. However, Duquesne’s ability to take credit for co-funded measures may impact whether its Plan can reasonably be expected to meet the May 31, 2011, and May 31, 2013, energy reduction requirements and the May 31, 2013, demand reduction requirements.

In determining whether an EDC may take credit for all energy savings for measures that 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, DOE clearly contemplated that ARRA funds could be used in conjunction with other funding. We conclude that this Commission should 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 Oder* 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 1 funds. To the 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* at 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 Duquesne 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 the EDC 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, Duquesne 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 Duquesne.

##### Statewide Whole House Approach

###### (a) Positions of the Parties

DEP strongly advocates for statewide whole-house programs indicating that these programs are the key to achieving deep energy savings for consumers and can be cost effective by targeting homes with the highest potential energy savings. DEP St. No. 1 at 17.

Duquesne rejects DEP’s recommendation because the majority of Duquesne’s service territory does not contain all-electric housing stock. There is only a 5% market share in electric space heating and 10% market share in electric water heating. Tr. 147. Therefore, Duquesne asserts that the whole house audit would not be cost effective for its Plan. Only 5% of the building population would achieve cost effective benefits from a whole house energy audit. Duquesne MB at 9. In addition, Duquesne argues that it cannot risk spending money for the whole house audit as DEP suggests but rather must focus spending money on implementing electric efficiency or its mandated reductions will not be met. Tr. at 148-149.

Duquesne points out that its Plan includes whole house audits to be provided to customers through the LIEEP and this approach renders cost effective programs to the low-income sector. Tr. at 166-167.

######  (b) Disposition

We agree with Duquesne that requiring it to implement a statewide whole house approach may not be as cost effective in its service territory as other EE&C programs and, therefore, we shall not require Duquesne to implement statewide whole house programs at this time. However, we encourage Duquesne to monitor and, where possible, coordinate its planned whole house energy audits, especially in regard to LIEEP, with any statewide whole house programs that would benefit its customers.

#### Commercial

Duquesne’s Plan includes peak demand reductions for the commercial sector totaling 69.6 MW for programs targeted at office buildings, healthcare facilities, retail store, restaurants, educational institutions and governmental/non-profit entities. Combined, these programs represent 61.6% of mandated peak demand reductions and 35.1% of Duquesne’s total Plan reductions. Duquesne Plan at 113.

The Plan also includes an air conditioner cycling program for small and mid-size facilities with an expected on-peak load reduction of 7.8 MW by 2012, or 6.9% of the mandated reduction. Energy savings for this program are expected to total 672 MWh. Duquesne Plan at 55-57.

##### New Construction

###### (a) Positions of the Parties

OCA witness David Hill observed that Duquesne’s Plan does not include a new construction program for commercial and industrial customers. The OCA argues that new construction and renovation projects are an important lost opportunity market that can yield long term cost effective savings relative to retrofit and early replacement programs. OCA St. No. 1 at 18-19. Mr. Hill also admitted that, given the current state of the economy, there are relatively few efficiency opportunities today in the new construction and major renovation markets; Duquesne could start to develop commercial new construction now in order to be fully prepared when construction activity picks up. OCA St. No. 1 at 18-19.

During cross-examination, Mr. Hill testified further that the bulk of the savings will come from existing building stock, but that major renovations and new construction provide cost effective savings that cannot always be attained in the retrofit market. Tr. at 242.

Duquesne agrees that new construction programs are an important part of energy efficiency program portfolios, but its program is based on the analysis of energy efficiency, technical, economic and achievable potential, and found that 95% of commercial efficiency gain potential in Pennsylvania is from the retrofit of existing building stock. Tr. at 144. The 95% figure was obtained from the April 2009 study completed by the American Council for Energy Efficiency Economy. Duquesne witness Crooks explained that because 95% of the potential gain is associated with retrofit and, because of the significant, aggressive targets Duquesne must achieve, the focus was on the 95%. Tr. at 144. Duquesne also considered the very short period of time to ramp up and achieve the 2011 goal. Duquesne has approximately seventeen months to achieve the mandated targets and does not believe it could achieve market penetration even if it chose to target the 5% potential for efficiency gain. Tr. at 144-145.

During cross-examination, Mr. Crooks testified that it may be possible to incorporate new construction program elements into Duquesne’s portfolio within the three-year period. Tr. at 176. The OCA recommends that Duquesne consider the incorporation of a new construction component into its commercial and industrial energy savings programs to contribute to savings needed to meet the 2013 reduction goal. OCA RB at 7.

###### (b) Disposition

Considering that commercial retrofits of existing building stock represent 95% of the efficiency gain potential, we find no reason to require that Duquesne expand its Plan to include new construction projects at this time.

#####  Scale-back of Projected Commercial and Industrial Savings

######  Positions of the Parties

The OCA recommends that Duquesne scale-back the proposed Plan savings. OCA St. No. 1 at 23. OCA witness Hill is concerned that Duquesne will not be able to reach its stated goals in the C&I sector with the stated budgets and incentive designs. The OCA suggests that, if Duquesne’s proposed program spending were to be applied to the required reductions, the available budget and incentive strategies would make more sense. The OCA argues that the ability to increase spending for each kilowatt hour saved without compromising compliance enables more robust program design and incentive options. OCA St. No. 1 at 23-24.

Duquesne witness Crooks explained why the projected program impacts exceeded the mandated requirements:

The programs were planned on an annual basis, and the first full program year will be program year 2010, starting June 1 through May 31st, 2011. We don’t know and there is a high degree of uncertainty as to which programs will be approved and when those programs will start in program year 2009. So, we didn’t feel we could count 2009’s impacts. That being the case, we had to in one year, one full program year, achieve the May 31st, 2011 mandated reductions or face penalties. Given this as a design requirement, we had to be able to achieve and design programs to achieve the mandated reduction in one year, not including the 2009 impacts. So, the impacts we provided, while they appear to exceed the mandated targets, are based on significant accomplishments, up to 80 million kilowatt-hours in 2009. We have a low level of confidence and great uncertainty with regard to 2009 impacts and have to be able to have a confidence that we canachieve the mandated reductions within the single 2010 program year to meet the 2011 goals. So, that being the case, I think that the ability to achieve our projected savings impacts for 2010 program year are 160 million kilowatt-hours. The mandated reductions by May 31st 2011 are 140 million kilowatt-hours. This is not a big overshoot and we have no basis to know what’s going to happen with ramp-up in 2009 and that this is a conservative approach to planning.

Tr. at 145-146.

###### (b) Disposition

We note that the *cumulative* projected energy savings for the program year ending May 31, 2011, is nearly 75% greater than the mandated level. *See* Plan at 163. Nevertheless, we find nothing wrong in Duquesne’s approach, considering the uncertainty of the projected savings potential for the few months preceding the 2010 program year. Once the EE&C programs are fully implemented, we expect Duquesne to assess their effectiveness and adjust, if necessary, the levels of incentives offered to customers such that an adequate participation response will result in achievement of Act 129 mandated reductions.

###### Industrial

The Plan includes a curtailable load program for large commercial and industrial facilities with demands exceeding 300 kW. Customers are required to reduce peak load when notified by Duquesne over a real-time communication system. Expected demand response benefits total 10.8 MW by 2012, or 9.6% of the mandated on-peak demand reduction, with energy savings of 1,037 MWh. Duquesne Plan at 74-76.

##### Distributed Generation

Duquesne’s Curtailable Load Program for large commercial and industrial customers with demands exceeding 300 kW offers incentives for reducing their load during peak periods when notified over a real-time communication system. Participants receive the communications system at half-price and are paid incentives based on recorded reductions and the wholesale energy price during the curtailment. Estimated peak load reductions from this program total 10.8 MW. Duquesne Plan at 74, 113.

######  Positions of the Parties

In regard to the possible addition to Duquesne’s Plan of distributed generation units to help reduce peak usage, 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.

DEP witness Maureen Guttman testified that DEP would be opposed to the inclusion of distributed generation resources as part of Duquesne’s Plan even if these resources meet DEP air permitting standards. Tr. at 234. DEP is opposed to the use of distributed generation to achieve peak demand goals under Act 129. Tr. at 238. 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. DEP MB at 7.

Duquesne’s witness Larry Barrett testified that:

[l]oad reductions may be achieved by reducing or shifting electricity usage in any end-use. The most likely load reductions will come with reduced air conditioning, lighting, ventilation, refrigeration, cooking, water heating and manufacturing operations.

Duquesne St. No. 3 at 9.

In oral rebuttal testimony, Mr. Barrett disagreed with DEP’s position, stating that:

as long as a generator participates in our curtailable load program and complies with the environmental rules, that would be acceptable from our perspective . . . I would want to include standby generators if the customer wants to include them, the curtailment service provider wants to include them and they comply with all permitting and environmental requirements.

Tr. at 193-194.

DII argues that Act 129 does not eliminate distributed generation from application by Duquesne and other EDCs for use in meeting energy and demand reduction goals. DII submits that Act 129 is silent with respect to distributed energy resources. Furthermore, DII states that under well-established principles of statutory construction, the Act’s explicit inclusion of certain EE&C measures, by stating that EE&C measures “shall include,” was clearly intended to be an inclusive provision for those measures and not an exclusive provision for measures not listed. DII RB at 10-11.

######  Disposition

 We find that 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. Therefore, a distributed generation program will 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, CSPs should be allowed to call upon these back-up generators in order to achieve the commitments of the Contracted Demand Response Program.

 DEP’s concern with environmental impact of distributed generation, as used for curtailment of peak demand, is without merit. First, load curtailments will be called for only during an average of forty-eight hours during the summer peak season. *See* Duquesne Plan at 74. Second, 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*.

 Duquesne’s Curtailable Load Program, as proposed, does not specifically include a distributed generation component. If, however, the customer and the curtailment service provider want to include a standby generator, for example, as a means to reduce Duquesne’s system peak demand and it is in compliance with all DEP permitting and environmental requirements, Duquesne has no objection.

 We find the potential use of distributed generation resources to contribute to Duquesne’s mandated Act 129 demand reductions to be acceptable. Therefore, we reject DEP’s proposal to restrict the dispatch of distributed energy resources.

### 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). In the *Implementation Order*, the Commission stated that interested parties would have the opportunity to make recommendations during the initial plan approval process.[[6]](#footnote-7)

#### Residential

#####  Use of Residential Furnace Fans

######  (a) Positions of the Parties

The OCA points out that its witness Hill observed that the replacement of residential furnace fans is not included as a measure in Duquesne’s Residential Energy Efficiency Program (REEP). Mr. Hill stated that the 2009 American Council for an Energy Efficient Economy (ACEEE) study of energy efficiency potential in Pennsylvania identified the savings associated with existing permanent split capacitor furnace fans with ones that meet or exceed the minimum electronically commutated motor standards as providing 6% of the electric energy savings potential identified for Pennsylvania. OCA St. 1 at 18.

Duquesne notes that it made an error in its TRC calculations on furnace fans. Duquesne states that it now agrees with the OCA and will modify its residential program mix to include high-efficiency furnace fans. Duquesne MB at 12-13.

######  (b) Disposition

We agree with Duquesne’s decision to modify its Plan to include high efficiency furnace fans.

##### (2) Electric Space Heaters

######  (a) Positions of the Parties

ACORN submits that Duquesne’s Plan should incorporate a similar strategy as utilized in PECO’s Plan, which proposes to require the reduction of electric space heaters. ACORN points out that supplemental electric heating units are wasteful of energy and are extremely dangerous to the families and neighborhoods in which they are used. ACORN St. No. 1 p. 8.

Duquesne agrees that electric space heating can be inefficient and a potential safety hazard. Duquesne also believes that the most appropriate way to address the situation of electric space heating is within its Smart Comfort or LIURP program. Duquesne points out that it currently utilizes Smart Comfort (LIURP) to address space heating issues and needs. Duquesne submits that adding a space heating component to its Plan would lead to confusion and inconsistency. Tr. at 122.

###### (b) Disposition

 The Commission believes that it need not micro-manage each plan to see that the use of space heaters is reduced in the Commonwealth. We believe other measures in the Act 129 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. For these reasons, the Commission will not direct Duquesne to implement space heater-specific programs.

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## 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).

Section 2806.1(g) of Act 129 states the total cost of any EE&C Plan may not exceed 2% of the EDC’s total annual revenues as of December 31, 2006. Additionally, this section of the Act provides that the 2% provision shall not apply to the cost of residential low-income usage reduction programs established under 52 Pa. Code Ch. 58. 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 our *Implementation Order*,we addressed Duquesne’s concern that a significant portion of its customers receive their energy supply from an alternate supplier, or an EGS. We concluded that the General Assembly intended Act 129 to be competitively neutral and not disadvantage EDCs that had active retail electric markets. *Implementation Order* at 35. Duquesne’s Plan presents total annual EDC revenues for calendar year 2006 of approximately $723 million ($723,299,451), and 2% of this amount is approximately $14 million ($14,465,989).

The Commission interprets “amounts paid to the [EDC] for generation, transmission, distribution and surcharges by retail customer,” set forth as the definition of EDC total annual revenue in 66 Pa. C.S. § 2806.1(m), 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. Duquesne’s total annual POLR generation and transmission revenues for 2006 were approximately $254 million ($253,998,128), and 2% of this amount is approximately $5 million ($5,079,962). The combined total revenue upon which the 2% allowable program cost is measured is approximately $977 million ($977,297,579), accordingly, the 2% program cap is approximately $19.5 million ($19,545,951) on an annual basis. Duquesne Plan, Figure 46 at 109; Duquesne St. No. 1 at 8.

In our *Implementation Order*, we concluded that “[w]ith regard to the 2% limitation provision of the Act, we agree with PPL Electric that this limitation on the ‘total cost of any plan’ should be interpreted as an annual amount, rather than an amount for the full term of the Plan.” *Implementation Order*, at 34. Duquesne has relied on the Commission’s determination regarding the allowable total cost and, accordingly, has constructed its Plan using $19.5 million as an annual cost for each of the Plan’s four years. Therefore, for the four year duration of the Plan, the total cost is $78,183,806. Duquesne Exh. WVP-1.

####  The Two Percent Cost Cap[[7]](#footnote-8)

##### (i) Positions of the Parties

DII asserts in its Main Brief that Duquesne's Proposed EE&C Plan violates the Act by over-calculating the proposed budget. DII MB at 13.

In support of its position, DII explains that the plain language of Act 129 provides that “[t]he total cost of any [EE&C] 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). In other words, DII asserts, that an EDC is permitted to recover from its customers a sum equal to 2% of its 2006 annual revenue to implement and administer its entire EE&C program. DII MB at 13. DII further states that the Commission recognized this clear limitation in the Implementation Order when noting, “[t]he Act dictates that the total cost of any plan must not exceed 2% of the EDC's total annual revenue as of December 31, 2006, excluding Low-Income Usage Reduction Programs established under 52 Pa. Code § 58 (relating to residential Low Income Usage Reduction Programs).” DII MB at 13; *Implementation Order* at 32*.* DII then points out that contrarily, the Commission later in its *Implementation Order* interpreted this limitation on the "total cost of any plan. . . . as an annual amount, rather than an amount for the full five-year period.” DII MB at 13; *Implementation Order* at 34.

DII argues the clear and unambiguous language of the Act limits the total cost of EE&C plans to an amount that “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). DII MB at 14. The plain language of the statute according to DII, does not allow for Commission discretion or interpretation of this amount. DII argues that the plain language of a statute cannot be ignored and must be given effect. Consequently, DII avers that the Commission’s reliance on additional purported indicia of statutory intent is unnecessary in this situation. DII MB at 14. DII also states that the *Implementation Order* was not an adjudication subject to appeal. As a result, DII has reiterated this legal argument in this adjudicatory proceeding to preserve its right to appeal the Final Order on that basis. DII MB at 14.

DII’s Reply Brief clarifies its position by stating that it raised this legal argument 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 reject Duquesne’s Plan on this basis. DII RB at 12, 13.

##### (ii) 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). As pointed out by DII, the Commission previously addressed this issue in the *Implementation Order*:

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 2% limit was read as applicable to the entire multi-year EE&C program.

*Implementation Order* at 34 (footnotes omitted).

 This Commission’s rationale 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 each of the 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 is applied to the entire multi‑year EE&C program. The evidence of record shows that Duquesne’s Plan slightly exceeds the statutory consumption and demand targets with budgets that spend 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 Duquesne to meet the statutorily imposed consumption and demand targets, unless Duquesne 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 would constitute 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.

We will also clarify our position on the EDC’s ability to recover the costs of their respective EE&C Plans on a levelized basis over the four-year duration of their EE&C Plans.

Initially, it must be noted that 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, a 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 believes 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.

#### Exclusion of Statewide Evaluator Costs 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. While the Act requires each EDC’s plan to explain how quality assurance and performance will be measured, verified and evaluated, 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), (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(c)(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.

##### Positions of the Parties

It is Duquesne’s view that the cost of the statewide Act 129 evaluator is not a cost of the Company’s EE&C Plan and, therefore, should not be subject to the 2% spending limitation previously discussed. Duquesne argues that the statute does not direct EDCs to include the cost of the statewide evaluator within the 2% spending cap. The Company states that it interprets the statute to “limit costs related to its plan, not an audit to be performed by the statewide evaluator.” Duquesne MB at 19. Duquesne has excluded its estimated share of the statewide evaluator cost, approximately $2.2 million,[[8]](#footnote-9) in determining its $78 million total cost for implementation of its EE&C Plan. Duquesne St. No. 1 at 9, 10. However, Duquesne states that should the Commission find that the statewide evaluator cost should be within the EE&C 2% cost cap, it will scale back its program budgets and make any appropriate adjustments. Duquesne St. No. 1 at 10; Duquesne MB at 19.

The OTS notes that the Act provides that an EDC can recover all prudent and reasonable costs related to the provision of its EE&C Plan, subject to the 2% cap and that the *Implementation Order* maintains that such recoverable costs would include capital expenditures and related administrative costs. *Implementation Order* at 32, 33;OTS MB at 7.

The OTS does not take issue with Duquesne’s $78 million proposed cost to implement its EE&C Plan: however, the OTS maintains that Duquesne erred in excluding the statewide evaluator cost from its 2% spending cap. OTS MB at 8; OTS St. No. 1 at 22.[[9]](#footnote-10) Accordingly, the OTS maintains that the statewide evaluator is an ongoing Plan cost that should be included within the 2% cap. OTS MB at 8.

The OCA states that, pursuant to Section 2806.1(g) of the Act, 66 Pa. C.S.

§ 2806.1(g), the cost of the statewide evaluator represents a necessary core cost of evaluating the Company’s Plan and must be included under the $78.2 million, 2% spending cap. OCA MB at 30; OCA St. No. 1 at 30.

In reply, the OTS states that Duquesne’s proposed treatment of the statewide evaluator cost as extraneous and unrelated to its statutory duties is contrary to the requirements of the Act. OTS RB at 4. Specifically, the OTS states that, under the subheading *Duties of Electric Distribution Companies,* each plan shall require an annual independent evaluation of its cost effectiveness and a full review of the results of each five-year plan. OTS RB at 4; Pa. C.S. § 2806.1(b)(1)(i)(J). This, according to the OTS, places a duty on each EDC to arrange for annual and five-year independent reviews. OTS RB at 4.

In reply, the OCA submits that Duquesne’s reading of the statute is incorrect. The statewide evaluator costs are a necessary component of the measurement, evaluation and verification needed to ensure that the Plan complies with Act 129. OCA RB at 9. The OCA notes that Section 2806.1(a)(2) of the Act, 66 Pa. C.S.

§ 2806.1(a)(2), charges the Commission with establishing an evaluation process “including a process to monitor and verify data collection, quality assurance and results of each plan and the program.” Evaluation of each plan is required and the OCA therefore concludes that the evaluation must be considered a necessary compliance element of Duquesne’s Plan. OCA RB at 9. Accordingly, the OCA asserts that Duquesne’s EE&C Plan budget must accommodate the inclusion of the costs of the statewide evaluator. The OCA submits that, if the General Assembly had intended for other exclusions to the 2% spending limit besides the LIURP costs, it would have so stated. OCA RB at 9.

##### (ii) 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. Therefore, the cost recovery of the statewide evaluator should be included in the reconcilable surcharge that will be used to recover those costs of the individual EE&C plans.

 We conclude that the expense related to the statewide evaluator is not a cost component of the EDCs’ individual plans. Rather, it is a cost component of the overall program instituted by the Commission. Accordingly, we find that Duquesne’s cost recovery for its respective share of the cost for the statewide evaluator will not be subject to the 2% cap on the cost of its Plan. Duquesne properly excluded these costs from their EE&C Plan.

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

Two areas that require review and analysis relate to the cost effectiveness of Duquesne’s Plan. First, it is important to verify that Duquesne follows the methodology set forth in the *TRC Test Order*[[10]](#footnote-11) in preparing its cost-benefit analysis. Second, verification is required that Duquesne’s Plan passes the TRC Test with a total plan cost-benefit ratio of greater than 1.0.[[11]](#footnote-12)

#### a. Positions of the Parties

 No parties offered comments on the overall TRC or disputed the analysis.

#### b. Disposition

Performing a cost effectiveness analysis using the Commission-approved TRC 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 was to ensure that all EDCs were using the same basic methodology to calculate the costs and benefits of their EE&C plans. This would help 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 plans’ 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.[[12]](#footnote-13)

Duquesne followed the prescribed methodology for the avoided cost calculations contained within its cost effectiveness analysis.[[13]](#footnote-14) According to the calculations contained in the Plan, it passes the Commission’s TRC Test with a cost-benefit ratio of 2.9:1.[[14]](#footnote-15) Therefore, we shall accept Duquesne’s cost effectiveness test.

### 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. Bid Demand Response Measures into PJM Auction

##### (i) Positions of the Parties

The OCA stated that Duquesne should be required to bid its qualifying energy efficiency and demand response resources into the PJM Reliability Pricing Model (RPM) auction. This, according to the OCA, could provide a credit to customers for the value received in the cost recovery mechanism. OCA MB at 31. The OCA points out that, beginning with the Auction conducted in May 2009, PJM has modified its RPM auction process to allow for the inclusion of energy efficiency and demand response resources. The OCA notes that qualifying energy efficiency and demand response resources can now bid into the PJM auctions as a capacity resource and if cleared, receive capacity payments. OCA MB at 31. Accordingly, the OCA submits that Duquesne should be directed to explore this option and to bid its qualifying resources into the auctions. The OCA notes that capacity payments can provide a significant value that should be credited to all customers through the cost recovery mechanism to offset the costs they must bear under the Act. OCA MB at 31.

Duquesne submits that although it is willing to look into this option, it cannot make any firm commitments because all of the PJM base residual RPM auctions have already run for the delivery years through 2012-2013. Duquesne asserts that these energy efficiency programs are scheduled to end in 2013, therefore Duquesne believes it could be impossible to bid into those auctions, but small incremental auctions could be reviewed. Duquesne notes that certain requirements have to be met to bid into RPM auctions and Duquesne does not know whether its energy efficiency savings will qualify as RPM capacity. Duquesne indicates that it will agree to look into the OCA’s suggestion, but for the reasons above cannot commit and believes that the Commission should not adopt the OCA’s recommendation. Duquesne RB at 7.

##### (ii) Disposition

We agree with the OCA’s recommendation and believe that bidding demand response measures into the PJM RPM is incumbent upon our jurisdictional EDCs. We expect our EDCs to take full advantage of savings made available from PJM programs. Duquesne is commended for showing a willingness to avail itself of the possible capacity payments from PJM’s RPM program. However, we will not require Duquesne to participate in the RPM program base residual auctions since auctions for delivery years through 2012 – 2013 have been concluded. Duquesne is directed to bid into any incremental RPM auctions where it is prudent to do so. We note that although Duquesne cannot bid their demand response programs into the bid response auction (“BRA”) since the programs expire May 31, 2013, Duquesne should consider bidding their longer term energy efficiency programs into future BRAs.

####  Treat Government/Non-Profit as Separate Class for Cost Recovery

##### Positions of the Parties

The OSBA contends that it appears from Duquesne’s Plan that Commercial customers will be subsidizing the required reductions in consumption and peak demand of another class, Government/Non-Profit customers, since Duquesne has grouped Commercial customers and Government/Non-Profit customers together for cost recovery purposes. OSBA Stmt. No. 1 at 3. The OSBA argues Duquesne’s grouping of Commercial customers with Government/Non-Profit customers is contrary to the requirement that the costs for approved measures be financed by the same customer class that will receive the direct energy and conservation benefits from those measures. *See* 66 Pa. C.S. §2806.1(a)(11). The OSBA submits that in view of the foregoing, Duquesne’s Plan should be modified in order to treat Government/Non-Profit as a separate class for cost recovery purposes. OSBA MB at 6.

#####  (ii) Disposition

 We reject the contention that units of government, school districts, institutions of higher education and non-profit 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 non-profit 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 Duquesne assigned the costs associated with

government/non-profit targeted programs in a reasonable manner by assigning such costs to the Commercial class and that Duquesne should not be required to treat government/non-profit as separate class for cost recovery purposes.

### 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. Separate Line Item on Customer’s Bill

##### Positions of the Parties

Duquesne has proposed five separate surcharges, which are proposed to be add-ons to its current distribution rates, to recover its budgeted EE&C costs of $78 million. Duquesne performed customer research and evaluation and found that customers preferred a simpler bill that was easy to understand. Based upon that preference, Duquesne proposes to roll the surcharges into existing distribution rates in lieu of establishing a separate line item on each bill. Duquesne MB at 13, 14; Duquesne Exh. WVP – 9. The five surcharges are: (1) residential; (2) small and medium commercial; (3) small and medium industrial with metered demand up to 300 kW; (4) large commercial with metered demand over 300 kW; and (5) large industrial with metered demand over 300 kW. Duquesne asserts that this segmentation of C&I customers is appropriate because it aligns programs and program costs with current rate structure. Duquesne St. No. 4 at 5. C&I program costs are assigned based on program description (e.g. Office Buildings – Large). Common program costs of the C&I classes are allocated based upon projected savings. Duquesne St. No. 4 at 5.

The OSBA’s position is that the recovery of Plan costs should be accomplished with a separate surcharge on each customer’s bill.[[15]](#footnote-16) OSBA St. No. 1at 7. In support of its position, the OSBA states that the costs associated with the conservation program are subsidies to a subset of customers not distribution costs; the costs allocated to small C&I customers is significant; customers will see the proposed surcharge as an increase in current distribution rates perhaps unrelated to Duquesne’s Plan; and a separate surcharge will help Duquesne’s communication efforts and will provide customers with a better understanding of the reason for the charge. OSBA St. No. 1 at 7, 8; OSBA MB at 15.

##### 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, Duquesne’s EE&C/DR program costs should be recovered 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 non by-passable 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.

We will, however, make an exception for both the large and small C&I customer classes. We are persuaded by the reasoning of OSBA and DII that a separate line delineation of these charges will provide necessary transparency and may foster greater participation by C&I customers. In the current economic environment, the itemization and identification of costs is increasingly critical for businesses. Therefore, we direct Duquesne to amend its Plan so that its large and small C&I surcharge is not included in distribution rates but presented as a separate line on C&I customers’ bills.

#### b. Interest on Over/Under Collections

##### (i) Positions of the Parties

Duquesne proposes an interest rate of 6%, applicable to both over and under-collected program costs. Duquesne Exh. WVP – 10.

The OTS maintains that interest must be applied on any over/under-collections. 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 two, currently 8%. The OTS further maintains that these interest costs should be excluded from the Company’s total allowable EE&C Plan costs and should not be recovered in any future proceeding. OTS MB at 6. The OTS also believes that the imposition of interest on over or under-collections corrects the inequity of early collection of revenues by the Company. OTS RB at 3.

The OCA does not support the Company’s proposal to charge interest on any under or over-collection of its Program costs. OCA MB at 29, 30; DLC St. 4 at 10; Exh. WPV-10(Proposed Tariff) at Second Revised Page No. 100, Original Page Nos. 100A-100C. The OCA asserts that the spending constraint contained in the Act does not contemplate interest charges. The OCA argues that Duquesne should not impose interest on the over and under-collections of its cost recovery mechanism, particularly if such interest would result in customers paying more than $78.2 million. Rather, the OCA submits that Duquesne should ensure that all funds are used for program implementation and administration. OCA MB at 29, 30.

It is also the OCA’s view that the imposition of interest on over or under-collections could result in customers paying more than the 2% spending cap. OCA RB at 8.

##### (ii) Disposition

Act 129 does not address whether over or 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 or under-collections are not subject to interest.

#### c. Measurement of Large C&I Demand

#####  (i) Positions of the Parties

The variable demand based portion of Duquesne’s Large C&I surcharge is calculated using the EE&C incentive cost budget and the forecast of distribution-related billing demand in excess of the first block of billing demand in each tariff rate schedule. Duquesne St. No. 4 at 9; Duquesne Exh. WVP – 10, Original Page No. 100C; Tr. at 208 – 209.

In its Main Brief, DII notes that, although still far from a true cost causation based mechanism, utilization of a demand charge would not penalize industrial customers for their energy-intensive characteristics as much as a kWh charge does and would present a more equitable rate across the Large C&I class. DII argues that a kW demand charge could be combined with a customer charge and/or direct assignment to better reflect cost-of-service principles in the design of the recovery mechanism for Large C&I customers, as Duquesne has done. DII MB at 21.

DII asserts that assuming a per kW demand is implemented, an EDC must clearly identify how a customer's kW demand is determined: whether by Peak Load Contribution (essentially, the customer's PJM capacity obligation), the customer's monthly peak demand, or some other demand identifier. DII points out that the PJM Peak Load Contribution (PLC) is determined based on the customer's electricity demand during the five PJM peaks occurring in the prior year. DII MB at 21. DII also believes that using the PLC to determine responsibility for any kW surcharge to collect Program costs from Large C&I customers would encourage all Large C&I customers to engage in efficiency and demand control measures during the five PJM peaks, which would further the demand reduction goals of Act 129. DII MB at 21, 22. In addition, according to DII, because PJM PLCs are determined once annually, a demand charge based on PLC will provide a consistent charge to customers and constant, reliable recovery to EDCs. DII argues that both of these points were confirmed by Duquesne’s witness during the evidentiary hearings. Specifically:

Q. [Ms. Linton-Keddie]: Now, would you agree that PJM peak load contribution is established for each customer on an annual basis and does not change for a 12-month period?

A. [Mr. Pfrommer]: Yes, I would. That's my understanding.

Q. And would you agree using the peak load contribution would then result in a more predictable revenue stream for Duquesne for the 12-month period because the customers' peak load contribution would not change on a monthly basis?

A. Over the course of the year, that's correct.

Q. And then would you also agree that using the peak load contribution would result in a more predictable charge to customers during the 12-month period, again because the peak load contribution does not change on a monthly basis?

A. Within a calendar year, that's correct. Year to year it would be debatable how much it would change year to year, but over the course of the 12-month period for PJM, yes, that's correct.

Tr. at 209-210.

DII supports Duquesne's proposed cost recovery mechanism and is satisfied that the demand charge approach with an additional fixed price component for application to Large C&I customers is an appropriate, non-discriminatory mechanism for these large, energy-intensive customers. DII submits that, pending further examination of the program costs and benefits in future annual reconciliations, the Company's proposed rate design for the Large Commercial and Large Industrial classes seems appropriate. DII MB at 22.

However, with respect to the calculation of Large C&I customer demand for purposes of the EEC/DR Surcharge, DII recommends that Duquesne utilize the PLC in order to provide consistent charges to customers as well as to further encourage peak load reduction by both EE&C Plan participants and non-participants. DII MB at 23.

Duquesne indicates that it does not object to DII’s proposed change in the calculation of the surcharge, with the understanding that there could be material changes to the customer from year to year if the customer’s PLC changes. Duquesne agrees that over the course of the year, using the PLC would result in a more consistent and constant surcharge since the customer’s PLC would not change on a monthly basis compared to the surcharge proposed in the Company’s filing. Duquesne RB at 7, 8.

#####  (ii) Disposition

We will reject DII’s position regarding the use of a mixed customer and demand charge rate design, but will accept its recommendation regarding the use of the PLC as the proper demand measure to use in the application of PPL’s cost recovery mechanism for large C&I customers. With respect to the mixed rate design proposal, we note that no fully allocated class cost-of-service study was provided in this proceeding, and, therefore, no significant evidence exists on which to base a more detailed or nuanced rate design such as DII proposes. In the absence of such a cost study, Duquesne’s proposal to recover the costs from customers on the same basis as the behaviors being encouraged is reasonable. Thus, for Large C&I customers, recovery on a per-kW demand basis to correspond to the encouragement of demand reductions would be appropriate.

With regard to the demand measure on which the per-kW charge should be based, we find that DII has provided compelling evidence to support the use of the PLC. As DII argues, using the PLC to determine responsibility for a kW-based surcharge would encourage all Large C&I customers to engage in efficiency and demand control measures during the five PJM peaks, which would further the demand reduction goals of Act 129. The use of the PLC determinate would not only encourage reduced demand on the Company’s system, but would also promote greater efficiency on the wider PJM system, thus contributing to the reduction of wholesale electricity prices and promoting the overall societal goals of Act 129. We will, therefore, direct Duquesne to adopt the use of the PLC demand measure in the application of its cost recovery mechanism for Large C&I customers, and to modify its tariff accordingly.

#### d. Inter/Intra Program Cost Shifting

##### (i) Positions of the Parties

At the Evidentiary Hearing, the Company’s witness explained that Duquesne intends to go to the Commission and stakeholders for major changes to the Plan but Duquesne should be given the right to shift funds for minor changes. Duquesne argues that this flexibility is important as the Company needs to be able to shift budget dollars quickly if programs are not working as anticipated. Tr. at 119; Duquesne MB at 17, 18. Further, Duquesne provides clarification that the quarterly regulatory reporting memos sent from Duquesne to the Commission will include all changes to the Plan – minor and major. Duquesne MB at 18. Duquesne further explains that the programs under the Plan are brand new and realizes that it will have to monitor all programs closely and if a program is failing, to be able to quickly adjust from one program to the next to achieve the Act 129 mandated goals. Tr. at 138; Duquesne MB at 18. Duquesne asserts that shifting funds between customer classes will enable it to react quickly to any programs that are not getting the response/participation needed to reach presumed goals. Duquesne MB at 18. Upon DII and OTS questioning on the difference between major and minor, the Company indicated that a 15%-25% of fund movement between customer classes could be a demarcation point between what is allowable absent obtaining additional Commission approval and what needed further Commission review and approval. Tr. at 127-128, 135; Duquesne MB at 18. This is based on the experience that Duquesne’s consultants have had through developing these programs in other states.[[16]](#footnote-17) Tr. at 135; Duquesne MB at 18.

Duquesne notes in its Petition that “[m]inor changes to programs or projects will be ongoing and will be reported to the PUC in the agreed upon reporting period for Duquesne's Plan. Any major changes to the Plan will be presented formally to the PUC for its review and consideration.” Petition at 5.

As clarified during the evidentiary hearings, Duquesne anticipates a range of 15% to 25% of budget per customer class per year in which it seeks to unilaterally shift costs. Tr. at 127-128. Specifically:

Q. [Ms. Linton-Keddie]: And Ms. Sandoe, if you would, if you could review the last paragraph on page 23 and the first paragraph on page 24 [of the Implementation Order].

(Witness perusing document.)

Q. And our question regarding this exhibit is, to the best of your knowledge, does Duquesne intend to seek approval for an inter or intra-sector program funding adjustment consistent with the process described on page 24, which, as I understand it, would require an annual reporting and stakeholder input, if they so desire?

A. [Ms. Sandoe]: I believe so, yes.

Q. Ok. I'm confused then, so if you could help me. It was my understanding that your oral rejoinder just indicated that the company would oppose going to the PUC for any shifting of dollars between classes, and it was also my understanding that the company considers minor changes as reallocating dollars between classes; and what my understanding is of the question I just asked you is that Duquesne would intend, if they were going to shift any costs between classes, that they would go through this annual reporting process as described in the implementation order.

 And so, I'm just trying to determine whether you would reallocate going through only this process or if your plan is to reallocate not using this process.

A. I believe the original plan was to follow this process when we considered major changes, but when we considered minor changes, that we would make those minor changes and report them accordingly.

Q. Ok. So, again, just to clarify, so minor changes would be ongoing and report[ed] to the PUC after the fact, but major changes would go through this process as described?

A. Correct.

Q. Ok. And then just a little clarification. Again, in your oral rebuttal, you indicated that a minor change would be reallocating dollars between classes. Is there a certain amount that you would consider that would be minor as compared to major?

A. We were proposing somewhere in the range of 15 to 25 percent of budget per customer class per year.

Q. And, again, just further clarification, the 15 to 25 percent of a customer class per budget per year, would that be a minor change or a major change?

A. That would be the line that below that would be a minor and above would be a major.

Tr. at 127-128.

Over the course of the Plan, it appears that Duquesne's proposed 15%-25% threshold would permit reallocation of programs and funding among customer classes in the range of $11.7 million to $19.5 million.[[17]](#footnote-18)

 As noted in the *Implementation Order*, Act 129 “requires the Commission to establish procedures through which recommendations can be made as to additional measures that will enable an [EDC] to improve its plan.” *Implementation Order* at 23 (citing 66 Pa. C.S. § 2806.1(a)(6)). Specifically, the *Implementation Order* cited Act 129s provision regarding modification and termination of EE&C plans, which states:

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

66 Pa. C.S. § 2806.1(b)(2). *Implementation Order* at 34. Act 129 further states that “[i]f part of a plan is modified or terminated” under this provision, the EDC must “submit a revised plan describing actions to be taken to offer substitute measures or to increase the availability of existing measures in the plan to achieve the required reductions in consumption.” 66 Pa. C.S. § 2806.1(b)(3). Accordingly, the Commission concluded that EE&C programs and costs are “subject to ongoing review and possible modification or termination if it is determined that such measures are not or have not been cost effective.” *Implementation Order*, at 24. The Commission thus clearly anticipates that the evaluation of the cost effectiveness of EE&C programs and measures be subject to review.

 DII submits that the *Implementation Order* specifically recognizes the need for ongoing due process with respect to changes to an EDC’s EE&C plan and requires that EDCs (and interested stakeholders) must propose such changes “in conjunction with the EDC's annual report filing required by [Act 129] at 66 Pa. C.S. § 2806.1(i)(1).” *Implementation Order* at 24. DII MB at 28. DII points out that the Commission established the following specific process:

Regarding approved plans, the Commission will permit EDCs and other interested stakeholders, as well as the statutory advocates, to propose plan changes in conjunction with the EDC's annual report filing required by the Act at 66 Pa. C.S. § 2806.1(i)(1). The Commission will establish a deadline for the filing of annual reports by the EDCs following the approval of the EDCs' plans in 2009. These annual reports are to be served on OCA, OSBA and OTS. The commission will also 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 30 days of the annual report filing. EDCs will have 20 days to file replies, after which the Commission will determine whether to rule on the recommended changes or refer the matter to an ALJ for hearings and a recommended decision. The Commission notes that, in addition to the above-described process, the Commission retains the authority to conduct investigations and initiate statutory and regulatory compliance proceedings against jurisdictional utilities.

*Implementation Order* at 24.

DII argues that the Commission clearly has concluded that Act 129 requires approval of any changes to the types of program offerings, the mixture of programs in the plan and the resulting cost allocation among customer classes. DII MB at 28. DII states that review and approval by the Commission is particularly important with respect to any potential shift of program cost allocations among customer classes. Additionally, DII believes that any inter-class change in cost allocation should, therefore, generally be subject to Commission review pursuant to each EDC's annual reporting requirement. DII MB at 28. DII submits that, although a stakeholder process could be used in conjunction with the EDC’s annual report to determine whether there is consensus regarding a proposed change, any party that objects to the proposed change must be given an opportunity to object and be heard. DII MB at 29. DII believes that the process set forth in the *Implementation Order* accomplishes this. *Implementation Order* at 24*.* DII contends that the Company similarly agrees that this process should be implemented:

 Q. [Ms. Linton-Keddie]: It's my understanding that in order to have the flexibility the company desires, you said that if a program is failing or if the incentives weren't incentivizing like you had hoped, that you would want the ability to adjust one program in order to meet the goals, and just now you indicated that annually you don't believe it is quick enough in order to switch dollars.

 Our question is, if you were allowed to switch either programs or inter or intra-class allocations within a year outside of the annual review process that was described in the implementation order, will interested parties have the ability to comment on the company's proposed reallocation or program change prior to those changes becoming effective?

A. [Ms. Sandoe]: I think they should be able to, yes.

Tr. 138.

DII avers that, assuming that appropriate cost recovery mechanisms are established for the Large C&I class based on sound cost-of-service ratemaking principles, minor intra-class program adjustments potentially could be permitted without prior approval, as long as those changes ultimately are subject to analysis and review by the parties and the Commission – as these costs would be incurred by the subject class irrespective of the EDC's decision to shift them from one specific program or measure to another; however, under the Company’s current proposal, Duquesne could potentially shift up to 25% of a customer class budget among classes without ratepayer input or Commission approval. DII MB at 29.

DII opposes the Company’s proposal to unilaterally shift program focus without stakeholder input or Commission review and approval. As explained above, DII believes that, for intra-class reallocations, an EDC could be permitted in some circumstances to shift costs outside the purview of the Commission – as these costs would be incurred by the subject class irrespective of the EDC’s decision to shift them from one specific program or measure to another. DII argues that because separate surcharges have been calculated for the Large Commercial and Large Industrial groups, each should be considered a separate class in reviewing budget shifts. DII MB at 30.

DII suggests the Commission consider the approach being proposed in PECO’s EE&C Plan,[[18]](#footnote-19) with thresholds adjusted based on Duquesne’s $78 million budget. DII MB at 30. DII points out that, in the PECO EE&C Plan, intra-class Plan changes can be made through stakeholder input without being submitted to the Commission for approval. Conversely, for inter-class program and cost changes, PECO has offered two approaches. For modifications that involve more than $20 million (or a total of approximately 5.8% of its total Plan budget) over the period of the Plan, PECO indicates that it will work with stakeholders and submit the requested revisions to the Commission for approval. With respect to inter-class program modifications of less than $20 million over the period of the Plan, PECO seeks Commission allowance to redirect costs between programs without Commission approval. DII notes that the comparable threshold for Duquesne would be approximately $4.5 million over the life of the Plan.[[19]](#footnote-20) DII MB at 31.

Although DII would still prefer a formal review process whereby the Company would obtain Commission review for any inter-class shifting of costs, DII believes that the proposal submitted by PECO could be considered as an alternative to the *Implementation Order’s* formal evaluation process. DII submits that at minimum, prior to any program change for inter or intra-class within a year that is outside of the Commission’s annual review process, Duquesne should confirm that interested parties will have the ability to comment on the proposed reallocation or program change prior to those changes becoming effective. DII MB at 31.

##### (ii) Disposition

 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 the 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. Frequency of Cost Recovery Reconciliation

#####  (i) Positions of the Parties

Duquesne has proposed to reconcile the Small and Medium, C&I surcharges on an annual basis. The surcharges for these customers will change annually effective September 1st. Duquesne St. No. 4 at 8; Duquesne Exh.

WVP – 10 at 4. The Company explains the reconciliation as follows:

The Company proposes to adjust the [small and medium, C&I] surcharges for actual program expense and revenues each year. The Company will submit a filing on or about July 1 to reconcile previous period revenue and expense and propose a new surcharge effective September 1 based on the projected budget and sales for the planning year and the over or under collection of expenses based on actual surcharge revenue and expenses incurred for the previous year.

Duquesne St. No. 4 at 8, 9.

Duquesne has proposed a one-time reconciliation for Residential and Large C&I surcharges. This one-time reconciliation will be submitted after the May 31, 2013, conclusion of the Plan. Additionally, Duquesne states that a one-time reconciliation is preferred by these customer classes. Duquesne St. No. 4 at 9.

The OSBA supports an annual reconciliation as proposed for small and medium, commercial and industrial surcharges; however, the OSBA does not support the one-time reconciliation for the residential and large C&I surcharges. The OSBA asserts that, without annual reconciliation for all surcharge groups, variations could expose one or more customer groups to significant rate increases (or decreases) when the reconciliation for all customer groups is done at the conclusion of the EE&C plan. The OSBA submits that the magnitude of the rate increase (or decrease) facing each customer group at that time could complicate the mandate that distribution rates be moved to cost of service and could compound the impact if default service rates must also rise at, or about, the same time. The OSBA believes the better approach is to require annual reconciliation in order to keep conservation cost recovery reasonably in sync with actual revenues and costs. OSBA MB at 16.

In its Main Brief, the DIIs state that pending further examination of the program costs and benefits in future annual reconciliations, the Company’s proposed rate design for the Large C&I classes seems appropriate. DII MB at 22.

In reply, the OSBA notes that the *Implementation Order* subjects the tariff mechanism to an annual review and reconciliation pursuant to 66 Pa. C.S. § 1307(e). OSBA RB at 4.

#####  (ii) Disposition

With regard to this issue, the *Implementation Order* states the following:

The annual review and reconciliation for each EDC’s cost recovery mechanism will occur pursuant to a public hearing, if required due to petitions filed by interveners, and will include an evaluation of the reasonableness of all program costs and their allocation to the applicable customer classes. Such annual review and reconciliation will be scheduled to coincide with our review of the annual report on the EDC’s plan submitted in accordance with 66 Pa. C.S. § 2806.1(i), and all calculations and supporting cost documentation shall be provided at the time that report is filed.

*Implementation Order* at 38. Thus, the OTS’ proposal will be satisfied pursuant to the *Implementation Order*.

 We agree with the OSBA that annual reconciliations are necessary for all surcharge groups, since variations could expose one or more customer groups to significant rate increases (or decreases) when the reconciliation for customer groups is done at the conclusion of the EE&C plan. Therefore we will require Duquesne to file revised tariffs that require all surcharge groups to file annual reconciliations.

 With respect to the scope and content of the Annual Review, it is the Commission’s intention to provide each of the EDCs with a Secretarial letter identifying issues that the Commission would like to see addressed as well as data the Commission needs to perform its review. That Secretarial letter will be in the nature of minimum requirements which may be expanded by each EDC and the stakeholder group as appropriate.

#### f. Capital Assets Excluded from Rate Base

##### Positions of the Parties

The OTS submits that a capital asset and any associated depreciation expense funded by EE&C surcharge revenues should be excluded from base rates and not included in any future rate base claim to the extent that asset was so funded. The OTS points out that such exclusion is proper since these assets are purchased or acquired by ratepayer monies directly and not financed by Company equity. OTS M.B at 6, 7.

##### Disposition

We concur and, by this Opinion and Order, we clarify that capital costs and associated depreciation expense recovered by Duquesne through the EE&C surcharge will not be allowed in future rate base claims.

## 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.

### Capping Load Contracted for Demand Response Programs

#### a. Positions of the Parties

ClearChoice contends that the Commission should cap the amount of demand reduction that a single CSP can be contracted for at 50%. ClearChoice states that this will preserve competitive markets by ensuring multiple contracts for CSPs under Duquesne’s Plan. ClearChoice St. No. 1 at 11; ClearChoice MB at 12.

EnerNOC states that it strongly disagrees and opposes ClearChoice’s recommendation to place a 50% cap on CSP load management. EnerNOC supports an open and competitive RFP process. EnerNOC submits that this process is non-discriminatory and promotes the hiring of the most qualified candidate. Therefore, EnerNOC requests the Commission to require Duquesne to submit competitive RFPs and to choose one CSP that is the most qualified to implement and run the demand response program. EnerNOC RB at 11-14.

Duquesne states that it plans to go through an RFP process, and depending on how the proposals come in, as well as the evaluation made on cost, scope, responsiveness, and various other criteria, Duquesne will decide whether it will have one CSP managing its program or more than one. Tr. at 190; Duquesne MB at 16.

Further, Duquesne disagrees with ClearChoice’s recommended 50% cap on demand response load management. Duquesne RB at 8. Duquesne states that the current plan has minimal reduction goals and splitting this load goal in half could hurt the willingness of CSPs to participate in the RFP. Duquesne does submit that the concept may be acceptable in later years, as reduction targets increase. Tr. at 190-192; Duquesne MB at 16-17.

#### b. Disposition

We disagree with ClearChoice’s proposal. We see Duquesne’s proposal, that the number of CSPs contracted will be dependent on RFP results, as a competitive and fair method for awarding demand response contracts. Furthermore, we do not view the possibility of hiring a single CSP to implement and manage the demand response programs as anti-competitive. Rather, this possibility will be a direct result of a competitive RFP procedure. Therefore, ClearChoice’s proposal for a demand response contract load cap of 50% is denied.

### Quota for Disadvantaged Businesses

#### a. Positions of the Parties

ClearChoice asserts that Duquesne has not indicated how it will encourage participation by disadvantaged businesses in its load curtailment program. Furthermore, ClearChoice submits that requiring CSPs to post collateral as a performance guarantee will significantly impede disadvantaged businesses. Therefore, ClearChoice recommends that 25% of demand response load be set aside for contract with disadvantaged businesses, with the provision that disadvantaged businesses will not have to post collateral or provide third party guarantees to participate in the program. ClearChoice MB at 13-14.

EnerNOC states that it strongly opposes ClearChoice’s recommendation to place a 25% quota for load management by disadvantaged businesses. EnerNOC supports an open and competitive RFP process. EnerNOC argues that an open process is non-discriminatory and promotes the hiring of the most qualified candidate. Therefore, EnerNOC requests the Commission to require Duquesne to submit competitive RFPs and to choose one CSP that is the most qualified to implement and run the demand response program. EnerNOC RB 11-14.

Duquesne disagrees with ClearChoice’s recommendation of a 25% quota for load managed by disadvantaged businesses in the demand response program. Duquesne submits that this set aside represents a potential constraint on program administration and injects legal concerns. Duquesne believes program efficiency and cost-effectiveness should take precedence. Duquesne RB at 8.

#### b. Disposition

We disagree with ClearChoice’s proposal. In our *Implementation Order* at page 26, we clearly encourage EDC’s efforts to acquire bids from “disadvantaged businesses”[[20]](#footnote-21) consistent with the Commission’s policy statements[[21]](#footnote-22) at 52 Pa. Code

§§ 69.807 and 69.808. However, we do not interpret these statements as requiring the adoption of a quota for disadvantaged businesses. Further, Duquesne’s CSP RFP procedures state, at section V.C., that Duquesne encourages bids from disadvantaged businesses. *See also* Duquesne Plan at 143. Therefore, the Commission denies ClearChoice’s 25% disadvantaged business quota proposal.

### DII’s Request to Use Their Own CSP

#### Positions of the Parties

DII seeks clarification on whether Duquesne would allow customers utilizing their existing PJM CSPs to participate in Duquesne’s Large C&I demand response program. DII Commments at 20.

Duquesne submits that its curtailable load program adds another layer or supplements those PJM programs. Duquesne argues that its curtailable load program does not displace PJM programs but rather adds to and enhances those programs. Furthermore, Duquesne points out that it expects to use a third party Curtailment Service Provider to implement this Large C&I curtailable load program and it expects that third party to qualify both as a PJM Curtailment Service Provider as well as a PUC Conservation Service Provider. Duquesne MB at 16.

#### Disposition

We note that Duquesne’s program, as designed, could be restrictive in that a customer could only participate through Duquesne’s selected CSP(s), and only for facilities not already committed under the PJM LRP program. Thus, Duquesne would be asking customers to pay for a program through their EE&C surcharges, for which they may not be able to participate, unless they abandoned contracts with their existing CSP, be it a third party or themselves. This is not in the best interest of its customers, nor demand side markets. It creates an incentive to abandon existing, effective demand side resources, in exchange for the Company program. All CSPs should be given equivalent incentives to participate in the Duquesne program, equivalent access to customer usage data, and equivalent facilities paid for through the EE&C surcharge to implement this program. Customers can then effectively choose to participate or not, without restriction, and choose the provider that is optimal for their needs.

### Demand Response Program Marketing

####  a. Positions of the Parties

ClearChoice asserts that Duquesne’s proposed curtailable load program does not contain any details to ensure retention of a competitive market for curtailment services or opportunities for disadvantaged businesses to participate in the program. In addition, ClearChoice states that PJM curtailment service providers will only be able to participate in Duquesne’s program through Duquesne’s contracted CSP. ClearChoice submits that any marketing of the curtailable load program by Duquesne be competitively neutral so as not to disadvantage ClearChoice in the event ClearChoice is not the winning CSP for Duquesne’s curtailable load program. ClearChoice RB at 4-5.

EnerNOC contends that ClearChoice’s position for a competitively neutral marketing program is flawed. EnerNOC believes that ClearChoice’s stance would cause confusion and instability to the program. EnerNOC believes that only a CSP contracted with Duquesne should be marketed to customers by Duquesne. EnerNOC RB at 11.

#### b. Disposition

Duquesne must implement a marketing procedure which it believes is the most effective for the success of its program. We view the effectiveness of the program as paramount. Furthermore, we believe the open RFP process for soliciting of the demand response contract does not leave ClearChoice at a disadvantage.

In order to facilitate participation in the program, we shall allow any CSP or PJM curtailment service provider who is not contracted as Duquesne’s demand response CSP(s) to participate in Duquesne’s program. However, we will not, at this time, direct Duquesne on how to implement its marketing program. The demand response program, including marketing procedures, will be subject to periodic review. In this review, the Commission will have a platform to direct such a provision. While, we will not, at this time, direct Duquesne on how to implement its marketing program, the Company must ensure that its marketing materials are competitively neutral with regard to the customer’s choice of CSP for this program. The demand response program, including marketing procedures, will be subject to periodic review. In this review, the Commission will have a platform to direct such a provision.

### Demand Response Incentive Levels

#### a. Positions of the Parties

EnerNOC contends that the incentive level payments in Duquesne’s curtailable load program are substantially lower than necessary. EnerNOC suggests that the Commission examine the appropriateness of the incentive levels for Duquesne’s Large C&I curtailable load program. EnerNOC states it supports the levels afforded in PPL and PECO’s EE&C plans. EnerNOC MB at 12.

Duquesne states that it plans to go through an RFP process, and dependent on the results, will hire one or multiple CSPs to manage its programs. Furthermore, Duquesne notes that the incentive levels issued in the demand response programs will be dependent on results from this RFP process. Duquesne MB at 16-17.

#### b. Disposition

In contrast to EnerNOC, we do not believe that comparing PECO’s and PPL’s incentive levels to Duquesne’s presents a fair comparison. Rather, different service territories may indeed need to implement far different incentive levels to effectively implement demand response. As well, the effectiveness of Duquesne’s demand response programs will be subject to periodic evaluation. Therefore, we view EnerNOC’s concerns about this issue as premature, and accordingly we will deny EnerNOC’s recommendation. To the extent incentive levels are found to be insufficient, Duquesne can file plan adjustments to improve this program’s effectiveness.

### Duration of Demand Response Contracts

####  a. Positions of the Parties

EnerNOC states that it disagrees with Duquesne’s interpretation of Act 129 in regard to demand response program duration. Duquesne’s proposed Plan terminates at the end of the forty-two month initial plan period, on May 31, 2013, unless the Commission affirmatively determines that the actual benefits of the Plan outweigh the costs. If that determination is made, new demand response goals would be established. EnerNOC supports a plan that includes demand response CSP contracts that extend beyond the end of Duquesne’s Plan, on May 31, 2013. EnerNOC believes that costs for CSPs past this date can be structured in a contract to be contingent on the Commission’s extension and continuation of demand response load reduction targets. EnerNOC endorses PPL’s position on this issue, which argues that the short term contracts contemplated in the initial EE&C plan time frame could be more costly. Lastly, EnerNOC states that other components of the EE&C plan, specifically smart metering, will certainly continue to be in service and operational after May 31, 2013, and that these components work in concert with demand response, therefore prompting good reason to continue demand response programs past the May 31, 2013, date. EnerNOC MB at 5-10; EnerNOC RB at 4-7.

DII takes issue with EnerNOC’s recommendation. Specifically, DII recommends that CSPs for demand response not be permitted to enter into contracts past the May 31, 2013 date. DII submits that the language of 66 Pa C.S. § 2806.1(d)(1) and (d)(2) does not allow for an extension of demand response programs beyond May 31, 2013, without the Commission first performing a cost-benefit analysis of an EE&C plan’s demand response programs by November 2013 and affirmatively finding that EDCs must achieve an additional reduction in peak demand by May 31, 2017. DII submits that this analysis by the Commission helps balance the interest of the EDCs with the interests of ratepayers by setting two distinct peak reduction goals and creating a formal review process of demand response program costs and benefits after the first deadline of May 31, 2013, before the Commission potentially sets additional goals for peak demand reduction to be achieved by May 31, 2017. Therefore, DII recommends that DLCs EE&C demand response programs not continue beyond May 31, 2013, without a prior Commission investigation and affirmative decision setting Duquesne’s second peak demand reduction requirements. DII RB at 6-10.

#### b. Disposition

For the purpose of Act 129 cost recovery, at this time, we shall allow demand response CSPs to enter into contracts up to, but not beyond, November 30, 2013. While CSPs are free to contract with Duquesne for contract lengths of their choice, cost recovery for contracts extending beyond November 30, 2013, however, shall be addressed when the Commission makes a determination regarding the Act 129 goals for the second plan period ending May 31, 2017.

## D. Implementation and Evaluation Issues

### Implementation Issues

#### Full Annual Vetting of Small Commercial and Industrial Programs

##### Positions of the Parties

The OSBA asserts that it does not oppose Duquesne’s Small C&I programs as filed, with the caveat that the programs be fully vetted. OSBA MB at 17. Specifically, the OSBA contends that certain issues should be further evaluated in the annual reconciliation proceedings. The OSBA submits that those issues include the magnitude of the subsidies offered to ratepayers, which may result in the plan not properly matching the costs of each program with the customers who pay for the program. The OSBA believes that Duquesne should present a detailed justification, as part of its annual reconciliation, for the magnitude of subsidies it offers. OSBA RB at 5.

##### Disposition

With regard to the OSBA’s request for “a full vetting” of the EE&C Plans in the annual reconciliation process, the Commission believes that this issue is 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. § 2806(i)(1). The Commission will establish a deadline for the filing of annual reports by the EDCs following approval of the EDCs’ plans. The Commission will prescribe any additional information that is to be included in the report at that time[[22]](#footnote-23).See 66 Pa. C.S. §2806(i)(1)(iv). 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 OSBA at this time.

#### b. Fuel Switching/Fuel Substitution Programs

##### Positions of the Parties

The NGDCs contend that Duquesne’s currently proposed EE&C Plan, with no fuel substitution measures, will roll out very soon and customers will make choices from an EDC-served menu of long-term electric-centric measures that will result in an increase, not a decrease, in energy demand and consumption. The NGDCs assert that the Commission should require Duquesne to implement fuel substitution measures, encouraging customers to switch from electric to gas where practical or available, as part of its current EE&C plan. NGDCs MB at 20. Alternatively, the NGDCs request that the Commission direct Duquesne to report to the Commission in its quarterly and annual reports the number of its customers that receive an incentive payment for a high efficiency electric appliance or equipment: (1) where the customer is switching from a natural gas appliance to the high efficiency electric appliance; (2) where in new homes a home buyer, contractor or builder/developer receives a rebate for installing electric heating where natural gas service was readily available; and (3) where the customer switches from a lower efficiency electric appliance to a high efficiency electric appliance where a natural gas appliance could have been used and natural gas service is available to that customer. NGDC RB at 12-13.

Duquesne believes that fuel switching is irrelevant to this proceeding and also that this issue is being handled by the Commission in another forum as noted in the Commission’s *TRM Order* which states:

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.

TRM Order at 9.

Duquesne argues that its Plan in no way promotes fuel switching as the incentives that Duquesne will provide to customers will not make customers select electric over gas appliances. Duquesne believes that this choice is driven more by the connections in the home, the appliances already operating there, and the price of the fuel. Duquesne argues that the likelihood that a small incentive that offsets the incremental cost associated with purchases that could cause a consumer to switch from electric to gas is extremely low. Tr. at 150; Duquesne MB at 20.

Duquesne submits that the arguments advanced by the NGDCs are unreasonable and should not be considered as part of evaluating EDC EE&C Plans. If the Commission does elect to take up an evaluation of source-fuel efficiency, Duquesne asserts that this should be done under a separate proceeding. Duquesne MB at 22.

##### (ii) Disposition

 The NGDCs 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 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.

 We addressed this issue in our TRM Order[[23]](#footnote-24) 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 to fuel switching. Depending on the outcome of this working group, fuel switching may be incorporated into a future version of the TRM.

*TRM Order* at 9.

We initiated the fuel switching working group at that time and directed that it report back to us with recommendations by June 1, 2010. *TRM Order* at 19. The fuel switching working group will need time to develop and make its recommendations. Still, we recognize the interest in this issue. Accordingly, to expedite the resolution of this issue, we direct the working group to submit its report by March 31, 2010.

Moreover, in regard to the NGDCs’ and the DEP’s concerns related to the potential to unintentionally promote fuel switching from a combustion appliance to an electric appliance, we find their arguments to be speculative and unconvincing. As these plans develop over time, we will review their progress. Nevertheless, we find merit in the NGDCs’ suggestion that relevant data be collected. We therefore direct that Duquesne track appropriate data, in coordination with the Statewide Evaluator, including at least the following: (1) type of appliance or equipment being replaced; (2) the availability of natural gas at the customer’s location or immediate area; and (3) whether electric appliances or equipment 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 EE&C Plans.

#### c. Recruiting Low-Income and Unemployed Workers

##### Positions of the Parties

ACORN states that part of the driving force behind Act 129 is the desire to help Pennsylvanians, particularly low-income Pennsylvanians, cope with the increasing cost of electricity. While Act 129’s principal focus is on reducing electric bills through efficiency and conservation, it is perfectly consistent with the intent of the statute to help low-income customers afford electricity by helping them acquire jobs that will lift them out of poverty. ACORN MB at 19. Accordingly, ACORN submits that Duquesne’s EE&C Plan should incorporate provisions indicating that the company will initiate good faith efforts to favor the hiring of unemployed and low-income workers. ACORN MB at 18.

##### Disposition

 ACORN recommends that the Commission mandate special attention for organizations that recruit and employ unemployed or low-income workers. According to ACORN, such a mandate would enhance benefits to the low-income population as contemplated by Act 129.

 Act 129 does not mandate that the CSP bidding process include evaluation criteria regarding a willingness to employ low-income and unemployed workers. On the other hand, there is nothing in the Act that would prohibit an EDC from actively seeking to employ unemployed or low-income people, assuming there is no issue with the qualifications or experience of the successful candidates.

 As already noted, Duquesne has a policy in place to stimulate the growth of Minority Business Enterprises (MBE), Women Business Enterprises (WBE) and Disabled Business Enterprises (DBE) by encouraging them to participate in its procurement activities. Duquesne has made a commitment to follow this policy and to require CSP(s) implementing its Plan to agree to carry-out that same policy “in the fullest extent:”

**28. MBE/WBE**

It is the policy of Company to stimulate the growth of Certified Minority, Women and Disabled Business Enterprises (MBEs, WBEs and DBEs) by encouraging their participation in Company's procurement activities and by affording them an equal opportunity to compete for Company's procurements. CSP agrees to carry out this policy to the fullest extent consistent with the requirements of the CSP Agreement (a) through the award of subcontracts to MBEs, WBEs and DBEs or (b) if CSP is a MBE,WBE or DBE, through the use of its own forces. CSP shall include this policy as a provision in all subcontracts.

Duquesne Plan at 143.

 While the Duquesne Plan does not define these business enterprises, the Commission has adopted a definition of “Minority-Owned Business Enterprise” in its Policy Statement on “Diversity at Major Jurisdictional Utility Companies[[24]](#footnote-25)” that is applicable here. This definition reads as follows:

*MBE—Minority-Owned Business Enterprise*—A business enterprise that is at least 51% owned by a minority individual or group or individuals; or a publicly-owned business that has at least 51% of its stock owned by one or more minority individuals, and whose management and daily business operations are controlled by these individuals. ‘‘Minority’’ may include African-Americans, Hispanic-Americans, Native Americans and Asian Americans, as well as **other groups found to be disadvantaged under section 8(a) of the Small Business Act (15 U.S.C.A. § 637(d))**.

52 Pa. Code § 69.802 (relating to definitions)(emphasis added).

 Section 8(a) of the Federal *Small Business Act,*[[25]](#footnote-26) lists the following business enterprises, including ones owned by economically disadvantaged individuals:

small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns **owned and controlled by socially and economically disadvantaged individuals**, and small business concerns owned and controlled by women.

15 U.S.C. § 637(d)(1)(emphasis added).

Based on the above analysis, it is fair to interpret Section 28 of Duquesne’s Plan as encouraging CSP(s) to hire economically disadvantaged businesses and presumably low income workers. Accordingly, ACORN's request to add a provision regarding the need for Duquesne to make a good faith effort to hire low income workers is unnecessary.

### 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 the 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).

Duquesne provides a detailed description of its quality assurance/quality control measures, and verification and internal evaluation process in regard to the implementation of its Plan in Section 6.1. Duquesne Plan at 100-108. Section 6.1.1 describes Duquesne’s general approach for incorporating quality assurance and quality control measures into its program planning and implementation as follows:

Program Planning: Program targets markets and measures content are based on an energy efficiency potential forecast that is a systematic and comprehensive inventory of regional efficiency gain opportunities. Program approaches to deliver identified energy efficiency services are developed using benchmarked program approaches, tailored to Duquesne Light regional needs and opportunities. Program logic models identify key program activities that combine to produce a variety of expected outputs that in turn lead to key short-, mid- and long-term outcomes as well as performance indicators or metrics for each activity.

Program implementation: Program managers will develop procedural guidelines to ensure programs are operated in a manner to achieve planned performance objectives. Procedural guidelines are a reference manual documenting qualifying technologies, instructions for calculating energy savings and demand reductions, step-by-step processes for customer enrollment, scheduling and recording energy audits, customer incentives reservation and payment. Program procedural guidelines provide the requirements for hard-copy project-level documentation as well as populating and operating the program tracking and reporting systems. Parts of the procedural guidelines are unique to each program implemented, developed prior to program launch to support orientation and training, and; a deliverable of CSP contracts. Procedural elements common to all programs support portfolio management regulatory compliance reporting.

Program managers and coordinators will be made of [sic] aware of program performance indicators (see section 6.2, below) and annual employee/ contractor performance evaluations will include progress toward addressing the program performance indicators.

Internal audits will be conducted each full year of program operation, to ensure programs are being implemented as designed and to determine to what extent performance indicators are being addressed. Additionally, the audits will inform management about changes needed in the programmatic approach, content and processes.

Duquesne Plan at 100.

#### Positions of the Parties

The OSBA points out that, pursuant to 66 Pa. C.S. § 2806.1(b)(1)(i)(C), each EDC’s plan is required to contain provisions on how quality assurance and performance will be measured, verified and evaluated. The OSBA submits that this statutory mandate supports its recommendation that Duquesne’s EE&C Plan be subjected to a thorough review each year and that the Plan be adjusted (if and as necessary) each year on a going forward-basis. OSBA MB at 17.

In its Reply Brief, the OSBA expands on its position, emphasizing the need for program data to evaluate the cost-effectiveness of the program. The OSBA states that Duquesne’s approach on its proposed conservation and demand reduction programs is reasonable enough to serve as a placeholder for initial implementation, and does not oppose Duquesne’s Plan for Small C&I customers as filed. OSBA RB at 4. However, the OSBA states that because Duquesne’s EE&C programs may not properly match the costs of each program with the customers who pay for the program, Duquesne should present a detailed justification for the magnitude of the subsidies that it will offer to customers. Based on this data, parties could propose, and the Commission could consider, adjustments to the subsidies offered to participants in the various programs on a going-forward basis. OSBA RB at 5; OSBA Statement No. 1 at 10-11.

#### Disposition

Based on our review, we believe that Duquesne’s EE&C Plan sufficiently explains how quality assurance and performance will be measured, verified, and evaluated as required by Act 129. We will approve Duquesne’s proposed approach as filed, except where modified by this Opinion and Order. We note that we have already disposed of OSBA’s concern by directing that all surcharge groups should be reconciled annually. In regard to cost recovery from specific customer classes, we will consider the quality of the data provided and the comments of the Parties, at the time of the Annual Review.

### 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 the 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).

In order to facilitate appropriate Plan modifications in a more timely manner, we direct Duquesne to provide an updated TRC Test analysis as part of the annual reporting 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

No parties addressed evaluation issues with regards to Duquesne’s Plan.[[26]](#footnote-27)

## E. Other Issues

### 1. On-Going Stakeholder Process

#### Positions of the Parties

Duquesne indicates in its filing that it intends to continue the stakeholder process during the implementation of its EE&C Plan. Duquesne St. 1 at 12. The OCA states that the initial stakeholder process was useful and it intends to participate in the on-going stakeholder process. The OCA submits that the Commission should include additional data regarding the stakeholder process to ensure that the process continues on a regular basis and provides a reasonable means of addressing Plan implementation and modifications. The OCA contends that meetings should be held on a quarterly basis and the process should remain an open exchange of ideas and information. OCA MB at 32-33.

More specifically, the OCA recommends that Duquesne investigate numerous anomalies in the study data supporting REEP and that Duquesne should provide further information during its ongoing stakeholder process. First, the OCA questioned the amount of savings from the program’s emphasis on residential outdoor fixtures. Second, the OCA questioned whether the 4% of total residential energy savings expected to come from the provision of energy efficient torchers is accurate. Third, the OCA questioned the applicability factor assigned to CFL’s. OCA St. 1 at 13; OCA MB at 19.

#### Disposition

With regard to stakeholder participation, using a collaborative process during the development of the Plan was beneficial for Duquesne and other interested parties. Similarly, we believe the continued 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. We will require Duquesne to meet with stakeholders as needed, but no less than semi-annually, until May 31, 2013, unless otherwise ordered by the Commission.

In the interest of efficiency, we believe Duquesne should be responsible for determining the topics to be covered in stakeholder meetings and all other aspects of the on-going stakeholder process. However, we encourage Duquesne to be open and responsive to issues of merit that the parties bring to these discussions which may lead to improvements in the efficiency and cost effectiveness of its EE&C Plan. We note that one such topic of investigation that should be addressed in the collaborative process should deal with the OCA’s concern regarding numerous anomalies in the study data supporting REEP as discussed above.

### Photovoltaic Incentives Program

Duquesne’s Plan includes a Solar-Photovoltaic Incentives Program (SPIP) which is considered a pilot program, designed to stimulate the application of systems among residential building types. The SPIP will offer incentives of $2.50 per watt of installed capacity. The maximum size of the incentive will be limited to ten kW for residential and 25 kW for commercial and industrial applications. Duquesne Plan at 32.

The Plan states that $600,000 is budgeted for the SPIP with total program impacts of 240 kW on-peak demand reduction and 624,000 kWh energy savings, representing 0.1 percent of the portfolio objectives. Administrative costs have not been separately estimated for the SPIP. Duquesne Plan at 33, 113. Program benefits are estimated at $146,000 and the benefit/cost ratio for this program is 0.3. Duquesne Plan at 175, Table 7A.

#### Position of the Parties

The OCA states that Duquesne’s Plan satisfies the TRC Test as set forth by the Commission, making the Plan a cost effective means of achieving the requirements of the Act. Every program proposed by Duquesne, other than the SPIP, has a TRC Test score greater than one. OCA MB at 9.

#### Disposition

As the Commission stated in its *Implementation Order*, a benefit/cost ratio above one indicates that the program is beneficial to the utility and its ratepayers on a TRC basis. Order at 16. The Act requires that the Plan be cost effective using a TRC Test. 66 Pa. C.S. § 2801(b)(i)(I).

We note that Duquesne’s TRC analysis of this program measure yields a benefit/cost ratio of only 0.3.[[27]](#footnote-28) While we want to foster the development of alternate energy sources, we find that the ratio of the benefits to costs for this program indicates that this is not an effective use of ratepayer funds. Accordingly, we direct Duquesne to delete this program from its Plan. We do however, encourage Duquesne to develop and resubmit another renewable resources program that yields a higher benefit/cost ratio.

# VI. Conclusion

 For the reasons set forth above, we will grant in part and deny in part the Petition of Duquesne Light Company 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, Duquesne Light Company 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 date of entry of this Opinion and Order. 66 Pa. C.S. §2806.1(e)(2)(ii). Interested parties will have ten days to file comments to 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 filing of its revisions to the Plan. See *Implementation Order* at 12‑13. Duquesne Light Company 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 Duquesne Light Company 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 Duquesne Light Company’s Energy Efficiency and Conservation Plan is approved as modified by this Opinion and Order.

3. That the Joint Petition for Partial Settlement of a portion of Duquesne Light Company’s Energy Efficiency and Conservation Response Plan is moot and, therefore, is denied.

 4. That the Pennsylvania Public Utility Commission is directed to convene a working group, composed of affected EDC representatives, consumer advocates, community-based organizations and other interested parties, 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. The working group shall provide its recommendations to the Commission no later than February 16, 2010.

5. That Duquesne Light Company is directed to participate in the working group referenced in Ordering Paragraph No. 4.

6. That Duquesne Light Company shall track appropriate data regarding fuel switching, in coordination with the Statewide Evaluator, including at least the following: (1) type of appliance or equipment being replaced; (2) the availability of natural gas at the customer’s location or immediate area; and, (3) whether electric appliances or equipment were installed in areas where natural gas is available.

7. That the Commission’s Working Group created in *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) to address fuel switching issues shall address, as part of its report to the Commission due March 31, 2010, the fuel switching issues raised in this proceeding.

 8. That Duquesne Light Company file a Tariff that includes the Energy Efficiency and Conservation Plan costs within the currently approved distribution rates on residential customers’ bills.

 9. That Duquesne Light Company shall meet with stakeholders as needed, but no less than twice annually, until May 31, 2013, unless otherwise ordered by the Commission with the results of those meetings to be reported as part of Duquesne Light Company’s Annual Review.

 10. That Duquesne Light Company’s proposal as part of the Energy Efficiency and Conservation Plan cost recovery annual reconciliation process to collect or pay interest on under or over collections, respectively, is denied.

 11. That Duquesne Light Company may not shift program funds within a customer class, or between classes without prior Commission approval.

 12. That, consistent with the requirements of Act 129, Section 2806.1(k)(1), Duquesne Light Company’s cost recovery for its respective share of the cost for the statewide evaluator will not be subject to the 2% cap on the cost of its Energy Efficiency and Conservation Plan.

 13. That, consistent with 66 Pa. C.S. § 2806.1(a)(10), the Office of Small Business Advocate’s proposal to treat Government/Non-Profit customers as a separate class for purposes of the cost recovery mechanism, is denied.

 14. That Duquesne Light Company shall modify its Energy Efficiency and Conservation Plan to include residential high efficiency furnace fans.

 15. That Duquesne Light Company shall file a new Tariff utilizing the Peak Load Contribution with respect to the calculation of Large Commercial and Large Industrial customer demand for purposes of the Energy Efficiency and Conservation/Demand Response Surcharge as proposed by the Duquesne Industrial Intervenors.

 16. That the Office of Small Business Advocate’s proposal to require Duquesne Light Company to modify its Energy Efficiency and Conservation Plan so that reconciliation of all customer classes will be done annually be, and is hereby, adopted.

 17. That ClearChoice’s proposal to require Duquesne Light Company to cap demand response contract load management at 50% is denied.

 18. That ClearChoice’s proposal to require Duquesne Light Company to place a 25% quota for load management by disadvantaged businesses is denied.

 19. That demand response conservation service providers shall be allowed to enter into contracts with Duquesne Light Company up to, but not beyond, November 30, 2013.

 20. That the Department of Environmental Protection’s recommendation that the Commission prohibit distributed generation at a customer’s facility to achieve peak load reductions is denied.

 21. That ACORN’s recommendation to require Duquesne Light Company to add a provision to its Energy Efficiency and Conservation Plan regarding the need for Duquesne to make a good faith effort to hire low-income workers is unnecessary and therefore is denied.

 22. That Duquesne Light Company’s proposed Photovoltaic Incentives Program is denied.

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

24. That all revisions to Duquesne Light Company’s Energy Efficiency and Conservation Plan shall comply with this Opinion and Order and shall be submitted to the Commission and to all parties of record in this proceeding, and to the PJM Interconnection, LLC, within sixty (60) days of the date of entry of this Opinion and Order.

25. That Duquesne Light Company 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 filing of its revisions to the Plan.

26. That Duquesne Light Company is permitted to implement any portion of its Energy Efficiency and Conservation Plan that was approved without modification by this Opinion and Order.

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



 **BY THE COMMISSION,**

 James J. McNulty

 Secretary

(SEAL)

ORDER ADOPTED: October 22, 2009

ORDER ENTERED: October 27, 2009

1. *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Reserves* – Technical Reference Manual Update, Docket No. M-00051856 (Order entered June 1, 2009) (*TRM Order*) [↑](#footnote-ref-2)
2. This manual can be found at: <http://www.clarkstrategicpartners.net/files/calif_standard_practice_manual.pdf>. [↑](#footnote-ref-3)
3. NGDCs’ fuel switching recommendations are based on the continued and/or the increased use of natural gas to conserve electricity. These recommendations include: (1) ensuring that Duquesne’s EE&C Plan does not encourage customers to switch from natural gas to electric appliances; (2) ensuring that Duquesne’s EE&C Plan does not encourage customers to use electric heating in new homes in lieu of natural gas; and (3) providing fuel neutral mechanisms to reduce electricity usage and encourage natural gas usage where appropriate. NGDC Statement No. 1; Exhibit NGDC-2. [↑](#footnote-ref-4)
4. 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-5)
5. Absent a specific definition, “energy usage” is construed to mean “electric usage” for Act 129 purposes. [↑](#footnote-ref-6)
6. Changes may be proposed to approved EE&C Plans in conjunction with the EDC’s annual report required by 66 Pa. C.S. § 2806.1(i)(I). *Implementation Order* at 24. [↑](#footnote-ref-7)
7. The OTS, OCA and OSBA did not object to the Company’s calculation of its two percent spending cap. *See* OTS MB at 7; OCA MB at 26; OSBA MB at 11. [↑](#footnote-ref-8)
8. Duquesne has estimated its share of the statewide evaluator cost to be $2,220,000 and has included this within its computation of the various surcharges proposed in this proceeding to recover all costs. Duquesne Exhibit WVP – 4 - 9. [↑](#footnote-ref-9)
9. DII supports the position taken by the OTS and the OCA on this issue. DII MB at 15, 16. [↑](#footnote-ref-10)
10. *TRC Test Order* at 9-19. [↑](#footnote-ref-11)
11. *Implementation Order* at 16. [↑](#footnote-ref-12)
12. *TRC Test Order* at 7. [↑](#footnote-ref-13)
13. Duquesne Plan, §8 at 111. [↑](#footnote-ref-14)
14. Duquesne Plan, §11 Table 1 at 162. [↑](#footnote-ref-15)
15. DII supports the position taken by the OSBA. DII MB at 23, 24. [↑](#footnote-ref-16)
16. The range of 15-25 percent is cited based on the consultant’s experience operating programs, generally. Examples of the policy application are as follows: Under programs administered by the California Public Utilities Commission (CPUC) during funding cycle 2004-2005, reallocation of program funding up to 15% was permitted without a requirement for Commission approvals; such funding shifts are noted in monthly progress reports to the Commission. In CPUC Ordering Paragraph 11 of D.03-12-060, the ALJ is delegated to resolve motions in which a utility seeks authority to transfer more than 25 percent of one 2004-2005 program’s funds into another program. [↑](#footnote-ref-17)
17. An allocation range of 15%-25% of $78 million = $11.7 million to $19.5 million. [↑](#footnote-ref-18)
18. *See, generally Petition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program*, Docket No. M-2009-2093215 (Order entered August 18, 2009). [↑](#footnote-ref-19)
19. $78 million x 5.8 percent = $4.5 million. [↑](#footnote-ref-20)
20. “Disadvantaged businesses” are defined as minority-owned, women-owned, persons-with-disability-owned, small companies, companies located in Enterprise Zones, and similar entities. *See* also 52 Pa. Code § 69.802 for the definition of “MBE-minority-owned business enterprises.” *Implementation Order* at 26. [↑](#footnote-ref-21)
21. *Diversity at Major Jurisdictional Utility Companies- Statement of Policy*, 52 Pa. Code §§ 69.801-69.809. [↑](#footnote-ref-22)
22. The reporting requirements relating to fuel switching set forth in this order are an example of the additional information that will be requested in the annual report. Data necessary to satisfy TRC calculations could also be requested. [↑](#footnote-ref-23)
23. *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-24)
24. *See* 52 Pa. Code §§ 69.801-69.809. [↑](#footnote-ref-25)
25. A link to citation may be found at: <http://frwebgate1.access.gpo.gov/cgi-bin/TEXTgate.cgi?WAISdocID=24031747320+22+1+0&WAISaction=retrieve> [↑](#footnote-ref-26)
26. DEP addressed the issue that the Commission should establish criteria for when plan changes require Commission approval. This issue was addressed under the section Implementation and Evaluation issues. Duquesne addressed the issue of statewide evaluator costs, which was previously discussed under the section Plan Cost Issues. [↑](#footnote-ref-27)
27. Application, Section 10, Appendix D, at 150. [↑](#footnote-ref-28)