**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held February 11, 2010

Commissioners Present:

James H. Cawley, Chairman

Tyrone J. Christy, Vice Chairman

Kim Pizzingrilli

Wayne E. Gardner

Robert F. Powelson

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

d/b/a Allegheny Power for Approval

of its Energy Efficiency and Conservation

Plan, Approval of Recovery of its Costs

through a Reconcilable Adjustment Clause

and Approval of Matters Relating to the

Energy Efficiency and Conservation Plan

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**OPINION AND ORDER**

**BY THE COMMISSION:**

# I. Introduction

In the *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan*, Docket No. M‑2009‑2093218 (Order entered October 23, 2009) (*October 2009 Order*) the Pennsylvania Public Utility Commission (Commission) approved in part and rejected in part the Energy Efficiency and Conservation Plan (Plan) filed by West Penn Power Company d/b/a Allegheny Power (Allegheny or the Company) pursuant to Act 129 of 2008 (Act 129 or the Act). The Commission required the Companies to submit revised Plans within sixty days. Now before the Commission for consideration and disposition is the Company’s revised Energy Efficiency and Conservation Plan (Revised Plan). For the reasons set forth herein, we will approve in part and reject in part Allegheny’s Revised Plan.

# II. Procedural History

A detailed procedural history was set forth in the *October 2009 Order*. Consequently, this section summarizes the procedural history of this matter.

Allegheny filed its Plan on July 1, 2009. The Plan was referred to Administrative Law Judge (ALJ) Katrina L. Dunderdale, who held public input hearings at Butler, Pennsylvania on July 31, 2009. ALJ Dunderdale also held evidentiary hearings on August 19-20, 2009.

The parties in this proceeding are: the Department of Environmental Protection (DEP); the Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA); the Office of Trial Staff (OTS); UGI Utilities, Inc.-Gas Division, UGI Penn Natural Gas, Inc., UGI Central Penn Gas, Inc., The Peoples Natural Gas Company d/b/a Dominion Peoples (collectively, the NGDCs); EnerNOC, Inc. (EnerNOC); West Penn Power Industrial Intervenors (WPPII); Association of Community Organizations for Reform Now (ACORN); Comperio Energy LLC d/b/a ClearChoice Energy (ClearChoice); Direct Energy Business, LLC; the Pennsylvania State University (Penn State); Field Diagnostic Services, Inc. (Field Diagnostic); and Constellation New Energy (CNE).

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

As stated previously, the *October 2009 Order* approved in part and rejected in part Allegheny’s Plan. *Inter alia*, the *October 2009 Order* directed Allegheny to file a revised Plan within sixty days. On November 9, 2009, the OSBA filed a Petition for Reconsideration (Petition) of the *October 2009 Order.* By Opinion and Order entered November 19, 2009, the Commission granted reconsideration pending review of, and consideration on, the merits. Allegheny filed an Answer to the Petition on November 19, 2009, and the Commission denied in part and granted in part the Petition by Opinion and Order entered on December 23, 2009 (*December 2009 Order)*. Specifically, the Commission denied the OSBA’s request that Allegheny be required to recognize Lighting customers served under Tariff No. 39, Schedules 51-59 and 71, as a separate class or classes for purpose of cost-recovery. *December 2009 Order* at 8. The Commission did, however, grant OSBA’s request that Allegheny be required to file a red‑line version of its revised plan. *December 2009 Order* at 11.

Allegheny filed a Revised Plan on December 21, 2009. The Revised Plan purported to be red-lined[[1]](#footnote-1) to show all changes that the Company had made to the June 30, 2009 version of its Plan. On December 24, 2009, the Commission issued a Secretarial Letter directing that Comments on the Revised Plan will be considered timely if filed on or before January 8, 2010 with Reply Comments being considered timely if filed on or before January 19, 2010.

On January 4, 2010, Allegheny filed a corrected red‑lined version of its Revised Plan. The Corrected red‑lined version underlines new language in red and strikes through the deleted language.

Comments on the Revised Plan were submitted by OSBA and OCA. WPPII filed a letter noting that it did not object to Allegheny’s Revised Plan as filed. Allegheny filed reply comments.

# III. Description of the Revised Plan

The Plans were described in detail in the *October 2009 Order.* As a result, the Plans will not be described in detail here.

The Revised Plan proposes numerous changes in response to the *October 2009 Order*. Following is a list of changes contained in the Revised Plan:

* It removed the expense of the statewide evaluator from the Plan and will reconcile the expense of the statewide evaluator separately and add it to the EE&C surcharge.
* It is proposing a new “Customer Resources Demand Response Program” that replaces the former “Distributed Generation Program” and the “Contract Demand Response Program” and will rely on PJM curtailment service providers and a distributed generation manager to dispatch customer load and generation during the Company’s highest load hours. The Company asserts that this program was developed through a working group process.
* It revised other programs to include clarification or changes included in the Company’s Reply Brief, that were agreed to with the parties, such as including messaging related to the use of electric space heaters in the low‑income programs.
* It adjusted the general reduction in customer incentives that it included in the 2011 and 2012 plan years.
* It corrected a plan‑year versus calendar‑year application in its avoided capacity rates that are utilized for calculating the avoided cost of electricity as part of the final Total Resource Cost Test adopted by the Commission.
* It completed the Total Resource Cost test on all programs based on the changes described herein and in accordance with the final adopted Total Resource Cost Test.
* It has updated all tables and charts based on the above changes or revisions.

Cover letter to Revised Plan at 1 and 2. In addition, the Company acknowledged the Commission’s strong encouragement to develop an alternative back‑up plan that is less reliant on smart meter deployment. Allegheny requested that it be authorized, as part of the disposition of this amended plan, to submit the results of its work on an overall Act 129 plan that is less reliant on smart meter deployment. Cover letter to Revised Plan at 1.

# IV. Discussion

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

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

## A. Act 129 Conservation and Demand Reduction Requirements

### 1. Overall Conservation Requirements

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

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

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

#### a. 2011 Requirements

##### *October 2009 Order*

In our *October 2009 Order*, we found that the Plan projected total energy savings that will meet the 2011 target set forth in the *Reduction Target Order*. *October 2009 Order* at 18. Nevertheless, as Allegheny removed and revised some of its Plan measures, as directed by the Commission, its Revised Plan contains an updated projected total energy savings.

1. **Positions of the Parties**

Allegheny’s Revised Plan proposes energy efficiency and conservation measures that are estimated to produce total energy savings of 210,871 MWh by the end of the 2010 program year (May 31, 2011), which is 100.7% of the established goal. Revised Plan at 29.

No Parties commented on the 2011 total energy savings projections.

1. **Disposition**

We find that the recalculated figures contained in the Revised Plan project total energy savings that will meet or exceed the 2011 target set forth in the *Reduction Target Order*.

#### b. 2013 Requirements

##### *October 2009 Order*

In our *October 2009 Order*, we found that the Plan projected total energy savings that will meet the 2013 targets set forth in the *Reduction Target Order*. *October 2009 Order* at 19. Nevertheless, as Allegheny removed and revised some of its Plan measures, as directed by the Commission, its Revised Plan contains an updated projected total energy savings.

1. **Positions of the Parties**

Allegheny’s Revised Plan proposes energy efficiency and conservation measures that are estimated to produce total energy savings of 647,434 MWh by the end of the 2012 program year (May 31, 2013), which is 103.1% of the established goal. Revised Plan at 29.

No Parties commented on the 2013 total energy savings projections.

##### Disposition

We find that the recalculated figures contained in the Revised Plan project total energy savings that will meet or exceed the 2013 targets set forth in the *Reduction Target 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 Allegheny’s calculation of its average historical peak loads for the top 100 hours as 3,496 MW and its proposed 4.5% reduction of 157 MW as of May 31, 2013.

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

#### *October 2009 Order*

In the *October 2009 Order*, we found that Allegheny’s Plan projected total energy savings that would meet the 4.5% peak demand reduction target by September 30, 2012, as mandated by the Act and the *Implementation Order*. *October 2009 Order* at 21. Nevertheless, as Allegheny removed and revised some of its Plan measures, as directed by the Commission, its Revised Plan contains an updated projected total energy savings.

1. **Positions of the Parties**

Allegheny’s Revised Plan proposes energy efficiency and conservation measures that are estimated to produce cumulative peak demand savings of 217,828 kW by the end of the 2012 program year (May 31, 2013), which is 104.1% of the established goal. Revised Plan at 29.

No Parties commented on the 2013 total energy savings projections.

#### Disposition

We find that the recalculated figures contained in Allegheny’s Revised Plan project total energy savings that will meet or exceed the 4.5% peak demand reduction target by September 30, 2012, as mandated by the Act and the *Implementation 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).

#### *October 2009 Order*

In the *October 2009 Order*, we concluded that Allegheny’s Plan met the requirement of the Act to provide a variety of measures to all customer classes in an equitable manner. The record evidence showed that Allegheny’s Plan provides five programs that are available to more than one customer class and that it offers at least eleven programs each to residential and non‑residential customer classes. *October 2009 Order* at 23.

1. **Positions of the Parties**

Allegheny’s Revised Plan has a portfolio of twenty‑one programs and rate offerings for all customer classes – residential, residential low‑income, small commercial and industrial, large commercial and industrial, and government/nonprofit. Revised Plan at 36 and 37. Allegheny’s Revised Plan has eleven programs for the residential customer class and ten programs for non-residential customer class. Revised Plan at 46.

No Parties submitted comments on this aspect of the Revised Plan.

#### Disposition

We conclude that the Company’s Revised Plan meets the requirement of the Act to provide a variety of measures to all customer classes in an equitable manner. The Revised Plan contains twenty‑one programs distributed across all customer classes. Allegheny has provided at least one energy efficiency program and one demand response program for each class in accordance with the Commission’s *Implementation Order*. Therefore, we conclude that the Revised Plan complies with the provisions of 66 Pa. C.S. § 2806.1(b)(1)(i)(B).

### 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).

#### a. *October 2009 Order*

The *October 2009 Order* stated that Allegheny’s approach to the government/non-profit sector was in substantial compliance with the requirement and found no reason to modify this aspect of its Plan. *October 2009 Order* at 25.

**b.** **Positions of the Parties**

Allegheny revised its Government/School/Non-profit Lighting Efficiency Program by stating under the marketing strategy for this program that it will promote a whole building approach to energy conservation for government entities by offering increased incentives for select projects and measures to entities that have undergone building energy audits. Revised Plan at 155. In addition, Allegheny has deleted the “Distributed Generation Program” and “Contracted Demand Response Program” and added the “Customer Resources Demand Response Program” as a program offering to the government/non-profit sector. Revised Plan at 153‑160.

No Parties commented on this aspect of the Revised Plan.

#### c. Disposition

We find Allegheny’s approach to the governmental/nonprofit sector in its Revised Plan to be satisfactory and in substantial compliance with the Act and our *October 2009 Order*.

### 5. Low Income Program Requirements

Act 129 provides:

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

66 Pa. C.S. § 2806.1(b)(1)(i)(G).

#### *October 2009 Order*

In the *October 2009 Order*, we found that Allegheny’s Plan had three of twenty-two programs, or 13.6% of total programs, that specifically targeted low-income customers.  This 13.6% proportionate share of programs targeting low-income customers far exceeded the estimated 4.8% share of total energy use attributable to low‑income customers in Allegheny’s service territory. We found that Allegheny’s Plan substantially complied with the Act’s low‑income requirements. *October 2009 Order* at 28 and 30.

The *October 2009 Order* stated that the Commission would form a working group 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 Companies are required to participate in the working group. *October 2009 Order* at 29.

1. **Positions of the Parties**

The first meeting of the Working Group was held on January 6, 2010. Representatives of Allegheny attended.

No Parties commented on the Company’s tracking of low-income customer program usage or their low-income program calculations.

#### Disposition

With regard to the Low-Income Program Requirements, we find that the Revised Plan continues to substantially comply with the Act’s low‑income requirements. We also find that Allegheny has revised this portion of its Plan in compliance with our directives in the *October 2009 Order*.

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

#### a. Residential

#### *October 2009 Order* –Smart Meters

In the *October 2009 Order* the Commission recognized that Allegheny’s reliance on the rapid deployment of smart meters and the associated network infrastructure does add an element of increased risk to its Plan. We noted that as Allegheny bears the sole risk of significant penalties if it fails to meet the mandated targets, we would not direct Allegheny to modify its Plan at that time, but would closely monitor the progress of Allegheny’s Smart Meter Procurement and Installation Plan. We strongly encouraged Allegheny to develop an alternative “back‑up” plan that is less reliant on smart meter deployment. *October 2009 Order* at 35 and 36.

In addition, the Commission found that Allegheny’s exclusion of smart meter costs from its EE&C Plan was appropriate, only to the extent that such costs were directly related to its approved smart meter plan. We went on to note that any costs directly associated with smart meters and their deployment should not be a part of the EE&C Plan’s TRC Test analysis. Finally, we recognized that the actual allocation of costs associated with Allegheny’s EE&C Plan, its Smart Meter Procurement and Installation Plan and even its default service plan, would depend on the facts when they become known. Based on this fact, we reserved the right to direct the allocation of reasonable and prudent costs incurred in implementing, the EE&C Plan, the smart meter plan and the default service plan through the appropriate procedural mechanisms. *October 2009 Order* at 34 and 35.

1. **Positions of the Parties**

Allegheny acknowledges the Commission’s strong encouragement to develop an alternative “back‑up” plan less reliant on smart meter deployment. Allegheny states that it is actively pursuing an overall plan for smart meter deployment at a slower pace to address the Commission’s concerns. Allegheny requests that it be authorized, as part of the Commission’s disposition of its Revised Plan, to submit the results of its work on an overall Act 129 plan that is less reliant on smart meter deployment. Cover letter to Revised Plan at 1.

The OSBA comments that if Allegheny submits an alternative plan in the future, that is less reliant on smart meters, that future submission should be considered a modification to the approved Revised Plan and should be subject to review, as any other substantive change to a Commission‑approved EE&C Plan. OSBA Comments at 4. The OSBA cites to the *October 2009 Order*, in which this Commission specified that Allegheny is required to file a petition seeking Commission approval of modifications to its plan. OSBA Comments at 4 and 5 (citing *October 2009 Order* at 98 and 99). The OSBA asserts that any Commission approval of the Revised Plan should in no way imply approval of any yet‑to‑be‑filed alternative plan. *Id*. at 4. Finally, the OSBA asserts that Commission approval of the Revised Plan and acknowledgement that Allegheny may submit an alternative plan should not in any way be a factor in determining the magnitude of any penalty to be imposed on Allegheny for failure to achieve the Act 129 mandated reduction targets. *Id*. at 6.

The OCA comments that a cost‑effective back‑up plan should be developed and submitted to the Commission for review as early as possible. The OCA asserts that the development and vetting of such a plan at some point in the future or by the next annual review period may not allow the Commission or the parties sufficient time to evaluate the reasonableness of the back‑up plan given the need to meet the required targets. OCA Comments at 2. The OCA stresses that its comments only address the limited issue of whether Allegheny’s Revised Plan is in compliance with the *October 2009 Order* and does not address its overarching concerns with the EE&C Plan, which the OCA reserves its right to further address those concerns on appeal. *Id*. at 1 and 2.

Allegheny replies that the OSBA seemed to misapprehend Allegheny’s filing regarding a back‑up plan. Allegheny stated that it was pursuing an overall plan for smart meters with a slower deployment schedule through its Smart Meter Procurement and Installation Plan proceeding at Docket No. M‑2009‑2123951. Allegheny stresses that its alternative smart meter deployment plan does not affect the programs in its EE&C Plan, asserting that this alternative deployment plan satisfies the Commission’s encouragement that the Company prepare an alternate plan less reliant on the rapid deployment of smart meters. Allegheny further posits that the Commission should determine the extent of review, if any, at a later date should Allegheny file a new EE&C Plan. In response to the OSBA’s comments regarding Act 129 penalties, Allegheny states that the OSBA is raising hypothetical issues that are not ripe for discussion and specifically incorporated its November 3, 2008 penalty provision comments at Docket No. M‑2008‑2069887, by reference. Allegheny Reply Comments at 1‑3.

##### Disposition

The Commission agrees with the OSBA to the extent that approval of Allegheny’s Revised Plan does not constitute approval of any plan component that has not been presented to the Commission. As we stated in the *October 2009 Order*, if an EDC believes that it is necessary to modify its Act 129 plan, the EDC may file a petition requesting that the Commission rescind and amend its prior Order approving the plan. *October 2009 Order* at 99.

As we noted in our original Order, the Commission agreed with the OCA that Allegheny’s reliance on the rapid deployment of smart meters and the associated network infrastructure does add an element of increased risk to its Plan. *October 2009 Order* at 18, 19, 21 and 35. In that Order, the Commission stated that it would closely monitor this element of Allegheny’s Plan during the annual plan reviews and its review and monitoring of Allegheny’s Smart Meter Procurement and Installation Plan. *October 2009 Order* at 35. Allegheny’s Revised Plan acknowledges a revised smart metering implementation schedule, but fails to clearly denote which EE&C programs and measures are dependent upon implementation of its smart metering plan. Revised Plan at 12‑15. Allegheny should therefore provide a chart clarifying its kWh and kW reductions for each of its programs that would be achieved if its smart metering plan is not implemented within the established timeline of its EE&C Plan.

Because Allegheny bears the sole risk of significant penalties if it fails to meet the mandated targets, we did not direct Allegheny to eliminate the proposed programs that rely on smart meter deployment, except as it is otherwise directed in the Opinion and Order regarding its Revised Plan. To the extent the revised chart indicates that Allegheny will fall short of its minimum EE&C requirements if its smart metering plan is not implemented during the initial EE&C plan period, the Commission once again strongly encourages Allegheny to develop an alternate “back‑up” plan that is less reliant on smart meter deployment. Such an alternate plan would be a readily available option that can be implemented on short notice, after Commission approval, should any unforeseen circumstances delay or disrupt Allegheny’s smart meter deployment. Having such a “back‑up” plan ready and available should reduce any delay in implementing such a plan to the time it takes to complete the Commission’s review process. The Commission believes having such a plan ready to file would alleviate the majority of OCA’s concerns. In addition, as we have continually encouraged the development of EE&C plans by engaging interested stakeholders, we encourage Allegheny to continue to use this process in developing any such back‑up plan.

Regarding the OSBA’s concern that approval of this Revised Plan and any future alternative plan should not in any way be a factor in determining the magnitude of any future penalty, the Commission declines to address the OSBA’s concern at this time. The Commission will assess and determine what specific factors it will consider in any future penalty proceeding when the facts and any interested parties’ positions are known. With that said, the Commission has issued a Policy Statement setting forth factors and standards to be considered in evaluating litigated and settled proceedings. See 52 Pa. Code § 69.1201.

#### b. Commercial/Industrial‑Distributed Generation & Demand Response

We will address issues related to programs targeting the small and large commercial and industrial sector together in this section of the Order.

##### (1) *October 2009 Order*

In the *October 2009 Order*, the Commission rejected Allegheny’s proposed Distributed Generation Program, due to the fact that it was costly, had an extremely low TRC and was not needed to meet the mandated peak demand targets. *October 2009 Order* at 42. Specifically, we were concerned that the administrative costs for this program accounted for 32.7% of the total program costs and that they were almost half as much as the incentive costs. *October 2009 Order* at 24 and 43. At that time, we encouraged Allegheny to submit a revised distributed generation program that addressed our concerns. *October 2009 Order* at 43.

In addition, in the *October 2009 Order*, the Commission rejected Allegheny’s proposed Contract Demand Response Program. We found it significant that this program only enabled competitive curtailment service providers an opportunity to participate in Allegheny’s EE&C Plan if the Customer Load Response Program did not provide sufficient demand response. We also found it significant that this program had no funding and was not slated for implementation until the summer of 2012. *October 2009 Order* at 46. The Commission directed Allegheny to immediately form a working group consisting of curtailment service providers and other interested parties to develop a plan to implement the Contract Demand Response Program in parallel with the Customer Load Response Program. The working group was to develop an implementation strategy to ensure that undue advantage was not given to participating curtailment service providers, including measures that assure timely access to data and equitable incentives for each of the demand response programs. Finally, we directed Allegheny to provide access to its EE&C Plan online user tools to all of its customers participating in the Company’s programs. *October 2009 Order* at 46 and 47.

**(2) Positions of the Parties**

Allegheny is proposing a new “Customer Resources Demand Response Program” to replace the Distributed Generation and Contract Demand Response Programs rejected by this Commission. Allegheny states that this program is the result of the efforts of the working group it formed as directed. This new program will rely on PJM curtailment service providers and a distributed generation manager to dispatch customer load and generation resources during the Company’s highest load hours. Cover letter to Revised Plan at 1.

Under the Customer Resources Demand Response Program, customers receive incentives to respond to event notices by Allegheny to curtail consumption and/or utilize standby generation. Participants in the program will receive revenues from Allegheny in addition to those received for participating in the PJM capacity and energy markets through a curtailment service provider. For those participants who use distributed generation, Allegheny will either contribute up to 50% of the operation and maintenance cost or provide traditional capacity/energy payment for the resulting load reduction. Revised Plan at 146.

WPPII stated that Allegheny’s Revised Plan includes significant modifications to energy efficiency and demand reduction programs offered to large commercial and industrial customers. WPPII further states that these revisions will help to reduce the administrative and logistical burden on the large commercial and industrial customers that seek to participate in Allegheny’s programs. Specifically, WPPII notes that by consolidating the distributed generation and load response programs into a single program, the Revised Plan provides customers with a more streamlined and efficient opportunity to contribute to the reduction targets. WPPII stresses that during these difficult economic times, every effort must be made to reduce transaction costs and provide meaningful opportunities for energy‑intensive customers to realize value from these Act 129 programs. Finally, WPPII states that, for these reasons, it does not object to Allegheny’s Revised Plan.

Allegheny replies that it appreciates WPPII’s input and the input of stakeholders provided to its Demand Response Working Group. Allegheny further states its belief that the Customer Resources Demand Response Program provides eligible customers with a better opportunity to contribute to the Company’s load reduction goals. Allegheny Reply Comments at 4.

##### (3) Disposition

As part of its initial filing, Allegheny proposed two commercial and industrial customer demand response programs - the Customer Load Response Program (CLRP) and the Contracted Demand Response Program (CDRP). The CLRP was to be implemented beginning in 2010 by an Allegheny-selected curtailment service provider that will have the benefit of administrative, operational, marketing, and incentive support from Allegheny. The CDRP, however, would have enabled other curtailment service providers to help Allegheny achieve its demand requirements, but only in the event that the CLRP did not provide sufficient demand response needed to achieve the Company’s Act 129 goals. In Allegheny’s Initial Plan, the CDRP had no initial funding and only was slated to be implemented in the summer of 2012. See *October 2009 Order* at 46.

In addition, the Commission was concerned about undue discrimination against non-selected curtailment service providers and inequitable incentives offered by the proposed CLRP and CDRP. As such, we directed Allegheny to form a working group consisting of curtailment service providers to develop its CDRP in parallel with its CRP. Allegheny was to develop an implementation strategy that ensures that undue advantage is not given to participating curtailment service providers, to include measures that assure timely access to data and equitable incentives for both demand response programs. Finally, Allegheny was to provide access to its EE&C Plan online user tools to all customers participating in the Company’s programs. See *October 2009 Order* at 46 and 47.

In its Revised Plan, the Company proposes a new Customer Resources Demand Response Program (CRDRP) to address the Commission’s concerns related to the CDRP and the rejected Distributed Generation Program. The Commission recognizes that the proposed CRDRP corrected the inconsistent implementation of the CDRP in relation to the CLRP deficiency by allowing for the marketing and operation of both the CRDRP and CLRP programs to start in planning year 2010 and run through planning year 2012. The Commission, however, is troubled by the fact that the proposed CRDRP only addresses access to post-Smart Meter Implementation data resources,[[2]](#footnote-2) but does not explain how the Company will ensure equitable access to data in situations where smart meters have not been deployed.

As to our concerns regarding undue discrimination and equitable incentives, Allegheny’s two program tariff filings provide insufficient information for the Commission to ascertain whether or not the Company has complied with our directive. Under the Company-run CLRP, Allegheny will subsidize costs associated with all marketing, administration, and PJM operations in the energy and capacity markets. A reasonable level of detail describing its CLRP marketing plan is provided in the Revised Plan as follows:

Assigned accounts: Account Managers proactively handle approximately 130 of the top energy users that would be eligible for the program. They will personally contact their assigned customers to educate them about the program. We will follow up with a direct mail piece to encourage participation and provide more program details. Non-assigned accounts: These accounts are managed by Business Account Specialists in Allegheny’s call center. Direct mail will be sent to these customers with program details and contact information from an assigned Business Account Specialist from the call center. As a follow up to both audiences, an email will be sent to reinforce the program details. A link to Allegheny’s web site will allow customers to access more program details and information. Sales/marketing/educational materials will be developed for the Account Managers and Business Account Specialists to provide to their customers.

Revised Plan at 142 and 143.

This Revised Plan indicates that Allegheny will provide more intensive administrative support to the CLRP program. This is further reflected in the projected need for three full-time equivalent employees (FTEEs) to administer the CLRP program, in addition to unspecified “internal staff.” Given the description of this program, it appears that the three FTEEs functions will be fulfilled by Assigned Account Managers, Business Account Specialists at the call center[[3]](#footnote-3) and other staffing that provide individual customer contracting expense tracking, accounting, bidding of customer load into PJM markets, reconciliation services, technical assistance, and overall project management. Allegheny will also develop the necessary online user tools for customers, enroll the customer in the PJM programs, download data for load profiling or historical energy usage, model load modification schemes, and review load curtailment events. Revised Plan at 141 and 142.

In contrast to the detailed and extensive marketing and operations plan for Allegheny’s in-house CLRP program, the proposed CRDRP, run by other curtailment service providers, marketing and administrative support is much more modest in description, yet fairly robust in comparable cost. The Company acknowledges that curtailment service providers will do much of their own marketing, proposing only a contingency marketing plan run by Allegheny that targets any “potential program participant” only if there is a need to attract more demand response to this program. Revised Plan at 149. Despite this marked disparity between marketing plans for the CRDRP and CLRP, the projected marketing costs of the two programs are identical. See Revised Plan at 144 and 151.

Similarly, the CRDRP administration needs are much more modest in description than those detailed for the CLRP. Allegheny’s filing states that the CRDRP will be “managed and administered” by the Company requiring one FTEE, but provides very limited information as to what services it will provide, besides communicating a signal as to which peak hours the curtailment service provider should seek to curtail load.[[4]](#footnote-4) See Revised Plan at 150. The Commission recognizes that the Company will incur some minor contracting and contract administration costs with the handful of curtailment service providers in the CRDRP. Once again, despite what should be minimal administrative requirements of a program run primarily by curtailment service providers, the projected administrative costs are approximately $1.0 million, relative to the $1.7 million for the Company-run CLRP over the 4 years of the Plan.[[5]](#footnote-5) While the administrative costs associated with the “distributed generation manager” may explain the relatively high costs associated with the meager list of administrative services associated with a curtailment service provider-run program, it is unclear why the distributed generation program is included in the CRDRP when such a program could theoretically be leveraged by both the CLRP and the CRDRP or simply managed by curtailment service providers without Allegheny’s intervention. Since insufficient cost detail and program explanation was provided with the Revised Plan, we cannot conclude that the administrative costs associated with the CRDRP are reasonable.

In order to assure that the CLRP and CRDRP programs are non‑discriminatory in design, the subsidies provided through marketing and administrative cost support, combined with the incentives for each program, should be roughly equivalent in total.[[6]](#footnote-6) However, both programs, as proposed, provide insufficient information to assess whether or not undue advantage is being given to participating curtailment service providers or whether the incentives proposed in the two programs are equitable. In particular, both programs lack transparency as to the level of individual customer incentives and provide insufficient description to explain the assumptions behind each program’s projected marketing and administrative costs. The Revised Plan indicates that incentives for the CLRP will be variable by customer contract.[[7]](#footnote-7) Similarly incentives for the CRDRP will also be variable by customer contract.[[8]](#footnote-8)

In order to determine whether these two programs are non-discriminatory, the Company should provide a more transparent incentive mechanism in its filing. Such a mechanism could be expressed as a value in $/MW, $/MWH, or both, for the CLRP and CRDRP. This mechanism should properly balance the higher marketing and administrative costs of the Company-run CLRP relative to the CRDRP run by curtailment service providers. The Company should consult with stakeholders, including curtailment service providers, to develop a more transparent incentive price for both programs. Non‑discriminatory marketing also dictates that customers should receive information and education regarding both the CLRP and the CRDRP at the same time. Company education on the CRDRP should not be limited to a situation where the CRDRP is underperforming.

In addition, the Company should provide revised estimates and detailed working papers on the marketing and administrative costs related to the services provided under the CLRP and CRDRP. These estimates should include the categories of services listed above and any additional services required under the second revised plan. Elements requiring further support include:

1. An explanation of why the distributed generation manager is lumped into the CRDRP. If this program can be leveraged under the CLRP, why is it not a separate program? What are the costs associated with this program on a stand-alone basis?
2. Marketing and administrative cost estimates of the CRDRP program if the distributed generation manager component is excluded.
3. An explanation of why a separate incentive mechanism is required for the distributed generation manager. Is there a need for a separate distributed generation manager when each participating curtailment service provider could include the distributed generation resource of its customers through the stated incentive mechanism rate?
4. An explanation of whether individual customers under the CLRP will be allocated 100% of the PJM program revenues associated with each customer’s participation in the PJM Load Response Programs. If not, a detailed explanation of what compensation each customer receives should be provided.
5. An explanation of how Allegheny will provide equitable access to customer usage data prior to implementation of its smart metering program.

### 7. Proposals for Improvement of EDC Plan

#### *October 2009 Order* – Low‑Income Space Heaters

In the *October 2009 Order* we noted that Allegheny agreed to expand its education regarding the use of space heaters directed at low‑income customers and to expand its program offerings directed at portable space heaters in the future as its budget permits. We directed Allegheny to incorporate into its Act 129 and Low‑Income Usage Reduction Programs that include home audits and/or weatherization of low‑income households a message that weatherization will help to minimize the use of space heaters. *October 2009 Order* at 54 and 105.

**Positions of the Parties**

Allegheny revised its low income programs by adding language stating that for homes with supplemental electric space heaters, auditors will provide messaging to the customer regarding weatherization services. In addition, the auditors will be required to determine the condition of the electric space heater, and if the primary heating system is inoperable, take steps to repair or replace the primary heating source by accessing appropriate agency or contractor and available funding sources. Furthermore, Allegheny added language indicating that it will continue to work with state agencies to identify low income customers to enroll into low income residential programs. Revised Plan at 88‑105. Finally, under its Residential Joint Utility Usage Management Program Allegheny added language indicating that savings attributed to customers that fall in the 151% to 200% of the federal poverty level will not be counted toward low‑income program savings. Revised Plan at 94.

No Parties submitted comments on this aspect of the Revised Plan.

**Disposition**

We find that Allegheny has revised this portion of its Plan in compliance with our directives in the *October 2009 Order*.

## B. Cost Issues

### 1. Plan Cost Issues

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

1. ***October 2009 Order* – Statewide Evaluator Costs**

In the *October 2009 Order*, the Commission found that while necessary to the implementation of the overall program administered by the Commission, the statewide evaluator expense is not a cost component of the EDCs’ individual plans. *October 2009 Order* at 62. We went on to state that since the EDCs have no control over the level of the statewide evaluator expense, it was appropriate that the EDCs not be required to include the statewide evaluator costs within the 2% limitation on the cost of their overall plans. *Id*. We concluded that the expense related to the statewide evaluator is not a cost component of Allegheny’s individual plan, rather, it was a cost component of the overall program instituted by the Commission. We directed that the cost recovery for the statewide evaluator expense should be reconciled separately and added to Allegheny’s EE&C Surcharge.

**b. Positions of the Parties**

Allegheny stated that it removed the expense of the statewide evaluator from the Revised Plan and will reconcile this expense and add it to the EE&C surcharge. Cover letter to Revised Plan at 1. In its Revised Plan, Allegheny removed the statewide evaluator costs from the administrative costs of its EE&C Plan. Revised Plan at 170 and 244.

No Parties submitted comments on this aspect of the Revised Plan.

1. **Disposition**

We find that Allegheny has complied with our *October 2009 Order* at 62 by removing this expense from expenses subject to the 2% spending cap.

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

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

#### a. *October 2009 Order*

In the *October 2009 Order*, we noted that Allegheny submitted an amended filing to ensure that their cost effectiveness test was in full agreement with the Commission approved *TRC Test Order*. While their amended filing resulted in slight changes to the overall TRC calculations, the Plan and the components therein still passed the Commission’s TRC Test with a cost‑benefit ratio of 4.1. Based on these facts, we accept Allegheny’s amended cost effectiveness test and found that the Plan, absent the Distributed Generation Program met the TRC Test. The Commission went on to note that Allegheny’s TRC Test results were based on estimates; as such, the Plan’s cost effectiveness is be reviewed annually per the Act. *See* 66 Pa. C.S. § 2806.1(b)(1)(i)(J) and (i). *October 2009 Order* at 66. As such, we required Allegheny to provide an updated TRC analysis of its Plan as part of its annual report. *October 2009 Order* at 105.

**b. Positions of the Parties**

Allegheny states that it corrected the plan‑year versus the calendar‑year application in its avoided capacity rates that are utilized for calculating the avoided cost of electricity as part of the final Total Resource Cost Test. Cover letter to Revised Plan at 2. In addition, Allegheny completed the Total Resource Cost Test on all programs based on the changes it made to programs, in accordance with the final Total Resource Cost Test. *Id*.

The OCA comments that Allegheny has not presented any working papers or documentation in the Revised Plan that would allow the Commission or other parties to verify Allegheny’s changes. The OCA asserts that without this information, it is not possible to ascertain if the avoided cost basis and the subsequent benefit/cost analyses have been appropriately modified. The OCA posits that Allegheny should provide the supporting working papers so that the Commission and other interested parties can review these documents. OCA Comments at 2 and 3. The OCA also comments that while Allegheny did update some of its TRC calculations to eliminate the 2009 costs, Allegheny did not include revised TRC analyses for such programs as the revised Customer Resources Demand Response Program in the tables and supporting documents. The OCA again asserts that the Commission and interested parties cannot evaluate whether the changes should be implemented without understanding the TRC test results. The OCA posits that the revised benefit/cost analyses need to be provided to the Commission and interested parties as soon as possible. OCA Comments at 3 and 4.

Allegheny replies that it utilized the PJM Reliability Pricing Model rates in the avoided capacity calculations in the Revised Plan, as was used in its previous filings. Allegheny states that the Revised Plan utilizes these rates on the plan‑year basis as opposed to the calendar‑year basis. Allegheny Reply Comments at 3. Allegheny further replies that it has prepared updated total resource cost analysis on all programs and included the updated total resource cost analysis in the Revised Plan. Allegheny stated that the total resource cost analysis can be found in Section 3.2 of the Revised Plan, for all programs on a lifetime basis in Table1, noting that some TRC values did not change due to rounding of TRC values, and for all programs by year in Table 7. Allegheny Reply Comments at 4.

1. **Disposition**

Allegheny has filed updated TRC calculations for all modifications made to its EE&C Plan. These revised calculations include new estimates for the annual energy savings, capacity savings, program costs, and program benefits for all programs within Allegheny’s Revised Plan. See Revised Plan, Tables 7A‑7E at 192‑195. Allegheny also included TRC calculations for its revised Customer Resources for Demand Response Program. Revised Plan, Table 7D at 195. Based on the estimates found in Allegheny’s Revised Plan, we find that it is possible to evaluate the changes made to the Plan. Using the estimates provided, it is possible to calculate the avoided cost per MWh saved as well as the avoided capacity costs used by Allegheny. While these remain estimates, we find that they meet the overall requirements of the TRC Test. While the Revised Plan shows minor changes to the calculated TRC values of some components, the overall TRC for the Plan remains unchanged at 4.1, due to rounding. Revised Plan at 38. As this still exceeds the threshold of a portfolio TRC ratio greater than or equal to 1, as set forth in the *Implementation Order* at 16, we find that the Revised Plan continues to pass the Commission’s approved TRC Test. We continue to note that the costs and benefits in Allegheny’s Revised Plan are estimates. As such, the Plan’s cost effectiveness will be reviewed annually and Allegheny will be required to provide an updated TRC Analysis as part of its Annual Report.

### 3. 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. *October 2009 Order* – PUC Assessment Charge**

In the *October 2009 Order*, The Commission agreed with the OCA that any increase in PUC Assessment fees due to increased revenue from collection of costs related to an EE&C plan are not directly incurred or attributable to the provision or management of an EE&C plan. *October 2009 Order* at 78. As such, we directed Allegheny to resubmit its budget and cost recovery mechanism, along with appropriate tariffs that do not include a gross‑up for any increase in PUC assessment fees. *October 2009 Order* at 79 and 105.

**(1) Positions of the Parties**

Allegheny’s Revised Plan includes revised surcharge cost recovery calculations that no longer reference PUC Assessment fees. Revised Plan at 281‑311.

The OCA Comments that although Allegheny removed the PUC assessment fee asterisk from its filing in its cost calculations, supporting cost documentation and its proposed tariff, Allegheny did not provide the calculation or working papers for the removal of this fee. The OCA asserts that the EE&C surcharge rate in Allegheny’s original filing and the revised filing appear to be identical. The OCA posits that these working papers should be provided to allow the Commission and interested parties an opportunity to review the changes. OCA Comment at 3.

Allegheny replies that beginning on page 281 of its Revised Plan, the Company provided updated work papers for the EE&C Surcharge calculation. Allegheny asserts that the EE&C Surcharge rates did not change due to the small impact the Commission assessment fee had on the surcharge rate. Finally, Allegheny states that while the removal of the Commission assessment fee does not impact the EE&C Surcharge rate, it will be evident in the revenues reported to the Commission in conjunction with the Company’s annual reconciliation since such revenues will not reflect any adjustment for the assessment fee. Allegheny Reply Comments at 3 and 4.

**(2) Disposition**

The Commission agrees with Allegheny that the removal of the PUC assessment fee does not change the EE&C Surcharge rate. Removal of the small amount of the PUC assessment fee added to the original EE&C Surcharge calculation results in a de minimis effect in the final EE&C Surcharge rate, such that the surcharge appears identical. We are satisfied that Allegheny has removed any gross‑up for PUC Assessment Fees and find that Allegheny has complied with our *October 2009 Order*.

**b. *October 2009 Order* – Demand Charge**

In the October 2009 Order, we stated that the Commission was persuaded by WPPII’s proposal for Allegheny to recover its EE&C Plan costs for large commercial and industrial customers utilizing a demand charge based on a customer’s PJM Peak Load Contribution (PLC). We noted that the PLC is based on PJM’s top five peak hours during the prior year and is established once on an annual basis and will provide a consistent charge to customers, as well as a consistent and reliable cost recovery mechanism. We noted our belief that utilizing the PLC would encourage large commercial and industrial customers to engage in efficiency and load control measures that would further the energy and demand reduction goals of Act 129. We directed Allegheny to adopt an EE&C Plan demand charge based on a customer’s PJM Peak Load Contribution as the cost recovery mechanism for its large commercial and industrial customers. *October 2009 Order* at 81, 82 and 105.

1. **Positions of the Parties**

Allegheny noted in its Revised Plan that cost recovery for Schedules 30 Large, 40, 41, 44, 46, and tariff No. 37 will be accomplished via a per kilowatt PJM peak load contribution. Revised Plan at 189. Allegheny also included the Rate per kW PLC for the appropriate customer class in its proposed tariff supplement. Revised Plan at 313‑315.

No Parties submitted comments on this aspect of the Revised Plan.

**(2) Disposition**

Allegheny’s Revised Plan includes a demand charge based on a customer’s PJM Peak load Contribution as the cost recovery mechanism for large commercial and industrial customers. As such, we find that Allegheny has complied with our *October 2009 Order*.

1. ***October 2009 Order* – Surcharge on Customer Bill**

In the *October 2009 Order*, we found that the costs associated with the EE&C program should be included within a company’s distribution rate for billing purposes. Accordingly, we rejected Allegheny’s proposal for a separate line item surcharge and directed Allegheny to incorporate recovery of its approved EE&C costs as an addition to its current approved distribution rates. We did, however, make an exception for both the large and small commercial and industrial customer classes and accepted Allegheny’s proposal to list its EE&C Surcharge as a separate line item on small and large commercial and industrial customers’ bills. *October 2009 Order* at 88 and 105.

1. **Positions of the Parties**

Allegheny’s Revised Plan states that for non‑residential customers, it will collect the costs of EE&C programs through a separately stated non‑bypassable line‑item bill surcharge that will be specific to each designated Tariff No. 39 rate schedule and Tariff No. 37. The Revised Plan also states that for residential customers, EE&C program costs are recovered in addition to the currently approved distribution rates. See Revised Plan at 181 and 186. Allegheny’s revised tariff supplement notes that for customers receiving service under Schedule 10, the EE&C Surcharge will be added to the Distribution Charge for customer billing purposes, while the EE&C Surcharge will be set out separately on all other customer’s bills. Revised Plan at 313.

No Parties submitted comments on this aspect of the Revised Plan.

1. **Disposition**

As Allegheny has included its EE&C Surcharge as part of its distribution rates for residential customers and as a separate line item for all commercial and industrial customers, we find that Allegheny is in compliance with our *October 2009 Order*.

1. **Tariff Supplement No. 191**

On November 4, 2009, Allegheny filed Tariff Revisions for Supplement No. 191 Electric‑Pa. P.U.C. No. 39 EE&C Surcharge to be effective on one day’s notice. The transmittal letter attached to Allegheny’s filing states that in accordance with Sections 5.591 and 5.592 of the Rules and Regulations of the Commission and the *October 2009 Order*, Allegheny has removed the Distributed Generation Program and the Commission assessment fee from the EE&C surcharge. Allegheny notes that because of programming changes necessitated by the *October 2009 Order,* Allegheny cannot implement the PLC surcharge for 660 specific customers for an additional three months until early February 2010. Allegheny states that this delay will cause a small non‑material change in the dollar amount of the EE&C Surcharge for these 660 customers as the surcharge will run for a period of 40 months, as opposed to the full 43 months. This letter also states that to the extent that EE&C Plan revisions to be filed by December 22, 2009, impact the reconcilable surcharge, an adjustment to the surcharge will be proposed and supported by Allegheny Power at that time.

The *October 2009 Order* clearly directs Allegheny to submit a Revised Plan that, *inter alia*, makes adjustments to program expenditures and cost allocations. These adjustments, which were still subject to Commission review and approval as part of the Revised Plan, resulted in changes to the EE&C Surcharge implemented by Supplement No. 191.

Allegheny’s representation that Sections 5.591 and 5.592 and the *October 2009 Order* directs a tariff filing to implement the EE&C Surcharge separate from the Revised Plan is incorrect. Act 129 requires that “[t]he *plan* shall include a proposed cost‑recovery mechanism....” 66 Pa. C.S. § 2806.1(b)(1)(i)(H) (emphasis added). Similarly, our *Implementation Order* provides that the cost recovery mechanism shall be included as part of an EDC’s plan. *Implementation Order* at 10 and 38. Nowhere in the Commission approval process delineated in 66 Pa. C.S. § 2806.1(e), the *Implementation Order* or the *October 2009 Order* is provision made for the review and approval of the tariff implementing the EE&C Surcharge separate from the Plan review process. Clearly, our review of the EE&C Surcharge is interdependent with our review of the program measures and the cost of those measures contained in the Revised Plan. Supplement No. 191 should be reviewed and approved by the Commission as part of, and concurrently with, the Revised Plan.

Supplement No. 191 was, therefore, inappropriately filed and approved, as a routine compliance filing. Since we are approving the tariff supplement filed with the Revised Plan by this Opinion and Order, we will avoid the administrative expense and ratepayer confusion that would result if we were to reverse the prior approval of the tariff to become effective November 5, 2009. Moreover, since the EE&C Surcharge is being recovered through a reconcilable adjustment clause mechanism in accordance with 66 Pa. C.S. § 1307, the premature implementation of Supplement No. 191 will not result in additional revenue being collected from ratepayers over the four‑year duration of the Plan.

**VI. Conclusion**

For the reasons set forth above, we approve in part and reject in part the Revised Energy Efficiency and Conservation Plan submitted by West Penn Power Company d/b/a Allegheny Power, consistent with this Opinion and Order. Pursuant to Section 2806.1(e)(2)(ii) of the Act, West Penn Power Company d/b/a Allegheny Power shall file with this Commission and serve on all parties of record in this proceeding a revised Energy Efficiency and Conservation Plan consistent with the modifications directed in this Opinion and Order, within sixty (60) days of the entry of this Opinion and Order. 66 Pa. C.S. §2806.1(e)(2)(ii). Interested parties will have ten days to file comments on the revised portions of the plan, with reply comments due ten days thereafter. The Commission will approve or reject the further Revised Plan at a public meeting within sixty days of the date of filing of the further Revised Plans. See *Implementation Order* at 12‑13. West Penn Power Company d/b/a Allegheny Power is permitted to implement any portion of its Plan that was approved without modification by the *October 2009 Order* and this Opinion and Order; **THEREFORE;**

**IT IS ORDERED:**

1. That the Revised Energy Efficiency and Conservation Plan filed on December 21, 2009, by West Penn Power Company d/b/a Allegheny Power is approved in part and rejected in part consistent with this Opinion and Order.

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

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

4. That as part of its revised Customer Resources Demand Response Program West Penn Power Company d/b/a Allegheny Power is directed to include an explanation of how it will provide equitable access to data in situations where smart meters have not been deployed.

5. That as part of its revised Customer Resources Demand Response Program West Penn Power Company d/b/a Allegheny Power is directed to include detailed cost information and explanation associated with the various elements of this program.

6. That as part of its revised Customer Resources Demand Response Program West Penn Power Company d/b/a Allegheny Power is directed to provide a more detailed and transparent explanation of the incentives to be provided under this program and the Customer Load Response Program, as described in more detail in this Option and Order.

7. That West Penn Power Company d/b/a Allegheny Power is directed to consult with stakeholders to develop a more transparent incentive price for both the Customer Resource Demand Response and Customer Load Response Programs.

8. That West Penn Power Company d/b/a Allegheny Power is directed to develop a more integrated marketing and education plan for its Customer Resource Demand Response and Customer Load Response Programs.

9. That as part of its further revised Energy Efficiency and Conservation Plan West Penn Power Company d/b/a Allegheny Power is directed provide revised estimates and detailed working papers on the marketing and administrative costs related to the services provided under the Customer Resource Demand Response and Customer Load Response Programs and additional support information as further set forth in this Opinion and Order.

10. That as part of its further revised Energy Efficiency and Conservation Plan West Penn Power Company d/b/a Allegheny Power is directed provide a chart clarifying its kilowatt‑hour and kilowatt reductions for each Energy Efficiency and Conservation Plan program that would be achieved if its smart metering plan is not implemented within the established timeline set forth in the Energy Efficiency and Conservation Plan.

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

12. That West Penn Power Company d/b/a Allegheny Power shall submit to the Commission and Parties to this proceeding a red-lined version of its Energy Efficiency and Conservation Plan that reflects all modifications to its Plan.

13. That West Penn Power Company d/b/a Allegheny Power shall file with this Commission and serve on all parties of record in this proceeding a further 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 sixty (60) days of the Company’s revised plan filing.

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

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



**BY THE COMMISSION,**

James J. McNulty

Secretary

(SEAL)

ORDER ADOPTED: February 11, 2010

ORDER ENTERED: **March 1, 2010**

1. As used here, a “red-lined” document shows all the differences between one version of a document and a previous version of that same document. [↑](#footnote-ref-1)
2. Revised Plan at 150. [↑](#footnote-ref-2)
3. The CLRP description indicates that managers and specialists would be intensely involved in demand side education for real time energy markets and peak demand markets, contracting, and administration of each customer account. [↑](#footnote-ref-3)
4. This same peak hour information will be required to implement the CLRP program. [↑](#footnote-ref-4)
5. Revised Plan at 144 and 151. [↑](#footnote-ref-5)
6. It is likely that evaluation, measurement, and validation costs would be similar or identical between the two programs. [↑](#footnote-ref-6)
7. Revised Plan at 143. [↑](#footnote-ref-7)
8. Revised Plan at 150. [↑](#footnote-ref-8)