

IN THE SUPREME COURT OF PENNSYLVANIA

Docket Nos. 34-36 MAP 2021

37-39 MAP 2021

40-45 MAP 2021

MARIA POVACZ
LAURA SUNSTEIN MURPHY
CYNTHIA RANDALL AND PAUL ALBRECHT

v.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

BRIEF FOR AMICUS CURIAE
BY MR. WES ZIMMERMAN IN SUPPORT OF
MARIA POVACZ, LAURA SUNSTEIN MURPHY, AND CYNTHIA
RANDALL AND PAUL ALBRECHT

Brief of Amicus Curiae Supporting Maria Povacz, Laura Sunstein Murphy, and Cynthia Randall and Paul Albrecht's Appeal from the Commonwealth Court's October 8, 2020 Order at Docket Nos. 492 C.D. 2019, 606 C.D. 2019, and 607 C.D. 2019, which affirmed in part, reversed and remanded in part, and vacated and remanded in part the Pennsylvania Public Utility Commission's Opinion and Orders entered at Docket Nos. C-2015-2475023, C-2015-2475726, and C-2016-2537666

Wes Zimmerman
69 Goat Hill Road
Boyertown, PA 19512

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- *Met-Ed Smart Meter Deployment Plan*, Docket No. M-2013-2341990
- *2021 Total Resource Cost (TRC) Test*, Docket No. M-2019-3006868

Pennsylvania General Assembly Legislative Journals & Legislative History

- Pennsylvania House Journals, February 11, 2008, pages 386-403 and February 12, 2008, pages 430-432
- Pennsylvania Senate Journal, October 8, 2008, pages 2626-2631
- House Bill No. 2200 of 2008, Printer's No. 3218
- House Bill No. 2200 of 2008, Printer's No. 3233
- House Bill No. 2200 of 2008, Printer's No. 4429
- House Bill No. 2200 of 2008, Printer's No. 4526

PA Statutes, Regulations, and Rules

- 66 Pa. C.S. §2807(f)(2)
- 66 Pa. C.S. §2807(f)(6)
- 66 Pa. C.S. §2807(f)(7)
- 66 Pa. C.S. §1703(a) & (b)

Federal Statutes, Regulations, and Rules (including definitions)

- 26 U.S.C. §167 – Depreciation
- 26 C.F.R. §1.167(a)-1 – Depreciation in General
- 65 FR 47666. IV Discussion.
- 18 CFR 101. Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, Definition No. 12

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- Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.

I. Statement of Interest

I am a Pro Se plaintiff in a PA PUC (PUC) administrative court case against Metropolitan Edison Company (Met-Ed).¹ My case was stayed due to the instant case. I have shared my analysis with many other Pro Se complainants needing assistance on what the law means, and many of those cases are currently stayed at the Commonwealth Court and PA PUC administrative court, ready to be argued and appealed.

The term “depreciation” and what it means is key to any analysis seeking to define PA C.S. §2807(f)(2)(iii). I am uniquely qualified to provide this analysis. I am a Special Agent with a federal law enforcement agency. I investigate criminal violations of federal tax laws and other related criminal statutes, such as money laundering, wire fraud, mail fraud, bank fraud, conspiracy and more. Prior to my position as a Special Agent, I was a Revenue Agent and Subject Matter Expert with the Internal Revenue Service’s Large Business and International Division for approximately 8 years. In those roles, I conducted technical tax examinations of large and international businesses that dealt with intricacies of tax law, regulations, various rulings, technical advice memorandums, and judicial precedent, as well as advising examination teams nationwide. In these positions, I have analyzed and interpreted the meaning of many different statutes, especially those involving

¹ V. Wes Zimmerman v. Metropolitan Edison Company, Docket No. C-2019-3007568

federal tax law. Through this experience, I am uniquely qualified to opine on PA C.S. §2807(f)(2), especially §2807(f)(2)(iii). The analysis I provide in this Amicus Brief is my own personal analysis and is not the analysis or opinion of my employer. Additionally, no other person or entity paid for the writing of this Amicus Brief.

II. Summary – Act 129 Does NOT Mandate Smart Meters

The case at hand concerns the appeals of the PUC, PECO Energy Company (PECO), and customer complainants Maria Povacz, Laura Sunstein Murphy, and Cynthia Randall and Paul Albrecht (“Complainants”) challenging the Commonwealth Court’s decision in *Povacz v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. 2020) (“*Povacz*”). In *Povacz*, the Commonwealth Court held, among other things, that Act 129 of 2008 (the Act) does not mandate that electric distribution companies (EDCs), like PECO, install smart meters, and remanded the case back to the PUC for consideration of customers’ requests for accommodations, if any are appropriate, given the court’s decision that the Act does not mandate smart meters.

The Commonwealth Court was correct in its finding that the Act does not mandate the installation of a smart meter, however, the Court did not base its conclusion on a complete analysis of the relevant portion of the Act. A complete analysis is the topic of this brief. The court also erred in remanding back to the

PUC for accommodations. Because the Act does not mandate smart meters, which as you will see, it does not, there is no accommodation or state-wide opt-out needed.

The relevant part of the Act to be analyzed is PA C.S. §2807(f)(2), **IN ITS ENTIRETY**. PA C.S. §2807(f)(2) states:

(f)(2) Electric distribution companies shall furnish smart meter technology as follows:

- (i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of request.**
- (ii) In new building construction.**
- (iii) In accordance with a depreciation schedule not to exceed 15 years.**

The Commonwealth Court focused its analysis on the word “furnish” at §2807(f)(2), and, in summary, and in conjunction with other areas of the Act, concluded that the word “furnish” does not require a customer to avail himself of every aspect of smart meter technology, thereby concluding that smart meters are not mandatory. The Energy Association of Pennsylvania in its Amicus Brief focused its analysis on the word “shall,” stating that it means “must”, or creates a mandate. Notably, neither of these analyses discusses §2807(f)(2)(i), (ii), and (iii) in its entirety, or fully analyzes what each means. Both miss the point entirely. My analysis will focus on what the plain language of §2807(f)(2)(i), (ii), and,

especially, (iii) means. As you will see, there is no system-wide mandate.

§2807(f)(2)(i) and (ii) require no detailed analysis. EDCs shall furnish smart meter technology upon request from a customer that agrees to pay for the cost of the meter at the time of request (§2807(f)(2)(i)), and EDCs shall furnish smart meter technology in new building construction (§2807(f)(2)(ii)). What will be shown in this analysis is that §2807(f)(2)(iii) defines the maximum service life of smart meter technology and creates a requirement that such technology be replaced at least every 15 years.

III. Analysis

A. The PUC Misrepresents the Plain Language of PA C.S. § 2807(f)(2)(iii)

As can be demonstrated by the PUC's own Implementation Order of June 2009,² Met-Ed's Smart Meter Deployment Plan,³ Pennsylvania's legislative history and various accounting and tax authorities and definitions, the PUC does not interpret the plain language of PA C.S. §2807(f)(2) correctly.

The PUC Implementation Order of June 2009⁴ on page 14 states, "The Commission believes that it was the intent of the General Assembly to require all

² Docket No. M-2009-2092655

³ Docket No. M-2013-2341990; Met-Ed's Smart Meter Deployment Plan is a joint deployment plan with Pennsylvania Electric Company (Docket No. M-2013-2341994), Pennsylvania Power Company (Docket No. 2013-2341993) and West Penn Power Company (Docket No. 2013-2341991). For purposes of this document, it will be referred to as Met-Ed's Deployment Plan.

⁴ Docket No. M-2009-2092655 (see Appendix E)

covered EDCs to deploy smart meters system-wide when it included a requirement for smart meter deployment in accordance with a depreciation schedule not to exceed 15 years.”

The PUC provided no analysis of how it arrived at the conclusion above. This is the equivalent of saying “it means this because I said so.” The PUC forced the plain language of §2807(f)(2)(iii) into a mandatory smart-meter narrative which has caused most EDCs to force smart meters on all customers, even over customer objections. The PUC arrives at the incorrect conclusion that Act 129 creates a state-wide mandate of smart meters by covered EDCs by misrepresenting unambiguous legislative intent and misconstruing plain legislative language that leaves no room for ambiguity.

The PUC claims the language of furnishing of smart meters “in accordance with a depreciation schedule not to exceed 15 years” to mean covered EDCs must force smart meters on all customers within 15 years. In addition, the PUC conflates furnishing smart meters with removal of analog meters, when, in fact, the Act is silent on currently deployed analog meters.

The following discussion focuses on subparagraph (f)(2)(iii) of the Act:
“Electric distribution companies shall furnish smart meter technology as follows ...in accordance with a depreciation schedule not to exceed 15 years.”

Interpreting this as a mandatory roll-out of smart meters within 15 years lacks not only common sense, but also ignores a key term found in the law – “depreciation.” Since “depreciation” is an accounting or tax term, it is necessary to consider how applicable authorities define the term “depreciation.”

B. The PUC Uses the Term “Depreciation” Deceptively

Internal Revenue Code⁵ (IRC) §167(a) and Treasury Regulation (Treas. Reg.) §1.167(a)-1(a) define depreciation as an allowance (deduction) for the exhaustion, wear and tear, and obsolescence of property used in a trade or business or property held for the production of income. Treas. Reg. §1.167(a)-1(a) goes on to dictate that depreciation deductions are allocated over an asset’s useful life.

*Black’s Law Dictionary*⁶ mirrors this definition of depreciation as a decrease in the potential of an asset over its lifetime. Various financial accounting authorities have the same or similar definitions, such as the Federal Energy Regulatory Commission (FERC).⁷ These definitions show that the terms “wear and tear”, “exhaustion”, or “obsolescence” are synonymous with the term depreciation. A depreciation schedule (or wear and tear schedule, exhaustion schedule, obsolescence schedule) is a schedule that ultimately defines an asset’s

⁵ Internal Revenue Code of 1986, as amended; see Appendix B and C

⁶ <https://thelawdictionary.org/depreciation/>; see Appendix A

⁷ FERC is an agency that regulates the interstate transmission of electricity, natural gas, and oil. FERC also administers accounting and financial reporting regulations of its regulated companies.

useful life (typically in terms of years) and for accounting and tax purposes - allocates the asset's cost over its useful life. In fact, Treas. Reg. §1.167(a)-1(b) defines useful life as the period over which an asset may reasonably be expected to be useful in a trade or business or for the production of income.

FERC, when it comes to defining the term “depreciation”, mirrors what has already been presented above. In establishing standards for depreciation for accounting purposes, FERC wanted to ensure that electric utilities charge proper amounts of depreciation to expense in each financial reporting period for the purpose of allocating in a systematic and rational manner the cost of utility property to the periods which the property is used in utility operations, i.e. over its estimated useful service life.⁸ The definition of depreciation according to FERC's Uniform System of Accounts for electric utilities is “the loss of an asset's service value not restored by current maintenance.”⁹ Once again, depreciation means wear and tear, obsolescence, or exhaustion of an asset – an asset like a smart meter. FERC does not somehow make the term “depreciation” mean deployment, nor does any other authority. “Deprecation” never means “deployment.”

Based on the definition of “depreciation” and “useful life” as used in legal and accounting contexts, the plain statutory language of §2807(f)(2)(iii) must be

⁸ 65 FR 47664 and 65 FR 47666; see Appendix D

⁹ 18 CFR 101. Definition No. 12; see Appendix D

interpreted as follows – using terms synonymous with depreciation to aid in interpretation:

Electric distribution companies shall furnish smart meter technology as follows ... in accordance with a wear and tear, exhaustion, or obsolescence schedule not to exceed 15 years.

In other words, §2807(f)(2)(iii) establishes the maximum service life of smart meters. This paragraph of the Act makes no reference to a mandatory roll-out of smart meters by all EDCs (regardless of their number of customers). It does not say nor can it be inferred in any way, that there is a required system-wide deployment of smart meters on a schedule of no longer than 15 years, as stated in the PUC’s 2009 Implementation Order. This section of the Act does not refer to replacing analog meters (in fact, no section does). Rather it plainly spells out that AMI (smart meters) are to have a service period not to exceed 15 years, and Met-Ed’s Smart Meter Deployment Plan (discussed later) confirms this.

The General Assembly previously enacted laws regarding the term “depreciation” as part of the Public Utility Consolidated Statutes. Section 1703 of Title 66 states in part:

§1703. Depreciation accounts; reports.

- (a) Accounts.--Every public utility shall carry on its books or records of account, proper and reasonable sums

representing the annual depreciation on its property used or useful in the public service, which sums shall be based upon the average estimated life of each of the several units or classes of depreciable property. The commission, by appropriate order, after hearing, shall, except where found to be inappropriate, establish for each class of public utilities, the units of depreciable property, the loss upon the retirement of which shall be charged to the depreciation reserve. (underlining added)

66 Pa. C.S. 1703(a).

66 PA C.S. §1703 (b) states:

(b) Statements.--Every public utility shall file with the commission, at such times and in such form as the commission may prescribe, statements setting forth the details supporting its computation of annual depreciation, as recorded on the books or records of accounts of the public utility. If the commission, upon review of such statements, is of the opinion that the amount of annual depreciation so recorded by any public utility is not reasonable and proper, it may, after hearing, require that

provision be made for annual depreciation in such sums as may be found by it to be reasonable and proper. In making its findings, the commission shall give consideration to the experience of the public utility, and the predecessors of the public utility in accumulating depreciation reserves, the retirements actually made, and such other factors as may be deemed relevant.

(underlining added)

Clearly the General Assembly was familiar with the term “depreciation” when it made a policy decision to specify the “useful life” of smart meters. That decision is consistent with Section 1703.

There is evidence elsewhere in the Act showing that the General Assembly knows the meaning of the word “depreciation.” §2807(f)(7) says “an electric distribution company may recover reasonable and prudent costs of providing smart meter technology under paragraph (2)(ii) and (iii),¹⁰ as determined by the commission. §2807(f)(7) says these costs include “annual depreciation and capital costs over the life of the smart meter technology and the cost of any system upgrades that the electric distribution company may require to enable the use of smart meter technology.....”

¹⁰ Specifically, this is referring to 2807(f)(2)(ii) and (iii).

Yet again – the General Assembly correctly applies the term “depreciation” in the context of the Act. In §2807(f)(7) the General Assembly knew that depreciation is a cost allocating the wear and tear of a smart meter over its useful life. Depreciation means the same thing here as it does in §2807(f)(2)(iii). Depreciation means depreciation (also known as wear and tear, obsolescence, or exhaustion). Depreciation does not mean deployment.

§2807(f)(2) in its entirety as written by the General Assembly means that the only way homeowners would be furnished their first smart meter was to request one and pay for its cost at time of such request (if living in existing construction). In new construction, smart meters “shall be furnished.” Thereafter, the smart meter that was furnished must be replaced with a new smart meter over a period not to exceed 15 years.¹¹

The PUC incorrectly interprets (f)(2)(iii) as a requirement for system-wide smart meter deployment within 15 years with no exceptions. The PUC has substituted “deployment and installation schedule” for “depreciation schedule.” Nowhere does any authority define or use the terms “deployment” or “installation” as synonymous with the term “depreciation.”

¹¹ It should be noted, there does not appear to be any prohibition from an EDC asking a customer if they consent to the installation of a smart meter if a customer would not fall under 2807(f)(2)(i) or (ii). Instead, covered EDCs have been forcing smart meters on customers not falling under 2807(f)(2)(i) or (ii).

§2807(f)(2) of the Act says EDCs shall furnish smart meter technology under three conditions only, and none of those conditions means a system-wide mandatory deployment.

§2807(f)(6) of the Act states that subsection (f) does not apply to EDCs with 100,000 or fewer customers. This does not mean that customers of all EDCs with 100,001 or more customers must accept a smart meter, rather it means that (f)(2)(i), (f)(2)(ii), and (f)(2)(iii) do not apply to EDCs with 100,000 or fewer customers. Therefore, EDCs with 100,000 or fewer customers do not have to furnish a smart meter upon request from a customer and nor do they have to furnish a smart meter in new construction. It does not mandate smart meters on customers of EDCs with 100,001 or more customers.

§2807(g) of Act 129 does include definitions of smart meter technology, including that it shall enable time-of-use rates, HOWEVER, the ONLY section of Act 129 that discusses how this technology “shall be furnished” is section (f).¹²

C. The PUC Actually Knows the Correct Meaning of “Depreciation”

In its Implementation Order of June 2009, on page 12 (where new construction is discussed), the PUC states the following: “As with all equipment, meters have a useful life. EDCs determine how much to invest in meter equipment

¹² As smart meters are provided to those who request one, and in new building construction, time of use rate requirements are honored.

based on its useful life and have an opportunity to depreciate that investment over the useful life of the meter. In addition, EDCs have an opportunity to recover the cost of the meter from ratepayers.”¹³

As shown above, the PUC used the terms “useful life” and “depreciation” when discussing meters (including smart meters) and related those terms to the meter’s cost and its useful life. This example taken from the PUC’s 2009 Implementation Order illustrates that the PUC appears to know that “depreciation” is, in fact, a term that relates to exhaustion, wear and tear, and obsolescence of an asset, and knows that for accounting purposes, depreciation refers to allocating the cost of an asset over its useful life. It also shows that the PUC should know that depreciation does not mean “mandatory deployment.” Rather depreciation is a result of deployment of an asset.

After showing an understanding of what depreciation means on page 12, it is unclear how only two pages later in the Implementation Order, on page 14, the PUC states “The Commission believes that it was the intent of the General Assembly to require all covered EDCs to deploy smart meters system-wide when it included a requirement for smart meter deployment “in accordance with a

¹³ See Appendix E

depreciation schedule not to exceed 15 years.”¹⁴ There is simply no basis for this position.

Further, on page 28 going into page 29 of the Implementation Order where recovery of costs of deployment and installation of smart meter technology is discussed,¹⁵ the PUC states “these costs would include both capital and expense items relating to all plan elements, equipment and facilities, as well as an analysis of all administrative costs. More specifically, these costs would include, but not be limited to, capital expenditures for any equipment and facilities that may be required to implement the smart meter plan, as well as depreciation, operating and maintenance expenses.” Once again – the PUC uses the term “depreciation” correctly as an accounting term as a cost *resulting from* the deployment of smart meters. “Depreciation” is not synonymous with the term “deployment” – rather the terms are separate and distinct.

The PUC’s discussion of the recovery of costs in the paragraph above comes from §2807(f)(7) of the Act. §2807(f)(7) provides that part of the recoverable costs include annual depreciation and capital costs over the life of smart meter technology. In §2807(f)(7), depreciation is clearly an expense for the exhaustion, wear and tear, and obsolescence of a smart meter. Based on the PUC’s 2009

¹⁴ See Appendix E

¹⁵ See Appendix E

Implementation Order references to “depreciation” discussed above, the PUC appears to understand the correct meaning and usage of the term. It is not logical that “depreciation” should somehow be defined completely differently by the PUC for purposes of §2807(f)(2)(iii). Nor is it truthful to ascribe to legislators an intent which was entirely absent from actual wording and legislative discussion just prior to passage of the Act solely for purposes of §2807(f)(2)(iii).

Additional historical clarity can be seen in the words of the PUC itself – as recently as December 19, 2019. In its Act 129 Total Resource Cost (TRC) Test for 2021¹⁶, on page 21, the PUC discusses effective useful life and stated “While certain technologies may have an expected useful life greater than 15 years, Act 129 is clear about the 15-year limit, and any adjustment to the cost ledger would circumvent the legislative directive.”¹⁷ Here – the PUC correlates useful life with the cost of a technology – providing additional evidence that the meaning of depreciation is fully understood. Also of note is the repetitive theme of a 15 year useful life seen in the Act.

¹⁶ Act 129 discusses the TRC test being 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. Reference to the TRC is only made here to show the PUC’s correlation of cost to the useful life of technology.

¹⁷ See Appendix F

D. Met-Ed - an EDC - Also Knows the Correct Meaning of

“Depreciation”

In Met-Ed’s Smart Meter Deployment Plan¹⁸, on page 52, it states “for Capex,¹⁹ the estimated book lives used for depreciation purposes were 15 year for smart meters and communication equipment, 5 years for hardware and 7 years for software. Book lives were determined based on input from external resources and internal subject matter experts while tax lives were based on IRS guidelines.”

Like the PUC, Met-Ed also understands that depreciation is synonymous with the wear and tear of an asset over its useful life, and when used solely in an accounting context – allocating the cost of an asset over its useful life. It is also noteworthy that the book lives used by Met-Ed for smart meters and related communication equipment all coincide with §2807(f)(2)(iii) in that they do not exceed 15 years. Met-Ed even stated that its internal subject matter experts agree. Also noteworthy is that §2807(f)(7) states that an EDC may recover the reasonable and prudent costs of providing smart meter technology under paragraph (2)(ii) (new building construction) and (iii) (in accordance with a depreciation schedule not to exceed 15 years). The Act itself ties the costs of smart meter technology to a

¹⁸ Docket No. M-2013-2341990; see Appendix G

¹⁹ This is an abbreviation for capital expenditure.

useful life not to exceed 15 years; and Met-Ed has acknowledged that legislative directive.

On page 76 of Met-Ed's Smart Meter Deployment Plan it states "for meters that are removed or become obsolete due to the installation of smart meters ("Legacy Meters"), the Companies propose to retire the meters out of stock, continue their existing depreciation schedule unaltered over their remaining lives as a regulatory asset, and continue cost recovery through base rates." The rate base equivalent of the regulatory asset for Legacy Meters plus the Cost of removal net of Salvage will continue to be included in the respective Company's base rate. This protocol would have no current impact on customer rates. For accounting purposes, the Companies are asking the Commission to approve an accounting treatment that would allow them to create a "regulatory asset" for the Legacy Meters with a recovery schedule equal to the remaining depreciable lives of the assets per the Companies' depreciation records." (underlining added for emphasis).

What the above paragraph from Met-Ed's Deployment Plan means is that Met-Ed (the EDCs) proposed to continue depreciating existing meters using the existing meters' regular depreciation schedules over their remaining lives to recover the full costs of those meters through base rates if they were taken out of service prior to the end of their useful life after forced deployment of smart meters resulting from the PUC's erroneous interpretation of the Act. In other words, this

is a request by Met-Ed to continue charging customers for meters that are taken out of service until their full cost is recovered from the customer. But once again, and more importantly, in the paragraph above Met-Ed shows that depreciation is a term tied to the wear and tear of an asset allocated over the asset's useful life. In this instance depreciation is discussed for purposes of continuing to charge base rates, but the meaning of depreciation is again confirmed by Met-Ed to be the same as established throughout this analysis.

The PUC and Met-Ed appear to understand what depreciation means, and that §2807(f)(2)(iii) imposes a maximum 15 year limit on the service life of smart meters; yet both state repeatedly that §2807(f)(2)(iii) imposes a mandated deployment of smart meters to all customers of covered EDCs. The PUC and Met-Ed thus are clearly capable of understanding and using the correct interpretation of the words “depreciation schedule”, but not when they are defending their erroneous misinterpretation of legislative intent and the PUC's Implementation Order of June 2009.

E. The Legislative History Shows That No Mandate Was Intended

Additional clarity is afforded by reviewing the third clauses of §2807(f)(2) of the PA General Assembly Legislative Journals for Printer's Numbers (PNs) of versions of House Bill 2200 (HB 2200 became the Act) that were NOT passed into law to see what language was excluded from the final version passed into law.

PNs 3218 and 3233 (February 11 and 12, respectively, 2008) both stated, “Electric distribution companies shall furnish smart meter technology to: ...(C) One hundred percent of its customers within ten years after the effective date of this paragraph.”²⁰

The *House Journal* records numerous dissenting comments about the mandatory nature of these PNs.

- House Journal, February 11, 2008, pages 386-403 [p. 390 Mr. Hutchinson; 390-391 Mr. Godshall; p. 392 Mr McCall; p.393 Rep. Smith and Mr. Saylor; p. 395 Mr. Benninghoff; p.397 Mr. Gabig].²¹
- House Journal, February 12, 2008, pages 430-432 [p. 431: Mr. Hutchinson].²²

PN 4429 (September 23, 2008) stated, “ELECTRIC DISTRIBUTION COMPANIES SHALL FURNISH SMART METER TECHNOLOGY AS FOLLOWS: ...(III) IN ACCORDANCE WITH A SCHEDULE OF REPLACEMENT OF FULL DEPRECIATION OF EXISTING METERS.”²³

Note that PNs 3218 and 3233 which mandated smart meters for all customers, and PN 4429 which made reference to retiring from service and replacing existing

²⁰ In both PNs 3218 and PN 3233, the third clause is actually §2807(E)(6)(II)(C). See Appendices I and J.

²¹ See Appendix M

²² See Appendix N

²³ In PN 4429, the third clause is now §2807(f)(2)(iii). See Appendix K.

meters were NOT PASSED INTO LAW. It is also worth noting that there would be no way to logically think “depreciation” could be synonymous with “deployment” in the paragraph above from PN 4429. It simply makes no sense. Also noteworthy is that PN 4429, again – which was NOT passed into law - would have required covered EDCs to replace fully depreciated existing meters that had exceeded their useful life with smart meters. However, this language in PN 4429 was changed, and is in sharp contrast to the language that was passed into law.

Any interpretation of §2807(f)(2)(iii) of the Act, such as the PUC and EDCs espouse, that it mandates smart meters for all customers or that it makes any reference at all to existing analog meters is erroneous. Those interpretations are based on language that the PA legislature purposefully modified and are based on language that was NOT PASSED INTO LAW. The prior PNs of the Act that were NOT passed into law should not have formed the basis for the PUC’s Implementation Order of June 2009, which the PUC and all of its Administrative Law Judge’s (ALJs) cite for the purpose of ruling against every smart meter formal complaint to date.

A system-wide mandated deployment of smart meters is not the meaning of §2807(f)(2)(iii), and the legislature understood this. The Senate Journal records of PN 4526, the version that WAS signed into law,²⁴ clearly show this. Discussion of

²⁴ See Appendix L for P.N. 4526

PN 4526 in the Senate is recorded in the Senate Journal on October 8, 2008, pages 2626-2631, from which the following comments pertinent to smart meters and concerns about customers are taken.²⁵

p 2626

Senator TOMLINSON.

“It also contains language in there that we will have smart meters. **It is not mandated**, but it allows for the deployment of smart meters through a depreciation process, through new home construction process, and through the depreciation of 15 years, and **for anyone who wants to purchase a smart meter which they feel will help them manage their electric load better.**”

p. 2627

Senator BOSCOLA.

“**We also made sure that smart meters would not be mandated for every single ratepayer.** Not only is that a smarter approach to smart meter deployment, but it will also save electric customers hundreds of millions of dollars paying for something that will not provide a real benefit in their own households.”

p. 2629

Senator FUMO

²⁵ See Appendix O

“In addition, **we did not mandate smart meters, but we made them optional.** We did say in new construction, where they really are practical, they will be put in.”

F. The PUC/EDCs Use of the “Opt-Out” Legislative Proposals

Argument is Illogical in the Absence of a Mandate

Time and time again in the PUC formal complaint administrative process, ALJ and PUC decisions have been rendered against smart meter complainants stating that the Act does not allow for opt outs. This reasoning is misleading. The Act does not provide any legislative opt outs because it was an “opt in” statute, other than new construction.²⁶ It was solely and unequivocally the PUC’s erroneous misinterpretation of the legislative intent and meaning of the words “in accordance with a depreciation schedule not to exceed 15 years” that enabled the PUC to turn the Act into a mandatory no opt out smart meter deployment law. If the PUC had not completely misconstrued the legislative intent and meaning of the law for its own purposes, there would never have been an urge for a legislative or regulatory opt out.

²⁶The absence of a plainly stated opt-out provision does not preclude a utility customer from declining a meter based on various unsafe conditions (including medical implications and negative health effects) that could be caused or exacerbated by smart meter radiofrequency emissions in accordance with 66 Pa. C.S. §1501.

The PUC, Met-Ed and other EDCs have either stated or insinuated that the existence of various smart meter opt-out bills proposed by the PA state legislature proves that the legislative intent of the Act was mandatory system-wide deployment. This is patently false. The first smart meter Opt-Out bill was proposed in 2012 by State Rep. Mike Reese (House Bills 2186 and 2188 most recently reintroduced as four bills - House Bills 310, 311, 312 and 313). The initial Bills were introduced approximately three years AFTER the PUC's 2009 Implementation Order, and only one year after the PUC started to dismiss all smart meter formal complaints filed by Pennsylvania residents. The introduction of smart meter opt out bills was prompted by the urging of constituents who, without exception, were denied opt outs and accommodations in formal complaint filings in front of the PUC, and not for any other reason.

It is noteworthy that the first opt out bill was not introduced until years after the passing of the Act and the PUC's June 2009 Implementation Order, when the EDCs were starting their smart meter roll outs pursuant to the PUC's implementation orders, but not before then. Timing is key here and speaks volumes. Timing of the first smart meter opt out bill introduction in 2012 establishes the fact that opt out proposals were a response to the PUC's flawed Implementation Order and the PUC's refusal to change its flawed interpretation of the Act, and not because of any wording or plain language in the Act itself.

See, for example, the long string of formal complaint cases that the PUC had dismissed on the pleadings starting in 2011, cited by PECO in *Kreider v PECO* PUC Docket No.: C-2015-2469655, *PECO Energy's Petition for Reconsideration of the Commission's September 3, 2015 Order*, citing *Gavin v. PECO*, Docket No. C-2012-2325258 (Final Order entered, Jan. 24, 2012).

In PECO's Interlocutory Petition for Reconsideration in *Kreider*, PECO cited an unbroken string of formal complaint smart meter cases that the PUC had dismissed heretofore without a hearing, because the PUC had determined that Act 129 did not permit any opt outs:

“Indeed, no AMI meter cases have proceeded to a hearing on the right to opt out; each of PECO's cases has been dismissed on preliminary objection. *See Francis v. PECO*, Docket No. C-2014-2451351 (Final Opinion and Ordered entered, August 20, 2015); *Van Schoyck v. PECO*, Docket No. C-2015-2478239 (Initial Decision entered, June 19, 2015); *Larson v. PECO*, Docket No. C-2014-2451754 (Final Opinion and Ordered entered, June 11, 2015); *Antonio Romeo v. PECO Energy*, Docket No. C-2015-2479260 (Initial Decision entered, June 4, 2015); *Gerald H. Smith v. PECO*, Docket No. C-2014-2443198 (Final Opinion and Order entered April 23, 2015); *Vincent Feldman v. PECO*, Docket No. C-2015-2442308 (Initial Decision entered, April 1, 2015); *Margaret*

Hager, M.D. v. PECO Energy, C-2014-2444961 (Final Order entered, March 12, 2015); *Ellen Donnelly v. PECO Energy*, Docket No. F-2013-2330663 (Final Order Entered March 18, 2014); *Douglas Evans v. PECO Energy*, Docket No. C-2013-2368477 (Final Order entered, February 6, 2014); *Theresa Gavin v. PECO Energy*, Docket No. C-2012-2325258 (Order entered January 24, 2013); *Jeff Morgan v. PECO Energy*, Docket No. C-2013-2356606 (Final Order entered July 23, 2013); *Thomas McCarey v. PECO Energy*, Docket No. C-2013-2354862 (Final Order entered September 26, 2013); *Renney Thomas v. PECO Energy*, Docket No. C-2012-2336225 (Final Order entered December 31, 2013); *Maria Povacz v. PECO Energy*, Docket No. C-2012-2317176 (Order entered September 28, 2012).”

“Moreover, the Commission has ruled consistently on the “no right to opt out” issue with respect to other EDCs. *Gloria Corbett v. Pennsylvania Power Company*, Docket No. C-2011-2219898 (Final Order entered, May 27, 2011); *Richard Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305 (Final Order entered, March 3, 2011); *Richard Secrest v. West Penn Power Company*, Docket No. C-2013-2356667 (Final Order entered, Jun. 11, 2013); *Corbett v. Pennsylvania Power Company*, Docket No. C-2011- 2219898 (Order

entered May 27, 2011); *Jones v. Metropolitan Edison Company*, Docket No. C-2011- 2224380 (Order entered June 28, 2011); *Griffin v. Metropolitan Edison Company*, Docket No. C-2012- 2300172 (Order entered July 31, 2012); *Brake v. West Penn Power Company*, Docket No. C-2013- 2367308 (Order entered November 14, 2013); *Drake v. Pennsylvania Electric Company*, Docket No. C- 2014-2413771 (Order entered June 12, 2014); *Efaw v West Penn Power Company*, Docket No. C-2014-2413744 (Order entered June 12, 2014); *Sean Loughry v. PPL Electric Utilities Corp.*, Docket No. C- 2014-2445932 (Order entered March 2, 2015).”

Krieder v PECO op cit, PECO Energy's September 18, 2015
Petition for Reconsideration of the Commission's September 3, 2015
Order fn 4.

Legislators clearly remarked as to the non-mandatory intent of PN 4526, and any subsequent effort by anyone to reach out to the PUC to remark about such intent fell on deaf ears as evidenced by complaint after complaint in the PUC administrative law court. As shown by a letter written by PUC counsel dated March 20, 2018 related to PUC administrative case docket number C-2018-3000222, the PUC has taken the posture that the only way it would change its implementation order was if there was a ruling from an appellate court rejecting

the PUC's interpretation of the Act or the Act was amended.²⁷ However, years prior, in the PUC's Public Meeting held April 15, 2010,²⁸ in discussing the deployment process of smart meters and related timeframes on page 10, it states that the PUC Administrative Law Judge (ALJ) "found that the *Implementation Order* is not a regulation and does not have the full force and effect of law. Instead, it acts as a policy to provide guidelines to EDCs regarding the Commission's expectations about smart meter plans."

That statement contradicts the need for a ruling from a higher court or an amendment to the Act for the PUC to change its Implementation Order. If its Implementation Order does not have the full force and effect of law, then why would a law (that has been completely misinterpreted by the PUC) need to be rewritten? Why would an appellate court need to make a ruling? The answer is that neither actually needs to take place, but the PUC's actions have put this Honorable Court in that position. The PUC itself states that its Implementation Order is a policy not having the full force and effect of law, yet it refuses to re-address its erroneous policy in the face of overwhelming evidence (well beyond a preponderance of the evidence) that it has misinterpreted the plain language of the Act, the legislative intent of the Act and the constitutionality of its Implementation

²⁷ See Appendix P

²⁸ Docket No. M-2009-2123950; see Appendix Q

Order. The PUC can change its erroneous and illegal policy; and does not need any court or the PA state legislature to do so.

G. PUC'S Ability to Change Its Implementation Order

In the PA PUC's Public Meeting held April 15, 2010²⁹ (the joint petition of Met-Ed and other EDCs), the discussion on page 9 states the following: "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. Comwlth. 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. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, the 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)."

In this same document, as mentioned above, in discussing the deployment process of smart meters and related timeframes on page 10, it states that the PUC Administrative Law Judge (ALJ) "found that the *Implementation Order* is not a

²⁹ Docket No. M-2009-2123950; see Appendix Q

regulation and does not have the full force and effect of law. Instead, it acts as a policy to provide guidelines to EDCs regarding the Commission's expectations about smart meter plans."

The evidence presented herein is overwhelming that §2807(f)(2)(iii) establishes a maximum service life of smart meters and nothing further. The legislative intent is clear. "Not mandatory" means no forced deployment over a customer's objections. There is no evidence to support the PUC's position that §2807(f)(2)(iii) mandates deployment of smart meters to all customers not covered by §2807(f)(2)(i) and (ii), yet the PUC refuses to provide an actual analysis of §2807(f)(2)(iii). Effectively, it is a mandate because they said so. This cannot be accepted.

IV. Conclusion – The PUC Must be Directed to Change its Erroneous Implementation Order

Taken *in toto*, §2807(f)(2)(iii), as per the definition of depreciation based on the authorities discussed herein, as used repeatedly in the PA Public Utilities Code, and mirrored by the PUC's Implementation Order and Met-Ed's Smart Meter Deployment Plan, sets a cap on the service period of smart meters, dictating their service life not exceed 15 years. Even Met-Ed's deployment plan agrees. The final version of §2807 passed into law says nothing about replacing

electromechanical analog meters and nothing about universal forced deployment of smart meters. No such inferences as these can be made from the statutory language of Act 129, from the “intent” as recorded in the *House* and *Senate Journals* in the legislative history of HB 2200 that became Act 129, nor in the changes to the Bill wording through each Printer’s Number, culminating with the final version (PN 4526) passed into law.

Thus, I have found no basis on which the PUC can justify its mandate of universal forced deployment of smart meters in its Implementation Order of June 2009 and all subsequent PUC formal complaint holdings and Implementation Orders. Consequently, no EDC in the state of Pennsylvania has a legal basis on which to force smart meters system-wide on its customers.

If one did not request a smart meter and agree to pay for it, or did not live in new building construction (presumably after implementation of Act 129 of 2008), then there is no mandated smart meter. Period. It ends there. §2807(f)(2)(iii) only deals with replacing smart meters that have exceeded their useful life (not to exceed 15 years). It is not a system-wide mandated deployment. Accordingly, because the Act does not require smart meter’s system-wide, EDC customers not living in new building construction should not need to request an accommodation from the PUC for something that is clearly not mandated. This Honorable Court must direct the PUC to change its erroneous Implementation Order to make it

agree with the non-mandatory plain language of the law, and allow Pennsylvanians to keep their analog/mechanical electric meters.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Wes Zimmerman", with a long horizontal flourish extending to the right.

Wes Zimmerman
69 Goat Hill Rd
Boyertown, PA 19512

Certificate of Word Count

I certify that in accordance with PA Rule of Procedure No. 2135(d), the preceding Amicus Curiae Brief was produced using 14-point font in the text and 12-point font in the footnotes and contains 6,655 words, excluding the cover page, Table of Contents, Table of Authorities, this Certificate of Word Count, the Certificate of Compliance, the Proof of Service, the List of Appendices and the Appendices themselves. The word count relies on the word count of Microsoft Word (the software used to prepare this Brief). The word count is less than the total words allowed under PA Rule of Procedure No. 531(b)(3).

Date: September 1, 2021



Wes Zimmerman
Amicus Curiae

Certificate of Compliance

I certify that this filing satisfies the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require confidential information and documents be filed differently than non-confidential information and documents.

Date: September 1, 2021

A handwritten signature in black ink, appearing to read "Wes Zimmerman", with a long horizontal flourish extending to the right.

Wes Zimmerman
Amicus Curaie

Certificate of Service

I, Wes Zimmerman, certify that on the date specified below, I served this document via email to the below named individuals pursuant to the requirements of PA. Rule of Procedure 121.

Tracey Lewis, Esquire
tracey@tslewislaw.com


Anthony E. Gay, Esquire
Jack R. Garfinkle, Esquire
Ward L. Smith, Esquire
PECO Energy Company
anthony.gay@exeloncorp.com
jack.garfinkle@exeloncorp.com
ward.smith@exeloncorp.com

Renardo L. Hicks, Esquire
Kriss E. Brown, Esquire
Tiffany L. Tran, Esquire
Joseph P. Cardinale, Esquire
PA Public Utility Commission
rehicks@pa.gov
kbrown@pa.gov
tiftran@pa.gov
jcardinale@pa.gov

Stephen G. Harvey, Esquire
Michael E. Gehring, Esquire
steve@steveharveylaw.com
mike@steveharveylaw.com

Kenneth M. Kulak, Esquire
Anthony C. DeCusatis, Esquire
Morgan, Lewis & Bockius LLP
ken.kulak@morganlewis.com
anthony.decusatis@morganlewis.com

Date: September 1, 2021



Wes Zimmerman
Amicus Curiae

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Appendix A

The Law Dictionary

Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.

Navigation ²



What is DEPRECIATION?

1. converting the cost of an asset into an operational cost over the lifetime. 2. a decline in market value of any asset. 3. a decrease in potential of an asset over lifetime. 4. reduction in currency value by government or floating exchange rate.

More On This Topic

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10. [Housing For Felons](#)

Related Legal Terms

[DEPRECIATION RATE](#), [PHYSICAL DEPRECIATION](#), [RATE OF DEPRECIATION](#), [ASSET DEPRECIATION RANGE SYSTEM \(ADR\)](#), [ALLOWANCE FOR DEPRECIATION](#), [SUM OF THE YEARS DIGITS \(SYD\) DEPRECIATION](#), [FUNCTIONAL DEPRECIATION](#), [ACCELERATED DEPRECIATION](#), [ACCUMULATED DEPRECIATION](#), [RECAPTURE OF DEPRECIATION](#)

Appendix B

“(a) Except as provided in subsections (b) and (c), the amendments made by the first section of this Act [amending this section and section 81 of this title] shall apply to taxable years ending after October 21, 1965.

“(b) If—

“(1) the taxpayer before October 22, 1965, claimed a deduction, for a taxable year ending before such date, under section 166(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for an addition to a reserve for bad debts on account of debt obligations described in section 166(g)(1)(A) of such Code (as amended by the first section of this Act), and

“(2) the assessment of a deficiency of the tax imposed by chapter 1 of such Code for such taxable year and each subsequent taxable year ending before October 22, 1965, is not prevented on December 31, 1966, by the operation of any law or rule of law,

then such deduction on account of such debt obligations shall be allowed for each such taxable year under such section 166(c) to the extent that the deduction would have been allowable under the provisions of such section 166(g)(1)(A) if such provisions applied to such taxable years.

“(c) Section 166(g)(2) of the Internal Revenue Code of 1986 (as amended by the first section of this Act) shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954.”

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85-866, set out as a note under section 165 of this title.

ESTABLISHMENT OF RESERVE FOR TAXABLE YEAR ENDING AFTER OCT. 21, 1965, AND BEGINNING BEFORE AUG. 2, 1966

Section 1(c) of Pub. L. 89-722, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “If the taxpayer establishes a reserve described in section 166(g)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a) of this section) for a taxable year ending after October 21, 1965, and beginning before August 2, 1966, the establishment of such reserve shall not be considered as a change in method of accounting for purposes of section 446(e) of such Code.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 108, 165, 172, 271, 582, 585, 593, 1351, 1367, 6227, 6511 of this title.

§ 167. Depreciation

(a) General rule

There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

- (1) of property used in the trade or business,
- or
- (2) of property held for the production of income.

(b) Cross reference

For determination of depreciation deduction in case of property to which section 168 applies, see section 168.

(c) Basis for depreciation

(1) In general

The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 1011, for the purpose of determining the gain on the sale or other disposition of such property.

(2) Special rule for property subject to lease

If any property is acquired subject to a lease—

- (A) no portion of the adjusted basis shall be allocated to the leasehold interest, and
- (B) the entire adjusted basis shall be taken into account in determining the depreciation deduction (if any) with respect to the property subject to the lease.

(d) Life tenants and beneficiaries of trusts and estates

In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust, the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each. In the case of an estate, the allowable deduction shall be apportioned between the estate and the heirs, legatees, and devisees on the basis of the income of the estate allocable to each.

(e) Certain term interests not depreciable

(1) In general

No depreciation deduction shall be allowed under this section (and no depreciation or amortization deduction shall be allowed under any other provision of this subtitle) to the taxpayer for any term interest in property for any period during which the remainder interest in such property is held (directly or indirectly) by a related person.

(2) Coordination with other provisions

(A) Section 273

This subsection shall not apply to any term interest to which section 273 applies.

(B) Section 305(e)

This subsection shall not apply to the holder of the dividend rights which were separated from any stripped preferred stock to which section 305(e)(1) applies.

(3) Basis adjustments

If, but for this subsection, a depreciation or amortization deduction would be allowable to the taxpayer with respect to any term interest in property—

(A) the taxpayer's basis in such property shall be reduced by any depreciation or amortization deductions disallowed under this subsection, and

(B) the basis of the remainder interest in such property shall be increased by the amount of such disallowed deductions (properly adjusted for any depreciation deductions allowable under subsection (d) to the taxpayer).

(4) Special rules

(A) Denial of increase in basis of remainderman

No increase in the basis of the remainder interest shall be made under paragraph (3)(B) for any disallowed deductions attrib-

Appendix C

§ 1.167(a)-1

26 CFR Ch. I (4-1-14 Edition)

(g) *Effective date*—(1) *In general.* This section is generally effective for taxable years ending after October 21, 1965.

(2) *Transitional rule.* Section 2(b) of the Act of November 2, 1966 (Pub. L. 89-722, 80 Stat. 1151) allows additions to section 166(c) bad debt reserves in earlier taxable years on account of section 166(f)(1)(A) guaranteed debt obligations to be deducted for those earlier taxable years. Paragraphs (c), (d), (e), and (f) of this section do not apply in determining whether a deduction is allowed under section 2(b) of the Act. See Rev. Rul. 68-313 (1968-1C.B. 75) for rules relating to that deduction.

[T.D. 8071, 51 FR 2479, Jan. 17, 1986; 51 FR 9787, Mar. 21, 1986]

§ 1.167(a)-1 Depreciation in general.

(a) *Reasonable allowance.* Section 167(a) provides that a reasonable allowance for the exhaustion, wear and tear, and obsolescence of property used in the trade or business or of property held by the taxpayer for the production of income shall be allowed as a depreciation deduction. The allowance is that amount which should be set aside for the taxable year in accordance with a reasonably consistent plan (not necessarily at a uniform rate), so that the aggregate of the amounts set aside, plus the salvage value, will, at the end of the estimated useful life of the depreciable property, equal the cost or other basis of the property as provided in section 167(g) and § 1.167(g)-1. An asset shall not be depreciated below a reasonable salvage value under any method of computing depreciation. However, see section 167(f) and § 1.167(f)-1 for rules which permit a reduction in the amount of salvage value to be taken into account for certain personal property acquired after October 16, 1962. See also paragraph (c) of this section for definition of salvage. The allowance shall not reflect amounts representing a mere reduction in market value. See section 179 and § 1.179-1 for a further description of the term “reasonable allowance.”

(b) *Useful life.* For the purpose of section 167 the estimated useful life of an asset is not necessarily the useful life inherent in the asset but is the period over which the asset may reasonably be expected to be useful to the tax-

payer in his trade or business or in the production of his income. This period shall be determined by reference to his experience with similar property taking into account present conditions and probable future developments. Some of the factors to be considered in determining this period are (1) wear and tear and decay or decline from natural causes, (2) the normal progress of the art, economic changes, inventions, and current developments within the industry and the taxpayer's trade or business, (3) the climatic and other local conditions peculiar to the taxpayer's trade or business, and (4) the taxpayer's policy as to repairs, renewals, and replacements. Salvage value is not a factor for the purpose of determining useful life. If the taxpayer's experience is inadequate, the general experience in the industry may be used until such time as the taxpayer's own experience forms an adequate basis for making the determination. The estimated remaining useful life may be subject to modification by reason of conditions known to exist at the end of the taxable year and shall be redetermined when necessary regardless of the method of computing depreciation. However, estimated remaining useful life shall be redetermined only when the change in the useful life is significant and there is a clear and convincing basis for the redetermination. For rules covering agreements with respect to useful life, see section 167(d) and § 1.167(d)-1. If a taxpayer claims an investment credit with respect to an asset for a taxable year preceding the taxable year in which the asset is considered as placed in service under § 1.167(a)-10(b) or § 1.167(a)-11(e), the useful life of the asset under this paragraph shall be the same useful life assigned to the asset under § 1.46-3(e).

(c) *Salvage.* (1) Salvage value is the amount (determined at the time of acquisition) which is estimated will be realizable upon sale or other disposition of an asset when it is no longer useful in the taxpayer's trade or business or in the production of his income and is to be retired from service by the taxpayer. Salvage value shall not be changed at any time after the determination made at the time of acquisition merely because of changes in price

Appendix D

relinquish the property to the security representative pending proper authorization for the possession of the property or its removal from the installation. The individual relinquishing the property will be provided with a receipt for the property.

§ 1204.1004 Trespass.

Unauthorized entry upon any NASA real property or installation is prohibited.

§ 1204.1005 Unauthorized introduction of firearms or weapons, explosives, or other dangerous materials.

(a) The unauthorized carrying, transporting, or otherwise introducing or causing to be introduced, or using firearms or other dangerous weapons, explosives or other incendiary devices, or other dangerous instrument, substance, or material likely to produce substantial injury or damage to persons or property, into or upon NASA real property, facility, or installation, is prohibited.

(b) Paragraph (a) of this section shall not apply to:

(1) The lawful performance of official duties by an officer, agent, or employee of the United States, a State, or a political subdivision thereof, or NASA contractor, who is authorized to carry firearms or other material covered by paragraph (a) of this section.

(2) The lawful carrying of firearms or other dangerous weapons at or on a NASA installation after written prior approval has been obtained from the installation Security Office in connection with sanctioned hunting, range practice, or other lawful purpose.

§ 1204.1006 Violations.

Please take notice that anyone violating these regulations may be cited for violating Title 18 of the United States Code (U.S.C.) Section 799, which states that whoever willfully shall violate, attempt to violate, or conspire to violate any regulation or order promulgated by the Administrator of the National Aeronautics and Space Administration for the protection or security of any laboratory, station, base or other facility, or part thereof, or any aircraft, missile, spacecraft, or similar vehicle, or part thereof, or other property or equipment in the custody of the Administration [NASA], or any real or personal property or equipment in the custody of any contractor under any contract with the Administration or any subcontractor of any such contractor, shall be fined under this title [Title 18],

or imprisoned not more than one year, or both.

Daniel S. Goldin,

Administrator.

[FR Doc. 00-19622 Filed 8-2-00; 8:45 am]

BILLING CODE 7510-01-U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 101

[Docket No. RM99-7-000; Order No. 618]

Depreciation Accounting

Issued July 27, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending the General Instructions of 18 CFR part 101 to establish, for those public utilities and licensees that are subject to part 101, standards for determining depreciation for accounting purposes. The Commission also explains how it intends to monitor depreciation practices. This action is necessary in order to fulfill the Commission's statutory obligation to ensure that electric utilities charge proper amounts of depreciation to expense in each financial reporting period. The effect of this action will be to ensure that utilities allocate in a systematic and rational manner the cost of utility property to the periods during which the property is used in utility operations.

DATES: This rule will be effective October 2, 2000.

FOR FURTHER INFORMATION CONTACT:

Wayne McDanal (Technical Information), Office of Finance, Accounting and Operations, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 219-2622

Joseph C. Lynch (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208-2128

SUPPLEMENTARY INFORMATION:

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending the General Instructions of 18 CFR Part

101 to establish, for those public utilities and licensees that are subject to Part 101, standards for determining depreciation for accounting purposes. The Commission also explains how it intends to monitor depreciation practices.

II. Background

On July 29, 1999, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to establish the principles that public utilities and licensees subject to Part 101 must follow in determining depreciation rates for accounting purposes.¹ In the NOPR the Commission noted that it has authority under Section 301 of the Federal Power Act (FPA)² over the accounting practices of public utilities and licensees and that, under this Section, it has prescribed a Uniform System of Accounts (USofA)³ that these jurisdictional entities must follow.

The Commission further noted in the NOPR that it also has authority under Section 302 of the FPA⁴ over the depreciation accounting practices of public utilities and licensees and that this authority includes the authority to determine and fix proper and adequate depreciation rates for accounting purposes.

The Commission stated that, in order to fulfill its statutory obligation to ensure that electric utilities charge proper amounts of depreciation to expense in each financial reporting period, it had required public utilities and licensees to obtain Commission approval before changing their depreciation rates for accounting purposes.⁵ The Commission noted, however, that a decision of the U.S. Court of Appeals for the District of Columbia Circuit, *Alabama Power Company, et al. v. FERC*, 160 F.3d 7 (D.C. Cir. 1998) (*Alabama Power*), overturned the Commission's action in *MidAmerican* on procedural grounds.

The Commission began this rulemaking proceeding to respond to the court's concern that the Commission could not exercise its authority with respect to depreciation accounting matters without first establishing standards. The Commission thus proposed to require utilities⁶ to use

¹ Depreciation Accounting, 64 FR 42304 (Aug. 4, 1999); FERC Stats. & Regs., Proposed Regulations ¶ 32,544 (July 29, 1999).

² 16 U.S.C. 825.

³ See 18 CFR Part 101.

⁴ 16 U.S.C. 825a.

⁵ See *MidAmerican Energy Company*, 79 FERC ¶ 61,169 (1997), *reh'g denied*, 81 FERC ¶ 61,081 (1997) (*MidAmerican*).

⁶ As in the NOPR, henceforth when we use the word "utilities" in this final rule, we intend to

depreciation rates for accounting purposes that were based on the straight-line method of depreciation and the assets' estimated useful lives, the predominant method traditionally used by utilities. The Commission proposed, also, to monitor utility depreciation rates for accounting purposes on a case-by-case basis, *e.g.*, as a result of or in conjunction with complaints or audits. The Commission's proposal to monitor depreciation practices and rates was in lieu of a requirement that utilities make individual filings and obtain prior Commission approval to change their depreciation rates for accounting purposes.

III. Comments Received

The Commission received 20 comments in response to the NOPR.⁷ The overwhelming majority of those comments agreed with the Commission's proposal not to require individual utilities to file their accounting depreciation rates with us for our approval.⁸ However, they strongly opposed the Commission's proposal to adopt the straight-line method of depreciation to the exclusion of other methods of depreciation that also result in systematically and rationally allocating the cost of utility property to the periods during which the utility uses the property in operations.

Only two Commenters, the Florida Public Service Commission and NARUC, supported the exclusive use of the straight-line method of depreciation,⁹ and NARUC asked for clarification of the inconsistency between this proposal and the accelerated cost recovery provisions that we have agreed to consider with respect to new transmission investment.¹⁰ All of the other Commenters opposed exclusive reliance upon the straight-line method of depreciation as the only permissible method of accounting for depreciation in the utility industry.

For example, the Edison Electric Institute (EEI) argued that the proposal is "inconsistent with the Commission's adopted policies promoting greater competition in electric markets * * *

encompass both public utilities and licensees; we will refer to "utilities" for ease of reading. See 18 CFR Part 101, Definition No. 39.

⁷ A list of Commenters appears in the Appendix; we will refer to each Commenter by the short form listed there next to each name. The Mississippi Public Service Commission filed a notice of intervention, but did not comment.

⁸ FERC Stats. & Regs. ¶ 32,544 at 33,808. See, *e.g.*, EEI at 2.

⁹ Florida Public Service Commission at 3; NARUC at 5.

¹⁰ NARUC at 4.

[which require] a flexible approach to depreciation accounting * * *"¹¹ EEI notes that in an era of rapid technological change an asset's productivity may vary greatly over its service life. EEI suggests that, under such circumstances, accelerated depreciation will provide a better match of expenses to revenues than would straight-line depreciation. EEI notes that unregulated companies have the advantage of using accelerated depreciation to meet the changing needs of a free market economy; it asks that the Commission make the same advantages available to utilities as they enter the competitive era.¹²

EEI urges the Commission to allow utilities the flexibility to meet the constantly changing conditions of the marketplace by permitting utilities to change the estimated service lives of their capital equipment and to adopt methods of depreciation other than straight-line, if, in their judgment, circumstances warrant. EEI points out that generally accepted accounting principles (GAAP)¹³ allows for methods of depreciation other than straight-line that are also systematic and rational ways of accounting for the depreciable life of assets.¹⁴ According to EEI, this flexibility would permit companies to use depreciation schedules that incorporate service lives of varying lengths as well as varying rates of obsolescence. This would allow management to more carefully track costs and cost causation.

EEI submits that the proposed adoption of a straight-line depreciation method of accounting does not meet the reporting needs of a changing industry and runs counter to the Commission's efforts to promote efficient competition by reducing the regulatory and accounting burden on utilities.¹⁵ EEI also observes that the NOPR's proposal for universal straight-line depreciation is inconsistent with the Commission's recent Order No. 2000, in which the Commission indicated that it would consider the application of accelerated

¹¹ EEI at 2.

¹² EEI at 16.

¹³ GAAP encompasses the conventions, rules and procedures necessary to define accepted accounting practices. GAAP incorporates the accounting profession's consensus at a particular time as to which economic resources and obligations companies should record as assets and liabilities, which changes in assets and liabilities they should record, how they should measure assets and liabilities and changes in them, what information they should disclose, how they should disclose it, and what financial statements they should prepare.

¹⁴ EEI at 18-19.

¹⁵ EEI at 4-6.

depreciation for new transmission investment.¹⁶

Detroit Edison submits that the Commission "is being far too prescriptive for an industry in transition and subject to competitive pressures."¹⁷ According to Detroit Edison, GAAP mandates only that companies determine depreciation in a systematic and rational manner and recognizes several different methods of accounting for depreciation that would accomplish this.¹⁸ Detroit Edison also argues that straight-line depreciation necessarily defers the recognition of certain costs to future years, when, in a competitive environment, a company charging the higher prices necessary to recover these deferred costs could drive away customers. Detroit Edison submits that other methods of depreciation, such as double or 150-percent declining balance or sum-of-the-years digits depreciation, better match cost accrual with revenues and allow companies the flexibility to survive in a competitive world.¹⁹

Detroit Edison observes that the straight-line method of accounting for depreciation worked well when there was an obligation to serve and a guarantee of future income because technology changed little and customers had few options. Today, technology is changing rapidly, costs are becoming more differentiated, and choice is becoming the norm. As a result, the assumption that assets will produce a steady stream of revenue throughout their physical lives is no longer valid.

Rather, Detroit Edison submits, the assumption in today's world should be that each asset will produce a different, individual income stream, which will depend on its economic usefulness. Detroit Edison argues that "accounting should reflect that reality[]"²⁰ and help the industry prepare for competition rather than re-enforce existing

¹⁶ EEI at 21. In Order No. 2000, the Commission included as one of the innovative rate treatments offered to Regional Transmission Organization (RTO) participants non-traditional depreciation for ratemaking purposes for new transmission investments. RTOs would have to support their proposals with: (a) a detailed explanation of how the proposed rate treatment would help achieve the goals of Regional Transmission Organizations; (b) a cost-benefit analysis, including rate impacts; and (c) a detailed explanation of why the proposed rate treatment is appropriate for the RTO requesting it. See 18 CFR 35.34(e)(1), .34 (2)(iii); Regional Transmission Organizations, Order No. 2000, FERC Stats. & Regs. ¶31,089 at 31,194-95, *order on reh'g*, Order 2000-A, FERC Stats. & Regs. ¶31,092 at 31,387-88.

¹⁷ Detroit Edison at 2.

¹⁸ *Id.* at 2, 8.

¹⁹ *Id.*

²⁰ *Id.* at 10.

regulatory practices.²¹ Most of the other Commenters expressed similar views.²²

IV. Discussion

The Commission's Uniform System of Accounts for electric utilities defines depreciation as the loss of an asset's service value not restored by current maintenance.²³ Some of the causes for the loss in service value include wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in the art, changes in demand, and requirements of public authorities. The primary objective of recording depreciation expense is to allocate an asset's service value over its remaining useful life. To accomplish this objective the Commission has traditionally used a straight-line depreciation method to allocate an asset's service value over its remaining life.

We thus initially proposed to adopt for accounting purposes the straight-line method of depreciation as our standard. As we noted in the NOPR, straight-line depreciation was the method typically used by utilities.²⁴ While, in general, we

expect that that is likely to continue to be the case for most utility property, commenters have persuaded us that requiring its universal use would be overly prescriptive. The primary objective of depreciation accounting is to allocate in a systematic and rational manner the cost of property to the periods during which the property is used in utility operations, *i.e.*, over its estimated useful service life. As Commenters correctly observe, there are methods of depreciation other than the straight-line method that also meet this objective.

Therefore, we will modify our proposed rule and simply require utilities to use for accounting purposes methods of depreciation that allocate the cost of utility property over its useful service life in a systematic and rational manner. Such methods include not only a straight-line method of depreciation, but other methods of depreciation. The broader systematic and rational standard will ensure that depreciation for accounting purposes is done properly while at the same time allowing flexibility in a changing business environment.

We are not unmindful of this additional flexibility could create a potential for abuse. However, we believe that our monitoring of utility depreciation practices will mitigate that potential. Consequently, as noted in the NOPR, we will not require utilities to make a separate filing to obtain Commission approval before implementing changes in depreciation rates for accounting purposes.²⁵ Instead,

(1973) ("Straight line is the predominant method used by utilities and sanctioned by most regulatory bodies."); Deloitte Haskins & Sells, Public Utilities Manual 23 (1980) ("[T]he straight-line concept is applied almost universally for both accounting and rulemaking. * * *"); C. Phillips, *The Regulation of Public Utilities: Theory and Practice* 272 (3d ed. 1993) (The straight line method * * * is the simplest and most commonly used."); L. Hyman, *America's Electric Utilities: Past, Present and Future* 292 (5th ed. 1994) ("The book depreciation rate is a straight line rate for most utility companies."); *accord* Depreciation Subcommittee of the NARUC Committee on Engineering, Depreciation, and Valuation of the National Association of Regulatory Utility Commissioners, *Public Utility Depreciation Practices* 12 (1968) ("In the two decades, since the Report of the Committee on Depreciation of the NARUC was published in 1943, the use of the straight-line method for accounting and rate-making purposes has become almost universal for public utilities.").

In addition, the FERC Annual Report Form No. 1's appeared to indicate the same.

²⁵ Our action today authorizes utilities to change their method of depreciation for accounting purposes *only*; it does not authorize any utility to change prices charged for power sales or transmission services (whether determined by stated rates or formula rates) to reflect a change in depreciation.

To change prices charged for power sales or transmission services (whether determined by

we will monitor utility depreciation practices on a case-by-case basis.²⁶

V. Environmental Statement

The Commission excludes certain actions not having a significant effect on the human environment from the requirement to prepare an environmental assessment or an environmental impact statement.²⁷ The promulgation of a rule that is procedural or that does not substantially change the effect of legislation or regulations being amended raises no environmental considerations.²⁸ This final rule amends Part 101 of the Commission's regulations and does not substantially change the effect of the underlying legislation or the regulations being revised.

Further, approval of actions under Section 301 of the FPA, relating to accounting orders, also raises no environmental considerations.²⁹ The instant rule fundamentally involves accounting matters, establishing standardized depreciation accounting practices. Accordingly, no environmental consideration is necessary.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires rulemakings to contain either a description and analysis of the effect that the final rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities.

In *Mid-Tex Elec. Coop. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985), the court found that Congress, in passing the RFA, intended agencies to limit their consideration "to small entities that would be directly regulated" by proposed rules. *Id.* at 342. The court further concluded that "the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities." *Id.* at 342.

Most public utilities to which this final rule would apply do not fall within

stated rates or formula rates) to reflect a change in depreciation, a utility would first have to make a filing with us, pursuant to sections 205 or 206, 16 U.S.C. 824d, 824e, as appropriate, to that effect.

²⁶ As we noted in *Midwest Power Systems Inc.*, 67 FERC ¶ 61,076 at 61,209 (1994), utilities "most common[ly]" change their depreciation rates in the context of a rate case. *Accord, id.* at 61,208, n.7.

We expect that utilities will continue to change their depreciation accounting predominantly in the context of rate cases, and that, in fact, changes in depreciation accounting will rarely occur outside of a rate case.

²⁷ 18 CFR 380.4.

²⁸ 18 CFR 380.4(a)(2)(ii).

²⁹ 18 CFR 380.4(a)(16).

²¹ *Id.* at 11.

²² See, e.g., American Institute of Certified Public Accountants at 1, 4; Commonwealth Edison at 1, 3–4, 7 (competition mandates various types of accounting for depreciation, including accelerated depreciation); Consumers Energy at 4–5 (Commission should allow all methods of accounting for depreciation, including accelerated depreciation, that result in a rational and systematic allocation of the cost of a utility's plant); PSE&G at 1 (under certain conditions methods of accounting for depreciation, other than straight-line, provide for a better matching of expenses with revenues); NRECA at 2 (changes in technology often require accelerated depreciation because of rapid obsolescence of assets); Cinergy at 1 (endorses comments of EEI); Allegheny Energy at 1 (the changing needs of the market place are affecting the useful lives of capital equipment and the rate at which equipment is becoming obsolete); Virginia Power at 6 (same); Old Dominion at 2 (GAAP recognizes other methods of accounting for depreciation that result in systematically and rationally recording depreciation expense over an asset's useful life.); AEP at 4 (proposed rule would impose more regulation and record keeping on the utility industry at the very time that it needs far less regulation in order to meet the demands of competition.); Arthur Anderson at 3 (depreciation accounting should be flexible to recognize the economic effects of regulation during the transition to a competitive business environment); Price Waterhouse at 1 (if the expected productivity or revenue-earning power or maintenance requirements vary greatly over the life of an asset, a depreciation method of accounting other than straight-line may more appropriately allocate costs to revenues); First Energy at 2 (the Commission should accept all methods of depreciation, including accelerated depreciation, that are consistent with GAAP); Deloitte & Touche at 2 (same); Southern at 13 (proposal runs counter to Commission's willingness to consider accelerated depreciation for new investment in transmission facilities).

²³ 18 CFR Part 101, Definition No. 12.

²⁴ See 64 FR 42304 (1999); FERC Stats. & Regs. ¶ 32,544 at 33,806. See also, e.g., J. Suelflow, *Public Utility Accounting: Theory and Application* 96

the definition of small entity.³⁰ Consequently, the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

VII. Public Reporting Burden and Information Collection Statement

The Commission is amending 18 CFR part 101 to establish the principles for determining depreciation rates for accounting purposes. While we are adding an instruction to an information requirement, the instruction is not adding to the information reporting burden because the Commission is not requiring public utilities to do anything more or less than they are already doing to account for depreciation.

Accordingly, this final rule does not impose any additional public reporting burden. We are forwarding a copy of this to the Office of Management and Budget for their information.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Capital Planning and Policy Group, Phone: (202) 208-1415, Fax: (202) 208-2425, E-mail: mike.miller@ferc.fed.us].

To submit comments concerning collections of information and associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, Phone: (202) 395-3087, Fax: (202) 395-7285].

VIII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.fed.us>) and in the Commission's Public Reference Room during regular business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First

Street, NE., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208-2222, or by E-Mail (to WebMaster@ferc.fed.us) or the Public Reference Room at (202) 208-1371 (E-Mail to public.referenceroom@ferc.fed.us).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

IX. Effective Date

This final rule will take effect October 2, 2000. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a "major rule" within the meaning of Section 251 of the Small Business Regulatory Fairness Act of 1996.³¹ The Commission will

submit the Final Rule to both houses of Congress and to the General Accounting Office.³²

List of Subjects in 18 CFR Part 101

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

By the Commission.

David P. Boergers,
Secretary.

In consideration of the foregoing, the Commission amends Part 101, Title 18 of the Code of Federal Regulations, as follows.

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

1. The authority citation for Part 101 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7102-7352, 7651-7651o.

2. In Part 101, General Instructions, paragraph 22 is added to read as follows:

General Instructions

* * * * *

22. Depreciation Accounting.

A. *Method.* Utilities must use a method of depreciation that allocates in a systematic and rational manner the service value of depreciable property over the service life of the property.

B. *Service lives.* Estimated useful service lives of depreciable property must be supported by engineering, economic, or other depreciation studies.

C. *Rate.* Utilities must use percentage rates of depreciation that are based on a method of depreciation that allocates in a systematic and rational manner the service value of depreciable property to the service life of the property. Where composite depreciation rates are used, they should be based on the weighted average estimated useful service lives of the depreciable property comprising the composite group.

Note: This appendix will not be published in the Code of Federal Regulations.

Appendix—Commenters

Name	As styled in order
Allegheny Energy, Inc American Electric Power Service Corporation (filing on behalf of itself and on behalf of its operating public utility affiliates: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company).	Allegheny Energy. AEP.

³⁰ See 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632, which defines "small business concern" as a business that is

independently owned and operated and that is not dominant in its field of operation.

³¹ 5 U.S.C. 804(2).

³² 5 U.S.C. 801(a)(1)(A).

Name	As styled in order
American Institute of Certified Public Accountants	American Institute of Certified Public Accountants.
Arthur Andersen, LLP	Arthur Andersen.
Cinergy Services, Inc.	Cinergy.
Cleco Corporation	Cleco.
Commonwealth Edison Company	Commonwealth Edison.
Consumers Energy Company	Consumers Energy.
Deloitte & Touche LLP	Deloitte & Touche.
Detroit Edison Company	Detroit Edison.
Edison Electric Institute	EEI.
FirstEnergy Corp	FirstEnergy.
Florida Public Service Commission	Florida Commission.
Mississippi Public Service Commission	Mississippi Commission.
National Association of Regulatory Utility Commissioners	NARUC.
National Rural Electric Cooperative Association	NRECA.
Old Dominion Electric Cooperative	Old Dominion.
PricewaterhouseCoopers, LLP	Price Waterhouse.
Public Service Electric & Gas Company of New Jersey	PSE&G.
Southern Company Services, Inc. (acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company Mississippi Power Company and Savannah Electric and Power Company (collectively, Southern Company)).	Southern.
Virginia Electric and Power Company	Virginia Power.

[FR Doc. 00-19507 Filed 8-2-00; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 514

[Docket No. 99N-2151]

New Animal Drug Applications; Sheep as a Minor Species

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to reclassify sheep as a minor species for all data collection purposes. This reclassification will allow sponsors of new animal drug applications (NADA's) to extrapolate human food safety data from a major species such as cattle to sheep. In particular, this will enable the extrapolation of the tolerances for residues of new animal drugs in cattle to sheep.

DATES: This rule is effective September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Meg Oeller, Center For Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-7581, e-mail: moeller@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 26, 1999 (64 FR 40321), FDA published a proposed rule to revise the definition of minor species in § 514.1(d)(1)(ii) (21 CFR 514.1(d)(1)(ii)) by deleting the following language: "Sheep are a minor species with respect to effectiveness and animal safety data collection requirements; sheep are a major species with respect to human safety data collection requirements arising from the possible presence of drug residues in food." This change makes sheep a minor species for all data collection purposes in support of NADA's.

As stated in the preamble to the proposed rule (64 FR 40321), new data that have become available since publication of the minor species final rule (48 FR 1922, January 14, 1983) allow the agency to conclude that sheep should be a minor species with respect to all data requirements. The new data concern the similarity of drug metabolism between sheep and cattle rather than consumption levels. While consumption levels can be a factor in determining whether a species should be classified as major or minor, the agency believes that the body of evidence concerning drug metabolism is more significant in determining the major/minor status of sheep than consumption data because it demonstrates the reliability of data extrapolated from cattle, a major species, to sheep.

II. Comments

FDA received seven comments on the proposed rule, six comments from organizations, and one from an individual. All the comments supported

the proposed rule. The following is a summary of the comments:

(Comment 1) Six comments expressed the opinion that this change would lower research and development costs for sponsors seeking approval of new animal drugs for sheep.

(Comment 2) Six comments noted that the sheep industry suffers from a lack of animal drug availability to the detriment of the industry and animal health.

(Comment 3) Four of the comments praised the agency for its science-based approach to this issue.

Thus, FDA is adopting the rule as proposed.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601-612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104-121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory

Appendix E

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION**
Harrisburg, PA. 17105-3265

Public Meeting held June 18, 2009

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
Kim Pizzingrilli
Wayne E. Gardner
Robert F. Powelson, Statement

Smart Meter Procurement and Installation

Docket No. M-2009-2092655

IMPLEMENTATION ORDER

BY THE COMMISSION:

The Pennsylvania General Assembly (“General Assembly”) has directed that electric distribution companies with more than 100,000 customers file smart meter technology procurement and installation plans with the Commission for approval. 66 Pa.C.S. § 2807(f). This Implementation Order will establish the standards each plan must meet and provide guidance on the procedures to be followed for submittal, review and approval of all aspects of each smart meter plan. This Implementation Order will also establish minimum smart meter capability and guidance on the Commission’s expectations for deployment of smart meters.

BACKGROUND AND HISTORY OF THIS PROCEEDING

Governor Edward Rendell signed Act 129 of 2008 (“the Act” or “Act 129”) into law on October 15, 2008. The Act took effect 30 days thereafter on November 14, 2008. Among other things, the Act specifically directed that within nine months of its effective date, electric distribution companies (“EDCs”) are to file, with the Commission for approval, a smart meter technology procurement and installation plan. 66 Pa.C.S. § 2807(f)(1). Each EDC smart meter plan must describe the smart meter technologies the EDC proposes to install, upon request from a customer at the customer’s expense, in new construction and in accordance with a depreciation schedule not to exceed 15 years. 66 Pa.C.S. §§ 2807(f)(1) and (2). The Act also establishes a requirement for EDCs to make available to third parties direct meter access and electronic access to meter data by third parties, upon customer consent. 66 Pa.C.S. § 2807(f)(3). The Act further defines minimum smart meter technology capabilities. 66 Pa.C.S. § 2807(g). Finally, the Act establishes acceptable cost recovery methods. 66 Pa.C.S. § 2807(7).

On March 30, 2009, the Commission issued a Secretarial Letter seeking comments on a draft staff proposal and additional questions regarding EDC smart meter procurement and installation. Comments were due by April 15, 2009, with reply comments due April 27, 2009. On April 9, 2009, the Commission, at the request of several interested parties, issued a Secretarial Letter extending the comment period to April 20, 2009 and the reply comment period to April 29, 2009.

The following parties filed comments: West Penn Power Company d/b/a Allegheny Power (“Allegheny”); Citizen Power (“Citizen”); Constellation NewEnergy, Inc. (“Constellation”); Duquesne Light Company (“Duquesne”); Elster Integrated Solutions (“Elster”); The Energy Association of Pennsylvania (“EA”), Exelon Energy (“Exelon”); Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company (collectively “FirstEnergy”); the Industrial Energy

Consumers of Pennsylvania (“IECPA”); Office of Consumer Advocate (“OCA”); PECO Energy Company (“PECO”); PPL Electric Utilities Corporation (“PPL”); Sensus Metering Systems (“Sensus”); Tendril Networks, Inc. (“Trendril”); and Trilliant, Inc. (“Trilliant”). The following parties filed reply comments: Duquesne; EA; FirstEnergy; IECPA; PECO; and PPL.¹

DISCUSSION

In this section the Commission will outline the standards each plan must meet and provide guidance on the procedures to be followed for submittal, review and approval of all aspects of each smart meter plan. This section will also establish guidance on the Commission’s expectations for the deployment of smart meters, as well as minimum smart meter capabilities. This section will also describe requirements regarding access to smart meters and data. Finally, in this section the Commission will provide guidance on EDC smart meter technology cost recovery.

A. Plan Approval Process

Within nine months after the effective date of Act 129, each EDC with more than 100,000 customers is to file a smart meter technology procurement and installation plan with the Commission for approval. 66 Pa.C.S. §§ 2807(f)(1) and (6). As Act 129 became effective on November 14, 2008, the smart meter plans must be submitted on or before August 14, 2009. Each smart meter plan shall include: a summary of the EDC’s current deployment of smart meter technology, if any; a plan for future deployment, complete with dates for key milestones and measurable goals; and such other information as is required by this Order. The plans shall be served on the Office of Consumer

¹ Wal-Mart Stores East, LP and Sam’s East Inc. filed a Petition for Extension of Time to file reply comments, which this Commission denied in a letter dated May 6, 2009. While we rejected Wal-Mart’s and Sam’s petition, we did receive and consider their reply comments submitted on May 1, 2009.

meters that are being replaced with smart meters in accordance with an approved plan. The Commission believes it would add unreasonable and unnecessary costs to require the EDCs to test every meter removed for the purposes of upgrading to a smart meter.

3. New Construction

As with all equipment, meters have a useful life. EDCs determine how much to invest in meter equipment based on its useful life and have an opportunity to depreciate that investment over the useful life of the meter. In addition, EDCs have an opportunity to recover the cost of the meter from ratepayers. Therefore, if a meter is replaced prior to the end of its useful life, the EDC will not be able to take advantage of the full depreciation of that meter or the ratepayers will pay an increased rate to cover the cost of both meters. The Commission believes that the intent of the Act's provision for installing smart meters in new construction was to avoid this waste and added expense.

Again, the Commission will not require deployment of smart meters in new construction during an EDC's approved network grace period. However, the Commission will direct all covered EDCs to develop a plan to install smart meters in new construction that is begun after the network grace period. Therefore, the Commission directs each covered EDC to include in its smart meter plan a proposal for deployment of smart meters in new construction. Such a proposal should include a plan to identify new developments and construction early enough to incorporate it into the system-wide deployment proposal.

Several parties commented on the proposed rollout of smart meters in new construction. OCA posits that smart meters should be installed on new construction from the beginning, even during the network installation grace period. OCA asserts that while the smart meters will not be fully functional, the smart meters should still be able to provide the necessary billing data. FirstEnergy, PECO and PPL disagree, noting that

4. System-Wide Deployment

The Commission believes that it was the intent of the General Assembly to require all covered EDCs to deploy smart meters system-wide when it included a requirement for smart meter deployment “in accordance with a depreciation schedule not to exceed 15 years.” It is this system-wide deployment that will provide the foundation for the EDCs’ smart meter installation plans. Therefore, it is crucial for the EDCs to develop a plan that will best meet the needs of their service territory, while at the same time operating in a manner that is both cost and time effective.

The EDCs shall detail their system-wide deployment plans to the Commission, including any type of tiered rollout the company proposes, as well as the associated costs and benefits incurred from such a rollout. This system-wide plan should also incorporate a coordination element with the new construction deployment component. Furthermore, the Commission will require all EDCs to file a “Smart Meter Progress” report on an annual basis that will update the status of their installation plans, including the number of customers who received meters in the prior year, the estimated number of customers scheduled to receive meters in the coming year, and all costs associated with the meter plan incurred during the previous year.

It should also be noted that Act 129 uses the language “not to exceed 15 years.” An EDC is encouraged to expedite the deployment process if it will provide increased customer benefits in a cost-effective manner. Again, the primary goal of the EDC deployment plan should be to implement a deployment and installation schedule that best balances the overall efficiency and timeliness of the smart meter installations with the costs incurred.

OCA commented that the Commission needs to clarify whether the 15 year depreciation schedule outlined in Act 129 commences upon plan approval or following

Act 129 allows an EDC to recover reasonable and prudent costs of providing smart meter technology, to include annual depreciation and capital costs over the life of the smart meter technology and the cost of any system upgrades required to enable the use of the smart meter technology, incurred after November 14, 2008, less operating and capital cost savings realized by the electric distribution company from the installation and use of the technology. Smart meter technology is deemed to be a new service offered for the first time under Section 2804(4)(vi).

1. Cost Recovery Mechanism

An EDC may recover smart meter technology costs through (1) base rates, including a deferral for future base rate recovery of current basis with carrying charge as determined by the Commission; or (2) on a full and current basis through a reconcilable automatic adjustment clause under Section 1307. 66 Pa.C.S. § 2807(f)(7). However, in no event shall lost or decreased revenues by an EDC due to reduced electricity consumption or shifting energy demand be considered a cost of the smart meter technology recoverable under a reconcilable automatic adjustment clause under Section 1307(b), except that decreased revenues and reduced energy consumption may be reflected in the revenue and sales data used to calculate rates in a subsequent distribution rate base rate proceeding filed under Section 1308 (relating to voluntary change in rates), or a recoverable cost. 66 Pa.C.S. § 2807(f)(4).

Act 129 allows an EDC to recover “all reasonable and prudent costs of providing smart meter technology.” In order to determine what these costs are, each EDC will document all costs relating to its smart meter deployment and installation plan. These costs will include both capital and expense items relating to all plan elements, equipment and facilities, as well as an analysis of all related administrative costs. More specifically, these costs would include, but not be limited to, capital expenditures for any equipment and facilities that may be required to implement the smart meter plan, as well as

depreciation, operating and maintenance expenses, a return component based on the EDC's weighted cost of capital, and taxes. Administrative costs would include, but not be limited to, incremental costs relating to plan development, cost analysis, measurement and verification, and reporting. In addition, the plan should include cost estimates for testing, upgrades, maintenance and personnel training. The EDC must also provide sufficient support to demonstrate that all such costs are reasonable and prudent with respect to its smart meter plan. Consistent with Section 315(a), the burden of proof shall be on the EDC. 66 Pa.C.S. § 315(a).

The Commission recognizes that some of the requirements for smart meters outlined in Section C of this Order go beyond the minimum requirements set forth in Act 129. In order to ensure that these additional smart meter functions are cost-effective, we direct that each smart meter plan filing include cost data that quantifies the costs to meet the minimum requirements set forth in Act 129, the costs to meet all of the requirements set forth in Section C above, and the individual incremental costs of each added function, less any operating and capital cost savings. Specifically, we direct that the plan filing shall quantify the costs to deploy and operate smart meter technology that is capable of the following minimum requirements set forth in 66 Pa.C.S. § 2807(g):

- Bidirectional data communications.
- Recording usage data on at least an hourly basis once per day.
- Providing customers with direct access to and use of price and consumption information.
- Providing customers with information on their hourly consumption.
- Enabling time-of-use rates and real-time price programs.
- Supporting the automatic control of the customer's electric consumption.

In addition, each plan filing shall include the individual incremental costs for deploying and operating the following smart meter technology capabilities:

Appendix F

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION**
Harrisburg, PA. 17105-3265

Public Meeting held December 19, 2019

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
David W. Sweet, Vice Chairman
Andrew G. Place
John F. Coleman, Jr.
Ralph V. Yanora

2021 Total Resource Cost (TRC) Test

M-2019-3006868

FINAL ORDER

BY THE COMMISSION:

Act 129 of 2008, 66 Pa. C.S. § 2806.1, directs the Pennsylvania Public Utility Commission (Commission) to analyze the benefits and costs of the energy efficiency and conservation (EE&C) plans that certain electric distribution companies (EDCs) are required to file. Our September 19, 2019 *2021 TRC Test Tentative Order* at this docket proposed methodology and requested comments on a 2021 TRC Test for use in planning for and during a potential Phase IV of Act 129. This Order finalizes the specific refinements to the 2021 TRC Test for use in Phase IV of Act 129, that, if approved, would begin June 1, 2021.¹

¹ The currently assigned docket for matters relating to the Commission's consideration of a potential Phase IV is *Release of the Act 129 [Phase III SWE] Energy Efficiency Baseline Studies*, Docket No. M-2019-3006866. The 2021 Technical Reference Manual (TRM) is at Docket No. M-2019-3006867.

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b. Disposition

Stakeholders were generally supportive of our proposal to disassociate the Act 129 discount rate from an EDC's WACC. Our proposal of a 3% real discount rate (5% nominal discount rate) is lower than EDC WACC values used in prior phases of Act 129. PA-EEFA and KEEA supported the direction and rationale for the change. Although neither the Industrials nor OSBA recommend a specific Act 129 discount rate, they aver that a rate higher than an EDC's WACC would be appropriate.

Contrary to OSBA's suggestion, Act 129 programs are, in fact, a government policy designed to encourage investments in energy efficiency that would not happen absent policy intervention. Accordingly, the 3% real discount rate will be used for Phase IV of Act 129.

5. Effective Useful Life

As established in Act 129 and as discussed in prior TRC Test Orders, any given measure is limited to a maximum of 15 years of savings benefits. 66 Pa. C.S. § 2806.1(m). Measures with recurring costs, such as increased natural gas consumption for CHP projects, are also limited to 15 years of negative benefits. Typically, the costs of energy efficiency are front-loaded, and the benefits accrue over many years. The National Standard Practice Manual (NSPM) addresses the issue imposed by capped measure life assumptions as "end effects"³¹ and suggests a methodology whereby costs are reduced proportionately to truncated lifetime benefits. The position of the Commission is that end effects adjustments such as the ones proposed in the NSPM are not acceptable for use in Phase IV. While certain technologies may have an expected useful life greater than 15 years, Act 129 is clear about the 15-year limit, and any adjustment to the cost ledger would circumvent the legislative directive. Therefore, we saw no reason to propose any changes for this provision.

³¹ See https://nationalefficiencyscreening.org/wp-content/uploads/2017/05/NSPM_May-2017_final.pdf page 91.

Appendix G

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**METROPOLITAN EDISON COMPANY
DOCKET NO. M-2013-2341990**

**PENNSYLVANIA ELECTRIC COMPANY
DOCKET NO. M-2013-2341994**

**PENNSYLVANIA POWER COMPANY
DOCKET NO. M-2013-2341993**

**WEST PENN POWER COMPANY
DOCKET NO. M-2013-2341991**

SMART METER DEPLOYMENT PLAN

**ORIGINAL DECEMBER 31, 2012
REVISED MARCH 19, 2014
REVISED JUNE 16, 2014**

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Book and Tax Depreciation

Each of the cost categories were assessed to determine if they were capital or O&M related costs. For Capex, the estimated book lives used for depreciation purposes were 15 year for smart meters and communications equipment, 5 years for hardware and 7 years for software. Book lives were determined based on input from external resources and internal subject matter experts while tax lives were based on IRS guidelines.

Escalation Rate

The Financial Model assumes an escalation rate of 2.56% for labor.¹³ A zero percent escalation rate was assumed for equipment and material costs in recognition that material costs may increase over time while technology costs may decrease over time.

Weighted Average Cost of Capital (“WACC”)

The Financial Model assumes the following Weighted Average Cost of Capital rates:

Figure 4.2. Weighted Average Cost of Capital by Company

8.17% 8.68% 9.14% 11.29%

The weighted average cost of capital for Met-Ed, Penelec and Penn Power is calculated in accordance with the Commission order entered June 9, 2010 at Docket No. M-2009-2123950 approving the Joint Petition for Approval of Smart Meter Technology Procurement and Installation Plan. The weighted average cost of capital for West Penn is calculated in accordance with Commission order entered June 30, 2011 at Docket No. M-2009-2123951 approving the Amended Joint Petition for Settlement of All Issues.

The Companies also assessed the project from the residential customer’s perspective utilizing a discount rate of .37%, which represents a current typical interest rate for a one-year Certificate of Deposit (CD)¹⁴. This analysis is discussed in Chapter 4.

¹³ Provided by the Companies Business Analytics department based on the average 12 month (Mar 2011 - Mar 2012) escalation index for the Utility industry being 2.56% from U.S. Bureau of Labor Statistics (<http://data.bls.gov/cgi-bin/print.pl/news.release/eci.t09.htm>)

¹⁴ Based upon the average of the initial Local Results Range for one year certificates of deposit for the Reading, Pennsylvania area as of March 10, 2014.

Legacy Meters

For meters that are removed or become obsolete due to the installation of smart meters (“Legacy Meters”), the Companies propose to retire the meters out of stock, continue their existing depreciation schedule unaltered over their remaining lives as a regulatory asset, and continue cost recovery through base rates. The rate base equivalent of the regulatory asset for Legacy Meters plus the Cost of removal net of Salvage will continue to be included in the respective Company’s rate base. This protocol would have no current impact on customer rates. For accounting purposes, the Companies are asking the Commission to approve an accounting treatment that would allow them to create a “regulatory asset” for the Legacy Meters with a recovery schedule equal to the remaining depreciable lives of the assets per the Companies’ depreciation records.

Appendix H

Pennsylvania General Assembly

https://www.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?year=2007&ind=0&body=H&type=B&bn=2200

08/30/2021 02:52 PM

[Home](#) / [Bill and Amendments](#) / [Bill Information](#)

Bill Information - History

House Bill 2200; Regular Session 2007-2008

Sponsors: [GEORGE, McCALL](#), [BELFANTI, CALTAGIRONE](#), [CONKLIN, DALEY](#), [N. P. GOODMAN](#), [HARHAI](#), [HARKINS, KULA](#), [MANDERINO](#), [McGEEHAN](#), [VITALI](#), [J. WHITE](#), [WALKO](#), [SURRA](#), [DeLUCA](#), [DERMODY](#), [GRUCELA](#), [JOSEPHS](#), [JAMES](#), [GINGRICH](#), [FREEMAN](#), [K. SMITH](#), [McILVAINE SMITH](#), [YOUNGBLOOD](#) and [FRANKEL](#)

Printer's No.(PN): [4526*](#) , [4429](#), [3233](#), [3218](#), [3176](#), [3089](#)

Short Title: An Act amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, further providing for director of operations, secretary, employees and consultants; repealing provisions relating to office of trial staff; further providing for bureaus and offices; providing for other bureaus, offices and positions; further providing for electric utility definitions; providing for energy efficiency and conservation program and for energy efficiency and conservation; further providing for duties of electric distribution companies and for market power remediation; and providing for procurement, for additional alternative energy sources and for carbon dioxide sequestration network.

Actions:

[PN 3089](#) Referred to CONSUMER AFFAIRS, Jan. 15, 2008

[PN 3176](#) Reported as amended, [Feb. 5, 2008](#)
First consideration, Feb. 5, 2008
Laid on the table, Feb. 5, 2008
Removed from table, Feb. 5, 2008
Re-committed to APPROPRIATIONS, Feb. 5, 2008
Re-reported as committed, [Feb. 11, 2008](#)

[PN 3218](#) Second consideration, with amendments, [Feb. 11, 2008](#)
(Remarks see House Journal Page [386-403](#)), Feb. 11, 2008

[PN 3233](#) Third consideration, with amendments, [Feb. 12, 2008](#)
Final passage, Feb. 12, 2008 ([152-45](#))
(Remarks see House Journal Page [430-432](#)), Feb. 12, 2008

In the Senate

Referred to CONSUMER PROTECTION AND PROFESSIONAL LICENSURE, Feb. 20, 2008

[PN 4429](#) Reported as amended, [Sept. 23, 2008](#)
First consideration, Sept. 23, 2008
Second consideration, Sept. 24, 2008
Re-committed to CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
Sept. 24, 2008

[PN 4526](#) Re-reported as amended, [Oct. 7, 2008](#)
Re-referred to APPROPRIATIONS, Oct. 7, 2008
Re-reported as committed, [Oct. 7, 2008](#)
Third consideration and final passage, Oct. 8, 2008 ([47-3](#))
(Remarks see Senate Journal Page [2626-2631](#)), Oct. 8, 2008

In the House

Referred to RULES, Oct. 8, 2008

Reported as committed, [Oct. 8, 2008](#)

House concurred in Senate amendments, Oct. 8, 2008 ([186-4](#))

(Remarks see House Journal Page [2323-2328](#)), Oct. 8, 2008

Signed in House, Oct. 8, 2008

Signed in Senate, Oct. 8, 2008

Presented to the Governor, Oct. 9, 2008

Approved by the Governor, Oct. 15, 2008

Act No. [129](#)

* denotes current Printer's Number

[How to Read a Bill](#)

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Appendix I

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2200 Session of 2008

INTRODUCED BY GEORGE, McCALL, BELFANTI, CALTAGIRONE, CONKLIN, DALEY, GOODMAN, HARHAI, HARKINS, KULA, MANDERINO, McGEEHAN, VITALI, J. WHITE, WALKO, SURRA, DeLUCA, DERMODY, GRUCELA, JOSEPHS, JAMES, GINGRICH, FREEMAN, K. SMITH, McILVAINE SMITH, YOUNGBLOOD AND FRANKEL, JANUARY 15, 2008

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, FEBRUARY 11, 2008

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, PROVIDING FOR RECOVERY OF CERTAIN <--
3 LABOR RELATIONS EXPENSES; further providing for definitions;
4 and providing for adoption of energy efficiency and demand- <--
5 side response; AND FURTHER PROVIDING FOR DUTIES OF ELECTRIC <--
6 DISTRIBUTION COMPANIES.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Section 2803 of Title 66 of the Pennsylvania <--
10 Consolidated Statutes is amended by adding definitions to read: <--
11 SECTION 1. TITLE 66 OF THE PENNSYLVANIA CONSOLIDATED <--
12 STATUTES IS AMENDED BY ADDING A SECTION TO READ:

13 § 1329. RECOVERY OF CERTAIN LABOR RELATIONS EXPENSES.

14 NO PUBLIC UTILITY MAY CHARGE ITS CUSTOMERS AS A PERMISSIBLE
15 OPERATING EXPENSE FOR RATEMAKING PURPOSES ANY PORTION OF THE
16 DIRECT OR INDIRECT COST OF MEETINGS, PUBLICATIONS, CONSULTANTS,
17 ATTORNEYS OR OTHER PROFESSIONAL SERVICES AND EXPENSES ASSOCIATED
18 WITH THE UTILITY'S EFFORTS TO DISSUADE THE EMPLOYEES OF THE
19 UTILITY, OR THE EMPLOYEES OF ANY AFFILIATED INTEREST OF THE
20 UTILITY AS DEFINED IN SECTION 2101 (RELATING TO DEFINITION OF
21 AFFILIATED INTEREST), FROM BECOMING OR REMAINING A MEMBER IN, OR
22 OTHERWISE BEING REPRESENTED BY, ANY LABOR UNION.

23 SECTION 2. SECTION 2803 OF TITLE 66 IS AMENDED BY ADDING
DEFINITIONS TO READ:

§ 2803. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Affiliated interest." As defined in section 2101 (relating to definition of affiliated interest).

* * *

"Cost effective." In relation to a program being evaluated, satisfaction of the total resource cost test.

* * *

"Demand-side response." Load management technologies, management practices or other strategies employed by retail customers that decrease peak electricity demand or shift demand from on-peak to off-peak periods provided that:

(1) The measure is installed on or after the effective date of this section at the service location of a retail customer.

24 (2) The measure reduces the peak demand or cost of
25 energy by the retail customer.

26 (3) The costs of the acquisition or installation of the
27 measure are directly incurred in whole or in part by the
28 electric distribution company.

29 * * *

30 "Energy efficiency." Technologies, management practices or
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1 other strategies or measures employed by retail customers that
2 reduce electricity consumption provided that:

3 (1) The measure is installed on or after the effective
4 date of this definition at the service location of a retail
5 customer.

6 (2) The measure reduces the consumption of energy by the
7 retail customer.

8 (3) The costs of the acquisition or installation of the
9 measure are directly incurred in whole or in part by the
10 electric distribution company.

11 "Independent entity." An entity with no direct or indirect
12 ownership, partnership or other affiliated interest with an
13 electric distribution company.

14 "Peak demand." The highest electrical requirement occurring
15 during a specified period. For an electric distribution company,
16 the term means the sum of the metered consumption for all retail
17 customers over that period.

18 * * *

19 "REAL-TIME PRICE." A RATE THAT DIRECTLY REFLECTS THE
20 DIFFERENT COST OF ENERGY DURING EACH HOUR.

21 * * *

22 "SMART METER TECHNOLOGY." TECHNOLOGY, INCLUDING, BUT NOT
23 LIMITED TO, METERING TECHNOLOGY AND NETWORK COMMUNICATIONS
24 TECHNOLOGY CAPABLE OF BIDIRECTIONAL COMMUNICATION AND THAT
25 RECORDS ELECTRICITY USAGE ON AT LEAST AN HOURLY BASIS, INCLUDING
26 RELATED ELECTRIC DISTRIBUTION SYSTEM UPGRADES TO ENABLE THE
27 TECHNOLOGY. THE TECHNOLOGY SHALL PROVIDE CUSTOMERS WITH DIRECT
28 ACCESS TO AND USE OF PRICE AND CONSUMPTION INFORMATION. THE
29 TECHNOLOGY SHALL ALSO:

30 (1) DIRECTLY PROVIDE CUSTOMERS WITH INFORMATION ON THEIR
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1 HOURLY CONSUMPTION.

2 (2) ENABLE TIME-OF-USE RATES AND REAL-TIME PRICE
3 PROGRAMS.

4 (3) EFFECTIVELY SUPPORT THE AUTOMATIC CONTROL OF THE
5 CUSTOMER'S ELECTRICITY CONSUMPTION BY ONE OR MORE OF THE
6 FOLLOWING AS SELECTED BY THE CUSTOMER:

7 (I) THE CUSTOMER;

8 (II) THE CUSTOMER'S UTILITY; OR

9 (III) A THIRD PARTY ENGAGED BY THE CUSTOMER OR THE
10 CUSTOMER'S UTILITY.

11 "TIME-OF-USE RATE." A RATE THAT REFLECTS THE COSTS OF
12 SERVING CUSTOMERS DURING DIFFERENT TIME PERIODS, INCLUDING OFF-
13 PEAK AND ON-PEAK PERIODS, BUT NOT AS FREQUENTLY AS EACH HOUR.

14 "Total resources cost test." A standard test that is met if,
15 over the effective life of the program, the avoided supply-side
16 monetary costs are greater than the monetary costs of the
17 demand-side programs borne by both the electric distribution
18 company and the participants.

19 * * *

20 Section 2 3. Title 66 is amended by adding a section to
21 read:

22 § 2806.1. Adoption of procedures encouraging energy efficiency
23 and demand-side response.

24 (a) Program.--The commission shall develop a program to
25 provide for the implementation of cost-effective programs that
26 reduce energy demand and consumption within the service
27 territories of all electric distribution companies throughout
28 this Commonwealth. The program shall include, but is not limited
29 to, the following:

30 (1) Selecting a program administrator to develop and

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<--

<--

1 oversee the delivery of energy efficiency and demand-side
2 response programs within the service territory of each
3 electric distribution company within this Commonwealth.

4 (2) Implementing the necessary administrative and
5 financial mechanisms that will enable the program
6 administrator to develop and oversee the provision of energy
7 efficiency and demand-side response programs within the
8 service territory of each electric distribution company
9 within this Commonwealth, including the levying of
10 assessments in accordance with sections 510 (relating to
11 assessment for regulatory expenses upon public utilities),
12 1307 (relating to sliding scale of rates; adjustments) and
13 1308 (relating to voluntary changes in rates). The commission
14 shall not approve or implement and shall not assess or charge
15 to customers the costs of energy efficiency or demand-
16 response programs to the extent that the costs of such
17 programs exceed 2% of the total annual revenues of the
18 electric distribution company in whose service territory the
19 programs are implemented. FROM ALL SOURCES, INCLUDING DEFAULT
20 SERVICE GENERATION REVENUES AS OF JANUARY 1, 2007. This
21 funding limit shall not include amounts provided for by the
22 low-income usage reduction programs established under
23 regulations at 52 Pa. Code Ch. 58 (relating to residential
24 low income usage reduction programs).

<--
<--

25 (3) Implementing the necessary administrative and
26 financial mechanisms that facilitate a system of third-party
27 entities to deliver all or portions of the energy efficiency
28 and demand-side response programs within the service
29 territory of each electric distribution company within this
30 Commonwealth, including the levying of assessments in

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1 accordance with sections 510, 1307 and 1308. The commission
2 may order the electric distribution company to pay the third-
3 party entity for services rendered in an electric
4 distribution company's respective service territory pursuant
5 to this section. The electric distribution company may be a
6 third-party entity.

7 (b) Selection of program administrator.--The commission
8 shall implement the following procedures when selecting a
9 program administrator:

10 (1) The commission shall prepare a request for proposals
11 for a program administrator to provide for the development
12 and delivery of the energy efficiency and demand-side
13 response programs in the service territories of all electric
14 distribution companies and shall make the request for
15 proposals available for public comment.

16 (2) The commission shall, within 60 days of the
17 completion of the public comment period, issue the final
18 request for proposals.

19 (3) The commission shall, based on a competitive bid
20 process, select an independent entity to serve as the energy
21 efficiency and demand-side response program administrator.

22 (4) The commission shall include as a part of its
23 agreement with the program administrator a system of
24 performance parameters and a financial mechanism that
25 provides incentives for exceeding established performance
26 parameters and penalties for third parties not meeting
27 established performance parameters.

28 (c) Powers and duties of program administrator.--The program
29 administrator shall have powers and duties assigned by the
30 commission. The powers and duties shall include, but not be

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1 limited to:

2 (1) Soliciting through a competitive procurement process
3 within each electric distribution company service territory a
4 program of providing energy efficiency and demand-side
5 response programs to residential, commercial and industrial
6 customers utilizing third-party entities.

7 (2) Ensuring that each proposal includes, but is not
8 limited to:

9 (i) A clear delineation of how the program will be
10 conducted.

11 (ii) The types of specific program measures to be
12 offered.

13 (iii) The cost and benefit of each program to be
14 offered.

15 (iv) A process for monitoring and verifying results,
16 data collection and management procedures, program
17 evaluation processes and financial management strategies.

18 (3) In its review of each proposal received:

19 (i) Taking into account the unique circumstances of
20 each electric distribution company's service territory.

21 (ii) Finding that each program is cost effective and
22 that the portfolio of programs is designed to provide
23 every affected customer class with the opportunity to
24 participate and benefit economically.

25 (iii) Determining the cost-effectiveness of energy
26 efficiency and demand-side response measures using the
27 total resource cost test.

28 (4) Recommending to the commission those entities best
29 suited to provide energy efficiency and demand-side response
30 programs within the service territory of each electric

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1 distribution company.

2 (5) In the event no qualified proposals are received
3 that meet the required plan goals in an electric distribution
4 company service territory to conduct the program activities:

5 (i) Issuing a subsequent request for proposals with
6 plan goals that are reduced no more than necessary to
7 obtain qualified proposals to provide program activities.
8 The lowered plan goals for energy efficiency and demand-
9 side response shall only be in effect for that year.

10 (ii) In subsequent years, utilizing the plan goals
11 unless no qualified proposals are received to conduct the
12 program activities that meet the plan goals, the program
13 administrator shall issue a subsequent request for
14 proposals in accordance with the procedures identified in
15 this subparagraph.

16 (6) Executing agreements on behalf of the commission
17 with the selected entity in each electric distribution
18 company service territory to conduct the energy efficiency
19 and demand-side response program. As part of these agreements
20 the program administrator shall ensure that:

21 (i) The programs offered by the selected entity are
22 provided equitably across all customer classes.

23 (ii) A clearly defined process for financial
24 compensation for the entity delivering the program which
25 is tied to defined goals for performance regarding
26 program activities accomplished, energy cost savings on a
27 per-customer basis and utility-wide basis and overall
28 energy and peak demand reduction is established.

29 (iii) A system of incentives and penalties for
30 performance of contractual activities above and below

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1 predetermined levels is in place.

2 (iv) There is a set contract term which may include
3 an initial three-year term with renewal terms of varied
4 length.

5 (7) Submitting reports to the commission at such times
6 and in such manner as the commission directs.

7 (d) Commission review of recommendations.--The commission
8 shall review the recommendations made by the program
9 administrator regarding those entities best suited to provide
10 energy efficiency and demand-side response programs within the
11 service territory of each electric distribution company. The
12 commission shall approve or disapprove the recommendations made
13 by the program administrator.

14 (1) The commission review of the recommendations of the
15 program administrator shall be limited to ensuring that:

16 (i) There is no evidence of fraud or market abuse.

17 (ii) Any costs entered into are borne by the
18 appropriate parties and that costs, including the costs
19 of subsection (c)(6)(iv) incentives, related to the
20 provision of the contracted services are borne by the
21 appropriate customer class.

22 (iii) There will be provided, in a cost-effective
23 manner, a program that provides energy efficiency and
24 demand-side response measures to all customer classes
25 throughout the service territory of each electric
26 distribution company.

27 (2) If the commission approves a third-party entity to
28 conduct the program, the commission shall ensure the program
29 administrator finalizes the agreement between the commission
30 and the third-party entity selected to provide the program of

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1 energy efficiency and demand-side response.

2 (3) In the event the commission disapproves the
3 recommendation of the program administrator, the commission
4 shall provide a rationale for this decision and direct the
5 program administrator on a course of action.

6 (e) Plan goals.--The program administrator shall ensure that
7 each proposal submitted by a third-party entity to deliver a
8 program of energy efficiency and demand-side response measures
9 includes meeting the following energy saving goals:

10 (1) The following relate to energy efficiency goals:

11 (I) BY MAY 31, 2011, TOTAL ANNUAL DELIVERIES TO <--
12 RETAIL CUSTOMERS OF ELECTRIC DISTRIBUTION COMPANIES SHALL
13 BE REDUCED BY A MINIMUM OF 1%. THIS LOAD REDUCTION SHALL
14 BE MEASURED AGAINST THE EXPECTED LOAD FORECASTED BY THE
15 COMMISSION FOR JUNE 1, 2010, THROUGH MAY 31, 2011, BASED
16 ON LOAD FOR THE PERIOD JUNE 1, 2007, THROUGH MAY 31,
17 2008, WITH PROVISION MADE FOR WEATHER ADJUSTMENTS AND
18 EXTRAORDINARY LOAD THAT THE ELECTRIC DISTRIBUTION COMPANY
19 MUST SERVE. THE COMMISSION SHALL DETERMINE AND MAKE
20 PUBLIC THE FORECASTS TO BE USED FOR EACH ELECTRIC
21 DISTRIBUTION COMPANY NO LATER THAN AUGUST 31, 2008. THE
22 PROGRAM ADMINISTRATOR SHALL ENSURE THAT A THIRD-PARTY
23 ENTITY MEETS THE GOALS CONTAINED IN THIS SECTION THROUGH
24 THE IMPLEMENTATION OF A PROGRAM OF ENERGY EFFICIENCY
25 MEASURES THROUGHOUT THE SERVICE TERRITORY OF THE ELECTRIC
26 DISTRIBUTION COMPANY.

27 (i) (II) By May 31, 2013, total annual deliveries to <--
28 retail customers of electric distribution companies shall
29 be reduced by a minimum of 2.5%. ~~with provision made~~ <--
30 for weather adjustments and extraordinary load that the

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1 electric distribution company must serve. This load
2 reduction shall be measured against the expected load
3 forecasted by the commission for June 1, 2012, through
4 May 31, 2013, based on load for the period June 1, 2007,
5 through May 31, 2008, WITH PROVISION MADE FOR WEATHER <--
6 ADJUSTMENTS AND EXTRAORDINARY LOAD THAT THE ELECTRIC
7 DISTRIBUTION COMPANY MUST SERVE. The commission shall
8 determine and make public the forecasts to be used for
9 each electric distribution company no later than August
10 31, 2008. The program administrator shall ensure that a
11 third-party entity meets the goals contained in this
12 section through the implementation of a program of energy
13 efficiency measures throughout the service territory of
14 the electric distribution company.

15 (ii) (III) By November 30, 2013, the program <--
16 administrator shall evaluate the costs and benefits of
17 these energy efficiency and conservation programs. If the
18 benefits have been shown to exceed the costs, consistent
19 with the total resource cost test, the program
20 administrator, in consultation with the commission, shall
21 set additional, incremental energy efficiency and
22 conservation goals for the period ending May 31, 2018.

23 (iii) (IV) After May 31, 2018, the program <--
24 administrator shall continue to evaluate the costs and

25 benefits of efficiency and conservation measures and, in
26 consultation with the commission, may adopt additional
27 incremental load reduction standards for electric
28 distribution companies.

29 (2) The following relate to demand-side response
30 measures:

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1 (i) Cost-effective demand-side response measures to
2 reduce peak demand by a minimum of 4% in the 100 hours of
3 highest demand with provision made for weather
4 adjustments and extraordinary load that the electric
5 distribution company must serve shall be implemented in
6 each electric distribution company's service territory.
7 This reduction will be measured against the electric
8 distribution company's peak demand in the 100 hours of
9 greatest demand for June 1, 2007, through May 31, 2008.
10 The reductions shall be accomplished by May 31, 2012.

11 (ii) By November 30, 2012, the program administrator
12 shall compare the total costs of these demand-side
13 response measures to the total savings in energy and
14 capacity costs to retail customers of this Commonwealth.
15 If the benefits have been shown to exceed the costs,
16 consistent with the total resource cost test, the
17 commission shall order additional peak demand reductions
18 for the 100 hours of greatest demand or an alternative
19 measure adopted by the commission. The reductions shall
20 be measured from the electric distribution company's peak
21 demand for the period from June 1, 2011, through May 31,
22 2012. The mandated reductions shall be accomplished no
23 later than May 31, 2017.

24 (iii) After May 31, 2017, the program administrator
25 shall continue to evaluate the costs and benefits of
26 demand-side response measures and may, in consultation
27 with the commission, adopt additional incremental peak
28 load reduction standards.

29 (f) Measurements and verification.--The commission shall
30 establish standards by which the program administrator submits

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1 to the commission an annual report, which includes that
2 information relating to the actions and results of the energy
3 efficiency and demand-side response programs undertaken within
4 each electric distribution service territory by each third-party
5 entity.

6 (1) The report shall include, but not be limited to:

7 (i) Documentation of program expenditures.

8 (ii) Measurement and verification of savings
9 resulting from programs.

10 (iii) Evaluation of the cost-effectiveness of
11 expenditures.

12 (iv) Any other information the commission may
13 require pursuant to its rulemaking authority.

14 (2) The program administrator, upon consultation with
15 the commission, shall direct a third-party entity to modify
16 or terminate a particular energy efficiency or a demand-side
17 response program if, after an adequate period for
18 implementation of the program, the commission determines the
19 program is not sufficiently meeting its goals and purposes.

20 (3) In the event an energy efficiency or demand-side
21 response program is terminated, the program administrator
22 shall require the third-party entity to submit a revised
23 program describing the actions to be undertaken to either
24 offer a substitute program or increase the availability of
25 existing programs to make up for the effect of the terminated
26 program on its overall program goals.

27 (g) Responsibilities of electric distribution companies.--
28 Each electric distribution company that does not seek to be a
29 third-party entity shall:

30 (1) Cooperate with the program administrator as needed

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1 in its efforts to competitively procure the services of a
2 third-party entity to provide an energy efficiency and
3 demand-side response program within the service territory of
4 the electric distribution company.

5 (2) Provide information necessary to effectively
6 facilitate the work of the selected third-party entity in
7 conducting the energy efficiency and demand-side response
8 program.

9 (3) Provide assistance as may be requested by the
10 program administrator in reviewing proposals from third-party
11 entities seeking to provide energy efficiency and demand-side
12 response programs within their service territories.

13 (4) Provide assistance as may be requested by the
14 program administrator to facilitate the successful execution
15 of the contract agreement with the third-party entities to
16 provide an energy efficiency and demand-side response program
17 within their service territories.

18 (h) Recovery of administrative and program costs.--An
19 electric distribution company may fully recover all
20 administrative costs, including, but not limited to, costs
21 incurred under subsections (a)(3) and (g)(1), (2), (3) and (4),
22 that the commission determines are prudently incurred and
23 reasonable in amount pursuant to implementing a program to
24 deliver cost-effective energy efficiency and demand-side
25 response activities through a third-party entity. Program and
26 administrative costs shall be recovered on a full and current
27 basis by the electric distribution company from customers
28 through a reconcilable automatic adjustment clause pursuant to
29 section 1307. Energy efficiency and demand-side resource
30 programs shall be deemed to be a new service offered for the

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1 first time under section 2804(4)(vi) (relating to standards for
2 restructuring of electric industry).

3 (i) Reporting.--The commission shall submit an annual report
4 to the General Assembly describing the results of the programs
5 implemented by each of the electric distribution companies,
6 including, but not limited to:

7 (1) The costs, benefits and reductions in energy costs.

8 (2) Energy use by customer class within this
9 Commonwealth.

10 (3) Reductions in overall peak demand and projections
11 toward complying with the overall target reduction goals of
12 this section.

13 (j) Definitions.--For purposes of this section, the term
14 "electric distribution company" shall mean a public utility
15 providing facilities for the jurisdictional transmission and
16 distribution of electricity to 100,000 or more retail customers
17 in this Commonwealth.

18 SECTION 4. SECTION 2807(E) OF TITLE 66 IS AMENDED BY ADDING <--
19 A PARAGRAPH TO READ:

20 § 2807. DUTIES OF ELECTRIC DISTRIBUTION COMPANIES.

21 * * *

22 (E) OBLIGATION TO SERVE.--* * *

23 (6) (I) WITHIN NINE MONTHS AFTER THE EFFECTIVE DATE OF
24 THIS PARAGRAPH, ELECTRIC DISTRIBUTION COMPANIES SHALL
25 FILE A SMART METER TECHNOLOGY PROCUREMENT AND
26 INSTALLATION PLAN WITH THE COMMISSION FOR APPROVAL AND
27 MAKE THE PLAN AVAILABLE FOR PUBLIC COMMENT FOR A MINIMUM
28 OF 30 DAYS. THE PLAN SHALL DESCRIBE THE SMART METER
29 TECHNOLOGIES THE ELECTRIC DISTRIBUTION COMPANY PROPOSES
30 TO INSTALL, HOW THE SMART METER TECHNOLOGY MEETS THE

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1 REQUIREMENTS OF THIS PARAGRAPH AND HOW THE SMART METER
2 TECHNOLOGY SHALL BE INSTALLED ACCORDING TO THIS
3 PARAGRAPH. IN ADDITION, THE PLAN SHALL ENSURE THAT ALL
4 SMART METER TECHNOLOGY INSTALLATION AND MAINTENANCE WORK
5 SHALL BE PERFORMED BY ADEQUATELY TRAINED AND QUALIFIED
6 PERSONNEL AND THAT, TO THE EXTENT PRACTICAL, SUCH WORK
7 SHALL BE OFFERED INITIALLY TO EMPLOYEES OF THE ELECTRIC
8 DISTRIBUTION COMPANY.

9 (II) ELECTRIC DISTRIBUTION COMPANIES SHALL FURNISH
10 SMART METER TECHNOLOGY TO:

11 (A) CUSTOMERS RESPONSIBLE FOR 40% OF THE
12 DISTRIBUTION COMPANY'S ANNUAL PEAK DEMAND WITHIN FOUR
13 YEARS AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH.

14 (B) CUSTOMERS RESPONSIBLE FOR 75% OF THE
15 DISTRIBUTION COMPANY'S ANNUAL PEAK DEMAND WITHIN SIX
16 YEARS AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH.

17 (C) ONE HUNDRED PERCENT OF ITS CUSTOMERS WITHIN
18 TEN YEARS AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH.
19 ELECTRIC DISTRIBUTION COMPANIES SHALL, WITH CUSTOMER
20 CONSENT, MAKE AVAILABLE ELECTRONIC ACCESS TO CUSTOMER
21 METER DATA TO THIRD PARTIES, INCLUDING ELECTRIC
22 GENERATION SUPPLIERS AND PROVIDERS OF CONSERVATION AND
23 LOAD MANAGEMENT SERVICES.

24 (III) ELECTRIC DISTRIBUTION COMPANIES SHALL BE
25 PERMITTED TO RECOVER ALL REASONABLE AND PRUDENT COSTS, AS
26 DETERMINED BY THE COMMISSION, OF PROVIDING SMART METER
27 TECHNOLOGY, INCLUDING ANNUAL DEPRECIATION AND CAPITAL
28 COSTS OVER THE LIFE OF THE SMART METER TECHNOLOGY, THAT
29 ARE INCURRED AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH,
30 LESS ALL OPERATING AND CAPITAL COSTS SAVINGS REALIZED BY

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1 THE ELECTRIC DISTRIBUTION COMPANY FROM THE INTRODUCTION
2 AND USE OF THE SMART METER TECHNOLOGY. AN ELECTRIC
3 DISTRIBUTION COMPANY MAY, AT ITS OPTION, RECOVER SUCH
4 SMART METER TECHNOLOGY COSTS:

5 (A) THROUGH BASE RATES, INCLUDING A DEFERRAL FOR
6 FUTURE BASE RATE RECOVERY OF CURRENT COSTS, WITH
7 CARRYING CHARGES EQUAL TO 6%; OR

8 (B) ON A FULL AND CURRENT BASIS THROUGH A
9 RECONCILABLE AUTOMATIC ADJUSTMENT CLAUSE UNDER
10 SECTION 1307 (RELATING TO SLIDING SCALE OF RATES;
11 ADJUSTMENTS).

12 IN NO EVENT SHALL LOST OR DECREASED REVENUES BY AN
13 ELECTRIC DISTRIBUTION COMPANY DUE TO REDUCED ELECTRICITY
14 CONSUMPTION OR SHIFTING ENERGY DEMAND BE CONSIDERED A
15 COST OF SMART METER TECHNOLOGY. SMART METER TECHNOLOGY
16 SHALL BE DEEMED TO BE A NEW SERVICE OFFERED FOR THE FIRST
17 TIME UNDER SECTION 2804(4)(VI) (RELATING TO STANDARDS FOR
18 RESTRUCTURING OF ELECTRIC INDUSTRY).

19 (IV) BY JANUARY 1, 2010, OR AT THE END OF THE
20 APPLICABLE GENERATION RATE CAP PERIOD, WHICHEVER IS
21 LATER, A DEFAULT SERVICE PROVIDER SHALL SUBMIT TO THE
22 COMMISSION ONE OR MORE PROPOSED TIME-OF-USE RATES AND A
23 REAL-TIME PRICE PLAN. THE COMMISSION SHALL APPROVE OR
24 MODIFY THE TIME-OF-USE RATES AND REAL-TIME PRICE PLAN
25 WITHIN SIX MONTHS OF SUBMITTAL. THE DEFAULT SERVICE
26 PROVIDER SHALL OFFER COMMISSION-APPROVED TIME-OF-USE
27 RATES AND A REAL-TIME PRICE PLAN TO ALL RESIDENTIAL AND
28 COMMERCIAL CUSTOMERS THAT HAVE BEEN PROVIDED WITH SMART
29 METER TECHNOLOGY WITHIN 60 DAYS OF INSTALLATION OF THE
30 SMART METER TECHNOLOGY OR COMMISSION APPROVAL OF THE

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1 TIME-OF-USE RATES AND A REAL-TIME PRICE PLAN, WHICHEVER
2 IS LATER. CUSTOMER PARTICIPATION IN TIME-OF-USE RATES OR
3 REAL-TIME PRICING SHALL BE VOLUNTARY AND SHALL ONLY BE
4 PROVIDED WITH THE AFFIRMATIVE CONSENT OF THE CUSTOMER.
5 THE DEFAULT SERVICE PROVIDER SHALL SUBMIT AN ANNUAL
6 REPORT TO THE COMMISSION ON THE PARTICIPATION IN THE
7 TIME-OF-USE AND REAL-TIME PRICE PROGRAMS AND THE EFFICACY
8 OF THE PROGRAMS IN AFFECTING ENERGY DEMAND AND
9 CONSUMPTION AND THE EFFECT ON WHOLESALE MARKET PRICES.

10 (V) FOR PURPOSES OF THIS PARAGRAPH, THE TERM
11 "ELECTRIC DISTRIBUTION COMPANY" SHALL MEAN A PUBLIC
12 UTILITY PROVIDING FACILITIES FOR THE JURISDICTIONAL
13 TRANSMISSION AND DISTRIBUTION OF ELECTRICITY TO 100,000
14 OR MORE RETAIL CUSTOMERS IN THIS COMMONWEALTH.

15 Section 3 5. This act shall take effect immediately.

<--

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Appendix J

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2200 Session of 2008

INTRODUCED BY GEORGE, McCALL, BELFANTI, CALTAGIRONE, CONKLIN,
DALEY, GOODMAN, HARHAI, HARKINS, KULA, MANDERINO, MCGEEHAN,
VITALI, J. WHITE, WALKO, SURRA, DeLUCA, DERMODY, GRUCELA,
JOSEPHS, JAMES, GINGRICH, FREEMAN, K. SMITH, McILVAINE SMITH,
YOUNGBLOOD AND FRANKEL, JANUARY 15, 2008

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
FEBRUARY 12, 2008

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, providing for recovery of certain
3 labor relations expenses; further providing for definitions;
4 providing for adoption of energy efficiency and demand-side
5 response; and further providing for duties of electric
6 distribution companies.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Title 66 of the Pennsylvania Consolidated
10 Statutes is amended by adding a section to read:

11 § 1329. Recovery of certain labor relations expenses.

12 No public utility may charge its customers as a permissible
13 operating expense for ratemaking purposes any portion of the
14 direct or indirect cost of meetings, publications, consultants,
15 attorneys or other professional services and expenses associated
16 with the utility's efforts to dissuade the employees of the
17 utility, or the employees of any affiliated interest of the
18 utility as defined in section 2101 (relating to definition of
1 affiliated interest), from becoming or remaining a member in, or
2 otherwise being represented by, any labor union.

3 Section 2. Section 2803 of Title 66 is amended by adding
4 definitions to read:

5 § 2803. Definitions.

6 The following words and phrases when used in this chapter
7 shall have the meanings given to them in this section unless the
8 context clearly indicates otherwise:

9 "Affiliated interest." As defined in section 2101 (relating
10 to definition of affiliated interest).

11 * * *

12 "Cost effective." In relation to a program being evaluated,
13 satisfaction of the total resource cost test.

14 * * *

15 "Demand-side response." Load management technologies,
16 management practices or other strategies employed by retail
17 customers that decrease peak electricity demand or shift demand
18 from on-peak to off-peak periods provided that:

19 (1) The measure is installed on or after the effective
20 date of this section at the service location of a retail
21 customer.

22 (2) The measure reduces the peak demand or cost of
23 energy by the retail customer.

24 (3) The costs of the acquisition or installation of the
25 measure are directly incurred in whole or in part by the
26 electric distribution company.

27 * * *

28 "Energy efficiency." Technologies, management practices or
29 other strategies or measures employed by retail customers that
30 reduce electricity consumption provided that:

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1 (1) The measure is installed on or after the effective
2 date of this definition at the service location of a retail
3 customer.

4 (2) The measure reduces the consumption of energy by the
5 retail customer.

6 (3) The costs of the acquisition or installation of the
7 measure are directly incurred in whole or in part by the
8 electric distribution company.

9 "Independent entity." An entity with no direct or indirect
10 ownership, partnership or other affiliated interest with an
11 electric distribution company.

12 "Peak demand." The highest electrical requirement occurring
13 during a specified period. For an electric distribution company,
14 the term means the sum of the metered consumption for all retail
15 customers over that period.

16 "Real-time price." A rate that directly reflects the
17 different cost of energy during each hour.

18 * * *

19 "Smart meter technology." Technology, including, but not
20 limited to, metering technology and network communications
21 technology capable of bidirectional communication and that
22 records electricity usage on at least an hourly basis, including
23 related electric distribution system upgrades to enable the
24 technology. The technology shall provide customers with direct
25 access to and use of price and consumption information. The
26 technology shall also:

27 (1) Directly provide customers with information on their
28 hourly consumption.

29 (2) Enable time-of-use rates and real-time price
30 programs.

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1 (3) Effectively support the automatic control of the
2 customer's electricity consumption by one or more of the
3 following as selected by the customer:

4 (i) the customer;

5 (ii) the customer's utility; or

6 (iii) a third party engaged by the customer or the
7 customer's utility.

8 "Time-of-use rate." A rate that reflects the costs of
9 servicing customers during different time periods, including off-
10 peak and on-peak periods, but not as frequently as each hour.

11 "Total resources cost test." A standard test that is met if,
12 over the effective life of the program, the avoided supply-side
13 monetary costs are greater than the monetary costs of the
14 demand-side programs borne by both the electric distribution
15 company and the participants.

16 * * *

17 Section 3. Title 66 is amended by adding a section to read:
18 § 2806.1. Adoption of procedures encouraging energy efficiency
19 and demand-side response.

20 (a) Program.--The commission shall develop a program to
21 provide for the implementation of cost-effective programs that
22 reduce energy demand and consumption within the service
23 territories of all electric distribution companies throughout
24 this Commonwealth. The program shall include, but is not limited
25 to, the following:

26 (1) Selecting a program administrator to develop and
27 oversee the delivery of energy efficiency and demand-side
28 response programs within the service territory of each
29 electric distribution company within this Commonwealth.

30 (2) Implementing the necessary administrative and

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1 financial mechanisms that will enable the program
2 administrator to develop and oversee the provision of energy
3 efficiency and demand-side response programs within the
4 service territory of each electric distribution company
5 within this Commonwealth, including the levying of
6 assessments in accordance with sections 510 (relating to
7 assessment for regulatory expenses upon public utilities),
8 1307 (relating to sliding scale of rates; adjustments) and
9 1308 (relating to voluntary changes in rates). The commission
10 shall not approve or implement and shall not assess or charge
11 to customers the costs of energy efficiency or demand-
12 response programs to the extent that the costs of such
13 programs exceed 2% of the total annual revenues of the
14 electric distribution company from all sources, including
15 default service generation revenues as of January 1, 2007.
16 This funding limit shall not include amounts provided for by
17 the low-income usage reduction programs established under
18 regulations at 52 Pa. Code Ch. 58 (relating to residential
19 low income usage reduction programs).

20 (3) Implementing the necessary administrative and
21 financial mechanisms that facilitate a system of third-party
22 entities to deliver all or portions of the energy efficiency
23 and demand-side response programs within the service
24 territory of each electric distribution company within this
25 Commonwealth, including the levying of assessments in
26 accordance with sections 510, 1307 and 1308. The commission
27 may order the electric distribution company to pay the third-
28 party entity for services rendered in an electric
29 distribution company's respective service territory pursuant
30 to this section. The electric distribution company may be a

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1 third-party entity.

2 (b) Selection of program administrator.--The commission
3 shall implement the following procedures when selecting a
4 program administrator:

5 (1) The commission shall prepare a request for proposals
6 for a program administrator to provide for the development
7 and delivery of the energy efficiency and demand-side
8 response programs in the service territories of all electric
9 distribution companies and shall make the request for
10 proposals available for public comment.

11 (2) The commission shall, within 60 days of the
12 completion of the public comment period, issue the final
13 request for proposals.

14 (3) The commission shall, based on a competitive bid
15 process, select an independent entity to serve as the energy
16 efficiency and demand-side response program administrator.

17 (4) The commission shall include as a part of its
18 agreement with the program administrator a system of
19 performance parameters and a financial mechanism that
20 provides incentives for exceeding established performance
21 parameters and penalties for third parties not meeting
22 established performance parameters.

23 (c) Powers and duties of program administrator.--The program
24 administrator shall have powers and duties assigned by the
25 commission. The powers and duties shall include, but not be
26 limited to:

27 (1) Soliciting through a competitive procurement process
28 within each electric distribution company service territory a
29 program of providing energy efficiency and demand-side
30 response programs to residential, commercial and industrial

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1 customers utilizing third-party entities.

2 (2) Ensuring that each proposal includes, but is not
3 limited to:

4 (i) A clear delineation of how the program will be
5 conducted.

6 (ii) The types of specific program measures to be
7 offered.

8 (iii) The cost and benefit of each program to be

9 offered.

10 (iv) A process for monitoring and verifying results,
11 data collection and management procedures, program
12 evaluation processes and financial management strategies.

13 (3) In its review of each proposal received:

14 (i) Taking into account the unique circumstances of
15 each electric distribution company's service territory.

16 (ii) Finding that each program is cost effective and
17 that the portfolio of programs is designed to provide
18 every affected customer class with the opportunity to
19 participate and benefit economically.

20 (iii) Determining the cost-effectiveness of energy
21 efficiency and demand-side response measures using the
22 total resource cost test.

23 (4) Recommending to the commission those entities best
24 suited to provide energy efficiency and demand-side response
25 programs within the service territory of each electric
26 distribution company.

27 (5) In the event no qualified proposals are received
28 that meet the required plan goals in an electric distribution
29 company service territory to conduct the program activities:

30 (i) Issuing a subsequent request for proposals with

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1 plan goals that are reduced no more than necessary to
2 obtain qualified proposals to provide program activities.
3 The lowered plan goals for energy efficiency and demand-
4 side response shall only be in effect for that year.

5 (ii) In subsequent years, utilizing the plan goals
6 unless no qualified proposals are received to conduct the
7 program activities that meet the plan goals, the program
8 administrator shall issue a subsequent request for
9 proposals in accordance with the procedures identified in
10 this subparagraph.

11 (6) Executing agreements on behalf of the commission
12 with the selected entity in each electric distribution
13 company service territory to conduct the energy efficiency
14 and demand-side response program. As part of these agreements
15 the program administrator shall ensure that:

16 (i) The programs offered by the selected entity are
17 provided equitably across all customer classes.

18 (ii) A clearly defined process for financial
19 compensation for the entity delivering the program which
20 is tied to defined goals for performance regarding
21 program activities accomplished, energy cost savings on a
22 per-customer basis and utility-wide basis and overall
23 energy and peak demand reduction is established.

24 (iii) A system of incentives and penalties for
25 performance of contractual activities above and below
26 predetermined levels is in place.

27 (iv) There is a set contract term which may include
28 an initial three-year term with renewal terms of varied
29 length.

30 (7) Submitting reports to the commission at such times

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1 and in such manner as the commission directs.

2 (d) Commission review of recommendations.--The commission
3 shall review the recommendations made by the program
4 administrator regarding those entities best suited to provide
5 energy efficiency and demand-side response programs within the
6 service territory of each electric distribution company. The
7 commission shall approve or disapprove the recommendations made
8 by the program administrator.

9 (1) The commission review of the recommendations of the
10 program administrator shall be limited to ensuring that:

11 (i) There is no evidence of fraud or market abuse.

12 (ii) Any costs entered into are borne by the
13 appropriate parties and that costs, including the costs
14 of subsection ~~(e)(6)(iv)~~ (C)(6)(III) incentives, related
15 to the provision of the contracted services are borne by
16 the appropriate customer class.

<--

17 (iii) There will be provided, in a cost-effective
18 manner, a program that provides energy efficiency and
19 demand-side response measures to all customer classes
20 throughout the service territory of each electric
21 distribution company.

22 (2) If the commission approves a third-party entity to
23 conduct the program, the commission shall ensure the program
24 administrator finalizes the agreement between the commission
25 and the third-party entity selected to provide the program of
26 energy efficiency and demand-side response.

27 (3) In the event the commission disapproves the
28 recommendation of the program administrator, the commission
29 shall provide a rationale for this decision and direct the
30 program administrator on a course of action.

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1 (e) Plan goals.--The program administrator shall ensure that
2 each proposal submitted by a third-party entity to deliver a
3 program of energy efficiency and demand-side response measures
4 includes meeting the following energy saving goals:

5 (1) The following relate to energy efficiency goals:

6 (i) By May 31, 2011, total annual deliveries to
7 retail customers of electric distribution companies shall
8 be reduced by a minimum of 1%. This load reduction shall
9 be measured against the expected load forecasted by the
10 commission for June 1, 2010, through May 31, 2011, based
11 on load for the period June 1, 2007, through May 31,
12 2008, with provision made for weather adjustments and
13 extraordinary load that the electric distribution company
14 must serve. The commission shall determine and make
15 public the forecasts to be used for each electric
16 distribution company no later than August 31, 2008. The
17 program administrator shall ensure that a third-party
18 entity meets the goals contained in this section through
19 the implementation of a program of energy efficiency
20 measures throughout the service territory of the electric
21 distribution company.

22 (ii) By May 31, 2013, total annual deliveries to
23 retail customers of electric distribution companies shall
24 be reduced by a minimum of 2.5%. This load reduction
25 shall be measured against the expected load forecasted by
26 the commission for June 1, 2012, through May 31, 2013,
27 based on load for the period June 1, 2007, through May
28 31, 2008, with provision made for weather adjustments and
29 extraordinary load that the electric distribution company
30 must serve. The commission shall determine and make

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1 public the forecasts to be used for each electric
2 distribution company no later than August 31, 2008. The
3 program administrator shall ensure that a third-party
4 entity meets the goals contained in this section through
5 the implementation of a program of energy efficiency
6 measures throughout the service territory of the electric
7 distribution company.

8 (iii) By November 30, 2013, the program
9 administrator shall evaluate the costs and benefits of
10 these energy efficiency and conservation programs. If the
11 benefits have been shown to exceed the costs, consistent
12 with the total resource cost test, the program
13 administrator, in consultation with the commission, shall
14 set additional, incremental energy efficiency and
15 conservation goals for the period ending May 31, 2018.

16 (iv) After May 31, 2018, the program administrator
17 shall continue to evaluate the costs and benefits of
18 efficiency and conservation measures and, in consultation
19 with the commission, may adopt additional incremental
20 load reduction standards for electric distribution
21 companies.

22 (2) The following relate to demand-side response
23 measures:

24 (i) Cost-effective demand-side response measures to

25 reduce peak demand by a minimum of 4% in the 100 hours of
26 highest demand with provision made for weather
27 adjustments and extraordinary load that the electric
28 distribution company must serve shall be implemented in
29 each electric distribution company's service territory.
30 This reduction will be measured against the electric

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1 distribution company's peak demand in the 100 hours of
2 greatest demand for June 1, 2007, through May 31, 2008.
3 The reductions shall be accomplished by May 31, 2012.
4 (ii) By November 30, 2012, the program administrator
5 shall compare the total costs of these demand-side
6 response measures to the total savings in energy and
7 capacity costs to retail customers of this Commonwealth.
8 If the benefits have been shown to exceed the costs,
9 consistent with the total resource cost test, the
10 commission shall order additional peak demand reductions
11 for the 100 hours of greatest demand or an alternative
12 measure adopted by the commission. The reductions shall
13 be measured from the electric distribution company's peak
14 demand for the period from June 1, 2011, through May 31,
15 2012. The mandated reductions shall be accomplished no
16 later than May 31, 2017.

17 (iii) After May 31, 2017, the program administrator
18 shall continue to evaluate the costs and benefits of
19 demand-side response measures and may, in consultation
20 with the commission, adopt additional incremental peak
21 load reduction standards.

22 (f) Measurements and verification.--The commission shall
23 establish standards by which the program administrator submits
24 to the commission an annual report, which includes that
25 information relating to the actions and results of the energy
26 efficiency and demand-side response programs undertaken within
27 each electric distribution service territory by each third-party
28 entity.

29 (1) The report shall include, but not be limited to:

30 (i) Documentation of program expenditures.

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1 (ii) Measurement and verification of savings
2 resulting from programs.

3 (iii) Evaluation of the cost-effectiveness of
4 expenditures.

5 (iv) Any other information the commission may
6 require pursuant to its rulemaking authority.

7 (2) The program administrator, upon consultation with
8 the commission, shall direct a third-party entity to modify
9 or terminate a particular energy efficiency or a demand-side
10 response program if, after an adequate period for
11 implementation of the program, the commission determines the
12 program is not sufficiently meeting its goals and purposes.

13 (3) In the event an energy efficiency or demand-side
14 response program is terminated, the program administrator
15 shall require the third-party entity to submit a revised
16 program describing the actions to be undertaken to either
17 offer a substitute program or increase the availability of
18 existing programs to make up for the effect of the terminated
19 program on its overall program goals.

20 (g) Responsibilities of electric distribution companies.--
21 Each electric distribution company that does not seek to be a
22 third-party entity shall:

23 (1) Cooperate with the program administrator as needed
24 in its efforts to competitively procure the services of a
25 third-party entity to provide an energy efficiency and
26 demand-side response program within the service territory of
27 the electric distribution company.

28 (2) Provide information necessary to effectively
29 facilitate the work of the selected third-party entity in
30 conducting the energy efficiency and demand-side response

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1 program.

2 (3) Provide assistance as may be requested by the
3 program administrator in reviewing proposals from third-party
4 entities seeking to provide energy efficiency and demand-side
5 response programs within their service territories.

6 (4) Provide assistance as may be requested by the
7 program administrator to facilitate the successful execution
8 of the contract agreement with the third-party entities to
9 provide an energy efficiency and demand-side response program
10 within their service territories.

11 (h) Recovery of administrative and program costs.--An
12 electric distribution company may fully recover all
13 administrative costs, including, but not limited to, costs
14 incurred under subsections (a)(3) and (g)(1), (2), (3) and (4),
15 that the commission determines are prudently incurred and
16 reasonable in amount pursuant to implementing a program to
17 deliver cost-effective energy efficiency and demand-side
18 response activities through a third-party entity. Program and
19 administrative costs shall be recovered on a full and current
20 basis by the electric distribution company from customers
21 through a reconcilable automatic adjustment clause pursuant to
22 section 1307. Energy efficiency and demand-side resource
23 programs shall be deemed to be a new service offered for the
24 first time under section 2804(4)(vi) (relating to standards for
25 restructuring of electric industry).

26 (i) Reporting.--The commission shall submit an annual report
27 to the General Assembly describing the results of the programs
28 implemented by each of the electric distribution companies,
29 including, but not limited to:

30 (1) The costs, benefits and reductions in energy costs.

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1 (2) Energy use by customer class within this
2 Commonwealth.

3 (3) Reductions in overall peak demand and projections
4 toward complying with the overall target reduction goals of
5 this section.

6 (j) Definitions.--For purposes of this section, the term
7 "electric distribution company" shall mean a public utility
8 providing facilities for the jurisdictional transmission and
9 distribution of electricity to 100,000 or more retail customers
10 in this Commonwealth.

11 Section 4. Section 2807(e) of Title 66 is amended by adding
12 a paragraph to read:

13 § 2807. Duties of electric distribution companies.

14 * * *

15 (e) Obligation to serve.--* * *

16 (6) (i) Within nine months after the effective date of
17 this paragraph, electric distribution companies shall
18 file a smart meter technology procurement and
19 installation plan with the commission for approval and
20 make the plan available for public comment for a minimum
21 of 30 days. The plan shall describe the smart meter
22 technologies the electric distribution company proposes
23 to install, how the smart meter technology meets the
24 requirements of this paragraph and how the smart meter
25 technology shall be installed according to this
26 paragraph. In addition, the plan shall ensure that all
27 smart meter technology installation and maintenance work
28 shall be performed by adequately trained and qualified
29 personnel and that, to the extent practical, such work
30 shall be offered initially to employees of the electric

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1 distribution company.

2 (ii) Electric distribution companies shall furnish
3 smart meter technology to:

4 (A) Customers responsible for 40% of the
5 distribution company's annual peak demand within four
6 years after the effective date of this paragraph.

7 (B) Customers responsible for 75% of the
8 distribution company's annual peak demand within six

9 years after the effective date of this paragraph.

10 (C) One hundred percent of its customers within
11 ten years after the effective date of this paragraph.
12 Electric distribution companies shall, with customer
13 consent, make available electronic access to customer
14 meter data to third parties, including electric
15 generation suppliers and providers of conservation and
16 load management services.

17 (iii) Electric distribution companies shall be
18 permitted to recover all reasonable and prudent costs, as
19 determined by the commission, of providing smart meter
20 technology, including annual depreciation and capital
21 costs over the life of the smart meter technology, that
22 are incurred after the effective date of this paragraph,
23 less all operating and capital costs savings realized by
24 the electric distribution company from the introduction
25 and use of the smart meter technology. An electric
26 distribution company may, at its option, recover such
27 smart meter technology costs:

28 (A) through base rates, including a deferral for
29 future base rate recovery of current costs, with
30 carrying charges equal to 6%; or

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1 (B) on a full and current basis through a
2 reconcilable automatic adjustment clause under
3 section 1307 (relating to sliding scale of rates;
4 adjustments).

5 In no event shall lost or decreased revenues by an
6 electric distribution company due to reduced electricity
7 consumption or shifting energy demand be considered a
8 cost of smart meter technology. Smart meter technology
9 shall be deemed to be a new service offered for the first
10 time under section 2804(4)(vi) (relating to standards for
11 restructuring of electric industry).

12 (iv) By January 1, 2010, or at the end of the
13 applicable generation rate cap period, whichever is
14 later, a default service provider shall submit to the
15 commission one or more proposed time-of-use rates and a
16 real-time price plan. The commission shall approve or
17 modify the time-of-use rates and real-time price plan
18 within six months of submittal. The default service
19 provider shall offer commission-approved time-of-use
20 rates and a real-time price plan to all residential and
21 commercial customers that have been provided with smart
22 meter technology within 60 days of installation of the
23 smart meter technology or commission approval of the
24 time-of-use rates and a real-time price plan, whichever
25 is later. Customer participation in time-of-use rates or
26 real-time pricing shall be voluntary and shall only be
27 provided with the affirmative consent of the customer.
28 The default service provider shall submit an annual
29 report to the commission on the participation in the
30 time-of-use and real-time price programs and the efficacy

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1 of the programs in affecting energy demand and
2 consumption and the effect on wholesale market prices.

3 (v) For purposes of this paragraph, the term
4 "electric distribution company" shall mean a public
5 utility providing facilities for the jurisdictional
6 transmission and distribution of electricity to 100,000
7 or more retail customers in this Commonwealth.

8 Section 5. This act shall take effect immediately.

Appendix K

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2200 Session of 2008

INTRODUCED BY GEORGE, McCALL, BELFANTI, CALTAGIRONE, CONKLIN,
DALEY, GOODMAN, HARHAI, HARKINS, KULA, MANDERINO, McGEEHAN,
VITALI, J. WHITE, WALKO, SURRA, DeLUCA, DERMODY, GRUCELA,
JOSEPHS, JAMES, GINGRICH, FREEMAN, K. SMITH, McILVAINE SMITH,
YOUNGBLOOD AND FRANKEL, JANUARY 15, 2008

SENATOR TOMLINSON, CONSUMER PROTECTION AND PROFESSIONAL
LICENSURE, IN SENATE, AS AMENDED, SEPTEMBER 23, 2008
AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, ~~providing for recovery of certain~~ <--
3 ~~labor relations expenses; further providing for definitions;~~
4 ~~providing for adoption of energy efficiency and demand side~~
5 ~~response; and further providing for duties of electric~~
6 ~~distribution companies.~~ FURTHER PROVIDING FOR DEFINITIONS; <--
7 PROVIDING FOR ENERGY EFFICIENCY AND CONSERVATION; FURTHER
8 PROVIDING FOR DUTIES OF ELECTRIC DISTRIBUTION COMPANIES; AND
9 PROVIDING FOR PROCUREMENT.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:
12 Section 1. ~~Title 66 of the Pennsylvania Consolidated~~ <--
13 ~~Statutes is amended by adding a section to read:~~
14 ~~§ 1329. Recovery of certain labor relations expenses.~~
15 ~~No public utility may charge its customers as a permissible~~
16 ~~operating expense for ratemaking purposes any portion of the~~
17 ~~direct or indirect cost of meetings, publications, consultants,~~
18 ~~attorneys or other professional services and expenses associated~~

1 ~~with the utility's efforts to dissuade the employees of the~~
2 ~~utility, or the employees of any affiliated interest of the~~
3 ~~utility as defined in section 2101 (relating to definition of~~
4 ~~affiliated interest), from becoming or remaining a member in, or~~
5 ~~otherwise being represented by, any labor union.~~

6 Section 2. Section 2803 of Title 66 is amended by adding
7 definitions to read:
8 § 2803. Definitions.
9 The following words and phrases when used in this chapter
10 shall have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "~~Affiliated interest.~~" ~~As defined in section 2101 (relating~~
13 ~~to definition of affiliated interest).~~

14 * * *
15 "~~Cost effective.~~" ~~In relation to a program being evaluated,~~
16 ~~satisfaction of the total resource cost test.~~
17 * * *

18 "~~Demand side response.~~" ~~Load management technologies,~~
19 ~~management practices or other strategies employed by retail~~
20 ~~customers that decrease peak electricity demand or shift demand~~

21 ~~from on peak to off peak periods provided that:~~

22 ~~(1) The measure is installed on or after the effective~~
23 ~~date of this section at the service location of a retail~~
24 ~~customer.~~

25 ~~(2) The measure reduces the peak demand or cost of~~
26 ~~energy by the retail customer.~~

27 ~~(3) The costs of the acquisition or installation of the~~
28 ~~measure are directly incurred in whole or in part by the~~
29 ~~electric distribution company.~~

30 ~~***~~

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1 ~~"Energy efficiency." Technologies, management practices or~~
2 ~~other strategies or measures employed by retail customers that~~
3 ~~reduce electricity consumption provided that:~~

4 ~~(1) The measure is installed on or after the effective~~
5 ~~date of this definition at the service location of a retail~~
6 ~~customer.~~

7 ~~(2) The measure reduces the consumption of energy by the~~
8 ~~retail customer.~~

9 ~~(3) The costs of the acquisition or installation of the~~
10 ~~measure are directly incurred in whole or in part by the~~
11 ~~electric distribution company.~~

12 ~~"Independent entity." An entity with no direct or indirect~~
13 ~~ownership, partnership or other affiliated interest with an~~
14 ~~electric distribution company.~~

15 ~~"Peak demand." The highest electrical requirement occurring~~
16 ~~during a specified period. For an electric distribution company,~~
17 ~~the term means the sum of the metered consumption for all retail~~
18 ~~customers over that period.~~

19 ~~"Real time price." A rate that directly reflects the~~
20 ~~different cost of energy during each hour.~~

21 ~~***~~

22 ~~"Smart meter technology." Technology, including, but not~~
23 ~~limited to, metering technology and network communications~~
24 ~~technology capable of bidirectional communication and that~~
25 ~~records electricity usage on at least an hourly basis, including~~
26 ~~related electric distribution system upgrades to enable the~~
27 ~~technology. The technology shall provide customers with direct~~
28 ~~access to and use of price and consumption information. The~~
29 ~~technology shall also:~~

30 ~~(1) Directly provide customers with information on their~~
20080H2200B4429 ~~hourly consumption.~~

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1 ~~(2) Enable time of use rates and real time price~~
2 ~~programs.~~

3 ~~(3) Effectively support the automatic control of the~~
4 ~~customer's electricity consumption by one or more of the~~
5 ~~following as selected by the customer:~~

6 ~~(i) the customer;~~

7 ~~(ii) the customer's utility; or~~

8 ~~(iii) a third party engaged by the customer or the~~
9 ~~customer's utility.~~

10 ~~"Time of use rate." A rate that reflects the costs of~~
11 ~~servicing customers during different time periods, including off-~~
12 ~~peak and on peak periods, but not as frequently as each hour.~~

13 ~~"Total resources cost test." A standard test that is met if,~~
14 ~~over the effective life of the program, the avoided supply side~~
15 ~~monetary costs are greater than the monetary costs of the~~
16 ~~demand side programs borne by both the electric distribution~~
17 ~~company and the participants.~~

18 ~~***~~

19 ~~Section 3. Title 66 is amended by adding a section to read:~~
20 ~~§ 2806.1. Adoption of procedures encouraging energy efficiency~~
21 ~~and demand side response.~~

22 ~~(a) Program. The commission shall develop a program to~~
23 ~~provide for the implementation of cost effective programs that~~
24 ~~reduce energy demand and consumption within the service~~
25 ~~territories of all electric distribution companies throughout~~
26 ~~this Commonwealth. The program shall include, but is not limited~~
27 ~~to, the following:~~
28

29 ~~(1) Selecting a program administrator to develop and~~
30 ~~oversee the delivery of energy efficiency and demand side~~
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1 ~~response programs within the service territory of each~~
2 ~~electric distribution company within this Commonwealth.~~

3 ~~(2) Implementing the necessary administrative and~~
4 ~~financial mechanisms that will enable the program~~
5 ~~administrator to develop and oversee the provision of energy~~
6 ~~efficiency and demand side response programs within the~~
7 ~~service territory of each electric distribution company~~
8 ~~within this Commonwealth, including the levying of~~
9 ~~assessments in accordance with sections 510 (relating to~~
10 ~~assessment for regulatory expenses upon public utilities),~~
11 ~~1307 (relating to sliding scale of rates; adjustments) and~~
12 ~~1308 (relating to voluntary changes in rates). The commission~~
13 ~~shall not approve or implement and shall not assess or charge~~
14 ~~to customers the costs of energy efficiency or demand~~
15 ~~response programs to the extent that the costs of such~~
16 ~~programs exceed 2% of the total annual revenues of the~~
17 ~~electric distribution company from all sources, including~~
18 ~~default service generation revenues as of January 1, 2007.~~
19 ~~This funding limit shall not include amounts provided for by~~
20 ~~the low income usage reduction programs established under~~
21 ~~regulations at 52 Pa. Code Ch. 58 (relating to residential~~
22 ~~low income usage reduction programs).~~

23 ~~(3) Implementing the necessary administrative and~~
24 ~~financial mechanisms that facilitate a system of third party~~
25 ~~entities to deliver all or portions of the energy efficiency~~
26 ~~and demand side response programs within the service~~
27 ~~territory of each electric distribution company within this~~
28 ~~Commonwealth, including the levying of assessments in~~
29 ~~accordance with sections 510, 1307 and 1308. The commission~~
30 ~~may order the electric distribution company to pay the third~~

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1 ~~party entity for services rendered in an electric~~
2 ~~distribution company's respective service territory pursuant~~
3 ~~to this section. The electric distribution company may be a~~
4 ~~third party entity.~~

5 ~~(b) Selection of program administrator. The commission~~
6 ~~shall implement the following procedures when selecting a~~
7 ~~program administrator:~~

8 ~~(1) The commission shall prepare a request for proposals~~
9 ~~for a program administrator to provide for the development~~
10 ~~and delivery of the energy efficiency and demand side~~
11 ~~response programs in the service territories of all electric~~
12 ~~distribution companies and shall make the request for~~
13 ~~proposals available for public comment.~~

14 ~~(2) The commission shall, within 60 days of the~~
15 ~~completion of the public comment period, issue the final~~
16 ~~request for proposals.~~

17 ~~(3) The commission shall, based on a competitive bid~~
18 ~~process, select an independent entity to serve as the energy~~
19 ~~efficiency and demand side response program administrator.~~

20 ~~(4) The commission shall include as a part of its~~
21 ~~agreement with the program administrator a system of~~
22 ~~performance parameters and a financial mechanism that~~
23 ~~provides incentives for exceeding established performance~~
24 ~~parameters and penalties for third parties not meeting~~
25 ~~established performance parameters.~~

26 ~~(c) Powers and duties of program administrator. The program~~
27 ~~administrator shall have powers and duties assigned by the~~
28 ~~commission. The powers and duties shall include, but not be~~
29 ~~limited to:~~

30 ~~(1) Soliciting through a competitive procurement process~~
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1 ~~within each electric distribution company service territory a~~
2 ~~program of providing energy efficiency and demand side~~
3 ~~response programs to residential, commercial and industrial~~
4 ~~customers utilizing third party entities.~~

5 ~~(2) Ensuring that each proposal includes, but is not~~

6 limited to:

7 (i) A clear delineation of how the program will be
8 conducted.

9 (ii) The types of specific program measures to be
10 offered.

11 (iii) The cost and benefit of each program to be
12 offered.

13 (iv) A process for monitoring and verifying results,
14 data collection and management procedures, program
15 evaluation processes and financial management strategies.

16 (3) In its review of each proposal received:

17 (i) Taking into account the unique circumstances of
18 each electric distribution company's service territory.

19 (ii) Finding that each program is cost effective and
20 that the portfolio of programs is designed to provide
21 every affected customer class with the opportunity to
22 participate and benefit economically.

23 (iii) Determining the cost effectiveness of energy
24 efficiency and demand side response measures using the
25 total resource cost test.

26 (4) Recommending to the commission those entities best
27 suited to provide energy efficiency and demand side response
28 programs within the service territory of each electric
29 distribution company.

30 (5) In the event no qualified proposals are received

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1 that meet the required plan goals in an electric distribution
2 company service territory to conduct the program activities:

3 (i) Issuing a subsequent request for proposals with
4 plan goals that are reduced no more than necessary to
5 obtain qualified proposals to provide program activities.
6 The lowered plan goals for energy efficiency and demand
7 side response shall only be in effect for that year.

8 (ii) In subsequent years, utilizing the plan goals
9 unless no qualified proposals are received to conduct the
10 program activities that meet the plan goals, the program
11 administrator shall issue a subsequent request for
12 proposals in accordance with the procedures identified in
13 this subparagraph.

14 (6) Executing agreements on behalf of the commission
15 with the selected entity in each electric distribution
16 company service territory to conduct the energy efficiency
17 and demand side response program. As part of these agreements
18 the program administrator shall ensure that:

19 (i) The programs offered by the selected entity are
20 provided equitably across all customer classes.

21 (ii) A clearly defined process for financial
22 compensation for the entity delivering the program which
23 is tied to defined goals for performance regarding
24 program activities accomplished, energy cost savings on a
25 per customer basis and utility wide basis and overall
26 energy and peak demand reduction is established.

27 (iii) A system of incentives and penalties for
28 performance of contractual activities above and below
29 predetermined levels is in place.

30 (iv) There is a set contract term which may include

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1 an initial three year term with renewal terms of varied
2 length.

3 (7) Submitting reports to the commission at such times
4 and in such manner as the commission directs.

5 (d) Commission review of recommendations. The commission
6 shall review the recommendations made by the program
7 administrator regarding those entities best suited to provide
8 energy efficiency and demand side response programs within the
9 service territory of each electric distribution company. The
10 commission shall approve or disapprove the recommendations made
11 by the program administrator.

12 (1) The commission review of the recommendations of the
13 program administrator shall be limited to ensuring that:

14 ~~(i) There is no evidence of fraud or market abuse.~~
15 ~~(ii) Any costs entered into are borne by the~~
16 ~~appropriate parties and that costs, including the costs~~
17 ~~of subsection (c)(6)(iii) incentives, related to the~~
18 ~~provision of the contracted services are borne by the~~
19 ~~appropriate customer class.~~
20 ~~(iii) There will be provided, in a cost effective~~
21 ~~manner, a program that provides energy efficiency and~~
22 ~~demand side response measures to all customer classes~~
23 ~~throughout the service territory of each electric~~
24 ~~distribution company.~~
25 ~~(2) If the commission approves a third party entity to~~
26 ~~conduct the program, the commission shall ensure the program~~
27 ~~administrator finalizes the agreement between the commission~~
28 ~~and the third party entity selected to provide the program of~~
29 ~~energy efficiency and demand side response.~~

30 ~~(3) In the event the commission disapproves the~~

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1 ~~recommendation of the program administrator, the commission~~
2 ~~shall provide a rationale for this decision and direct the~~
3 ~~program administrator on a course of action.~~

4 ~~(e) Plan goals. The program administrator shall ensure that~~
5 ~~each proposal submitted by a third party entity to deliver a~~
6 ~~program of energy efficiency and demand side response measures~~
7 ~~includes meeting the following energy saving goals:~~

8 ~~(1) The following relate to energy efficiency goals:~~

9 ~~(i) By May 31, 2011, total annual deliveries to~~
10 ~~retail customers of electric distribution companies shall~~
11 ~~be reduced by a minimum of 1%. This load reduction shall~~
12 ~~be measured against the expected load forecasted by the~~
13 ~~commission for June 1, 2010, through May 31, 2011, based~~
14 ~~on load for the period June 1, 2007, through May 31,~~
15 ~~2008, with provision made for weather adjustments and~~
16 ~~extraordinary load that the electric distribution company~~
17 ~~must serve. The commission shall determine and make~~
18 ~~public the forecasts to be used for each electric~~
19 ~~distribution company no later than August 31, 2008. The~~
20 ~~program administrator shall ensure that a third party~~
21 ~~entity meets the goals contained in this section through~~
22 ~~the implementation of a program of energy efficiency~~
23 ~~measures throughout the service territory of the electric~~
24 ~~distribution company.~~

25 ~~(ii) By May 31, 2013, total annual deliveries to~~
26 ~~retail customers of electric distribution companies shall~~
27 ~~be reduced by a minimum of 2.5%. This load reduction~~
28 ~~shall be measured against the expected load forecasted by~~
29 ~~the commission for June 1, 2012, through May 31, 2013,~~
30 ~~based on load for the period June 1, 2007, through May~~

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1 ~~31, 2008, with provision made for weather adjustments and~~
2 ~~extraordinary load that the electric distribution company~~
3 ~~must serve. The commission shall determine and make~~
4 ~~public the forecasts to be used for each electric~~
5 ~~distribution company no later than August 31, 2008. The~~
6 ~~program administrator shall ensure that a third party~~
7 ~~entity meets the goals contained in this section through~~
8 ~~the implementation of a program of energy efficiency~~
9 ~~measures throughout the service territory of the electric~~
10 ~~distribution company.~~

11 ~~(iii) By November 30, 2013, the program~~
12 ~~administrator shall evaluate the costs and benefits of~~
13 ~~these energy efficiency and conservation programs. If the~~
14 ~~benefits have been shown to exceed the costs, consistent~~
15 ~~with the total resource cost test, the program~~
16 ~~administrator, in consultation with the commission, shall~~
17 ~~set additional, incremental energy efficiency and~~
18 ~~conservation goals for the period ending May 31, 2018.~~

19 ~~(iv) After May 31, 2018, the program administrator~~
20 ~~shall continue to evaluate the costs and benefits of~~
21 ~~efficiency and conservation measures and, in consultation~~

22 with the commission, may adopt additional incremental
23 load reduction standards for electric distribution
24 companies.

25 (2) The following relate to demand side response
26 measures:

27 (i) Cost effective demand side response measures to
28 reduce peak demand by a minimum of 4% in the 100 hours of
29 highest demand with provision made for weather
30 adjustments and extraordinary load that the electric

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1 distribution company must serve shall be implemented in
2 each electric distribution company's service territory.
3 This reduction will be measured against the electric
4 distribution company's peak demand in the 100 hours of
5 greatest demand for June 1, 2007, through May 31, 2008.
6 The reductions shall be accomplished by May 31, 2012.

7 (ii) By November 30, 2012, the program administrator
8 shall compare the total costs of these demand side
9 response measures to the total savings in energy and
10 capacity costs to retail customers of this Commonwealth.
11 If the benefits have been shown to exceed the costs,
12 consistent with the total resource cost test, the
13 commission shall order additional peak demand reductions
14 for the 100 hours of greatest demand or an alternative
15 measure adopted by the commission. The reductions shall
16 be measured from the electric distribution company's peak
17 demand for the period from June 1, 2011, through May 31,
18 2012. The mandated reductions shall be accomplished no
19 later than May 31, 2017.

20 (iii) After May 31, 2017, the program administrator
21 shall continue to evaluate the costs and benefits of
22 demand side response measures and may, in consultation
23 with the commission, adopt additional incremental peak
24 load reduction standards.

25 (f) Measurements and verification. The commission shall
26 establish standards by which the program administrator submits
27 to the commission an annual report, which includes that
28 information relating to the actions and results of the energy
29 efficiency and demand side response programs undertaken within
30 each electric distribution service territory by each third party

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1 entity.

2 (1) The report shall include, but not be limited to:

3 (i) Documentation of program expenditures.

4 (ii) Measurement and verification of savings
5 resulting from programs.

6 (iii) Evaluation of the cost effectiveness of
7 expenditures.

8 (iv) Any other information the commission may
9 require pursuant to its rulemaking authority.

10 (2) The program administrator, upon consultation with
11 the commission, shall direct a third party entity to modify
12 or terminate a particular energy efficiency or a demand side
13 response program if, after an adequate period for
14 implementation of the program, the commission determines the
15 program is not sufficiently meeting its goals and purposes.

16 (3) In the event an energy efficiency or demand side
17 response program is terminated, the program administrator
18 shall require the third party entity to submit a revised
19 program describing the actions to be undertaken to either
20 offer a substitute program or increase the availability of
21 existing programs to make up for the effect of the terminated
22 program on its overall program goals.

23 (g) Responsibilities of electric distribution companies. —
24 Each electric distribution company that does not seek to be a
25 third party entity shall:

26 (1) Cooperate with the program administrator as needed
27 in its efforts to competitively procure the services of a
28 third party entity to provide an energy efficiency and
29 demand side response program within the service territory of

30 ~~the electric distribution company.~~

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1 ~~(2) Provide information necessary to effectively~~
2 ~~facilitate the work of the selected third party entity in~~
3 ~~conducting the energy efficiency and demand side response~~
4 ~~program.~~

5 ~~(3) Provide assistance as may be requested by the~~
6 ~~program administrator in reviewing proposals from third party~~
7 ~~entities seeking to provide energy efficiency and demand side~~
8 ~~response programs within their service territories.~~

9 ~~(4) Provide assistance as may be requested by the~~
10 ~~program administrator to facilitate the successful execution~~
11 ~~of the contract agreement with the third party entities to~~
12 ~~provide an energy efficiency and demand side response program~~
13 ~~within their service territories.~~

14 ~~(h) Recovery of administrative and program costs. An~~
15 ~~electric distribution company may fully recover all~~
16 ~~administrative costs, including, but not limited to, costs~~
17 ~~incurred under subsections (a)(3) and (g)(1), (2), (3) and (4).~~
18 ~~that the commission determines are prudently incurred and~~
19 ~~reasonable in amount pursuant to implementing a program to~~
20 ~~deliver cost effective energy efficiency and demand side~~
21 ~~response activities through a third party entity. Program and~~
22 ~~administrative costs shall be recovered on a full and current~~
23 ~~basis by the electric distribution company from customers~~
24 ~~through a reconcilable automatic adjustment clause pursuant to~~
25 ~~section 1307. Energy efficiency and demand side resource~~
26 ~~programs shall be deemed to be a new service offered for the~~
27 ~~first time under section 2804(4)(vi) (relating to standards for~~
28 ~~restructuring of electric industry).~~

29 ~~(i) Reporting. The commission shall submit an annual report~~
30 ~~to the General Assembly describing the results of the programs~~

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1 ~~implemented by each of the electric distribution companies,~~
2 ~~including, but not limited to:~~

3 ~~(1) The costs, benefits and reductions in energy costs.~~

4 ~~(2) Energy use by customer class within this~~
5 ~~Commonwealth.~~

6 ~~(3) Reductions in overall peak demand and projections~~
7 ~~toward complying with the overall target reduction goals of~~
8 ~~this section.~~

9 ~~(j) Definitions. For purposes of this section, the term~~
10 ~~"electric distribution company" shall mean a public utility~~
11 ~~providing facilities for the jurisdictional transmission and~~
12 ~~distribution of electricity to 100,000 or more retail customers~~
13 ~~in this Commonwealth.~~

14 ~~Section 4. Section 2807(e) of Title 66 is amended by adding~~
15 ~~a paragraph to read:~~

16 ~~§ 2807. Duties of electric distribution companies.~~

17 ~~***~~

18 ~~(e) Obligation to serve. ***~~

19 ~~(6) (i) Within nine months after the effective date of~~
20 ~~this paragraph, electric distribution companies shall~~
21 ~~file a smart meter technology procurement and~~
22 ~~installation plan with the commission for approval and~~
23 ~~make the plan available for public comment for a minimum~~
24 ~~of 30 days. The plan shall describe the smart meter~~
25 ~~technologies the electric distribution company proposes~~
26 ~~to install, how the smart meter technology meets the~~
27 ~~requirements of this paragraph and how the smart meter~~
28 ~~technology shall be installed according to this~~
29 ~~paragraph. In addition, the plan shall ensure that all~~
30 ~~smart meter technology installation and maintenance work~~

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1 ~~shall be performed by adequately trained and qualified~~
2 ~~personnel and that, to the extent practical, such work~~
3 ~~shall be offered initially to employees of the electric~~
4 ~~distribution company.~~

5 ~~(ii) Electric distribution companies shall furnish~~
6 ~~smart meter technology to:~~

7 ~~(A) Customers responsible for 40% of the~~
8 ~~distribution company's annual peak demand within four~~
9 ~~years after the effective date of this paragraph.~~

10 ~~(B) Customers responsible for 75% of the~~
11 ~~distribution company's annual peak demand within six~~
12 ~~years after the effective date of this paragraph.~~

13 ~~(C) One hundred percent of its customers within~~
14 ~~ten years after the effective date of this paragraph.~~
15 ~~Electric distribution companies shall, with customer~~
16 ~~consent, make available electronic access to customer~~
17 ~~meter data to third parties, including electric~~
18 ~~generation suppliers and providers of conservation and~~
19 ~~load management services.~~

20 ~~(iii) Electric distribution companies shall be~~
21 ~~permitted to recover all reasonable and prudent costs, as~~
22 ~~determined by the commission, of providing smart meter~~
23 ~~technology, including annual depreciation and capital~~
24 ~~costs over the life of the smart meter technology, that~~
25 ~~are incurred after the effective date of this paragraph,~~
26 ~~less all operating and capital costs savings realized by~~
27 ~~the electric distribution company from the introduction~~
28 ~~and use of the smart meter technology. An electric~~
29 ~~distribution company may, at its option, recover such~~
30 ~~smart meter technology costs:~~

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1 ~~(A) through base rates, including a deferral for~~
2 ~~future base rate recovery of current costs, with~~
3 ~~carrying charges equal to 6%; or~~

4 ~~(B) on a full and current basis through a~~
5 ~~reconcilable automatic adjustment clause under~~
6 ~~section 1307 (relating to sliding scale of rates;~~
7 ~~adjustments).~~

8 ~~In no event shall lost or decreased revenues by an~~
9 ~~electric distribution company due to reduced electricity~~
10 ~~consumption or shifting energy demand be considered a~~
11 ~~cost of smart meter technology. Smart meter technology~~
12 ~~shall be deemed to be a new service offered for the first~~
13 ~~time under section 2804(4)(vi) (relating to standards for~~
14 ~~restructuring of electric industry).~~

15 ~~(iv) By January 1, 2010, or at the end of the~~
16 ~~applicable generation rate cap period, whichever is~~
17 ~~later, a default service provider shall submit to the~~
18 ~~commission one or more proposed time of use rates and a~~
19 ~~real time price plan. The commission shall approve or~~
20 ~~modify the time of use rates and real time price plan~~
21 ~~within six months of submittal. The default service~~
22 ~~provider shall offer commission approved time of use~~
23 ~~rates and a real time price plan to all residential and~~
24 ~~commercial customers that have been provided with smart~~
25 ~~meter technology within 60 days of installation of the~~
26 ~~smart meter technology or commission approval of the~~
27 ~~time of use rates and a real time price plan, whichever~~
28 ~~is later. Customer participation in time of use rates or~~
29 ~~real time pricing shall be voluntary and shall only be~~
30 ~~provided with the affirmative consent of the customer.~~

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1 ~~The default service provider shall submit an annual~~
2 ~~report to the commission on the participation in the~~
3 ~~time of use and real time price programs and the efficacy~~
4 ~~of the programs in affecting energy demand and~~
5 ~~consumption and the effect on wholesale market prices.~~

6 ~~(v) For purposes of this paragraph, the term~~
7 ~~"electric distribution company" shall mean a public~~
8 ~~utility providing facilities for the jurisdictional~~
9 ~~transmission and distribution of electricity to 100,000~~
10 ~~or more retail customers in this Commonwealth.~~

11 ~~Section 5. This act shall take effect immediately.~~

12 SECTION 1. SECTION 2803 OF TITLE 66 OF THE PENNSYLVANIA
13 CONSOLIDATED STATUTES IS AMENDED BY ADDING DEFINITIONS TO READ:
14 § 2803. DEFINITIONS.

<--

15 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
16 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
17 CONTEXT CLEARLY INDICATES OTHERWISE:

18 * * *

19 "BILATERAL CONTRACT." AN AGREEMENT, AS APPROVED BY THE
20 PENNSYLVANIA PUBLIC UTILITY COMMISSION, REACHED BY TWO PARTIES,
21 EACH ACTING IN ITS OWN INDEPENDENT SELF-INTEREST, AS A RESULT OF
22 NEGOTIATIONS FREE OF UNDUE INFLUENCE, DURESS OR FAVORITISM, IN
23 WHICH THE ELECTRIC ENERGY SUPPLIER AGREES TO SELL AND THE
24 ELECTRIC DISTRIBUTION COMPANY AGREES TO BUY A QUANTITY OF
25 ELECTRIC ENERGY AT A SPECIFIED PRICE FOR A SPECIFIED PERIOD OF
26 TIME UNDER TERMS AGREED TO BY BOTH PARTIES, AND WHICH FOLLOWS A
27 STANDARD INDUSTRY TEMPLATE WIDELY ACCEPTED IN THE INDUSTRY OR
28 VARIATIONS THERETO ACCEPTED BY THE PARTIES. STANDARD INDUSTRY
29 TEMPLATES MAY INCLUDE THE EEI MASTER AGREEMENT FOR PHYSICAL
30 ENERGY PURCHASES AND SALES AND THE ISDA MASTER AGREEMENT FOR

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1 FINANCIAL ENERGY PURCHASES AND SALES.

2 * * *

3 "DEFAULT SERVICE PROVIDER." AN ELECTRIC DISTRIBUTION COMPANY
4 WITHIN ITS CERTIFIED SERVICE TERRITORY OR AN ALTERNATIVE
5 SUPPLIER APPROVED BY THE PENNSYLVANIA PUBLIC UTILITY COMMISSION
6 THAT PROVIDES GENERATION SERVICE TO RETAIL ELECTRIC CUSTOMERS
7 WHO:

8 (1) CONTRACT FOR ELECTRIC POWER, INCLUDING ENERGY AND
9 CAPACITY, AND THE CHOSEN ELECTRIC GENERATION SUPPLIER DOES
10 NOT SUPPLY THE SERVICE; OR

11 (2) DO NOT CHOOSE AN ALTERNATIVE ELECTRIC GENERATION
12 SUPPLIER.

13 SECTION 2. TITLE 66 IS AMENDED BY ADDING A SECTION TO READ:
14 § 2806.1. ENERGY EFFICIENCY AND CONSERVATION.

15 (A) PROGRAM.--THE COMMISSION SHALL ADOPT A PROGRAM TO
16 REQUIRE ELECTRIC DISTRIBUTION COMPANIES TO ADOPT AND IMPLEMENT
17 COST-EFFECTIVE ENERGY EFFICIENCY AND CONSERVATION PLANS TO
18 REDUCE ENERGY DEMAND AND CONSUMPTION WITHIN THE SERVICE
19 TERRITORIES OF ALL ELECTRIC DISTRIBUTION COMPANIES IN THIS
20 COMMONWEALTH. THE PROGRAM SHALL INCLUDE:

21 (1) PROCEDURES FOR THE APPROVAL OF PLANS SUBMITTED UNDER
22 SUBSECTION (B).

23 (2) A PLAN EVALUATION PROCESS INCLUDING A PROCESS TO
24 MONITOR AND VERIFY DATA COLLECTION, QUALITY ASSURANCE AND
25 RESULTS SUBMITTED.

26 (3) AN ANALYSIS OF THE COST AND BENEFIT OF EACH PLAN
27 SUBMITTED UNDER SUBSECTION (B) IN ACCORDANCE WITH A TOTAL
28 RESOURCE COST TEST.

29 (4) AN ANALYSIS OF HOW THE PROGRAM AND INDIVIDUAL PLANS
30 WILL ENABLE EACH ELECTRIC DISTRIBUTION COMPANY TO ACHIEVE THE

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1 REQUIREMENTS FOR REDUCTION IN CONSUMPTION UNDER SUBSECTIONS
2 (C) AND (D).

3 (5) STANDARDS TO ENSURE THAT EACH PLAN INCLUDES A
4 VARIETY OF ENERGY EFFICIENCY AND CONSERVATION MEASURES AND
5 WILL PROVIDE THE MEASURES EQUITABLY TO ALL CLASSES OF
6 CUSTOMERS.

7 (6) PROCEDURES TO REVIEW ALL PROPOSED CONTRACTS PRIOR TO
8 THE EXECUTION OF THE CONTRACT WITH THIRD-PARTY ENTITIES TO
9 IMPLEMENT THE PLAN. THE COMMISSION MAY ORDER THE MODIFICATION
10 OF A PROPOSED CONTRACT TO ENSURE THAT THE PLAN IS ADEQUATE.

11 (7) PROCEDURES TO ENSURE COMPLIANCE WITH REQUIREMENTS
12 FOR REDUCTION IN CONSUMPTION UNDER SUBSECTIONS (C) AND (D).

13 (8) A REQUIREMENT FOR THE PARTICIPATION OF THIRD-PARTY
14 ENTITIES IN THE IMPLEMENTATION OF ALL OR PART OF A PLAN.

15 (9) A PROCESS TO LINK REDUCTIONS IN CONSUMPTION TO THE
16 COMPENSATION OF THIRD-PARTY ENTITIES.

17 (10) PROCEDURES FOR THE LEVY OF ASSESSMENTS IN
18 ACCORDANCE WITH SECTIONS 510 (RELATING TO ASSESSMENT FOR
19 REGULATORY EXPENSES UPON PUBLIC UTILITIES) AND 1308 (RELATING
20 TO VOLUNTARY CHANGES IN RATES) SUBJECT TO THE LIMITATIONS OF
21 SUBSECTION (G) TO FUND PLANS FILED UNDER SUBSECTION (B).
22 SUBJECT TO THE LIMITATIONS SET FORTH UNDER SUBSECTION (G).

23 (B) DUTIES OF ELECTRIC DISTRIBUTION COMPANIES.--

24 (1) (I) BY NOVEMBER 15, 2008, EACH ELECTRIC
25 DISTRIBUTION COMPANY SHALL DEVELOP AND FILE AN ENERGY
26 EFFICIENCY AND CONSERVATION PLAN WITH THE COMMISSION FOR
27 APPROVAL TO MEET THE REQUIREMENTS OF SUBSECTION (A) AND
28 THE REQUIREMENTS FOR REDUCTION IN CONSUMPTION UNDER
29 SUBSECTIONS (C) AND (D). THE PLAN SHALL BE IMPLEMENTED
30 UPON APPROVAL BY THE COMMISSION AND SHALL COMPLY WITH ALL

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1 OF THE FOLLOWING:

2 (A) INCLUDE SPECIFIC PROPOSALS TO IMPLEMENT
3 ENERGY EFFICIENCY AND CONSERVATION MEASURES TO
4 ACHIEVE THE REQUIRED REDUCTIONS IN CONSUMPTION UNDER
5 SUBSECTIONS (C) AND (D).

6 (B) A MINIMUM OF 10% OF THE REQUIRED REDUCTIONS
7 IN CONSUMPTION UNDER SUBSECTIONS (C) AND (D) SHALL BE
8 OBTAINED FROM UNITS OF FEDERAL, STATE AND LOCAL
9 GOVERNMENT, INCLUDING MUNICIPALITIES, SCHOOL
10 DISTRICTS, INSTITUTIONS OF HIGHER EDUCATION AND
11 NONPROFIT ENTITIES.

12 (C) THE MANNER IN WHICH PERFORMANCE WILL BE
13 MEASURED, VERIFIED AND EVALUATED.

14 (D) THE MANNER IN WHICH THE PLAN WILL ACHIEVE
15 THE REQUIREMENTS OF THE PROGRAM UNDER SUBSECTION (A).
16 AND THE REQUIRED REDUCTIONS IN CONSUMPTION UNDER
17 SUBSECTIONS (C) AND (D).

18 (E) INCLUDE A CONTRACT WITH ONE OR MORE THIRD-
19 PARTY ENTITIES TO IMPLEMENT THE PLAN OR A PORTION OF
20 THE PLAN AS APPROVED BY THE COMMISSION.

21 (F) INCLUDE ESTIMATES OF THE COST OF
22 IMPLEMENTATION OF THE ENERGY EFFICIENCY AND
23 CONSERVATION MEASURES IN THE PLAN.

24 (G) INCLUDE SPECIFIC ENERGY EFFICIENCY MEASURES
25 FOR HOUSEHOLDS AT OR BELOW 150% OF THE FEDERAL
26 POVERTY INCOME GUIDELINES. THE NUMBER OF MEASURES
27 SHALL BE PROPORTIONATE TO THOSE HOUSEHOLDS' SHARE OF
28 THE TOTAL ENERGY USAGE IN THIS COMMONWEALTH. THE
29 ELECTRIC DISTRIBUTION COMPANY SHALL COORDINATE
30 MEASURES UNDER THIS CLAUSE WITH OTHER PROGRAMS

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1 ADMINISTERED BY THE COMMISSION OR ANOTHER FEDERAL OR
2 STATE AGENCY. THE EXPENDITURES OF AN ELECTRIC
3 DISTRIBUTION COMPANY UNDER THIS CLAUSE SHALL BE IN
4 ADDITION TO EXPENDITURES MADE UNDER 52 PA. CODE CH.
5 58 (RELATING TO RESIDENTIAL LOW INCOME USAGE
6 REDUCTION PROGRAMS).

7 (H) INCLUDE A PROPOSED COST-RECOVERY TARIFF
8 MECHANISM TO FUND THE ENERGY EFFICIENCY AND
9 CONSERVATION MEASURES AND TO ENSURE RECOVERY OF THE
10 PRUDENT AND REASONABLE COSTS OF THE PLAN AS APPROVED
11 BY THE COMMISSION.

12 (I) A DEMONSTRATION THAT THE PLAN IS COST-
13 EFFECTIVE USING A TOTAL RESOURCE COST TEST OR OTHER
14 COST-BENEFIT ANALYSIS APPROVED BY THE COMMISSION AND
15 PROVIDES A DIVERSE CROSS SECTION OF ALTERNATIVES FOR
16 CUSTOMERS OF ALL RATE CLASSES.

17 (J) REQUIRE AN ANNUAL INDEPENDENT EVALUATION OF
18 THE PERFORMANCE OF THE COST-EFFECTIVENESS OF THE PLAN
19 AND A FULL REVIEW OF THE FIVE-YEAR RESULTS OF THE
20 PLAN AND, TO THE EXTENT PRACTICABLE, HOW THE PLAN
21 WILL BE ADJUSTED ON A GOING-FORWARD BASIS AS A RESULT
22 OF THE EVALUATION.

23 (II) A NEW PLAN SHALL BE FILED WITH THE COMMISSION
24 EVERY FIVE YEARS OR AS OTHERWISE REQUIRED BY THE
25 COMMISSION. THE PLAN SHALL SET FORTH THE MANNER IN WHICH
26 THE COMPANY WILL MEET THE REQUIRED REDUCTIONS IN
27 CONSUMPTION UNDER SUBSECTIONS (C) AND (D).

28 (III) NO MORE THAN 2% OF FUNDS AVAILABLE TO
29 IMPLEMENT A PLAN UNDER THIS SUBSECTION SHALL BE ALLOCATED

30 FOR EXPERIMENTAL EQUIPMENT OR DEVICES.

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1 (2) THE COMMISSION SHALL DIRECT AN ELECTRIC DISTRIBUTION
2 COMPANY TO MODIFY OR TERMINATE ANY PART OF A PLAN APPROVED
3 UNDER THIS SECTION IF, AFTER AN ADEQUATE PERIOD FOR
4 IMPLEMENTATION, THE COMMISSION DETERMINES THAT AN ENERGY
5 EFFICIENCY OR CONSERVATION MEASURE INCLUDED IN THE PLAN IS
6 NOT EFFECTIVE.

7 (3) IF PART OF A PLAN IS MODIFIED OR TERMINATED UNDER
8 PARAGRAPH (2), THE ELECTRIC DISTRIBUTION COMPANY SHALL SUBMIT
9 A REVISED PLAN DESCRIBING ACTIONS TO BE TAKEN TO OFFER
10 SUBSTITUTE MEASURES OR TO INCREASE THE AVAILABILITY OF
11 EXISTING MEASURES IN THE PLAN TO ACHIEVE THE REQUIRED
12 REDUCTIONS IN CONSUMPTION UNDER SUBSECTIONS (C) AND (D).

13 (C) REDUCTIONS IN CONSUMPTION.--EACH ELECTRIC DISTRIBUTION
14 COMPANY SHALL REDUCE CONSUMPTION AS FOLLOWS:

15 (1) BY MAY 31, 2011, EACH ELECTRIC DISTRIBUTION COMPANY
16 SHALL REDUCE ITS TOTAL ANNUAL WEATHER-NORMALIZED DELIVERIES
17 TO RETAIL CUSTOMERS BY A MINIMUM OF 1%. THE 1% LOAD REDUCTION
18 IN CONSUMPTION SHALL BE MEASURED AGAINST THE ELECTRIC
19 DISTRIBUTION COMPANY'S EXPECTED LOAD AS FORECASTED BY THE
20 COMMISSION FOR JUNE 1, 2007 THROUGH MAY 31, 2008, WITH
21 PROVISIONS MADE FOR WEATHER ADJUSTMENTS AND EXTRAORDINARY
22 LOADS THAT THE ELECTRIC DISTRIBUTION COMPANY MUST SERVE.

23 (2) BY MAY 31, 2013, EACH ELECTRIC DISTRIBUTION COMPANY
24 SHALL REDUCE ITS TOTAL ANNUAL WEATHER-NORMALIZED DELIVERIES
25 TO RETAIL CUSTOMERS BY A MINIMUM OF 2.5%. THE 2.5% LOAD
26 REDUCTION IN CONSUMPTION SHALL BE MEASURED AGAINST THE
27 ELECTRIC DISTRIBUTION COMPANY'S EXPECTED LOAD AS FORECASTED
28 BY THE COMMISSION FOR JUNE 1, 2007, THROUGH MAY 31, 2008,
29 WITH PROVISION MADE FOR WEATHER ADJUSTMENTS AND EXTRAORDINARY
30 LOADS THAT THE ELECTRIC DISTRIBUTION COMPANY MUST SERVE.

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1 (3) BY NOVEMBER 30, 2013, THE COMMISSION SHALL EVALUATE
2 THE COSTS AND BENEFITS OF THE PROGRAM ESTABLISHED UNDER
3 SUBSECTION (A) AND ENERGY EFFICIENCY AND CONSERVATION PLANS
4 SUBMITTED TO THE PROGRAM. THE EVALUATION SHALL BE CONSISTENT
5 WITH A TOTAL RESOURCE COST TEST OR A COST VERSUS BENEFIT
6 MEASUREMENT DETERMINED BY THE COMMISSION. IF THE COMMISSION
7 DETERMINES THAT THE BENEFITS OF THE PROGRAM EXCEED THE COSTS,
8 THE COMMISSION SHALL ADOPT ADDITIONAL INCREMENTAL REQUIRED
9 REDUCTIONS IN CONSUMPTION FOR THE PERIOD ENDING MAY 31, 2018.

10 (4) AFTER MAY 31, 2018, THE COMMISSION SHALL CONTINUE TO
11 EVALUATE THE COSTS AND BENEFITS OF THE PROGRAM ESTABLISHED
12 UNDER SUBSECTION (A) AND ENERGY EFFICIENCY AND CONSERVATION
13 PLANS APPROVED UNDER SUBSECTION (A). IF THE COMMISSION
14 DETERMINES THAT THE BENEFITS OF THE PROGRAM EXCEED THE COSTS,
15 THE COMMISSION MAY REQUIRE AND APPROVE ADDITIONAL PLANS TO
16 ACHIEVE INCREMENTAL REQUIREMENTS FOR REDUCTION IN CONSUMPTION
17 FOR ELECTRIC DISTRIBUTION COMPANIES. EACH PLAN SHALL BE FOR A
18 TERM NOT TO EXCEED FIVE YEARS.

19 (D) PEAK DEMAND.--EACH ELECTRIC DISTRIBUTION COMPANY SHALL
20 IMPLEMENT ENERGY EFFICIENCY AND CONSERVATION MEASURES TO ACHIEVE
21 THE FOLLOWING REDUCTIONS IN CONSUMPTION:

22 (1) BY MAY 31, 2013, EACH ELECTRIC DISTRIBUTION COMPANY
23 SHALL REDUCE ITS WEATHER-NORMALIZED DELIVERIES TO RETAIL
24 CUSTOMERS BY A MINIMUM OF 4% IN THE 100 HOURS OF HIGHEST
25 DEMAND. THE REDUCTION SHALL BE MEASURED AGAINST THE ELECTRIC
26 DISTRIBUTION COMPANY'S PEAK DEMAND IN THE 100 HOURS OF
27 GREATEST DEMAND FOR JUNE 1, 2007, THROUGH MAY 31, 2008.

28 (2) BY NOVEMBER 30, 2013, THE COMMISSION SHALL COMPARE
29 THE TOTAL COSTS OF ENERGY EFFICIENCY AND CONSERVATION PLANS
30 IMPLEMENTED UNDER THIS SECTION TO THE TOTAL SAVINGS IN ENERGY

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1 AND CAPACITY COSTS TO RETAIL CUSTOMERS IN THIS COMMONWEALTH.
2 IF THE COMMISSION DETERMINES THAT THE BENEFITS OF THE
3 MEASURES EXCEED THE COSTS, THE COMMISSION SHALL SET
4 ADDITIONAL INCREMENTAL REQUIREMENTS FOR REDUCTION IN PEAK
5 DEMAND FOR THE 100 HOURS OF GREATEST DEMAND OR AN ALTERNATIVE
6 REDUCTION APPROVED BY THE COMMISSION. REDUCTIONS IN

7 CONSUMPTION SHALL BE MEASURED FROM THE ELECTRIC DISTRIBUTION
8 COMPANY'S PEAK DEMAND FOR THE PERIOD FROM JUNE 1, 2011,
9 THROUGH MAY 31, 2012. THE REDUCTIONS IN CONSUMPTION REQUIRED
10 BY THE COMMISSION SHALL BE ACCOMPLISHED NO LATER THAN MAY 31,
11 2017.

12 (E) COMMISSION APPROVAL.--THE COMMISSION SHALL APPROVE OR
13 DISAPPROVE A PLAN FILED UNDER SUBSECTION (B) WITHIN 120 DAYS OF
14 SUBMISSION. THE FOLLOWING SHALL APPLY TO AN ORDER DISAPPROVING A
15 PLAN:

16 (1) THE COMMISSION SHALL DESCRIBE IN DETAIL THE REASONS
17 FOR THE DISAPPROVAL.

18 (2) THE ELECTRIC DISTRIBUTION COMPANY SHALL HAVE 60 DAYS
19 TO FILE A REVISED PLAN TO ADDRESS THE DEFICIENCIES IDENTIFIED
20 BY THE COMMISSION.

21 (F) PENALTIES.--

22 (1) THE FOLLOWING SHALL APPLY FOR FAILURE TO SUBMIT A
23 PLAN:

24 (I) AN ELECTRIC DISTRIBUTION COMPANY THAT FAILS TO
25 FILE A PLAN UNDER SUBSECTION (B) SHALL BE SUBJECT TO A
26 CIVIL PENALTY OF \$100,000 PER DAY UNTIL THE PLAN IS
27 FILED.

28 (II) AN ELECTRIC DISTRIBUTION COMPANY THAT FAILS TO
29 FILE A REVISED PLAN UNDER SUBSECTION (E)(2) SHALL BE
30 SUBJECT TO A CIVIL PENALTY OF \$100,000 PER DAY UNTIL THE

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1 PLAN IS FILED.

2 (III) PENALTIES COLLECTED UNDER THIS PARAGRAPH SHALL
3 BE DEPOSITED IN THE LOW-INCOME ELECTRIC CUSTOMER
4 ASSISTANCE PROGRAM OF THE ENERGY DISTRIBUTION COMPANY FOR
5 THE RESPECTIVE SERVICE TERRITORY.

6 (2) THE FOLLOWING SHALL APPLY TO AN ELECTRIC
7 DISTRIBUTION COMPANY THAT FAILS TO ACHIEVE THE REDUCTIONS IN
8 CONSUMPTION REQUIRED UNDER SUBSECTION (C) OR (D):

9 (I) THE ELECTRIC DISTRIBUTION COMPANY SHALL BE
10 SUBJECT TO A CIVIL PENALTY OF UP TO \$5,000,000 FOR
11 FAILURE TO ACHIEVE THE REQUIRED REDUCTIONS IN CONSUMPTION
12 UNDER SUBSECTION (C) OR (D). ANY PENALTY PAID BY AN
13 ELECTRIC DISTRIBUTION COMPANY UNDER THIS SUBPARAGRAPH
14 SHALL NOT BE RECOVERABLE FROM RATEPAYERS.

15 (II) IF AN ELECTRIC DISTRIBUTION COMPANY FAILS TO
16 ACHIEVE THE REQUIRED REDUCTIONS IN CONSUMPTION UNDER
17 SUBSECTION (C) OR (D) BY 2013, RESPONSIBILITY TO ACHIEVE
18 THE REDUCTIONS IN CONSUMPTION SHALL BE TRANSFERRED TO THE
19 COMMISSION. THE COMMISSION SHALL DO ALL OF THE FOLLOWING:

20 (A) IMPLEMENT A PLAN TO ACHIEVE THE REQUIRED
21 REDUCTIONS IN CONSUMPTION UNDER SUBSECTION (C) OR
22 (D).

23 (B) CONTRACT WITH THIRD-PARTY ENTITIES AS
24 NECESSARY TO IMPLEMENT ANY PORTION OF THE PLAN.

25 (III) THE PROVISIONS OF SUBPARAGRAPH (II) SHALL
26 APPLY IN EACH SUBSEQUENT FIVE-YEAR PERIOD IF THE ELECTRIC
27 DISTRIBUTION COMPANY FAILS TO ACHIEVE THE REDUCTION
28 STANDARDS UNDER SUBSECTION (C) OR (D).

29 (G) LIMITATION ON COSTS.--THE TOTAL COST OF ANY PLAN
30 REQUIRED UNDER THIS SECTION SHALL NOT EXCEED 2% OF THE ELECTRIC

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1 DISTRIBUTION COMPANY'S TOTAL ANNUAL REVENUE AS OF DECEMBER 31,
2 2006. NO MORE THAN 1% OF THE 2% OF THE COMPANY'S TOTAL ANNUAL
3 REVENUE MAY BE USED FOR THE ADMINISTRATIVE COSTS OF THE ELECTRIC
4 DISTRIBUTION COMPANY. THE LIMITATION UNDER THIS PARAGRAPH SHALL
5 NOT INCLUDE THE COST OF LOW-INCOME USAGE REDUCTION PROGRAMS
6 ESTABLISHED UNDER 52 PA. CODE CH. 58 (RELATING TO RESIDENTIAL
7 LOW INCOME USAGE REDUCTION PROGRAMS).

8 (H) REPORT.--THE FOLLOWING SHALL APPLY:

9 (1) EACH ELECTRIC DISTRIBUTION COMPANY SHALL SUBMIT AN
10 ANNUAL REPORT TO THE COMMISSION RELATING TO THE RESULTS OF
11 THE ENERGY EFFICIENCY AND CONSERVATION PLAN WITHIN THE
12 ELECTRIC DISTRIBUTION SERVICE TERRITORY. THE REPORT SHALL
13 INCLUDE ALL OF THE FOLLOWING:

14 (I) DOCUMENTATION OF PROGRAM EXPENDITURES.

15 (II) MEASUREMENT AND VERIFICATION OF ENERGY SAVINGS
16 UNDER THE PLAN.

17 (III) EVALUATION OF THE COST-EFFECTIVENESS OF
18 EXPENDITURES.

19 (IV) ANY OTHER INFORMATION REQUIRED BY THE
20 COMMISSION.

21 (2) BEGINNING FIVE YEARS FOLLOWING THE EFFECTIVE DATE OF
22 THIS SECTION AND ANNUALLY THEREAFTER, THE COMMISSION SHALL
23 SUBMIT A REPORT TO THE CONSUMER PROTECTION AND PROFESSIONAL
24 LICENSURE COMMITTEE OF THE SENATE AND THE CONSUMER AFFAIRS
25 COMMITTEE OF THE HOUSE OF REPRESENTATIVES.

26 (I) EXISTING FUNDING SOURCES.--EACH ELECTRIC DISTRIBUTION
27 COMPANY SHALL PROVIDE A LIST OF ALL ELIGIBLE FEDERAL AND STATE
28 FUNDING PROGRAMS.

29 (J) RECOVERY.--IN NO CASE SHALL DECREASED REVENUES OF AN
30 ELECTRIC DISTRIBUTION COMPANY DUE TO REDUCED ENERGY CONSUMPTION

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1 OR CHANGES IN ENERGY DEMAND BE CONSIDERED A RECOVERABLE COST.

2 (K) APPLICABILITY.--THIS SECTION SHALL NOT APPLY TO AN
3 ELECTRIC DISTRIBUTION COMPANY WITH FEWER THAN 100,000 CUSTOMERS.

4 (L) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
5 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
6 SUBSECTION:

7 "ELECTRIC DISTRIBUTION COMPANY TOTAL ANNUAL REVENUE."
8 AMOUNTS PAID TO THE ELECTRIC DISTRIBUTION COMPANY FOR
9 GENERATION, TRANSMISSION, DISTRIBUTION AND SURCHARGES BY RETAIL
10 CUSTOMERS.

11 "ENERGY EFFICIENCY AND CONSERVATION MEASURES."

12 (1) TECHNOLOGIES, MANAGEMENT PRACTICES OR OTHER MEASURES
13 EMPLOYED BY RETAIL CUSTOMERS THAT REDUCE ELECTRICITY
14 CONSUMPTION OR DEMAND IF ALL OF THE FOLLOWING APPLY:

15 (I) THE TECHNOLOGY, PRACTICE OR OTHER MEASURE IS
16 INSTALLED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION
17 AT THE LOCATION OF A RETAIL CUSTOMER.

18 (II) THE TECHNOLOGY, PRACTICE OR OTHER MEASURE
19 REDUCES CONSUMPTION OF ENERGY BY THE RETAIL CUSTOMER.

20 (III) THE COST OF THE ACQUISITION OR INSTALLATION OF
21 THE MEASURE IS DIRECTLY INCURRED IN WHOLE OR IN PART BY
22 THE ELECTRIC DISTRIBUTION COMPANY.

23 (2) ENERGY EFFICIENCY AND CONSERVATION MEASURES SHALL
24 INCLUDE SOLAR OR SOLAR PHOTOVOLTAIC PANELS, ENERGY EFFICIENT
25 WINDOWS AND DOORS, ENERGY EFFICIENT LIGHTING, INCLUDING EXIT
26 SIGN RETROFIT, HIGH BAY FLUORESCENT RETROFIT AND PEDESTRIAN
27 AND TRAFFIC SIGNAL CONVERSION, GEOTHERMAL HEATING,
28 INSULATION, AIR SEALING, REFLECTIVE ROOF COATINGS, ENERGY
29 EFFICIENT HEATING AND COOLING EQUIPMENT OR SYSTEMS AND ENERGY
30 EFFICIENT APPLIANCES AND OTHER TECHNOLOGIES, PRACTICES OR

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1 MEASURES APPROVED BY THE COMMISSION.

2 "PEAK DEMAND." THE HIGHEST ELECTRICAL REQUIREMENT OCCURRING
3 DURING A SPECIFIED PERIOD. FOR AN ELECTRIC DISTRIBUTION COMPANY,
4 THE TERM SHALL MEAN THE SUM OF THE METERED CONSUMPTION FOR ALL
5 RETAIL CUSTOMERS OVER THAT PERIOD.

6 "QUALITY ASSURANCE." ALL OF THE FOLLOWING:

7 (1) THE AUDITING OF BUILDINGS, EQUIPMENT AND PROCESSES
8 TO DETERMINE THE COST-EFFECTIVENESS OF ENERGY EFFICIENCY AND
9 CONSERVATION MEASURES USING NATIONALLY RECOGNIZED TOOLS AND
10 CERTIFICATION PROGRAMS.

11 (2) INDEPENDENT INSPECTION OF COMPLETED ENERGY
12 EFFICIENCY AND CONSERVATION MEASURES COMPLETED BY THIRD-PARTY
13 ENTITIES TO EVALUATE THE QUALITY OF THE COMPLETED MEASURE.

14 "REAL-TIME PRICE." A RATE THAT DIRECTLY REFLECTS THE
15 DIFFERENT COST OF ENERGY DURING EACH HOUR.

16 "THIRD-PARTY ENTITY." AN ENTITY WITH NO DIRECT OR INDIRECT
17 OWNERSHIP, PARTNERSHIP OR OTHER AFFILIATED INTEREST WITH AN
18 ELECTRIC DISTRIBUTION COMPANY.

19 "TIME-OF-USE RATE." A RATE THAT REFLECTS THE COSTS OF
20 SERVING CUSTOMERS DURING DIFFERENT TIME PERIODS, INCLUDING OFF-
21 PEAK AND ON-PEAK PERIODS, BUT NOT AS FREQUENTLY AS EACH HOUR.

22 "TOTAL RESOURCE COST TEST." A STANDARD TEST THAT IS MET IF,

23 OVER THE EFFECTIVE LIFE OF EACH PLAN NOT TO EXCEED FIVE YEARS,
24 THE AVOIDED MONETARY COSTS OF SUPPLYING ELECTRICITY ARE GREATER
25 THAN THE MONETARY COSTS OF ENERGY EFFICIENCY MEASURES AND
26 CONSERVATION OF CONSUMPTION.

27 SECTION 3. SECTION 2807(E) OF TITLE 66 IS AMENDED AND THE
28 SECTION IS AMENDED BY ADDING SUBSECTIONS TO READ:
29 § 2807. DUTIES OF ELECTRIC DISTRIBUTION COMPANIES.

30 * * *

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1 (E) OBLIGATION TO SERVE.--[AN ELECTRIC DISTRIBUTION
2 COMPANY'S] A DEFAULT SERVICE PROVIDER'S OBLIGATION TO PROVIDE
3 ELECTRIC GENERATION SUPPLY SERVICE FOLLOWING [IMPLEMENTATION OF
4 RESTRUCTURING AND THE CHOICE OF ALTERNATIVE GENERATION BY A
5 CUSTOMER] THE EXPIRATION OF A GENERATION RATE CAP SPECIFIED
6 UNDER SECTION 2804(4) (RELATING TO STANDARDS FOR RESTRUCTURING
7 OF ELECTRIC INDUSTRY) OR A RESTRUCTURING PLAN UNDER SECTION
8 2806(F) (RELATING TO IMPLEMENTATION, PILOT PROGRAMS AND
9 PERFORMANCE-BASED RATES). IS REVISED AS FOLLOWS:

10 (1) WHILE AN ELECTRIC DISTRIBUTION COMPANY COLLECTS
11 EITHER A COMPETITIVE TRANSITION CHARGE OR AN INTANGIBLE
12 TRANSITION CHARGE OR UNTIL 100% OF ITS CUSTOMERS HAVE CHOICE,
13 WHICHEVER IS LONGER, THE ELECTRIC DISTRIBUTION COMPANY SHALL
14 CONTINUE TO HAVE THE FULL OBLIGATION TO SERVE, INCLUDING THE
15 CONNECTION OF CUSTOMERS, THE DELIVERY OF ELECTRIC ENERGY AND
16 THE PRODUCTION OR ACQUISITION OF ELECTRIC ENERGY FOR
17 CUSTOMERS.

18 [(2) AT THE END OF THE TRANSITION PERIOD, THE COMMISSION
19 SHALL PROMULGATE REGULATIONS TO DEFINE THE ELECTRIC
20 DISTRIBUTION COMPANY'S OBLIGATION TO CONNECT AND DELIVER AND
21 ACQUIRE ELECTRICITY UNDER PARAGRAPH (3) THAT WILL EXIST AT
22 THE END OF THE PHASE-IN PERIOD.

23 (3) IF A CUSTOMER CONTRACTS FOR ELECTRIC ENERGY AND IT
24 IS NOT DELIVERED OR IF A CUSTOMER DOES NOT CHOOSE AN
25 ALTERNATIVE ELECTRIC GENERATION SUPPLIER, THE ELECTRIC
26 DISTRIBUTION COMPANY OR COMMISSION-APPROVED ALTERNATIVE
27 SUPPLIER SHALL ACQUIRE ELECTRIC ENERGY AT PREVAILING MARKET
28 PRICES TO SERVE THAT CUSTOMER AND SHALL RECOVER FULLY ALL
29 REASONABLE COSTS.]

30 (3.1) (I) FOLLOWING THE EXPIRATION OF AN ELECTRIC

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1 DISTRIBUTION COMPANY'S OBLIGATION TO PROVIDE ELECTRIC
2 GENERATION SUPPLY SERVICE TO RETAIL CUSTOMERS AT CAPPED
3 RATES, IF A CUSTOMER CONTRACTS FOR ELECTRIC GENERATION
4 SUPPLY SERVICE AND THE CHOSEN ELECTRIC GENERATION
5 SUPPLIER DOES NOT PROVIDE THE SERVICE OR IF A CUSTOMER
6 DOES NOT CHOOSE AN ALTERNATIVE ELECTRIC GENERATION
7 SUPPLIER, THE DEFAULT SERVICE PROVIDER SHALL PROVIDE
8 ELECTRIC GENERATION SUPPLY SERVICE TO THAT CUSTOMER
9 PURSUANT TO A COMMISSION-APPROVED COMPETITIVE PROCUREMENT
10 PLAN. THE ELECTRIC POWER ACQUIRED SHALL BE PROCURED
11 THROUGH COMPETITIVE PROCUREMENT PROCESSES AND SHALL
12 INCLUDE ONE OR MORE OF THE FOLLOWING:

13 (A) AUCTIONS.

14 (B) REQUESTS FOR PROPOSAL.

15 (C) BILATERAL AGREEMENTS ENTERED INTO AT THE
16 SOLE DISCRETION OF THE DEFAULT SERVICE PROVIDER WHICH
17 SHALL BE AT PRICES WHICH ARE:

18 (I) NO GREATER THAN THE COST OF OBTAINING
19 GENERATION UNDER COMPARABLE TERMS IN THE
20 WHOLESALE MARKET, AS DETERMINED BY THE COMMISSION
21 AT THE TIME OF EXECUTION OF THE CONTRACT; OR

22 (II) CONSISTENT WITH A COMMISSION-APPROVED
23 COMPETITION PROCUREMENT PROCESS. ANY AGREEMENT
24 BETWEEN AFFILIATED PARTIES SHALL BE SUBJECT TO
25 REVIEW AND APPROVAL OF THE PENNSYLVANIA PUBLIC
26 UTILITY COMMISSION UNDER CHAPTER 21 (RELATING TO
27 RELATIONS WITH AFFILIATED INTERESTS). IN NO CASE
28 SHALL THE COST OF OBTAINING GENERATION FROM ANY
29 AFFILIATED INTEREST BE GREATER THAN THE COST OF

THE WHOLESALE MARKET AT THE TIME OF EXECUTION OF
THE CONTRACT.

(II) THE PROVISIONS OF THIS PARAGRAPH SHALL APPLY TO
ANY TYPE OF FUEL PURCHASED BY A DEFAULT SERVICE PROVIDER
TO PROVIDE ELECTRIC GENERATION SUPPLY SERVICE, INCLUDING
FUEL REQUIRED TO BE PURCHASED UNDER THE ACT OF NOVEMBER
30, 2004 (P.L.1672, NO.213), KNOWN AS THE ALTERNATIVE
ENERGY PORTFOLIO STANDARDS ACT.

(3.2) THE ELECTRIC POWER PROCURED PURSUANT TO PARAGRAPH
(3.1) SHALL INCLUDE A PRUDENT MIX OF THE FOLLOWING:

(I) SPOT MARKET PURCHASES.

(II) SHORT-TERM CONTRACTS.

(III) LONG-TERM PURCHASE CONTRACTS, ENTERED INTO AS
A RESULT OF AN AUCTION, REQUEST FOR PROPOSAL OR BILATERAL
CONTRACT THAT IS FREE OF UNDUE INFLUENCE, DURESS OR
FAVORITISM, OF NOT LESS THAN THREE AND NOT MORE THAN 20
YEARS, UNLESS THE COMMISSION DETERMINES A LONGER TERM IS
NECESSARY FOR THE RELIABILITY IN THE ACQUISITION OF
GENERATION AND IT IS IN THE BEST INTEREST OF CONSUMERS TO
EXTEND THE TERM OF THE CONTRACT BEYOND 20 YEARS. THE
DEFAULT SERVICE PROVIDER SHALL HAVE SOLE DISCRETION TO
DETERMINE THE SOURCE, FUEL TYPE AND LENGTH OF CONTRACT.

(3.3) THE PRUDENT MIX OF CONTRACTS ENTERED INTO PURSUANT
TO PARAGRAPH (3.2) SHALL BE DESIGNED TO ENSURE:

(I) ADEQUATE AND RELIABLE SERVICE.

(II) THE LEAST COST TO CUSTOMERS OVER TIME.

(III) COMPLIANCE WITH THE REQUIREMENTS OF PARAGRAPH

(3.1).

(3.4) THE DEFAULT SERVICE PROVIDER SHALL FILE A PLAN FOR
COMPETITIVE PROCUREMENT WITH THE COMMISSION AND OBTAIN

COMMISSION APPROVAL OF THE PLAN CONSIDERING THE STANDARDS IN
PARAGRAPHS (3.1), (3.2) AND (3.3) BEFORE THE COMPETITIVE
PROCESS IS IMPLEMENTED. THE COMMISSION SHALL HOLD HEARINGS AS
NECESSARY ON THE PROPOSED PLAN. IF THE COMMISSION FAILS TO
ISSUE A FINAL ORDER ON THE PLAN WITHIN NINE MONTHS OF THE
DATE THAT THE PLAN IS FILED, THE PLAN SHALL BE DEEMED TO BE
APPROVED AND THE DEFAULT SERVICE PROVIDER MAY IMPLEMENT THE
PLAN AS FILED. COSTS INCURRED THROUGH AN APPROVED COMPETITIVE
PROCUREMENT PLAN SHALL BE DEEMED TO BE THE LEAST COST OVER
TIME AS REQUIRED UNDER PARAGRAPH (3.3).

(3.5) AT THE TIME THE COMMISSION EVALUATES THE PLAN AND
PRIOR TO APPROVAL, IN DETERMINING IF THE DEFAULT ELECTRIC
SERVICE PROVIDER'S PLAN OBTAINS GENERATION SUPPLY AT THE
LEAST COST, THE COMMISSION SHALL CONSIDER THE DEFAULT SERVICE
PROVIDER'S OBLIGATION TO PROVIDE ADEQUATE AND RELIABLE
SERVICE TO THE CUSTOMERS AND THAT THE DEFAULT SERVICE
PROVIDER HAS OBTAINED A PRUDENT MIX OF CONTRACTS TO OBTAIN
LEAST COST ON LONG-TERM, SHORT-TERM AND SPOT MARKET BASIS AND
SHALL MAKE SPECIFIC FINDINGS WHICH SHALL INCLUDE THE
FOLLOWING:

(I) THE DEFAULT SERVICE PROVIDER'S PLAN INCLUDES
PRUDENT STEPS NECESSARY TO NEGOTIATE FAVORABLE GENERATION
SUPPLY CONTRACTS.

(II) THE DEFAULT SERVICE PROVIDER'S PLAN INCLUDES
PRUDENT STEPS NECESSARY TO OBTAIN LEAST COST GENERATION
SUPPLY CONTRACTS ON A LONG-TERM, SHORT-TERM AND SPOT
MARKET BASIS.

(III) NEITHER THE DEFAULT SERVICE PROVIDER NOR ITS
AFFILIATED INTEREST HAS WITHHELD OR ASKED TO WITHHOLD
FROM THE MARKET ANY GENERATION SUPPLY WHICH SHOULD HAVE

BEEN UTILIZED AS PART OF THE LEAST COST PROCUREMENT
POLICY.

(3.6) NOTWITHSTANDING SECTIONS 508 (RELATING TO POWER OF
COMMISSION TO VARY, REFORM AND REVISE CONTRACTS) AND 2102
(RELATING TO APPROVAL OF CONTRACTS WITH AFFILIATED
INTERESTS), THE COMMISSION SHALL NOT MODIFY CONTRACTS OR

7 DISALLOW COSTS ASSOCIATED WITH AN APPROVED PROCUREMENT
8 PROCESS WHEN IT HAS REVIEWED AND APPROVED THE RESULTS OF THE
9 PROCUREMENT.

10 (3.7) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE
11 TO THE CONTRARY, THE COMMISSION MAY MODIFY CONTRACTS OR
12 DISALLOW COSTS WHEN THE PARTY SEEKING RECOVERY OF THE COSTS
13 IS AT FAULT ASSOCIATED WITH CONTRACTS ENTERED INTO PURSUANT
14 TO A COMMISSION-APPROVED PROCUREMENT PLAN IF THE COMMISSION
15 DETERMINES AFTER A HEARING THAT:

16 (I) THE CONTRACT HAS NOT BEEN IMPLEMENTED OR
17 APPROVED OR DOES NOT COMPLY WITH THE COMMISSION-APPROVED
18 PROCUREMENT PLAN; OR

19 (II) THERE HAS BEEN FRAUD, COLLUSION OR MARKET
20 MANIPULATION WITH REGARD TO THESE CONTRACTS.

21 (3.8) THE DEFAULT SERVICE PROVIDER SHALL HAVE THE RIGHT
22 TO RECOVER ON A FULL AND CURRENT BASIS, PURSUANT TO A
23 RECONCILABLE AUTOMATIC ADJUSTMENT CLAUSE UNDER SECTION 1307
24 (RELATING TO SLIDING SCALE OF RATES; ADJUSTMENTS), ALL COSTS
25 INCURRED UNDER THIS SECTION AND A COMMISSION-APPROVED
26 COMPETITIVE PROCUREMENT PLAN.

27 (4) IF A CUSTOMER THAT CHOOSES AN ALTERNATIVE SUPPLIER
28 AND SUBSEQUENTLY DESIRES TO RETURN TO THE LOCAL DISTRIBUTION
29 COMPANY FOR GENERATION SERVICE, THE LOCAL DISTRIBUTION
30 COMPANY SHALL TREAT THAT CUSTOMER EXACTLY AS IT WOULD ANY NEW

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1 APPLICANT FOR ENERGY SERVICE.

2 (5) (I) NOTWITHSTANDING PARAGRAPH [(3)] (3.1), THE
3 ELECTRIC DISTRIBUTION COMPANY OR COMMISSION-APPROVED
4 ALTERNATIVE SUPPLIER MAY, IN ITS SOLE DISCRETION, OFFER
5 LARGE CUSTOMERS WITH A PEAK DEMAND OF 15 MEGAWATTS OR
6 GREATER AT ONE METER AT A LOCATION IN ITS SERVICE
7 TERRITORY ANY NEGOTIATED RATE FOR SERVICE AT ALL OF THE
8 CUSTOMERS' LOCATIONS WITHIN THE SERVICE TERRITORY FOR ANY
9 DURATION AGREED UPON BY THE ELECTRIC DISTRIBUTION COMPANY
10 OR COMMISSION-APPROVED ALTERNATIVE SUPPLIER AND THE LARGE
11 CUSTOMER. THE COMMISSION SHALL PERMIT, BUT SHALL NOT
12 REQUIRE, AN ELECTRIC DISTRIBUTION COMPANY OR COMMISSION-
13 APPROVED ALTERNATIVE SUPPLIER TO PROVIDE SERVICE TO LARGE
14 CUSTOMERS UNDER THIS PARAGRAPH. CONTRACT RATES ENTERED
15 INTO UNDER THIS PARAGRAPH SHALL BE SUBJECT TO REVIEW BY
16 THE COMMISSION IN ORDER TO ENSURE THAT ALL COSTS RELATED
17 TO THE RATES ARE BORNE BY THE PARTIES TO THE CONTRACT AND
18 THAT NO COSTS RELATED TO THE RATES ARE BORNE BY OTHER
19 CUSTOMERS OR CUSTOMER CLASSES. IF NO COSTS RELATED TO THE
20 RATES ARE BORNE BY OTHER CUSTOMERS OR CUSTOMER CLASSES,
21 THE COMMISSION SHALL APPROVE THE CONTRACT WITHIN 90 DAYS
22 OF ITS FILING, OR IT SHALL BE DEEMED APPROVED BY
23 OPERATION OF LAW UPON EXPIRATION OF THE 90 DAYS.
24 INFORMATION SUBMITTED UNDER THIS PARAGRAPH SHALL BE
25 SUBJECT TO THE COMMISSION'S PROCEDURES FOR THE FILING OF
26 CONFIDENTIAL AND PROPRIETARY INFORMATION.

27 (II) FOR PURPOSES OF PROVIDING SERVICE UNDER THIS
28 PARAGRAPH TO CUSTOMERS WITH A PEAK DEMAND OF 20 MEGAWATTS
29 OR GREATER AT ONE METER AT A LOCATION WITHIN THAT
30 DISTRIBUTION COMPANY'S SERVICE TERRITORY, AN ELECTRIC

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1 DISTRIBUTION COMPANY THAT HAS COMPLETED ITS RESTRUCTURING
2 TRANSITION PERIOD AS OF THE EFFECTIVE DATE OF THIS
3 PARAGRAPH MAY, IN ITS SOLE DISCRETION, ACQUIRE AN
4 INTEREST IN A GENERATION FACILITY OR CONSTRUCT A
5 GENERATION FACILITY SPECIFICALLY TO MEET THE ENERGY
6 REQUIREMENTS OF THE CUSTOMERS, INCLUDING THE ELECTRIC
7 REQUIREMENTS OF THE CUSTOMERS' OTHER BILLING LOCATIONS
8 WITHIN ITS SERVICE TERRITORY. THE ELECTRIC DISTRIBUTION
9 COMPANY MUST COMMENCE CONSTRUCTION OF THE GENERATION
10 FACILITY OR CONTRACT TO ACQUIRE THE GENERATION INTEREST
11 WITHIN THREE YEARS AFTER THE EFFECTIVE DATE OF THIS
12 PARAGRAPH, EXCEPT THAT THE ELECTRIC DISTRIBUTION COMPANY
13 MAY ADD TO THE GENERATION FACILITIES IT COMMENCED
14 CONSTRUCTION OR CONTRACTED TO ACQUIRE AFTER THIS THREE-

15 YEAR PERIOD TO SERVE ADDITIONAL LOAD OF CUSTOMERS FOR
16 WHOM IT COMMENCED CONSTRUCTION OR CONTRACTED TO ACQUIRE
17 GENERATION WITHIN THREE YEARS. NOTHING IN THIS PARAGRAPH
18 REQUIRES OR AUTHORIZES THE COMMISSION TO REQUIRE AN
19 ELECTRIC DISTRIBUTION COMPANY TO COMMENCE CONSTRUCTION OR
20 ACQUIRE AN INTEREST IN A GENERATION FACILITY. THE
21 ELECTRIC DISTRIBUTION COMPANY'S INTEREST IN THE
22 GENERATION FACILITY IT BUILT OR CONTRACTED TO ACQUIRE
23 SHALL BE NO LARGER THAN NECESSARY TO MEET PEAK DEMAND OF
24 CUSTOMERS SERVED UNDER THIS SUBPARAGRAPH. DURING TIMES
25 WHEN THE CUSTOMER'S DEMAND IS LESS THAN THE ELECTRIC
26 DISTRIBUTION COMPANY'S GENERATION INTEREST, THE ELECTRIC
27 DISTRIBUTION COMPANY MAY SELL EXCESS POWER ON THE
28 WHOLESALE MARKET. AT NO TIME SHALL THE COSTS ASSOCIATED
29 WITH THE GENERATING FACILITY INTERESTS BE INCLUDED IN
30 RATE BASE OR OTHERWISE REFLECTED IN RATES. THE GENERATION

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1 FACILITY INTERESTS SHALL NOT BE COMMISSION-REGULATED
2 ASSETS.

3 (6) A DEFAULT SERVICE PLAN APPROVED BY THE COMMISSION
4 PRIOR TO THE EFFECTIVE DATE OF THIS SECTION SHALL REMAIN IN
5 EFFECT THROUGH ITS APPROVED TERM. AT ITS SOLE DISCRETION, THE
6 DEFAULT SERVICE PROVIDER MAY PROPOSE AMENDMENTS TO ITS
7 APPROVED PLAN THAT ARE CONSISTENT WITH THIS SECTION, AND THE
8 COMMISSION SHALL ISSUE A DECISION WHETHER TO APPROVE OR
9 DISAPPROVE THE PROPOSED AMENDMENTS WITHIN NINE MONTHS OF THE
10 DATE THAT THE AMENDMENTS ARE FILED. IF THE COMMISSION FAILS
11 TO ISSUE A FINAL ORDER WITHIN NINE MONTHS, THE AMENDMENTS
12 SHALL BE DEEMED TO BE APPROVED AND THE DEFAULT SERVICE
13 PROVIDER MAY IMPLEMENT THE AMENDMENTS AS FILED.

14 (7) THE DEFAULT SERVICE PROVIDER SHALL OFFER RESIDENTIAL
15 AND SMALL BUSINESS CUSTOMERS A GENERATION SUPPLY SERVICE RATE
16 THAT SHALL CHANGE NO MORE FREQUENTLY THAN ON A QUARTERLY
17 BASIS. ALL DEFAULT SERVICE RATES SHALL BE REVIEWED BY THE
18 COMMISSION TO ENSURE THAT THE COSTS OF PROVIDING SERVICE TO
19 EACH CUSTOMER CLASS ARE NOT SUBSIDIZED BY ANY OTHER CLASS.

20 (E) SMART METER TECHNOLOGY AND TIME OF USE RATES.--

21 (1) WITHIN NINE MONTHS AFTER THE EFFECTIVE DATE OF THIS
22 PARAGRAPH, ELECTRIC DISTRIBUTION COMPANIES SHALL FILE A SMART
23 METER TECHNOLOGY PROCUREMENT AND INSTALLATION PLAN WITH THE
24 COMMISSION FOR APPROVAL. THE PLAN SHALL DESCRIBE THE SMART
25 METER TECHNOLOGIES THE ELECTRIC DISTRIBUTION COMPANY PROPOSES
26 TO INSTALL IN ACCORDANCE WITH PARAGRAPH (2).

27 (2) ELECTRIC DISTRIBUTION COMPANIES SHALL FURNISH SMART
28 METER TECHNOLOGY AS FOLLOWS:

29 (I) UPON REQUEST TO A CUSTOMER THAT AGREES TO PAY
30 THE COST OF THE SMART METER.

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1 (II) IN THE CONSTRUCTION OF A NEW RESIDENCE OR NEW
2 BUILDING TO BE USED BY A COMMERCIAL CUSTOMER.

3 (III) IN ACCORDANCE WITH A SCHEDULE OF REPLACEMENT
4 OF FULL DEPRECIATION OF EXISTING METERS.

5 (3) ELECTRIC DISTRIBUTION COMPANIES SHALL, WITH CUSTOMER
6 CONSENT, MAKE AVAILABLE ELECTRONIC ACCESS TO CUSTOMER METER
7 DATA TO THIRD PARTIES, INCLUDING ELECTRIC GENERATION
8 SUPPLIERS AND PROVIDERS OF CONSERVATION AND LOAN MANAGEMENT
9 SERVICES.

10 (4) AN ELECTRIC DISTRIBUTION COMPANY SHALL NOT BE
11 PERMITTED TO RECOVER THE COSTS, AS DETERMINED BY THE
12 COMMISSION, OF PROVIDING SMART METER TECHNOLOGY UNDER
13 PARAGRAPH (2).

14 (5) IN NO EVENT SHALL LOST OR DECREASED REVENUES BY AN
15 ELECTRIC DISTRIBUTION COMPANY DUE TO REDUCED ELECTRICITY
16 CONSUMPTION OR SHIFTING ENERGY DEMAND BE CONSIDERED A COST OF
17 SMART METER TECHNOLOGY.

18 (6) BY JANUARY 1, 2010, OR AT THE END OF THE APPLICABLE
19 GENERATION RATE CAP PERIOD, WHICHEVER IS LATER, A DEFAULT
20 SERVICE PROVIDER SHALL SUBMIT TO THE COMMISSION ONE OR MORE
21 PROPOSED TIME-OF-USE RATES AND REAL-TIME PRICE PLANS. THE
22 COMMISSION SHALL APPROVE OR MODIFY THE TIME-OF-USE RATES AND

23 REAL-TIME PRICE PLAN WITHIN SIX MONTHS OF SUBMITTAL. THE
24 DEFAULT SERVICE PROVIDER SHALL OFFER THE RATES AND REAL-TIME
25 PRICE PLAN TO ALL RESIDENTIAL AND COMMERCIAL CUSTOMERS THAT
26 HAVE BEEN PROVIDED WITH SMART METER TECHNOLOGY WITHIN 60 DAYS
27 OF INSTALLATION OF THE SMART METER TECHNOLOGY OR COMMISSION
28 APPROVAL OF THE TIME-OF-USE RATES AND REAL-TIME PRICE PLAN,
29 WHICHEVER IS LATER. RESIDENTIAL OR COMMERCIAL CUSTOMERS MAY
30 ELECT TO PARTICIPATE IN TIME-OF-USE RATES OR REAL-TIME

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1 PRICING. THE DEFAULT SERVICE PROVIDER SHALL SUBMIT AN ANNUAL
2 REPORT TO THE COMMISSION ON THE PARTICIPATION IN THE TIME-OF-
3 USE AND REAL-TIME PRICE PROGRAMS AND THE EFFICACY OF THE
4 PROGRAMS IN AFFECTING ENERGY DEMAND AND CONSUMPTION AND THE
5 EFFECT ON WHOLESALE MARKET PRICES.

6 (7) THE PROVISIONS OF THIS SUBSECTION SHALL NOT APPLY TO
7 AN ELECTRIC DISTRIBUTION COMPANY WITH 100,000 OR FEWER
8 CUSTOMERS.

9 (G) DEFINITION.--AS USED IN THIS SECTION, THE TERM "SMART
10 METER TECHNOLOGY" MEANS TECHNOLOGY, INCLUDING METERING
11 TECHNOLOGY AND NETWORK COMMUNICATIONS TECHNOLOGY CAPABLE OF
12 BIDIRECTIONAL COMMUNICATION, THAT RECORDS ELECTRICITY USAGE ON
13 AT LEAST AN HOURLY BASIS, INCLUDING RELATED ELECTRIC
14 DISTRIBUTION SYSTEM UPGRADES TO ENABLE THE TECHNOLOGY. THE
15 TECHNOLOGY SHALL PROVIDE CUSTOMERS WITH DIRECT ACCESS TO AND USE
16 OF PRICE AND CONSUMPTION INFORMATION. THE TECHNOLOGY SHALL ALSO:

17 (1) DIRECTLY PROVIDE CUSTOMERS WITH INFORMATION ON THEIR
18 HOURLY CONSUMPTION.

19 (2) ENABLE TIME-OF-USE RATES AND REAL-TIME PRICE
20 PROGRAMS.

21 (3) EFFECTIVELY SUPPORT THE AUTOMATIC CONTROL OF THE
22 CUSTOMER'S ELECTRICITY CONSUMPTION BY ONE OR MORE OF THE
23 FOLLOWING AS SELECTED BY THE CUSTOMER:

24 (I) THE CUSTOMER;

25 (II) THE CUSTOMER'S UTILITY; OR

26 (III) A THIRD PARTY ENGAGED BY THE CUSTOMER OR THE
27 CUSTOMER'S UTILITY.

28 (4) PROVIDE A MEANS TO OBTAIN REAL-TIME CONSUMPTION
29 INFORMATION FROM A METER SUCH AS AN INSTALLED PORT OR OUTPUT
30 FOR TRANSMITTING METER PULSE DATA EXTERNAL TO THE METER TO BE

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1 USED BY THE CUSTOMER, THE ELECTRIC DISTRIBUTION COMPANY OR A
2 THIRD PARTY ENGAGED BY THE CUSTOMER IN THE ELECTRIC
3 DISTRIBUTION COMPANY.

4 SECTION 4. TITLE 66 IS AMENDED BY ADDING A SECTION TO READ:
5 § 2813. PROCUREMENT OF POWER.

6 EXCEPT AS PROVIDED UNDER THE ACT OF NOVEMBER 30, 2004
7 (P.L.1672, NO.213), KNOWN AS THE ALTERNATIVE ENERGY PORTFOLIO
8 STANDARDS ACT, THE COMMISSION MAY NOT ORDER A DEFAULT SERVICE
9 PROVIDER TO PROCURE POWER FROM A SPECIFIC GENERATION SUPPLIER,
10 FROM A SPECIFIC GENERATION FUEL TYPE OR FROM NEW GENERATION
11 ONLY.

12 SECTION 5. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.

Appendix L

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2200 Session of 2008

INTRODUCED BY GEORGE, McCALL, BELFANTI, CALTAGIRONE, CONKLIN,
DALEY, N. P. GOODMAN, HARHAI, HARKINS, KULA, MANDERINO,
McGEEHAN, VITALI, J. WHITE, WALKO, SURRA, DeLUCA, DERMODY,
GRUCELA, JOSEPHS, JAMES, GINGRICH, FREEMAN, K. SMITH,
McILVAINE SMITH, YOUNGBLOOD AND FRANKEL, JANUARY 15, 2008

SENATOR TOMLINSON, CONSUMER PROTECTION AND PROFESSIONAL
LICENSURE, IN SENATE, RE-REPORTED AS AMENDED, OCTOBER 7, 2008

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, ~~providing for recovery of certain~~ <--
3 ~~labor relations expenses; further providing for definitions;~~
4 ~~providing for adoption of energy efficiency and demand side~~
5 ~~response; and further providing for duties of electric~~
6 ~~distribution companies. FURTHER PROVIDING FOR DEFINITIONS;~~ <--
7 ~~PROVIDING FOR ENERGY EFFICIENCY AND CONSERVATION; FURTHER~~
8 ~~PROVIDING FOR DUTIES OF ELECTRIC DISTRIBUTION COMPANIES; AND~~
9 ~~PROVIDING FOR PROCUREMENT. FURTHER PROVIDING FOR DIRECTOR OF~~ <--
10 OPERATIONS, SECRETARY, EMPLOYEES AND CONSULTANTS; REPEALING
11 PROVISIONS RELATING TO OFFICE OF TRIAL STAFF; FURTHER
12 PROVIDING FOR BUREAUS AND OFFICES; PROVIDING FOR OTHER
13 BUREAUS, OFFICES AND POSITIONS; FURTHER PROVIDING FOR
14 ELECTRIC UTILITY DEFINITIONS; PROVIDING FOR ENERGY EFFICIENCY
15 AND CONSERVATION PROGRAM AND FOR ENERGY EFFICIENCY AND
16 CONSERVATION; FURTHER PROVIDING FOR DUTIES OF ELECTRIC
17 DISTRIBUTION COMPANIES AND FOR MARKET POWER REMEDIATION; AND
18 PROVIDING FOR PROCUREMENT, FOR ADDITIONAL ALTERNATIVE ENERGY
19 SOURCES AND FOR CARBON DIOXIDE SEQUESTRATION NETWORK.

20 THE GENERAL ASSEMBLY RECOGNIZES THE FOLLOWING PUBLIC POLICY
21 FINDINGS AND DECLARES THAT THE FOLLOWING OBJECTIVES OF THE
22 COMMONWEALTH ARE SERVED BY THIS ACT:

23 (1) THE HEALTH, SAFETY AND PROSPERITY OF ALL CITIZENS OF
1 THIS COMMONWEALTH ARE INHERENTLY DEPENDENT UPON THE
2 AVAILABILITY OF ADEQUATE, RELIABLE, AFFORDABLE, EFFICIENT AND
3 ENVIRONMENTALLY SUSTAINABLE ELECTRIC SERVICE AT THE LEAST
4 COST, TAKING INTO ACCOUNT ANY BENEFITS OF PRICE STABILITY,
5 OVER TIME AND THE IMPACT ON THE ENVIRONMENT.

6 (2) IT IS IN THE PUBLIC INTEREST TO ADOPT ENERGY
7 EFFICIENCY AND CONSERVATION MEASURES AND TO IMPLEMENT ENERGY
8 PROCUREMENT REQUIREMENTS DESIGNED TO ENSURE THAT ELECTRICITY
9 OBTAINED REDUCES THE POSSIBILITY OF ELECTRIC PRICE
10 INSTABILITY, PROMOTES ECONOMIC GROWTH AND ENSURES AFFORDABLE
11 AND AVAILABLE ELECTRIC SERVICE TO ALL RESIDENTS.

12 (3) IT IS IN THE PUBLIC INTEREST TO EXPAND THE USE OF
13 ALTERNATIVE ENERGY AND TO EXPLORE THE FEASIBILITY OF NEW
14 SOURCES OF ALTERNATIVE ENERGY TO PROVIDE ELECTRIC GENERATION
15 IN THIS COMMONWEALTH.

16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

18 Section 1. ~~Title 66 of the Pennsylvania Consolidated~~
19 ~~Statutes is amended by adding a section to read:~~

<--

20 ~~§ 1329. Recovery of certain labor relations expenses.~~

21 ~~No public utility may charge its customers as a permissible~~
22 ~~operating expense for ratemaking purposes any portion of the~~
23 ~~direct or indirect cost of meetings, publications, consultants,~~
24 ~~attorneys or other professional services and expenses associated~~
25 ~~with the utility's efforts to dissuade the employees of the~~
26 ~~utility, or the employees of any affiliated interest of the~~
27 ~~utility as defined in section 2101 (relating to definition of~~
28 ~~affiliated interest), from becoming or remaining a member in, or~~
29 ~~otherwise being represented by, any labor union.~~

30 Section 2. Section 2803 of Title 66 is amended by adding
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1 definitions to read:

2 § 2803. Definitions.

3 The following words and phrases when used in this chapter
4 shall have the meanings given to them in this section unless the
5 context clearly indicates otherwise:

6 "Affiliated interest." As defined in section 2101 (relating
7 to definition of affiliated interest).

8 * * *

9 "Cost effective." In relation to a program being evaluated,
10 satisfaction of the total resource cost test.

11 * * *

12 "Demand side response." Load management technologies,
13 management practices or other strategies employed by retail
14 customers that decrease peak electricity demand or shift demand
15 from on peak to off peak periods provided that:

16 (1) ~~The measure is installed on or after the effective~~
17 ~~date of this section at the service location of a retail~~
18 ~~customer.~~

19 (2) ~~The measure reduces the peak demand or cost of~~
20 ~~energy by the retail customer.~~

21 (3) ~~The costs of the acquisition or installation of the~~
22 ~~measure are directly incurred in whole or in part by the~~
23 ~~electric distribution company.~~

24 * * *

25 "Energy efficiency." Technologies, management practices or
26 other strategies or measures employed by retail customers that
27 reduce electricity consumption provided that:

28 (1) ~~The measure is installed on or after the effective~~
29 ~~date of this definition at the service location of a retail~~
30 ~~customer.~~

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1 (2) ~~The measure reduces the consumption of energy by the~~
2 ~~retail customer.~~

3 (3) ~~The costs of the acquisition or installation of the~~
4 ~~measure are directly incurred in whole or in part by the~~
5 ~~electric distribution company.~~

6 "Independent entity." An entity with no direct or indirect
7 ownership, partnership or other affiliated interest with an
8 electric distribution company.

9 "Peak demand." The highest electrical requirement occurring
10 during a specified period. For an electric distribution company,
11 the term means the sum of the metered consumption for all retail
12 customers over that period.

13 "Real time price." A rate that directly reflects the
14 different cost of energy during each hour.

15 * * *

16 "Smart meter technology." Technology, including, but not
17 limited to, metering technology and network communications
18 technology capable of bidirectional communication and that
19 records electricity usage on at least an hourly basis, including
20 related electric distribution system upgrades to enable the
21 technology. The technology shall provide customers with direct
22 access to and use of price and consumption information. The
23 technology shall also:

24 ~~(1) Directly provide customers with information on their~~
25 ~~hourly consumption.~~
26 ~~(2) Enable time of use rates and real time price~~
27 ~~programs.~~
28 ~~(3) Effectively support the automatic control of the~~
29 ~~customer's electricity consumption by one or more of the~~
30 ~~following as selected by the customer:~~

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1 ~~(i) the customer;~~
2 ~~(ii) the customer's utility; or~~
3 ~~(iii) a third party engaged by the customer or the~~
4 ~~customer's utility.~~
5 ~~"Time of use rate." A rate that reflects the costs of~~
6 ~~servicing customers during different time periods, including off-~~
7 ~~peak and on peak periods, but not as frequently as each hour.~~
8 ~~"Total resources cost test." A standard test that is met if,~~
9 ~~over the effective life of the program, the avoided supply side~~
10 ~~monetary costs are greater than the monetary costs of the~~
11 ~~demand side programs borne by both the electric distribution~~
12 ~~company and the participants.~~

~~* * *~~

14 Section 3. Title 66 is amended by adding a section to read:
15 ~~§ 2806.1. Adoption of procedures encouraging energy efficiency~~
16 ~~and demand side response.~~

17 ~~(a) Program. The commission shall develop a program to~~
18 ~~provide for the implementation of cost effective programs that~~
19 ~~reduce energy demand and consumption within the service~~
20 ~~territories of all electric distribution companies throughout~~
21 ~~this Commonwealth. The program shall include, but is not limited~~
22 ~~to, the following:~~

23 ~~(1) Selecting a program administrator to develop and~~
24 ~~oversee the delivery of energy efficiency and demand side~~
25 ~~response programs within the service territory of each~~
26 ~~electric distribution company within this Commonwealth.~~
27 ~~(2) Implementing the necessary administrative and~~
28 ~~financial mechanisms that will enable the program~~
29 ~~administrator to develop and oversee the provision of energy~~
30 ~~efficiency and demand side response programs within the~~

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1 ~~service territory of each electric distribution company~~
2 ~~within this Commonwealth, including the levying of~~
3 ~~assessments in accordance with sections 510 (relating to~~
4 ~~assessment for regulatory expenses upon public utilities),~~
5 ~~1307 (relating to sliding scale of rates; adjustments) and~~
6 ~~1308 (relating to voluntary changes in rates). The commission~~
7 ~~shall not approve or implement and shall not assess or charge~~
8 ~~to customers the costs of energy efficiency or demand-~~
9 ~~response programs to the extent that the costs of such~~
10 ~~programs exceed 2% of the total annual revenues of the~~
11 ~~electric distribution company from all sources, including~~
12 ~~default service generation revenues as of January 1, 2007.~~
13 ~~This funding limit shall not include amounts provided for by~~
14 ~~the low income usage reduction programs established under~~
15 ~~regulations at 52 Pa. Code Ch. 58 (relating to residential~~
16 ~~low income usage reduction programs).~~

17 ~~(3) Implementing the necessary administrative and~~
18 ~~financial mechanisms that facilitate a system of third party~~
19 ~~entities to deliver all or portions of the energy efficiency~~
20 ~~and demand side response programs within the service~~
21 ~~territory of each electric distribution company within this~~
22 ~~Commonwealth, including the levying of assessments in~~
23 ~~accordance with sections 510, 1307 and 1308. The commission~~
24 ~~may order the electric distribution company to pay the third-~~
25 ~~party entity for services rendered in an electric~~
26 ~~distribution company's respective service territory pursuant~~
27 ~~to this section. The electric distribution company may be a~~
28 ~~third party entity.~~

29 ~~(b) Selection of program administrator. The commission~~
30 ~~shall implement the following procedures when selecting a~~

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1 program administrator:

2 (1) The commission shall prepare a request for proposals
3 for a program administrator to provide for the development
4 and delivery of the energy efficiency and demand side
5 response programs in the service territories of all electric
6 distribution companies and shall make the request for
7 proposals available for public comment.

8 (2) The commission shall, within 60 days of the
9 completion of the public comment period, issue the final
10 request for proposals.

11 (3) The commission shall, based on a competitive bid
12 process, select an independent entity to serve as the energy
13 efficiency and demand side response program administrator.

14 (4) The commission shall include as a part of its
15 agreement with the program administrator a system of
16 performance parameters and a financial mechanism that
17 provides incentives for exceeding established performance
18 parameters and penalties for third parties not meeting
19 established performance parameters.

20 (c) Powers and duties of program administrator. The program
21 administrator shall have powers and duties assigned by the
22 commission. The powers and duties shall include, but not be
23 limited to:

24 (1) Soliciting through a competitive procurement process
25 within each electric distribution company service territory a
26 program of providing energy efficiency and demand side
27 response programs to residential, commercial and industrial
28 customers utilizing third party entities.

29 (2) Ensuring that each proposal includes, but is not
30 limited to:

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1 (i) A clear delineation of how the program will be
2 conducted.

3 (ii) The types of specific program measures to be
4 offered.

5 (iii) The cost and benefit of each program to be
6 offered.

7 (iv) A process for monitoring and verifying results,
8 data collection and management procedures, program
9 evaluation processes and financial management strategies.

10 (3) In its review of each proposal received:

11 (i) Taking into account the unique circumstances of
12 each electric distribution company's service territory.

13 (ii) Finding that each program is cost effective and
14 that the portfolio of programs is designed to provide
15 every affected customer class with the opportunity to
16 participate and benefit economically.

17 (iii) Determining the cost effectiveness of energy
18 efficiency and demand side response measures using the
19 total resource cost test.

20 (4) Recommending to the commission those entities best
21 suited to provide energy efficiency and demand side response
22 programs within the service territory of each electric
23 distribution company.

24 (5) In the event no qualified proposals are received
25 that meet the required plan goals in an electric distribution
26 company service territory to conduct the program activities:

27 (i) Issuing a subsequent request for proposals with
28 plan goals that are reduced no more than necessary to
29 obtain qualified proposals to provide program activities.
30 The lowered plan goals for energy efficiency and demand

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1 side response shall only be in effect for that year.

2 (ii) In subsequent years, utilizing the plan goals
3 unless no qualified proposals are received to conduct the
4 program activities that meet the plan goals, the program
5 administrator shall issue a subsequent request for
6 proposals in accordance with the procedures identified in
7 this subparagraph.

8 (6) Executing agreements on behalf of the commission

9 with the selected entity in each electric distribution
10 company service territory to conduct the energy efficiency
11 and demand side response program. As part of these agreements
12 the program administrator shall ensure that:

13 (i) The programs offered by the selected entity are
14 provided equitably across all customer classes.

15 (ii) A clearly defined process for financial
16 compensation for the entity delivering the program which
17 is tied to defined goals for performance regarding
18 program activities accomplished, energy cost savings on a
19 per customer basis and utility wide basis and overall
20 energy and peak demand reduction is established.

21 (iii) A system of incentives and penalties for
22 performance of contractual activities above and below
23 predetermined levels is in place.

24 (iv) There is a set contract term which may include
25 an initial three year term with renewal terms of varied
26 length.

27 (7) Submitting reports to the commission at such times
28 and in such manner as the commission directs.

29 (d) Commission review of recommendations. The commission
30 shall review the recommendations made by the program

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1 administrator regarding those entities best suited to provide
2 energy efficiency and demand side response programs within the
3 service territory of each electric distribution company. The
4 commission shall approve or disapprove the recommendations made
5 by the program administrator.

6 (1) The commission review of the recommendations of the
7 program administrator shall be limited to ensuring that:

8 (i) There is no evidence of fraud or market abuse.

9 (ii) Any costs entered into are borne by the
10 appropriate parties and that costs, including the costs
11 of subsection (c)(6)(iii) incentives, related to the
12 provision of the contracted services are borne by the
13 appropriate customer class.

14 (iii) There will be provided, in a cost effective
15 manner, a program that provides energy efficiency and
16 demand side response measures to all customer classes
17 throughout the service territory of each electric
18 distribution company.

19 (2) If the commission approves a third party entity to
20 conduct the program, the commission shall ensure the program
21 administrator finalizes the agreement between the commission
22 and the third party entity selected to provide the program of
23 energy efficiency and demand side response.

24 (3) In the event the commission disapproves the
25 recommendation of the program administrator, the commission
26 shall provide a rationale for this decision and direct the
27 program administrator on a course of action.

28 (e) Plan goals. The program administrator shall ensure that
29 each proposal submitted by a third party entity to deliver a
30 program of energy efficiency and demand side response measures

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1 includes meeting the following energy saving goals:

2 (1) The following relate to energy efficiency goals:

3 (i) By May 31, 2011, total annual deliveries to
4 retail customers of electric distribution companies shall
5 be reduced by a minimum of 1%. This load reduction shall
6 be measured against the expected load forecasted by the
7 commission for June 1, 2010, through May 31, 2011, based
8 on load for the period June 1, 2007, through May 31,
9 2008, with provision made for weather adjustments and
10 extraordinary load that the electric distribution company
11 must serve. The commission shall determine and make
12 public the forecasts to be used for each electric
13 distribution company no later than August 31, 2008. The
14 program administrator shall ensure that a third party
15 entity meets the goals contained in this section through
16 the implementation of a program of energy efficiency

17 measures throughout the service territory of the electric
18 distribution company.

19 (ii) By May 31, 2013, total annual deliveries to
20 retail customers of electric distribution companies shall
21 be reduced by a minimum of 2.5%. This load reduction
22 shall be measured against the expected load forecasted by
23 the commission for June 1, 2012, through May 31, 2013,
24 based on load for the period June 1, 2007, through May
25 31, 2008, with provision made for weather adjustments and
26 extraordinary load that the electric distribution company
27 must serve. The commission shall determine and make
28 public the forecasts to be used for each electric
29 distribution company no later than August 31, 2008. The
30 program administrator shall ensure that a third party

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1 entity meets the goals contained in this section through
2 the implementation of a program of energy efficiency
3 measures throughout the service territory of the electric
4 distribution company.

5 (iii) By November 30, 2013, the program
6 administrator shall evaluate the costs and benefits of
7 these energy efficiency and conservation programs. If the
8 benefits have been shown to exceed the costs, consistent
9 with the total resource cost test, the program
10 administrator, in consultation with the commission, shall
11 set additional, incremental energy efficiency and
12 conservation goals for the period ending May 31, 2018.

13 (iv) After May 31, 2018, the program administrator
14 shall continue to evaluate the costs and benefits of
15 efficiency and conservation measures and, in consultation
16 with the commission, may adopt additional incremental
17 load reduction standards for electric distribution
18 companies.

19 (2) The following relate to demand side response
20 measures:

21 (i) Cost effective demand side response measures to
22 reduce peak demand by a minimum of 4% in the 100 hours of
23 highest demand with provision made for weather
24 adjustments and extraordinary load that the electric
25 distribution company must serve shall be implemented in
26 each electric distribution company's service territory.
27 This reduction will be measured against the electric
28 distribution company's peak demand in the 100 hours of
29 greatest demand for June 1, 2007, through May 31, 2008.
30 The reductions shall be accomplished by May 31, 2012.

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1 (ii) By November 30, 2012, the program administrator
2 shall compare the total costs of these demand side
3 response measures to the total savings in energy and
4 capacity costs to retail customers of this Commonwealth.
5 If the benefits have been shown to exceed the costs,
6 consistent with the total resource cost test, the
7 commission shall order additional peak demand reductions
8 for the 100 hours of greatest demand or an alternative
9 measure adopted by the commission. The reductions shall
10 be measured from the electric distribution company's peak
11 demand for the period from June 1, 2011, through May 31,
12 2012. The mandated reductions shall be accomplished no
13 later than May 31, 2017.

14 (iii) After May 31, 2017, the program administrator
15 shall continue to evaluate the costs and benefits of
16 demand side response measures and may, in consultation
17 with the commission, adopt additional incremental peak
18 load reduction standards.

19 (f) Measurements and verification. The commission shall
20 establish standards by which the program administrator submits
21 to the commission an annual report, which includes that
22 information relating to the actions and results of the energy
23 efficiency and demand side response programs undertaken within
24 each electric distribution service territory by each third party

25 entity.

- 26 ~~(1) The report shall include, but not be limited to:~~
27 ~~(i) Documentation of program expenditures.~~
28 ~~(ii) Measurement and verification of savings~~
29 ~~resulting from programs.~~
30 ~~(iii) Evaluation of the cost effectiveness of~~

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1 ~~expenditures.~~

- 2 ~~(iv) Any other information the commission may~~
3 ~~require pursuant to its rulemaking authority.~~

4 ~~(2) The program administrator, upon consultation with~~
5 ~~the commission, shall direct a third party entity to modify~~
6 ~~or terminate a particular energy efficiency or a demand side~~
7 ~~response program if, after an adequate period for~~
8 ~~implementation of the program, the commission determines the~~
9 ~~program is not sufficiently meeting its goals and purposes.~~

10 ~~(3) In the event an energy efficiency or demand side~~
11 ~~response program is terminated, the program administrator~~
12 ~~shall require the third party entity to submit a revised~~
13 ~~program describing the actions to be undertaken to either~~
14 ~~offer a substitute program or increase the availability of~~
15 ~~existing programs to make up for the effect of the terminated~~
16 ~~program on its overall program goals.~~

17 ~~(g) Responsibilities of electric distribution companies.~~

18 ~~Each electric distribution company that does not seek to be a~~
19 ~~third party entity shall:~~

20 ~~(1) Cooperate with the program administrator as needed~~
21 ~~in its efforts to competitively procure the services of a~~
22 ~~third party entity to provide an energy efficiency and~~
23 ~~demand side response program within the service territory of~~
24 ~~the electric distribution company.~~

25 ~~(2) Provide information necessary to effectively~~
26 ~~facilitate the work of the selected third party entity in~~
27 ~~conducting the energy efficiency and demand side response~~
28 ~~program.~~

29 ~~(3) Provide assistance as may be requested by the~~
30 ~~program administrator in reviewing proposals from third party~~

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1 ~~entities seeking to provide energy efficiency and demand side~~
2 ~~response programs within their service territories.~~

3 ~~(4) Provide assistance as may be requested by the~~
4 ~~program administrator to facilitate the successful execution~~
5 ~~of the contract agreement with the third party entities to~~
6 ~~provide an energy efficiency and demand side response program~~
7 ~~within their service territories.~~

8 ~~(h) Recovery of administrative and program costs. An~~
9 ~~electric distribution company may fully recover all~~
10 ~~administrative costs, including, but not limited to, costs~~
11 ~~incurred under subsections (a)(3) and (g)(1), (2), (3) and (4).~~
12 ~~that the commission determines are prudently incurred and~~
13 ~~reasonable in amount pursuant to implementing a program to~~
14 ~~deliver cost effective energy efficiency and demand side~~
15 ~~response activities through a third party entity. Program and~~
16 ~~administrative costs shall be recovered on a full and current~~
17 ~~basis by the electric distribution company from customers~~
18 ~~through a reconcilable automatic adjustment clause pursuant to~~
19 ~~section 1307. Energy efficiency and demand side resource~~
20 ~~programs shall be deemed to be a new service offered for the~~
21 ~~first time under section 2804(4)(vi) (relating to standards for~~
22 ~~restructuring of electric industry).~~

23 ~~(i) Reporting. The commission shall submit an annual report~~
24 ~~to the General Assembly describing the results of the programs~~
25 ~~implemented by each of the electric distribution companies,~~
26 ~~including, but not limited to:~~

27 ~~(1) The costs, benefits and reductions in energy costs.~~

28 ~~(2) Energy use by customer class within this~~
29 ~~Commonwealth.~~

30 ~~(3) Reductions in overall peak demand and projections~~

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1 ~~toward complying with the overall target reduction goals of~~
2 ~~this section.~~

3 ~~(j) Definitions. For purposes of this section, the term~~
4 ~~"electric distribution company" shall mean a public utility~~
5 ~~providing facilities for the jurisdictional transmission and~~
6 ~~distribution of electricity to 100,000 or more retail customers~~
7 ~~in this Commonwealth.~~

8 Section 4. Section 2807(e) of Title 66 is amended by adding
9 a paragraph to read:

10 § 2807. Duties of electric distribution companies.

11 * * *

12 (e) ~~Obligation to serve. * * *~~

13 ~~(6) (i) Within nine months after the effective date of~~
14 ~~this paragraph, electric distribution companies shall~~
15 ~~file a smart meter technology procurement and~~
16 ~~installation plan with the commission for approval and~~
17 ~~make the plan available for public comment for a minimum~~
18 ~~of 30 days. The plan shall describe the smart meter~~
19 ~~technologies the electric distribution company proposes~~
20 ~~to install, how the smart meter technology meets the~~
21 ~~requirements of this paragraph and how the smart meter~~
22 ~~technology shall be installed according to this~~
23 ~~paragraph. In addition, the plan shall ensure that all~~
24 ~~smart meter technology installation and maintenance work~~
25 ~~shall be performed by adequately trained and qualified~~
26 ~~personnel and that, to the extent practical, such work~~
27 ~~shall be offered initially to employees of the electric~~
28 ~~distribution company.~~

29 ~~(ii) Electric distribution companies shall furnish~~
30 ~~smart meter technology to:~~

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1 ~~(A) Customers responsible for 40% of the~~
2 ~~distribution company's annual peak demand within four~~
3 ~~years after the effective date of this paragraph.~~

4 ~~(B) Customers responsible for 75% of the~~
5 ~~distribution company's annual peak demand within six~~
6 ~~years after the effective date of this paragraph.~~

7 ~~(C) One hundred percent of its customers within~~
8 ~~ten years after the effective date of this paragraph.~~
9 ~~Electric distribution companies shall, with customer~~
10 ~~consent, make available electronic access to customer~~
11 ~~meter data to third parties, including electric~~
12 ~~generation suppliers and providers of conservation and~~
13 ~~load management services.~~

14 ~~(iii) Electric distribution companies shall be~~
15 ~~permitted to recover all reasonable and prudent costs, as~~
16 ~~determined by the commission, of providing smart meter~~
17 ~~technology, including annual depreciation and capital~~
18 ~~costs over the life of the smart meter technology, that~~
19 ~~are incurred after the effective date of this paragraph,~~
20 ~~less all operating and capital costs savings realized by~~
21 ~~the electric distribution company from the introduction~~
22 ~~and use of the smart meter technology. An electric~~
23 ~~distribution company may, at its option, recover such~~
24 ~~smart meter technology costs:~~

25 ~~(A) through base rates, including a deferral for~~
26 ~~future base rate recovery of current costs, with~~
27 ~~carrying charges equal to 6%; or~~

28 ~~(B) on a full and current basis through a~~
29 ~~reconcilable automatic adjustment clause under~~
30 ~~section 1307 (relating to sliding scale of rates;~~

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1 ~~adjustments).~~

2 ~~In no event shall lost or decreased revenues by an~~
3 ~~electric distribution company due to reduced electricity~~
4 ~~consumption or shifting energy demand be considered a~~
5 ~~cost of smart meter technology. Smart meter technology~~
6 ~~shall be deemed to be a new service offered for the first~~
7 ~~time under section 2804(4)(vi) (relating to standards for~~
8 ~~restructuring of electric industry).~~

9 ~~(iv) By January 1, 2010, or at the end of the~~
10 ~~applicable generation rate cap period, whichever is~~
11 ~~later, a default service provider shall submit to the~~
12 ~~commission one or more proposed time of use rates and a~~
13 ~~real time price plan. The commission shall approve or~~
14 ~~modify the time of use rates and real time price plan~~
15 ~~within six months of submittal. The default service~~
16 ~~provider shall offer commission approved time of use~~
17 ~~rates and a real time price plan to all residential and~~
18 ~~commercial customers that have been provided with smart~~
19 ~~meter technology within 60 days of installation of the~~
20 ~~smart meter technology or commission approval of the~~
21 ~~time of use rates and a real time price plan, whichever~~
22 ~~is later. Customer participation in time of use rates or~~
23 ~~real time pricing shall be voluntary and shall only be~~
24 ~~provided with the affirmative consent of the customer.~~
25 ~~The default service provider shall submit an annual~~
26 ~~report to the commission on the participation in the~~
27 ~~time of use and real time price programs and the efficacy~~
28 ~~of the programs in affecting energy demand and~~
29 ~~consumption and the effect on wholesale market prices.~~

30 ~~(v) For purposes of this paragraph, the term~~

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1 ~~"electric distribution company" shall mean a public~~
2 ~~utility providing facilities for the jurisdictional~~
3 ~~transmission and distribution of electricity to 100,000~~
4 ~~or more retail customers in this Commonwealth.~~

5 Section 5. This act shall take effect immediately.

6 SECTION 1. SECTION 2803 OF TITLE 66 OF THE PENNSYLVANIA
7 CONSOLIDATED STATUTES IS AMENDED BY ADDING DEFINITIONS TO READ:
8 § 2803. DEFINITIONS.

9 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
10 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
11 CONTEXT CLEARLY INDICATES OTHERWISE:

12 * * *

13 ~~"BILATERAL CONTRACT." AN AGREEMENT, AS APPROVED BY THE~~
14 ~~PENNSYLVANIA PUBLIC UTILITY COMMISSION, REACHED BY TWO PARTIES,~~
15 ~~EACH ACTING IN ITS OWN INDEPENDENT SELF INTEREST, AS A RESULT OF~~
16 ~~NEGOTIATIONS FREE OF UNDUE INFLUENCE, DURESS OR FAVORITISM, IN~~
17 ~~WHICH THE ELECTRIC ENERGY SUPPLIER AGREES TO SELL AND THE~~
18 ~~ELECTRIC DISTRIBUTION COMPANY AGREES TO BUY A QUANTITY OF~~
19 ~~ELECTRIC ENERGY AT A SPECIFIED PRICE FOR A SPECIFIED PERIOD OF~~
20 ~~TIME UNDER TERMS AGREED TO BY BOTH PARTIES, AND WHICH FOLLOWS A~~
21 ~~STANDARD INDUSTRY TEMPLATE WIDELY ACCEPTED IN THE INDUSTRY OR~~
22 ~~VARIATIONS THERETO ACCEPTED BY THE PARTIES. STANDARD INDUSTRY~~
23 ~~TEMPLATES MAY INCLUDE THE EEI MASTER AGREEMENT FOR PHYSICAL~~
24 ~~ENERGY PURCHASES AND SALES AND THE ISDA MASTER AGREEMENT FOR~~
25 ~~FINANCIAL ENERGY PURCHASES AND SALES.~~

26 * * *

27 ~~"DEFAULT SERVICE PROVIDER." AN ELECTRIC DISTRIBUTION COMPANY~~
28 ~~WITHIN ITS CERTIFIED SERVICE TERRITORY OR AN ALTERNATIVE~~
29 ~~SUPPLIER APPROVED BY THE PENNSYLVANIA PUBLIC UTILITY COMMISSION~~
30 ~~THAT PROVIDES GENERATION SERVICE TO RETAIL ELECTRIC CUSTOMERS~~

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1 WHO:

2 ~~(1) CONTRACT FOR ELECTRIC POWER, INCLUDING ENERGY AND~~
3 ~~CAPACITY, AND THE CHOSEN ELECTRIC GENERATION SUPPLIER DOES~~
4 ~~NOT SUPPLY THE SERVICE; OR~~

5 ~~(2) DO NOT CHOOSE AN ALTERNATIVE ELECTRIC GENERATION~~
6 ~~SUPPLIER.~~

7 SECTION 2. TITLE 66 IS AMENDED BY ADDING A SECTION TO READ:
8 § 2806.1. ENERGY EFFICIENCY AND CONSERVATION.

9 ~~(A) PROGRAM. THE COMMISSION SHALL ADOPT A PROGRAM TO~~
10 ~~REQUIRE ELECTRIC DISTRIBUTION COMPANIES TO ADOPT AND IMPLEMENT~~
11 ~~COST EFFECTIVE ENERGY EFFICIENCY AND CONSERVATION PLANS TO~~
12 ~~REDUCE ENERGY DEMAND AND CONSUMPTION WITHIN THE SERVICE~~
13 ~~TERRITORIES OF ALL ELECTRIC DISTRIBUTION COMPANIES IN THIS~~
14 ~~COMMONWEALTH. THE PROGRAM SHALL INCLUDE:~~

15 ~~(1) PROCEDURES FOR THE APPROVAL OF PLANS SUBMITTED UNDER~~
16 ~~SUBSECTION (B).~~

17 ~~(2) A PLAN EVALUATION PROCESS INCLUDING A PROCESS TO~~
18 ~~MONITOR AND VERIFY DATA COLLECTION, QUALITY ASSURANCE AND~~
19 ~~RESULTS SUBMITTED.~~

20 ~~(3) AN ANALYSIS OF THE COST AND BENEFIT OF EACH PLAN~~
21 ~~SUBMITTED UNDER SUBSECTION (B) IN ACCORDANCE WITH A TOTAL~~
22 ~~RESOURCE COST TEST.~~

23 ~~(4) AN ANALYSIS OF HOW THE PROGRAM AND INDIVIDUAL PLANS~~
24 ~~WILL ENABLE EACH ELECTRIC DISTRIBUTION COMPANY TO ACHIEVE THE~~
25 ~~REQUIREMENTS FOR REDUCTION IN CONSUMPTION UNDER SUBSECTIONS~~
26 ~~(C) AND (D).~~

27 ~~(5) STANDARDS TO ENSURE THAT EACH PLAN INCLUDES A~~
28 ~~VARIETY OF ENERGY EFFICIENCY AND CONSERVATION MEASURES AND~~
29 ~~WILL PROVIDE THE MEASURES EQUITABLY TO ALL CLASSES OF~~
30 ~~CUSTOMERS.~~

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- 20 -

1 ~~(6) PROCEDURES TO REVIEW ALL PROPOSED CONTRACTS PRIOR TO~~
2 ~~THE EXECUTION OF THE CONTRACT WITH THIRD PARTY ENTITIES TO~~
3 ~~IMPLEMENT THE PLAN. THE COMMISSION MAY ORDER THE MODIFICATION~~
4 ~~OF A PROPOSED CONTRACT TO ENSURE THAT THE PLAN IS ADEQUATE.~~

5 ~~(7) PROCEDURES TO ENSURE COMPLIANCE WITH REQUIREMENTS~~
6 ~~FOR REDUCTION IN CONSUMPTION UNDER SUBSECTIONS (C) AND (D).~~

7 ~~(8) A REQUIREMENT FOR THE PARTICIPATION OF THIRD PARTY~~
8 ~~ENTITIES IN THE IMPLEMENTATION OF ALL OR PART OF A PLAN.~~

9 ~~(9) A PROCESS TO LINK REDUCTIONS IN CONSUMPTION TO THE~~
10 ~~COMPENSATION OF THIRD PARTY ENTITIES.~~

11 ~~(10) PROCEDURES FOR THE LEVY OF ASSESSMENTS IN~~
12 ~~ACCORDANCE WITH SECTIONS 510 (RELATING TO ASSESSMENT FOR~~
13 ~~REGULATORY EXPENSES UPON PUBLIC UTILITIES) AND 1308 (RELATING~~
14 ~~TO VOLUNTARY CHANGES IN RATES) SUBJECT TO THE LIMITATIONS OF~~
15 ~~SUBSECTION (G) TO FUND PLANS FILED UNDER SUBSECTION (B);~~
16 ~~SUBJECT TO THE LIMITATIONS SET FORTH UNDER SUBSECTION (G).~~

17 ~~(B) DUTIES OF ELECTRIC DISTRIBUTION COMPANIES.~~

18 ~~(1) (I) BY NOVEMBER 15, 2008, EACH ELECTRIC~~
19 ~~DISTRIBUTION COMPANY SHALL DEVELOP AND FILE AN ENERGY~~
20 ~~EFFICIENCY AND CONSERVATION PLAN WITH THE COMMISSION FOR~~
21 ~~APPROVAL TO MEET THE REQUIREMENTS OF SUBSECTION (A) AND~~
22 ~~THE REQUIREMENTS FOR REDUCTION IN CONSUMPTION UNDER~~
23 ~~SUBSECTIONS (C) AND (D). THE PLAN SHALL BE IMPLEMENTED~~
24 ~~UPON APPROVAL BY THE COMMISSION AND SHALL COMPLY WITH ALL~~
25 ~~OF THE FOLLOWING:~~

26 ~~(A) INCLUDE SPECIFIC PROPOSALS TO IMPLEMENT~~
27 ~~ENERGY EFFICIENCY AND CONSERVATION MEASURES TO~~
28 ~~ACHIEVE THE REQUIRED REDUCTIONS IN CONSUMPTION UNDER~~
29 ~~SUBSECTIONS (C) AND (D).~~

30 ~~(B) A MINIMUM OF 10% OF THE REQUIRED REDUCTIONS~~

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- 21 -

1 ~~IN CONSUMPTION UNDER SUBSECTIONS (C) AND (D) SHALL BE~~
2 ~~OBTAINED FROM UNITS OF FEDERAL, STATE AND LOCAL~~
3 ~~GOVERNMENT, INCLUDING MUNICIPALITIES, SCHOOL~~
4 ~~DISTRICTS, INSTITUTIONS OF HIGHER EDUCATION AND~~
5 ~~NONPROFIT ENTITIES.~~

6 ~~(C) THE MANNER IN WHICH PERFORMANCE WILL BE~~
7 ~~MEASURED, VERIFIED AND EVALUATED.~~

8 ~~(D) THE MANNER IN WHICH THE PLAN WILL ACHIEVE~~
9 ~~THE REQUIREMENTS OF THE PROGRAM UNDER SUBSECTION (A)~~
10 ~~AND THE REQUIRED REDUCTIONS IN CONSUMPTION UNDER~~
11 ~~SUBSECTIONS (C) AND (D).~~

12 ~~(E) INCLUDE A CONTRACT WITH ONE OR MORE THIRD-~~
13 ~~PARTY ENTITIES TO IMPLEMENT THE PLAN OR A PORTION OF~~
14 ~~THE PLAN AS APPROVED BY THE COMMISSION.~~

15 ~~(F) INCLUDE ESTIMATES OF THE COST OF~~
16 ~~IMPLEMENTATION OF THE ENERGY EFFICIENCY AND~~
17 ~~CONSERVATION MEASURES IN THE PLAN.~~

18 ~~(G) INCLUDE SPECIFIC ENERGY EFFICIENCY MEASURES~~
19 ~~FOR HOUSEHOLDS AT OR BELOW 150% OF THE FEDERAL~~
20 ~~POVERTY INCOME GUIDELINES. THE NUMBER OF MEASURES~~
21 ~~SHALL BE PROPORTIONATE TO THOSE HOUSEHOLDS' SHARE OF~~
22 ~~THE TOTAL ENERGY USAGE IN THIS COMMONWEALTH. THE~~
23 ~~ELECTRIC DISTRIBUTION COMPANY SHALL COORDINATE~~
24 ~~MEASURES UNDER THIS CLAUSE WITH OTHER PROGRAMS~~

25 ADMINISTERED BY THE COMMISSION OR ANOTHER FEDERAL OR
26 STATE AGENCY. THE EXPENDITURES OF AN ELECTRIC
27 DISTRIBUTION COMPANY UNDER THIS CLAUSE SHALL BE IN
28 ADDITION TO EXPENDITURES MADE UNDER 52 PA. CODE CH.
29 58 (RELATING TO RESIDENTIAL LOW INCOME USAGE
30 REDUCTION PROGRAMS).

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- 22 -

1 (H) INCLUDE A PROPOSED COST RECOVERY TARIFF
2 MECHANISM TO FUND THE ENERGY EFFICIENCY AND
3 CONSERVATION MEASURES AND TO ENSURE RECOVERY OF THE
4 PRUDENT AND REASONABLE COSTS OF THE PLAN AS APPROVED
5 BY THE COMMISSION.

6 (I) A DEMONSTRATION THAT THE PLAN IS COST-
7 EFFECTIVE USING A TOTAL RESOURCE COST TEST OR OTHER
8 COST-BENEFIT ANALYSIS APPROVED BY THE COMMISSION AND
9 PROVIDES A DIVERSE CROSS SECTION OF ALTERNATIVES FOR
10 CUSTOMERS OF ALL RATE CLASSES.

11 (J) REQUIRE AN ANNUAL INDEPENDENT EVALUATION OF
12 THE PERFORMANCE OF THE COST-EFFECTIVENESS OF THE PLAN
13 AND A FULL REVIEW OF THE FIVE-YEAR RESULTS OF THE
14 PLAN AND, TO THE EXTENT PRACTICABLE, HOW THE PLAN
15 WILL BE ADJUSTED ON A GOING-FORWARD BASIS AS A RESULT
16 OF THE EVALUATION.

17 (II) A NEW PLAN SHALL BE FILED WITH THE COMMISSION
18 EVERY FIVE YEARS OR AS OTHERWISE REQUIRED BY THE
19 COMMISSION. THE PLAN SHALL SET FORTH THE MANNER IN WHICH
20 THE COMPANY WILL MEET THE REQUIRED REDUCTIONS IN
21 CONSUMPTION UNDER SUBSECTIONS (C) AND (D).

22 (III) NO MORE THAN 2% OF FUNDS AVAILABLE TO
23 IMPLEMENT A PLAN UNDER THIS SUBSECTION SHALL BE ALLOCATED
24 FOR EXPERIMENTAL EQUIPMENT OR DEVICES.

25 (2) THE COMMISSION SHALL DIRECT AN ELECTRIC DISTRIBUTION
26 COMPANY TO MODIFY OR TERMINATE ANY PART OF A PLAN APPROVED
27 UNDER THIS SECTION IF, AFTER AN ADEQUATE PERIOD FOR
28 IMPLEMENTATION, THE COMMISSION DETERMINES THAT AN ENERGY
29 EFFICIENCY OR CONSERVATION MEASURE INCLUDED IN THE PLAN IS
30 NOT EFFECTIVE.

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- 23 -

1 (3) IF PART OF A PLAN IS MODIFIED OR TERMINATED UNDER
2 PARAGRAPH (2), THE ELECTRIC DISTRIBUTION COMPANY SHALL SUBMIT
3 A REVISED PLAN DESCRIBING ACTIONS TO BE TAKEN TO OFFER
4 SUBSTITUTE MEASURES OR TO INCREASE THE AVAILABILITY OF
5 EXISTING MEASURES IN THE PLAN TO ACHIEVE THE REQUIRED
6 REDUCTIONS IN CONSUMPTION UNDER SUBSECTIONS (C) AND (D).

7 (C) REDUCTIONS IN CONSUMPTION. EACH ELECTRIC DISTRIBUTION
8 COMPANY SHALL REDUCE CONSUMPTION AS FOLLOWS:

9 (1) BY MAY 31, 2011, EACH ELECTRIC DISTRIBUTION COMPANY
10 SHALL REDUCE ITS TOTAL ANNUAL WEATHER-NORMALIZED DELIVERIES
11 TO RETAIL CUSTOMERS BY A MINIMUM OF 1%. THE 1% LOAD REDUCTION
12 IN CONSUMPTION SHALL BE MEASURED AGAINST THE ELECTRIC
13 DISTRIBUTION COMPANY'S EXPECTED LOAD AS FORECASTED BY THE
14 COMMISSION FOR JUNE 1, 2007 THROUGH MAY 31, 2008, WITH
15 PROVISIONS MADE FOR WEATHER ADJUSTMENTS AND EXTRAORDINARY
16 LOADS THAT THE ELECTRIC DISTRIBUTION COMPANY MUST SERVE.

17 (2) BY MAY 31, 2013, EACH ELECTRIC DISTRIBUTION COMPANY
18 SHALL REDUCE ITS TOTAL ANNUAL WEATHER-NORMALIZED DELIVERIES
19 TO RETAIL CUSTOMERS BY A MINIMUM OF 2.5%. THE 2.5% LOAD
20 REDUCTION IN CONSUMPTION SHALL BE MEASURED AGAINST THE
21 ELECTRIC DISTRIBUTION COMPANY'S EXPECTED LOAD AS FORECASTED
22 BY THE COMMISSION FOR JUNE 1, 2007, THROUGH MAY 31, 2008,
23 WITH PROVISION MADE FOR WEATHER ADJUSTMENTS AND EXTRAORDINARY
24 LOADS THAT THE ELECTRIC DISTRIBUTION COMPANY MUST SERVE.

25 (3) BY NOVEMBER 30, 2013, THE COMMISSION SHALL EVALUATE
26 THE COSTS AND BENEFITS OF THE PROGRAM ESTABLISHED UNDER
27 SUBSECTION (A) AND ENERGY EFFICIENCY AND CONSERVATION PLANS
28 SUBMITTED TO THE PROGRAM. THE EVALUATION SHALL BE CONSISTENT
29 WITH A TOTAL RESOURCE COST TEST OR A COST VERSUS BENEFIT
30 MEASUREMENT DETERMINED BY THE COMMISSION. IF THE COMMISSION

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- 24 -

1 ~~DETERMINES THAT THE BENEFITS OF THE PROGRAM EXCEED THE COSTS,~~
2 ~~THE COMMISSION SHALL ADOPT ADDITIONAL INCREMENTAL REQUIRED~~
3 ~~REDUCTIONS IN CONSUMPTION FOR THE PERIOD ENDING MAY 31, 2018.~~

4 ~~(4) AFTER MAY 31, 2018, THE COMMISSION SHALL CONTINUE TO~~
5 ~~EVALUATE THE COSTS AND BENEFITS OF THE PROGRAM ESTABLISHED~~
6 ~~UNDER SUBSECTION (A) AND ENERGY EFFICIENCY AND CONSERVATION~~
7 ~~PLANS APPROVED UNDER SUBSECTION (A). IF THE COMMISSION~~
8 ~~DETERMINES THAT THE BENEFITS OF THE PROGRAM EXCEED THE COSTS,~~
9 ~~THE COMMISSION MAY REQUIRE AND APPROVE ADDITIONAL PLANS TO~~
10 ~~ACHIEVE INCREMENTAL REQUIREMENTS FOR REDUCTION IN CONSUMPTION~~
11 ~~FOR ELECTRIC DISTRIBUTION COMPANIES. EACH PLAN SHALL BE FOR A~~
12 ~~TERM NOT TO EXCEED FIVE YEARS.~~

13 ~~(D) PEAK DEMAND. EACH ELECTRIC DISTRIBUTION COMPANY SHALL~~
14 ~~IMPLEMENT ENERGY EFFICIENCY AND CONSERVATION MEASURES TO ACHIEVE~~
15 ~~THE FOLLOWING REDUCTIONS IN CONSUMPTION:~~

16 ~~(1) BY MAY 31, 2013, EACH ENERGY DISTRIBUTION COMPANY~~
17 ~~SHALL REDUCE ITS WEATHER NORMALIZED DELIVERIES TO RETAIL~~
18 ~~CUSTOMERS BY A MINIMUM OF 4% IN THE 100 HOURS OF HIGHEST~~
19 ~~DEMAND. THE REDUCTION SHALL BE MEASURED AGAINST THE ELECTRIC~~
20 ~~DISTRIBUTION COMPANY'S PEAK DEMAND IN THE 100 HOURS OF~~
21 ~~GREATEST DEMAND FOR JUNE 1, 2007, THROUGH MAY 31, 2008.~~

22 ~~(2) BY NOVEMBER 30, 2013, THE COMMISSION SHALL COMPARE~~
23 ~~THE TOTAL COSTS OF ENERGY EFFICIENCY AND CONSERVATION PLANS~~
24 ~~IMPLEMENTED UNDER THIS SECTION TO THE TOTAL SAVINGS IN ENERGY~~
25 ~~AND CAPACITY COSTS TO RETAIL CUSTOMERS IN THIS COMMONWEALTH.~~
26 ~~IF THE COMMISSION DETERMINES THAT THE BENEFITS OF THE~~
27 ~~MEASURES EXCEED THE COSTS, THE COMMISSION SHALL SET~~
28 ~~ADDITIONAL INCREMENTAL REQUIREMENTS FOR REDUCTION IN PEAK~~
29 ~~DEMAND FOR THE 100 HOURS OF GREATEST DEMAND OR AN ALTERNATIVE~~
30 ~~REDUCTION APPROVED BY THE COMMISSION. REDUCTIONS IN~~

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- 25 -

1 ~~CONSUMPTION SHALL BE MEASURED FROM THE ELECTRIC DISTRIBUTION~~
2 ~~COMPANY'S PEAK DEMAND FOR THE PERIOD FROM JUNE 1, 2011,~~
3 ~~THROUGH MAY 31, 2012. THE REDUCTIONS IN CONSUMPTION REQUIRED~~
4 ~~BY THE COMMISSION SHALL BE ACCOMPLISHED NO LATER THAN MAY 31,~~
5 ~~2017.~~

6 ~~(E) COMMISSION APPROVAL. THE COMMISSION SHALL APPROVE OR~~
7 ~~DISAPPROVE A PLAN FILED UNDER SUBSECTION (B) WITHIN 120 DAYS OF~~
8 ~~SUBMISSION. THE FOLLOWING SHALL APPLY TO AN ORDER DISAPPROVING A~~
9 ~~PLAN:~~

10 ~~(1) THE COMMISSION SHALL DESCRIBE IN DETAIL THE REASONS~~
11 ~~FOR THE DISAPPROVAL.~~

12 ~~(2) THE ELECTRIC DISTRIBUTION COMPANY SHALL HAVE 60 DAYS~~
13 ~~TO FILE A REVISED PLAN TO ADDRESS THE DEFICIENCIES IDENTIFIED~~
14 ~~BY THE COMMISSION.~~

15 ~~(F) PENALTIES.~~

16 ~~(1) THE FOLLOWING SHALL APPLY FOR FAILURE TO SUBMIT A~~
17 ~~PLAN:~~

18 ~~(i) AN ELECTRIC DISTRIBUTION COMPANY THAT FAILS TO~~
19 ~~FILE A PLAN UNDER SUBSECTION (B) SHALL BE SUBJECT TO A~~
20 ~~CIVIL PENALTY OF \$100,000 PER DAY UNTIL THE PLAN IS~~
21 ~~FILED.~~

22 ~~(ii) AN ELECTRIC DISTRIBUTION COMPANY THAT FAILS TO~~
23 ~~FILE A REVISED PLAN UNDER SUBSECTION (E)(2) SHALL BE~~
24 ~~SUBJECT TO A CIVIL PENALTY OF \$100,000 PER DAY UNTIL THE~~
25 ~~PLAN IS FILED.~~

26 ~~(iii) PENALTIES COLLECTED UNDER THIS PARAGRAPH SHALL~~
27 ~~BE DEPOSITED IN THE LOW INCOME ELECTRIC CUSTOMER~~
28 ~~ASSISTANCE PROGRAM OF THE ENERGY DISTRIBUTION COMPANY FOR~~
29 ~~THE RESPECTIVE SERVICE TERRITORY.~~

30 ~~(2) THE FOLLOWING SHALL APPLY TO AN ELECTRIC~~

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- 26 -

1 ~~DISTRIBUTION COMPANY THAT FAILS TO ACHIEVE THE REDUCTIONS IN~~
2 ~~CONSUMPTION REQUIRED UNDER SUBSECTION (C) OR (D):~~

3 ~~(i) THE ELECTRIC DISTRIBUTION COMPANY SHALL BE~~
4 ~~SUBJECT TO A CIVIL PENALTY OF UP TO \$5,000,000 FOR~~
5 ~~FAILURE TO ACHIEVE THE REQUIRED REDUCTIONS IN CONSUMPTION~~
6 ~~UNDER SUBSECTION (C) OR (D). ANY PENALTY PAID BY AN~~
7 ~~ELECTRIC DISTRIBUTION COMPANY UNDER THIS SUBPARAGRAPH~~
8 ~~SHALL NOT BE RECOVERABLE FROM RATEPAYERS.~~

9 ~~(II) IF AN ELECTRIC DISTRIBUTION COMPANY FAILS TO~~
10 ~~ACHIEVE THE REQUIRED REDUCTIONS IN CONSUMPTION UNDER~~
11 ~~SUBSECTION (C) OR (D) BY 2013, RESPONSIBILITY TO ACHIEVE~~
12 ~~THE REDUCTIONS IN CONSUMPTION SHALL BE TRANSFERRED TO THE~~
13 ~~COMMISSION. THE COMMISSION SHALL DO ALL OF THE FOLLOWING:~~

14 ~~(A) IMPLEMENT A PLAN TO ACHIEVE THE REQUIRED~~
15 ~~REDUCTIONS IN CONSUMPTION UNDER SUBSECTION (C) OR~~
16 ~~(D).~~

17 ~~(B) CONTRACT WITH THIRD PARTY ENTITIES AS~~
18 ~~NECESSARY TO IMPLEMENT ANY PORTION OF THE PLAN.~~

19 ~~(III) THE PROVISIONS OF SUBPARAGRAPH (II) SHALL~~
20 ~~APPLY IN EACH SUBSEQUENT FIVE YEAR PERIOD IF THE ELECTRIC~~
21 ~~DISTRIBUTION COMPANY FAILS TO ACHIEVE THE REDUCTION~~
22 ~~STANDARDS UNDER SUBSECTION (C) OR (D).~~

23 ~~(G) LIMITATION ON COSTS. THE TOTAL COST OF ANY PLAN~~
24 ~~REQUIRED UNDER THIS SECTION SHALL NOT EXCEED 2% OF THE ELECTRIC~~
25 ~~DISTRIBUTION COMPANY'S TOTAL ANNUAL REVENUE AS OF DECEMBER 31,~~
26 ~~2006. NO MORE THAN 1% OF THE 2% OF THE COMPANY'S TOTAL ANNUAL~~
27 ~~REVENUE MAY BE USED FOR THE ADMINISTRATIVE COSTS OF THE ELECTRIC~~
28 ~~DISTRIBUTION COMPANY. THE LIMITATION UNDER THIS PARAGRAPH SHALL~~
29 ~~NOT INCLUDE THE COST OF LOW INCOME USAGE REDUCTION PROGRAMS~~
30 ~~ESTABLISHED UNDER 52 PA. CODE CH. 58 (RELATING TO RESIDENTIAL~~

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1 ~~LOW INCOME USAGE REDUCTION PROGRAMS).~~

2 ~~(II) REPORT. THE FOLLOWING SHALL APPLY:~~

3 ~~(1) EACH ELECTRIC DISTRIBUTION COMPANY SHALL SUBMIT AN~~
4 ~~ANNUAL REPORT TO THE COMMISSION RELATING TO THE RESULTS OF~~
5 ~~THE ENERGY EFFICIENCY AND CONSERVATION PLAN WITHIN THE~~
6 ~~ELECTRIC DISTRIBUTION SERVICE TERRITORY. THE REPORT SHALL~~
7 ~~INCLUDE ALL OF THE FOLLOWING:~~

8 ~~(I) DOCUMENTATION OF PROGRAM EXPENDITURES.~~

9 ~~(II) MEASUREMENT AND VERIFICATION OF ENERGY SAVINGS~~
10 ~~UNDER THE PLAN.~~

11 ~~(III) EVALUATION OF THE COST EFFECTIVENESS OF~~
12 ~~EXPENDITURES.~~

13 ~~(IV) ANY OTHER INFORMATION REQUIRED BY THE~~
14 ~~COMMISSION.~~

15 ~~(2) BEGINNING FIVE YEARS FOLLOWING THE EFFECTIVE DATE OF~~
16 ~~THIS SECTION AND ANNUALLY THEREAFTER, THE COMMISSION SHALL~~
17 ~~SUBMIT A REPORT TO THE CONSUMER PROTECTION AND PROFESSIONAL~~
18 ~~LICENSURE COMMITTEE OF THE SENATE AND THE CONSUMER AFFAIRS~~
19 ~~COMMITTEE OF THE HOUSE OF REPRESENTATIVES.~~

20 ~~(I) EXISTING FUNDING SOURCES. EACH ELECTRIC DISTRIBUTION~~
21 ~~COMPANY SHALL PROVIDE A LIST OF ALL ELIGIBLE FEDERAL AND STATE~~
22 ~~FUNDING PROGRAMS.~~

23 ~~(J) RECOVERY. IN NO CASE SHALL DECREASED REVENUES OF AN~~
24 ~~ELECTRIC DISTRIBUTION COMPANY DUE TO REDUCED ENERGY CONSUMPTION~~
25 ~~OR CHANGES IN ENERGY DEMAND BE CONSIDERED A RECOVERABLE COST.~~

26 ~~(K) APPLICABILITY. THIS SECTION SHALL NOT APPLY TO AN~~
27 ~~ELECTRIC DISTRIBUTION COMPANY WITH FEWER THAN 100,000 CUSTOMERS.~~

28 ~~(L) DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING~~
29 ~~WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS~~
30 ~~SUBSECTION:~~

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1 ~~"ELECTRIC DISTRIBUTION COMPANY TOTAL ANNUAL REVENUE."~~

2 ~~AMOUNTS PAID TO THE ELECTRIC DISTRIBUTION COMPANY FOR~~
3 ~~GENERATION, TRANSMISSION, DISTRIBUTION AND SURCHARGES BY RETAIL~~
4 ~~CUSTOMERS.~~

5 ~~"ENERGY EFFICIENCY AND CONSERVATION MEASURES."~~

6 ~~(1) TECHNOLOGIES, MANAGEMENT PRACTICES OR OTHER MEASURES~~
7 ~~EMPLOYED BY RETAIL CUSTOMERS THAT REDUCE ELECTRICITY~~
8 ~~CONSUMPTION OR DEMAND IF ALL OF THE FOLLOWING APPLY:~~

9 ~~(I) THE TECHNOLOGY, PRACTICE OR OTHER MEASURE IS~~
10 ~~INSTALLED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION~~
11 ~~AT THE LOCATION OF A RETAIL CUSTOMER.~~

12 ~~(II) THE TECHNOLOGY, PRACTICE OR OTHER MEASURE~~
13 ~~REDUCES CONSUMPTION OF ENERGY BY THE RETAIL CUSTOMER.~~

14 ~~(III) THE COST OF THE ACQUISITION OR INSTALLATION OF~~
15 ~~THE MEASURE IS DIRECTLY INCURRED IN WHOLE OR IN PART BY~~
16 ~~THE ELECTRIC DISTRIBUTION COMPANY.~~

17 ~~-(2) ENERGY EFFICIENCY AND CONSERVATION MEASURES SHALL~~
18 ~~INCLUDE SOLAR OR SOLAR PHOTOVOLTAIC PANELS, ENERGY EFFICIENT~~
19 ~~WINDOWS AND DOORS, ENERGY EFFICIENT LIGHTING, INCLUDING EXIT~~
20 ~~SIGN RETROFIT, HIGH BAY FLUORESCENT RETROFIT AND PEDESTRIAN~~
21 ~~AND TRAFFIC SIGNAL CONVERSION, GEOTHERMAL HEATING,~~
22 ~~INSULATION, AIR SEALING, REFLECTIVE ROOF COATINGS, ENERGY~~
23 ~~EFFICIENT HEATING AND COOLING EQUIPMENT OR SYSTEMS AND ENERGY~~
24 ~~EFFICIENT APPLIANCES AND OTHER TECHNOLOGIES, PRACTICES OR~~
25 ~~MEASURES APPROVED BY THE COMMISSION.~~

26 ~~"PEAK DEMAND." THE HIGHEST ELECTRICAL REQUIREMENT OCCURRING~~
27 ~~DURING A SPECIFIED PERIOD. FOR AN ELECTRIC DISTRIBUTION COMPANY,~~
28 ~~THE TERM SHALL MEAN THE SUM OF THE METERED CONSUMPTION FOR ALL~~
29 ~~RETAIL CUSTOMERS OVER THAT PERIOD.~~

30 ~~"QUALITY ASSURANCE." ALL OF THE FOLLOWING:~~

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1 ~~(1) THE AUDITING OF BUILDINGS, EQUIPMENT AND PROCESSES~~
2 ~~TO DETERMINE THE COST EFFECTIVENESS OF ENERGY EFFICIENCY AND~~
3 ~~CONSERVATION MEASURES USING NATIONALLY RECOGNIZED TOOLS AND~~
4 ~~CERTIFICATION PROGRAMS.~~

5 ~~(2) INDEPENDENT INSPECTION OF COMPLETED ENERGY~~
6 ~~EFFICIENCY AND CONSERVATION MEASURES COMPLETED BY THIRD PARTY~~
7 ~~ENTITIES TO EVALUATE THE QUALITY OF THE COMPLETED MEASURE.~~

8 ~~"REAL TIME PRICE." A RATE THAT DIRECTLY REFLECTS THE~~
9 ~~DIFFERENT COST OF ENERGY DURING EACH HOUR.~~

10 ~~"THIRD PARTY ENTITY." AN ENTITY WITH NO DIRECT OR INDIRECT~~
11 ~~OWNERSHIP, PARTNERSHIP OR OTHER AFFILIATED INTEREST WITH AN~~
12 ~~ELECTRIC DISTRIBUTION COMPANY.~~

13 ~~"TIME OF USE RATE." A RATE THAT REFLECTS THE COSTS OF~~
14 ~~SERVING CUSTOMERS DURING DIFFERENT TIME PERIODS, INCLUDING OFF-~~
15 ~~PEAK AND ON PEAK PERIODS, BUT NOT AS FREQUENTLY AS EACH HOUR.~~

16 ~~"TOTAL RESOURCE COST TEST." A STANDARD TEST THAT IS MET IF,~~
17 ~~OVER THE EFFECTIVE LIFE OF EACH PLAN NOT TO EXCEED FIVE YEARS,~~
18 ~~THE AVOIDED MONETARY COSTS OF SUPPLYING ELECTRICITY ARE GREATER~~
19 ~~THAN THE MONETARY COSTS OF ENERGY EFFICIENCY MEASURES AND~~
20 ~~CONSERVATION OF CONSUMPTION.~~

21 ~~SECTION 3. SECTION 2807(E) OF TITLE 66 IS AMENDED AND THE~~
22 ~~SECTION IS AMENDED BY ADDING SUBSECTIONS TO READ:~~
23 ~~§ 2807. DUTIES OF ELECTRIC DISTRIBUTION COMPANIES.~~

24 ~~* * *~~

25 ~~(E) OBLIGATION TO SERVE. [AN ELECTRIC DISTRIBUTION~~
26 ~~COMPANY'S] A DEFAULT SERVICE PROVIDER'S OBLIGATION TO PROVIDE~~
27 ~~ELECTRIC GENERATION SUPPLY SERVICE FOLLOWING [IMPLEMENTATION OF~~
28 ~~RESTRUCTURING AND THE CHOICE OF ALTERNATIVE GENERATION BY A~~
29 ~~CUSTOMER] THE EXPIRATION OF A GENERATION RATE CAP SPECIFIED~~
30 ~~UNDER SECTION 2804(4) (RELATING TO STANDARDS FOR RESTRUCTURING~~

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1 ~~OF ELECTRIC INDUSTRY) OR A RESTRUCTURING PLAN UNDER SECTION~~
2 ~~2806(F) (RELATING TO IMPLEMENTATION, PILOT PROGRAMS AND~~
3 ~~PERFORMANCE BASED RATES) IS REVISED AS FOLLOWS:~~

4 ~~(1) WHILE AN ELECTRIC DISTRIBUTION COMPANY COLLECTS~~
5 ~~EITHER A COMPETITIVE TRANSITION CHARGE OR AN INTANGIBLE~~
6 ~~TRANSITION CHARGE OR UNTIL 100% OF ITS CUSTOMERS HAVE CHOICE,~~
7 ~~WHICHEVER IS LONGER, THE ELECTRIC DISTRIBUTION COMPANY SHALL~~
8 ~~CONTINUE TO HAVE THE FULL OBLIGATION TO SERVE, INCLUDING THE~~
9 ~~CONNECTION OF CUSTOMERS, THE DELIVERY OF ELECTRIC ENERGY AND~~
10 ~~THE PRODUCTION OR ACQUISITION OF ELECTRIC ENERGY FOR~~
11 ~~CUSTOMERS.~~

12 ~~[(2) AT THE END OF THE TRANSITION PERIOD, THE COMMISSION~~
13 ~~SHALL PROMULGATE REGULATIONS TO DEFINE THE ELECTRIC~~
14 ~~DISTRIBUTION COMPANY'S OBLIGATION TO CONNECT AND DELIVER AND~~
15 ~~ACQUIRE ELECTRICITY UNDER PARAGRAPH (3) THAT WILL EXIST AT~~
16 ~~THE END OF THE PHASE IN PERIOD.~~

17 ~~(3) IF A CUSTOMER CONTRACTS FOR ELECTRIC ENERGY AND IT~~
18 ~~IS NOT DELIVERED OR IF A CUSTOMER DOES NOT CHOOSE AN~~
19 ~~ALTERNATIVE ELECTRIC GENERATION SUPPLIER, THE ELECTRIC~~
20 ~~DISTRIBUTION COMPANY OR COMMISSION APPROVED ALTERNATIVE~~
21 ~~SUPPLIER SHALL ACQUIRE ELECTRIC ENERGY AT PREVAILING MARKET~~
22 ~~PRICES TO SERVE THAT CUSTOMER AND SHALL RECOVER FULLY ALL~~
23 ~~REASONABLE COSTS.]~~

24 ~~(3.1) (I) FOLLOWING THE EXPIRATION OF AN ELECTRIC~~

25 ~~DISTRIBUTION COMPANY'S OBLIGATION TO PROVIDE ELECTRIC~~
26 ~~GENERATION SUPPLY SERVICE TO RETAIL CUSTOMERS AT CAPPED~~
27 ~~RATES, IF A CUSTOMER CONTRACTS FOR ELECTRIC GENERATION~~
28 ~~SUPPLY SERVICE AND THE CHOSEN ELECTRIC GENERATION~~
29 ~~SUPPLIER DOES NOT PROVIDE THE SERVICE OR IF A CUSTOMER~~
30 ~~DOES NOT CHOOSE AN ALTERNATIVE ELECTRIC GENERATION~~

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1 ~~SUPPLIER, THE DEFAULT SERVICE PROVIDER SHALL PROVIDE~~
2 ~~ELECTRIC GENERATION SUPPLY SERVICE TO THAT CUSTOMER~~
3 ~~PURSUANT TO A COMMISSION APPROVED COMPETITIVE PROCUREMENT~~
4 ~~PLAN. THE ELECTRIC POWER ACQUIRED SHALL BE PROCURED~~
5 ~~THROUGH COMPETITIVE PROCUREMENT PROCESSES AND SHALL~~
6 ~~INCLUDE ONE OR MORE OF THE FOLLOWING:~~

7 ~~(A) AUCTIONS.~~

8 ~~(B) REQUESTS FOR PROPOSAL.~~

9 ~~(C) BILATERAL AGREEMENTS ENTERED INTO AT THE~~
10 ~~SOLE DISCRETION OF THE DEFAULT SERVICE PROVIDER WHICH~~
11 ~~SHALL BE AT PRICES WHICH ARE:~~

12 ~~(I) NO GREATER THAN THE COST OF OBTAINING~~
13 ~~GENERATION UNDER COMPARABLE TERMS IN THE~~
14 ~~WHOLESALE MARKET, AS DETERMINED BY THE COMMISSION~~
15 ~~AT THE TIME OF EXECUTION OF THE CONTRACT, OR~~

16 ~~(II) CONSISTENT WITH A COMMISSION APPROVED~~
17 ~~COMPETITION PROCUREMENT PROCESS. ANY AGREEMENT~~
18 ~~BETWEEN AFFILIATED PARTIES SHALL BE SUBJECT TO~~
19 ~~REVIEW AND APPROVAL OF THE PENNSYLVANIA PUBLIC~~
20 ~~UTILITY COMMISSION UNDER CHAPTER 21 (RELATING TO~~
21 ~~RELATIONS WITH AFFILIATED INTERESTS). IN NO CASE~~
22 ~~SHALL THE COST OF OBTAINING GENERATION FROM ANY~~
23 ~~AFFILIATED INTEREST BE GREATER THAN THE COST OF~~
24 ~~OBTAINING GENERATION UNDER COMPARABLE TERMS IN~~
25 ~~THE WHOLESALE MARKET AT THE TIME OF EXECUTION OF~~
26 ~~THE CONTRACT.~~

27 ~~(II) THE PROVISIONS OF THIS PARAGRAPH SHALL APPLY TO~~
28 ~~ANY TYPE OF FUEL PURCHASED BY A DEFAULT SERVICE PROVIDER~~
29 ~~TO PROVIDE ELECTRIC GENERATION SUPPLY SERVICE, INCLUDING~~
30 ~~FUEL REQUIRED TO BE PURCHASED UNDER THE ACT OF NOVEMBER~~

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1 ~~30, 2004 (P.L.1672, NO.213), KNOWN AS THE ALTERNATIVE~~
2 ~~ENERGY PORTFOLIO STANDARDS ACT.~~

3 ~~(3.2) THE ELECTRIC POWER PROCURED PURSUANT TO PARAGRAPH~~
4 ~~(3.1) SHALL INCLUDE A PRUDENT MIX OF THE FOLLOWING:~~

5 ~~(I) SPOT MARKET PURCHASES.~~

6 ~~(II) SHORT TERM CONTRACTS.~~

7 ~~(III) LONG TERM PURCHASE CONTRACTS, ENTERED INTO AS~~
8 ~~A RESULT OF AN AUCTION, REQUEST FOR PROPOSAL OR BILATERAL~~
9 ~~CONTRACT THAT IS FREE OF UNDUE INFLUENCE, DURESS OR~~
10 ~~FAVORITISM, OF NOT LESS THAN THREE AND NOT MORE THAN 20~~
11 ~~YEARS, UNLESS THE COMMISSION DETERMINES A LONGER TERM IS~~
12 ~~NECESSARY FOR THE RELIABILITY IN THE ACQUISITION OF~~
13 ~~GENERATION AND IT IS IN THE BEST INTEREST OF CONSUMERS TO~~
14 ~~EXTEND THE TERM OF THE CONTRACT BEYOND 20 YEARS. THE~~
15 ~~DEFAULT SERVICE PROVIDER SHALL HAVE SOLE DISCRETION TO~~
16 ~~DETERMINE THE SOURCE, FUEL TYPE AND LENGTH OF CONTRACT.~~

17 ~~(3.3) THE PRUDENT MIX OF CONTRACTS ENTERED INTO PURSUANT~~
18 ~~TO PARAGRAPH (3.2) SHALL BE DESIGNED TO ENSURE:~~

19 ~~(I) ADEQUATE AND RELIABLE SERVICE.~~

20 ~~(II) THE LEAST COST TO CUSTOMERS OVER TIME.~~

21 ~~(III) COMPLIANCE WITH THE REQUIREMENTS OF PARAGRAPH~~

22 ~~(3.1).~~

23 ~~(3.4) THE DEFAULT SERVICE PROVIDER SHALL FILE A PLAN FOR~~
24 ~~COMPETITIVE PROCUREMENT WITH THE COMMISSION AND OBTAIN~~
25 ~~COMMISSION APPROVAL OF THE PLAN CONSIDERING THE STANDARDS IN~~
26 ~~PARAGRAPHS (3.1), (3.2) AND (3.3) BEFORE THE COMPETITIVE~~
27 ~~PROCESS IS IMPLEMENTED. THE COMMISSION SHALL HOLD HEARINGS AS~~
28 ~~NECESSARY ON THE PROPOSED PLAN. IF THE COMMISSION FAILS TO~~
29 ~~ISSUE A FINAL ORDER ON THE PLAN WITHIN NINE MONTHS OF THE~~
30 ~~DATE THAT THE PLAN IS FILED, THE PLAN SHALL BE DEEMED TO BE~~

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1 APPROVED AND THE DEFAULT SERVICE PROVIDER MAY IMPLEMENT THE
2 PLAN AS FILED. COSTS INCURRED THROUGH AN APPROVED COMPETITIVE
3 PROCUREMENT PLAN SHALL BE DEEMED TO BE THE LEAST COST OVER
4 TIME AS REQUIRED UNDER PARAGRAPH (3.3).

5 ~~(3.5) AT THE TIME THE COMMISSION EVALUATES THE PLAN AND
6 PRIOR TO APPROVAL, IN DETERMINING IF THE DEFAULT ELECTRIC
7 SERVICE PROVIDER'S PLAN OBTAINS GENERATION SUPPLY AT THE
8 LEAST COST, THE COMMISSION SHALL CONSIDER THE DEFAULT SERVICE
9 PROVIDER'S OBLIGATION TO PROVIDE ADEQUATE AND RELIABLE
10 SERVICE TO THE CUSTOMERS AND THAT THE DEFAULT SERVICE
11 PROVIDER HAS OBTAINED A PRUDENT MIX OF CONTRACTS TO OBTAIN
12 LEAST COST ON LONG TERM, SHORT TERM AND SPOT MARKET BASIS AND
13 SHALL MAKE SPECIFIC FINDINGS WHICH SHALL INCLUDE THE
14 FOLLOWING:~~

15 ~~(I) THE DEFAULT SERVICE PROVIDER'S PLAN INCLUDES
16 PRUDENT STEPS NECESSARY TO NEGOTIATE FAVORABLE GENERATION
17 SUPPLY CONTRACTS.~~

18 ~~(II) THE DEFAULT SERVICE PROVIDER'S PLAN INCLUDES
19 PRUDENT STEPS NECESSARY TO OBTAIN LEAST COST GENERATION
20 SUPPLY CONTRACTS ON A LONG TERM, SHORT TERM AND SPOT
21 MARKET BASIS.~~

22 ~~(III) NEITHER THE DEFAULT SERVICE PROVIDER NOR ITS
23 AFFILIATED INTEREST HAS WITHHELD OR ASKED TO WITHHOLD
24 FROM THE MARKET ANY GENERATION SUPPLY WHICH SHOULD HAVE
25 BEEN UTILIZED AS PART OF THE LEAST COST PROCUREMENT
26 POLICY.~~

27 ~~(3.6) NOTWITHSTANDING SECTIONS 508 (RELATING TO POWER OF
28 COMMISSION TO VARY, REFORM AND REVISE CONTRACTS) AND 2102
29 (RELATING TO APPROVAL OF CONTRACTS WITH AFFILIATED
30 INTERESTS), THE COMMISSION SHALL NOT MODIFY CONTRACTS OR~~

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1 DISALLOW COSTS ASSOCIATED WITH AN APPROVED PROCUREMENT
2 PROCESS WHEN IT HAS REVIEWED AND APPROVED THE RESULTS OF THE
3 PROCUREMENT.

4 ~~(3.7) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE
5 TO THE CONTRARY, THE COMMISSION MAY MODIFY CONTRACTS OR
6 DISALLOW COSTS WHEN THE PARTY SEEKING RECOVERY OF THE COSTS
7 IS AT FAULT ASSOCIATED WITH CONTRACTS ENTERED INTO PURSUANT
8 TO A COMMISSION APPROVED PROCUREMENT PLAN IF THE COMMISSION
9 DETERMINES AFTER A HEARING THAT:~~

10 ~~(I) THE CONTRACT HAS NOT BEEN IMPLEMENTED OR
11 APPROVED OR DOES NOT COMPLY WITH THE COMMISSION APPROVED
12 PROCUREMENT PLAN; OR~~

13 ~~(II) THERE HAS BEEN FRAUD, COLLUSION OR MARKET
14 MANIPULATION WITH REGARD TO THESE CONTRACTS.~~

15 ~~(3.8) THE DEFAULT SERVICE PROVIDER SHALL HAVE THE RIGHT
16 TO RECOVER ON A FULL AND CURRENT BASIS, PURSUANT TO A
17 RECONCILABLE AUTOMATIC ADJUSTMENT CLAUSE UNDER SECTION 1307
18 (RELATING TO SLIDING SCALE OF RATES; ADJUSTMENTS), ALL COSTS
19 INCURRED UNDER THIS SECTION AND A COMMISSION APPROVED
20 COMPETITIVE PROCUREMENT PLAN.~~

21 ~~(4) IF A CUSTOMER THAT CHOOSES AN ALTERNATIVE SUPPLIER
22 AND SUBSEQUENTLY DESIRES TO RETURN TO THE LOCAL DISTRIBUTION
23 COMPANY FOR GENERATION SERVICE, THE LOCAL DISTRIBUTION
24 COMPANY SHALL TREAT THAT CUSTOMER EXACTLY AS IT WOULD ANY NEW
25 APPLICANT FOR ENERGY SERVICE.~~

26 ~~(5) (I) NOTWITHSTANDING PARAGRAPH [(3)] (3.1), THE
27 ELECTRIC DISTRIBUTION COMPANY OR COMMISSION APPROVED
28 ALTERNATIVE SUPPLIER MAY, IN ITS SOLE DISCRETION, OFFER
29 LARGE CUSTOMERS WITH A PEAK DEMAND OF 15 MEGAWATTS OR
30 GREATER AT ONE METER AT A LOCATION IN ITS SERVICE~~

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1 TERRITORY ANY NEGOTIATED RATE FOR SERVICE AT ALL OF THE
2 CUSTOMERS' LOCATIONS WITHIN THE SERVICE TERRITORY FOR ANY
3 DURATION AGREED UPON BY THE ELECTRIC DISTRIBUTION COMPANY
4 OR COMMISSION APPROVED ALTERNATIVE SUPPLIER AND THE LARGE
5 CUSTOMER. THE COMMISSION SHALL PERMIT, BUT SHALL NOT
6 REQUIRE, AN ELECTRIC DISTRIBUTION COMPANY OR COMMISSION-
7 APPROVED ALTERNATIVE SUPPLIER TO PROVIDE SERVICE TO LARGE
8 CUSTOMERS UNDER THIS PARAGRAPH. CONTRACT RATES ENTERED

9 INTO UNDER THIS PARAGRAPH SHALL BE SUBJECT TO REVIEW BY
10 THE COMMISSION IN ORDER TO ENSURE THAT ALL COSTS RELATED
11 TO THE RATES ARE BORNE BY THE PARTIES TO THE CONTRACT AND
12 THAT NO COSTS RELATED TO THE RATES ARE BORNE BY OTHER
13 CUSTOMERS OR CUSTOMER CLASSES. IF NO COSTS RELATED TO THE
14 RATES ARE BORNE BY OTHER CUSTOMERS OR CUSTOMER CLASSES,
15 THE COMMISSION SHALL APPROVE THE CONTRACT WITHIN 90 DAYS
16 OF ITS FILING, OR IT SHALL BE DEEMED APPROVED BY
17 OPERATION OF LAW UPON EXPIRATION OF THE 90 DAYS.
18 INFORMATION SUBMITTED UNDER THIS PARAGRAPH SHALL BE
19 SUBJECT TO THE COMMISSION'S PROCEDURES FOR THE FILING OF
20 CONFIDENTIAL AND PROPRIETARY INFORMATION.

21 (II) FOR PURPOSES OF PROVIDING SERVICE UNDER THIS
22 PARAGRAPH TO CUSTOMERS WITH A PEAK DEMAND OF 20 MEGAWATTS
23 OR GREATER AT ONE METER AT A LOCATION WITHIN THAT
24 DISTRIBUTION COMPANY'S SERVICE TERRITORY, AN ELECTRIC
25 DISTRIBUTION COMPANY THAT HAS COMPLETED ITS RESTRUCTURING
26 TRANSITION PERIOD AS OF THE EFFECTIVE DATE OF THIS
27 PARAGRAPH MAY, IN ITS SOLE DISCRETION, ACQUIRE AN
28 INTEREST IN A GENERATION FACILITY OR CONSTRUCT A
29 GENERATION FACILITY SPECIFICALLY TO MEET THE ENERGY
30 REQUIREMENTS OF THE CUSTOMERS, INCLUDING THE ELECTRIC

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1 REQUIREMENTS OF THE CUSTOMERS' OTHER BILLING LOCATIONS
2 WITHIN ITS SERVICE TERRITORY. THE ELECTRIC DISTRIBUTION
3 COMPANY MUST COMMENCE CONSTRUCTION OF THE GENERATION
4 FACILITY OR CONTRACT TO ACQUIRE THE GENERATION INTEREST
5 WITHIN THREE YEARS AFTER THE EFFECTIVE DATE OF THIS
6 PARAGRAPH, EXCEPT THAT THE ELECTRIC DISTRIBUTION COMPANY
7 MAY ADD TO THE GENERATION FACILITIES IT COMMENCED
8 CONSTRUCTION OR CONTRACTED TO ACQUIRE AFTER THIS THREE-
9 YEAR PERIOD TO SERVE ADDITIONAL LOAD OF CUSTOMERS FOR
10 WHOM IT COMMENCED CONSTRUCTION OR CONTRACTED TO ACQUIRE
11 GENERATION WITHIN THREE YEARS. NOTHING IN THIS PARAGRAPH
12 REQUIRES OR AUTHORIZES THE COMMISSION TO REQUIRE AN
13 ELECTRIC DISTRIBUTION COMPANY TO COMMENCE CONSTRUCTION OR
14 ACQUIRE AN INTEREST IN A GENERATION FACILITY. THE
15 ELECTRIC DISTRIBUTION COMPANY'S INTEREST IN THE
16 GENERATION FACILITY IT BUILT OR CONTRACTED TO ACQUIRE
17 SHALL BE NO LARGER THAN NECESSARY TO MEET PEAK DEMAND OF
18 CUSTOMERS SERVED UNDER THIS SUBPARAGRAPH. DURING TIMES
19 WHEN THE CUSTOMER'S DEMAND IS LESS THAN THE ELECTRIC
20 DISTRIBUTION COMPANY'S GENERATION INTEREST, THE ELECTRIC
21 DISTRIBUTION COMPANY MAY SELL EXCESS POWER ON THE
22 WHOLESALE MARKET. AT NO TIME SHALL THE COSTS ASSOCIATED
23 WITH THE GENERATING FACILITY INTERESTS BE INCLUDED IN
24 RATE BASE OR OTHERWISE REFLECTED IN RATES. THE GENERATION
25 FACILITY INTERESTS SHALL NOT BE COMMISSION REGULATED
26 ASSETS.

27 (G) A DEFAULT SERVICE PLAN APPROVED BY THE COMMISSION
28 PRIOR TO THE EFFECTIVE DATE OF THIS SECTION SHALL REMAIN IN
29 EFFECT THROUGH ITS APPROVED TERM. AT ITS SOLE DISCRETION, THE
30 DEFAULT SERVICE PROVIDER MAY PROPOSE AMENDMENTS TO ITS

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1 APPROVED PLAN THAT ARE CONSISTENT WITH THIS SECTION, AND THE
2 COMMISSION SHALL ISSUE A DECISION WHETHER TO APPROVE OR
3 DISAPPROVE THE PROPOSED AMENDMENTS WITHIN NINE MONTHS OF THE
4 DATE THAT THE AMENDMENTS ARE FILED. IF THE COMMISSION FAILS
5 TO ISSUE A FINAL ORDER WITHIN NINE MONTHS, THE AMENDMENTS
6 SHALL BE DEEMED TO BE APPROVED AND THE DEFAULT SERVICE
7 PROVIDER MAY IMPLEMENT THE AMENDMENTS AS FILED.

8 (H) THE DEFAULT SERVICE PROVIDER SHALL OFFER RESIDENTIAL
9 AND SMALL BUSINESS CUSTOMERS A GENERATION SUPPLY SERVICE RATE
10 THAT SHALL CHANGE NO MORE FREQUENTLY THAN ON A QUARTERLY
11 BASIS. ALL DEFAULT SERVICE RATES SHALL BE REVIEWED BY THE
12 COMMISSION TO ENSURE THAT THE COSTS OF PROVIDING SERVICE TO
13 EACH CUSTOMER CLASS ARE NOT SUBSIDIZED BY ANY OTHER CLASS.

14 (I) SMART METER TECHNOLOGY AND TIME OF USE RATES.

15 (1) WITHIN NINE MONTHS AFTER THE EFFECTIVE DATE OF THIS
16 PARAGRAPH, ELECTRIC DISTRIBUTION COMPANIES SHALL FILE A SMART

17 ~~METER TECHNOLOGY PROCUREMENT AND INSTALLATION PLAN WITH THE~~
18 ~~COMMISSION FOR APPROVAL. THE PLAN SHALL DESCRIBE THE SMART~~
19 ~~METER TECHNOLOGIES THE ELECTRIC DISTRIBUTION COMPANY PROPOSES~~
20 ~~TO INSTALL IN ACCORDANCE WITH PARAGRAPH (2).~~

21 ~~(2) ELECTRIC DISTRIBUTION COMPANIES SHALL FURNISH SMART~~
22 ~~METER TECHNOLOGY AS FOLLOWS:~~

23 ~~(I) UPON REQUEST TO A CUSTOMER THAT AGREES TO PAY~~
24 ~~THE COST OF THE SMART METER.~~

25 ~~(II) IN THE CONSTRUCTION OF A NEW RESIDENCE OR NEW~~
26 ~~BUILDING TO BE USED BY A COMMERCIAL CUSTOMER.~~

27 ~~(III) IN ACCORDANCE WITH A SCHEDULE OF REPLACEMENT~~
28 ~~OF FULL DEPRECIATION OF EXISTING METERS.~~

29 ~~(3) ELECTRIC DISTRIBUTION COMPANIES SHALL, WITH CUSTOMER~~
30 ~~CONSENT, MAKE AVAILABLE ELECTRONIC ACCESS TO CUSTOMER METER~~

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1 ~~DATA TO THIRD PARTIES, INCLUDING ELECTRIC GENERATION~~
2 ~~SUPPLIERS AND PROVIDERS OF CONSERVATION AND LOAN MANAGEMENT~~
3 ~~SERVICES.~~

4 ~~(4) AN ELECTRIC DISTRIBUTION COMPANY SHALL NOT BE~~
5 ~~PERMITTED TO RECOVER THE COSTS, AS DETERMINED BY THE~~
6 ~~COMMISSION, OF PROVIDING SMART METER TECHNOLOGY UNDER~~
7 ~~PARAGRAPH (2).~~

8 ~~(5) IN NO EVENT SHALL LOST OR DECREASED REVENUES BY AN~~
9 ~~ELECTRIC DISTRIBUTION COMPANY DUE TO REDUCED ELECTRICITY~~
10 ~~CONSUMPTION OR SHIFTING ENERGY DEMAND BE CONSIDERED A COST OF~~
11 ~~SMART METER TECHNOLOGY.~~

12 ~~(6) BY JANUARY 1, 2010, OR AT THE END OF THE APPLICABLE~~
13 ~~GENERATION RATE CAP PERIOD, WHICHEVER IS LATER, A DEFAULT~~
14 ~~SERVICE PROVIDER SHALL SUBMIT TO THE COMMISSION ONE OR MORE~~
15 ~~PROPOSED TIME OF USE RATES AND REAL TIME PRICE PLANS. THE~~
16 ~~COMMISSION SHALL APPROVE OR MODIFY THE TIME OF USE RATES AND~~
17 ~~REAL TIME PRICE PLAN WITHIN SIX MONTHS OF SUBMITTAL. THE~~
18 ~~DEFAULT SERVICE PROVIDER SHALL OFFER THE RATES AND REAL TIME~~
19 ~~PRICE PLAN TO ALL RESIDENTIAL AND COMMERCIAL CUSTOMERS THAT~~
20 ~~HAVE BEEN PROVIDED WITH SMART METER TECHNOLOGY WITHIN 60 DAYS~~
21 ~~OF INSTALLATION OF THE SMART METER TECHNOLOGY OR COMMISSION~~
22 ~~APPROVAL OF THE TIME OF USE RATES AND REAL TIME PRICE PLAN,~~
23 ~~WHICHEVER IS LATER. RESIDENTIAL OR COMMERCIAL CUSTOMERS MAY~~
24 ~~ELECT TO PARTICIPATE IN TIME OF USE RATES OR REAL TIME~~
25 ~~PRICING. THE DEFAULT SERVICE PROVIDER SHALL SUBMIT AN ANNUAL~~
26 ~~REPORT TO THE COMMISSION ON THE PARTICIPATION IN THE TIME OF~~
27 ~~USE AND REAL TIME PRICE PROGRAMS AND THE EFFICACY OF THE~~
28 ~~PROGRAMS IN AFFECTING ENERGY DEMAND AND CONSUMPTION AND THE~~
29 ~~EFFECT ON WHOLESALE MARKET PRICES.~~

30 ~~(7) THE PROVISIONS OF THIS SUBSECTION SHALL NOT APPLY TO~~

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1 ~~AN ELECTRIC DISTRIBUTION COMPANY WITH 100,000 OR FEWER~~
2 ~~CUSTOMERS.~~

3 ~~(G) DEFINITION. AS USED IN THIS SECTION, THE TERM "SMART~~
4 ~~METER TECHNOLOGY" MEANS TECHNOLOGY, INCLUDING METERING~~
5 ~~TECHNOLOGY AND NETWORK COMMUNICATIONS TECHNOLOGY CAPABLE OF~~
6 ~~BIDIRECTIONAL COMMUNICATION, THAT RECORDS ELECTRICITY USAGE ON~~
7 ~~AT LEAST AN HOURLY BASIS, INCLUDING RELATED ELECTRIC~~
8 ~~DISTRIBUTION SYSTEM UPGRADES TO ENABLE THE TECHNOLOGY. THE~~
9 ~~TECHNOLOGY SHALL PROVIDE CUSTOMERS WITH DIRECT ACCESS TO AND USE~~
10 ~~OF PRICE AND CONSUMPTION INFORMATION. THE TECHNOLOGY SHALL ALSO:~~

11 ~~(1) DIRECTLY PROVIDE CUSTOMERS WITH INFORMATION ON THEIR~~
12 ~~HOURLY CONSUMPTION.~~

13 ~~(2) ENABLE TIME OF USE RATES AND REAL TIME PRICE~~
14 ~~PROGRAMS.~~

15 ~~(3) EFFECTIVELY SUPPORT THE AUTOMATIC CONTROL OF THE~~
16 ~~CUSTOMER'S ELECTRICITY CONSUMPTION BY ONE OR MORE OF THE~~
17 ~~FOLLOWING AS SELECTED BY THE CUSTOMER:~~

18 ~~(I) THE CUSTOMER;~~

19 ~~(II) THE CUSTOMER'S UTILITY; OR~~

20 ~~(III) A THIRD PARTY ENGAGED BY THE CUSTOMER OR THE~~
21 ~~CUSTOMER'S UTILITY.~~

22 ~~(4) PROVIDE A MEANS TO OBTAIN REAL TIME CONSUMPTION~~
23 ~~INFORMATION FROM A METER SUCH AS AN INSTALLED PORT OR OUTPUT~~
24 ~~FOR TRANSMITTING METER PULSE DATA EXTERNAL TO THE METER TO BE~~

25 ~~USED BY THE CUSTOMER, THE ELECTRIC DISTRIBUTION COMPANY OR A~~
26 ~~THIRD PARTY ENGAGED BY THE CUSTOMER IN THE ELECTRIC~~
27 ~~DISTRIBUTION COMPANY.~~

28 SECTION 4. ~~TITLE 66 IS AMENDED BY ADDING A SECTION TO READ:~~
29 ~~§ 2813. PROCUREMENT OF POWER.~~

30 ~~EXCEPT AS PROVIDED UNDER THE ACT OF NOVEMBER 30, 2004~~

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1 ~~(P.L.1672, NO.213), KNOWN AS THE ALTERNATIVE ENERGY PORTFOLIO~~
2 ~~STANDARDS ACT, THE COMMISSION MAY NOT ORDER A DEFAULT SERVICE~~
3 ~~PROVIDER TO PROCURE POWER FROM A SPECIFIC GENERATION SUPPLIER,~~
4 ~~FROM A SPECIFIC GENERATION FUEL TYPE OR FROM NEW GENERATION~~
5 ~~ONLY.~~

6 SECTION 5. ~~THIS ACT SHALL TAKE EFFECT IN 60 DAYS.~~

7 SECTION 1. SECTION 305(A) OF TITLE 66 OF THE PENNSYLVANIA
8 CONSOLIDATED STATUTES IS AMENDED TO READ: <--

9 § 305. DIRECTOR OF OPERATIONS, SECRETARY, EMPLOYEES AND
10 CONSULTANTS.

11 (A) DIRECTOR OF OPERATIONS.--THE COMMISSION MAY APPOINT A
12 DIRECTOR OF OPERATIONS WHO SHALL SERVE AT THE PLEASURE OF THE
13 COMMISSION AND SHALL BE RESPONSIBLE FOR THE DAY-TO-DAY
14 ADMINISTRATION AND OPERATION OF THE BUREAUS AND OFFICES OF THE
15 COMMISSION, EXCEPT THAT THE DIRECTOR OF OPERATIONS SHALL HAVE
16 RESPONSIBILITY FOR THE [OFFICE OF TRIAL STAFF] PROSECUTORIAL
17 FUNCTION ONLY WITH REGARD TO ADMINISTRATIVE MATTERS.

18 * * *

19 SECTION 1.1. SECTION 306 OF TITLE 66 IS REPEALED:

20 [§ 306. OFFICE OF TRIAL STAFF.

21 (A) GENERAL RULE.--THE OFFICE OF TRIAL STAFF TO THE
22 PENNSYLVANIA PUBLIC UTILITY COMMISSION IS HEREBY CREATED. THE
23 DIRECTOR OF TRIAL STAFF, WHO SHALL BE THE CHIEF PROSECUTOR OF
24 THE COMMISSION, SHALL BE APPOINTED BY THE COMMISSION AND HOLD
25 OFFICE AT ITS PLEASURE. THE COMMISSION SHALL ASSIGN A PERMANENT
26 STAFF OF SUCH LEGAL, TECHNICAL AND OTHER EMPLOYEES OF THE
27 COMMISSION AS MAY BE REQUIRED FOR THE PROPER CONDUCT OF THE WORK
28 OF THE OFFICE OF TRIAL STAFF. EMPLOYEES ASSIGNED TO THE OFFICE
29 OF TRIAL STAFF SHALL BE UNDER THE SUPERVISION OF THE DIRECTOR OF
30 TRIAL STAFF AND SHALL NOT BE ASSIGNED TO ANY DUTIES OTHER THAN

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1 WITH THE OFFICE OF TRIAL STAFF, EXCEPT AS THE COMMISSION MAY ON
2 A TEMPORARY CASE-BY-CASE BASIS PERMIT WHERE THE PERFORMANCE OF
3 SUCH OTHER DUTIES WILL NOT REPRESENT, OR CREATE THE APPEARANCE
4 OF, A CONFLICT OF INTEREST. THE COMMISSION MAY DESIGNATE
5 EMPLOYEES OF THE OFFICE OF TRIAL STAFF TO SERVE AS DEPUTIES TO
6 THE DIRECTOR OF TRIAL STAFF. THE DIRECTOR OF TRIAL STAFF MAY
7 RECOMMEND PERSONS FOR CONSIDERATION BY THE COMMISSION AS
8 EMPLOYEES UNDER HIS SUPERVISION. ATTORNEYS ASSIGNED TO THE
9 OFFICE OF TRIAL STAFF MAY BE REMOVED BY THE COMMISSION ONLY FOR
10 GOOD CAUSE. THE COMPENSATION OF THE DIRECTOR OF TRIAL STAFF AND
11 THE EMPLOYEES UNDER HIS SUPERVISION SHALL BE FIXED BY THE
12 COMMISSION. THE DIRECTOR OF TRIAL STAFF SHALL REPORT AND BE
13 RESPONSIBLE DIRECTLY TO THE COMMISSION, PROVIDED THAT THE
14 DIRECTOR OF TRIAL STAFF SHALL BE RESPONSIBLE TO THE COMMISSION
15 THROUGH THE DIRECTOR OF OPERATIONS ONLY FOR PURPOSES OF
16 ADMINISTRATIVE MATTERS.

17 (B) POWER AND DUTIES.--

18 (1) THE OFFICE OF TRIAL STAFF SHALL BE RESPONSIBLE FOR
19 AND SHALL ASSIST IN THE DEVELOPMENT OF, CHALLENGE OF AND
20 REPRESENTATION ON THE RECORD OF ALL MATTERS IN THE PUBLIC
21 INTEREST IN ALL COMMISSION PROCEEDINGS EXCEPT THOSE INVOLVING
22 TRANSPORTATION, SAFETY, EMINENT DOMAIN, SITING, SERVICE
23 ISSUES HAVING NO IMPACT ON RATES AND ABILITY TO PAY, PROVIDED
24 THAT THE DIRECTOR OF TRIAL STAFF MAY PETITION THE COMMISSION
25 OR MAY BE DIRECTED BY THE COMMISSION TO INTERVENE TO PROTECT
26 THE PUBLIC INTEREST IN ANY PROCEEDING INVOLVING
27 TRANSPORTATION, SAFETY, EMINENT DOMAIN, SITING, SERVICE
28 ISSUES HAVING NO IMPACT ON RATES AND ABILITY TO PAY. TO
29 ASSIST IN CARRYING OUT HIS POWERS AND DUTIES UNDER THIS
30 SECTION, THE DIRECTOR OF TRIAL STAFF SHALL SUPERVISE THE

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1 ACTIVITIES OF THE OFFICE OF TRIAL STAFF IN ALL COMMISSION
2 PROCEEDINGS IN WHICH HE PARTICIPATES. IF THE DIRECTOR OF
3 TRIAL STAFF IS OF THE OPINION THAT THE INITIATION OF A
4 PROCEEDING IS NECESSARY TO PROTECT THE PUBLIC INTEREST, HE
5 SHALL REQUEST THAT THE COMMISSION INITIATE THE APPROPRIATE
6 PROCEEDING. WHEN HE PARTICIPATES IN A COMMISSION PROCEEDING,
7 IT SHALL BE THE DUTY AND RESPONSIBILITY OF THE DIRECTOR OF
8 TRIAL STAFF TO PROSECUTE IN THAT PROCEEDING.

9 (2) IN ADDITION TO ANY OTHER RESPONSIBILITY CONVEYED
10 UPON IT BY THE COMMISSION, THE OFFICE OF TRIAL STAFF SHALL
11 SUBMIT A REPORT TO THE COMMISSION RECOMMENDING WHETHER THE
12 COMMISSION SHOULD ENTER UPON A HEARING IN ORDER TO
13 INVESTIGATE THE JUSTNESS AND REASONABLENESS OF A TARIFF FILED
14 PURSUANT TO SECTION 1308 (RELATING TO VOLUNTARY CHANGES IN
15 RATES), TO SUSPEND THE EFFECTIVENESS OF SUCH TARIFF, TO ALLOW
16 SUCH TARIFF TO BE SUSPENDED BY OPERATION OF LAW OR TO ALLOW
17 TEMPORARY RATES PURSUANT TO SECTION 1310 (RELATING TO
18 TEMPORARY RATES). THE REPORT:

19 (I) SHALL RECOMMEND ONLY THE INITIAL ACTION WHICH
20 THE COMMISSION SHOULD TAKE AND SHALL NOT CONTAIN AN
21 OPINION AS TO THE PORTION OF A PROPOSED RATE INCREASE
22 WHICH APPEARS TO BE JUST AND REASONABLE, UNLESS THE
23 REPORT INCLUDES A FINDING THAT THE PROPOSED RATE INCREASE
24 APPEARS TO BE JUST AND REASONABLE IN ITS ENTIRETY;

25 (II) SHALL BE RELEASED TO THE PUBLIC IF THE REPORT
26 RECOMMENDS THAT NO HEARINGS NEED TO BE HELD REGARDING THE
27 PROPOSED TARIFF OR THAT THE PROPOSED TARIFF SHOULD NOT BE
28 SUSPENDED, AND MAY BE RELEASED TO THE PUBLIC IN OTHER
29 CIRCUMSTANCES WHEN, IN THE OPINION OF THE COMMISSION,
30 SUCH RELEASE WOULD BE IN THE PUBLIC INTEREST;

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1 (III) SHALL BE CONSIDERED ONLY AS AN INDICATION OF
2 THE OFFICE OF TRIAL STAFF'S OPINION REGARDING WHETHER
3 THERE SHOULD BE A HEARING ON THE PROPOSED TARIFF OR
4 WHETHER THE PROPOSED TARIFF SHOULD BE SUSPENDED; AND

5 (IV) SHALL NOT BE CONSIDERED AS EVIDENCE OF THE
6 OFFICE OF TRIAL STAFF'S OPINION REGARDING THE JUSTNESS
7 AND REASONABLENESS OF ANY PROPOSED TARIFF IN ANY
8 SUBSEQUENT COMMISSION PROCEEDING.

9 (3) EXCEPT FOR THE DUTIES SET OUT IN PARAGRAPH (2),
10 NEITHER THE DIRECTOR OF TRIAL STAFF NOR ANY EMPLOYEE WHOM THE
11 DIRECTOR OF TRIAL STAFF SUPERVISES SHALL COMMUNICATE WITH THE
12 COMMISSION, AN ADMINISTRATIVE LAW JUDGE OR ANY OTHER EMPLOYEE
13 OF THE COMMISSION WHO IS DECIDING OR ADVISING IN THE DECISION
14 IN AN ON-THE-RECORD PROCEEDING, WHETHER CONTESTED OR
15 UNCONTESTED, AS DEFINED IN SECTION 332(C) (RELATING TO
16 PROCEDURES IN GENERAL), EXCEPT THROUGH THE PRACTICE AND
17 PROCEDURE AVAILABLE TO ALL PARTIES TO COMMISSION
18 PROCEEDINGS.]

19 SECTION 1.2. SECTION 308(A) (2) AND (4), (B), (C), (E), (F)
20 AND (G) OF TITLE 66 ARE AMENDED TO READ:

21 § 308. BUREAUS AND OFFICES.

22 (A) ENUMERATION.--THERE SHALL BE ESTABLISHED WITHIN THE
23 COMMISSION THE FOLLOWING BUREAUS AND FUNCTIONS:

24 * * *

25 [(2) BUREAU OF CONSERVATION, ECONOMICS AND ENERGY
26 PLANNING.]

27 * * *

28 [(4) OFFICE OF SPECIAL ASSISTANTS.]

29 (B) LAW BUREAU.--THE LAW BUREAU SHALL BE A MULTIFUNCTION
30 LEGAL STAFF, CONSISTING OF A PROSECUTORY FUNCTION, AN ADVISORY

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1 FUNCTION, A REPRESENTATIONAL FUNCTION AND AN ENFORCEMENT
2 FUNCTION. THE DIRECTOR OF THE LAW BUREAU SHALL BE THE CHIEF
3 COUNSEL OF THE COMMISSION AND SHALL SERVE AT THE PLEASURE OF THE
4 COMMISSION. THE COMMISSION MAY ALSO, FROM TIME TO TIME, APPOINT
5 SUCH ASSISTANT COUNSEL TO THE COMMISSION AS MAY BE REQUIRED FOR
6 THE PROPER CONDUCT OF THE WORK OF THE LAW BUREAU. ASSISTANT
7 COUNSEL MAY BE REMOVED BY THE COMMISSION ONLY FOR GOOD CAUSE.
8 THE LAW BUREAU SHALL ADVISE THE COMMISSION ON ANY AND ALL

9 MATTERS. NO COUNSEL SHALL IN THE SAME CASE OR A FACTUALLY
10 RELATED CASE PERFORM DUTIES IN THE PROSECUTORY AND ADVISORY
11 FUNCTIONS, IF SUCH PERFORMANCE WOULD REPRESENT A CONFLICT OF
12 INTEREST. EXCEPT FOR LITIGATION REFERRED TO THE ATTORNEY GENERAL
13 OR OTHER APPROPRIATE OUTSIDE COUNSEL, THE LAW BUREAU SOLELY
14 SHALL BE RESPONSIBLE TO REPRESENT THE COMMISSION UPON APPEALS
15 AND OTHER HEARINGS IN THE COURTS OF COMMON PLEAS AND IN THE
16 COMMONWEALTH COURT, SUPREME COURT OR OTHER COURTS OF THIS
17 COMMONWEALTH OR IN ANY FEDERAL COURT OR AGENCY AND IN ACTIONS
18 INSTITUTED TO RECOVER PENALTIES AND TO ENFORCE REGULATIONS AND
19 ORDERS OF THE COMMISSION. [NO MEMBER OF THE LAW BUREAU SHALL
20 PARTICIPATE IN ANY PROSECUTORY FUNCTION IN ANY MATTER] IF
21 NECESSARY TO PROTECT THE PUBLIC INTEREST, THE LAW BUREAU,
22 PURSUANT TO ITS PROSECUTORIAL FUNCTION, MAY INITIATE AND
23 PARTICIPATE IN PROCEEDINGS BEFORE THE COMMISSION UNLESS DIRECTED
24 BY THE COMMISSION TO DO SO IN A PROCEEDING INVOLVING
25 TRANSPORTATION, SAFETY, EMINENT DOMAIN, SITING, SERVICE ISSUES
26 HAVING NO IMPACT ON RATES OR ABILITY TO PAY OR ASSIST THE OFFICE
27 OF TRIAL STAFF IN CARRYING OUT THE DUTIES OF THE OFFICE OF TRIAL
28 STAFF, NOR SHALL ANY MEMBER OF THE LAW BUREAU RECEIVE ASSISTANCE
29 FROM THE OFFICE OF TRIAL STAFF IN THE PERFORMANCE OF HIS DUTIES.
30 EXCEPT AS PROVIDED IN THIS SECTION, THE LAW BUREAU MAY RECEIVE

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1 ASSISTANCE FROM ANY OTHER BUREAU OR OFFICE OF THE COMMISSION AS
2 DETERMINED TO BE NECESSARY.

3 [(C) BUREAU OF CONSERVATION, ECONOMICS AND ENERGY
4 PLANNING.--THE BUREAU OF CONSERVATION, ECONOMICS AND ENERGY
5 PLANNING SHALL CONDUCT STUDIES AND RESEARCH ALL MATTERS WITHIN
6 THE COMMISSION'S JURISDICTION AND ADVISE THE COMMISSION OF THE
7 RESULTS THEREOF IN ORDER TO ENABLE THE COMMISSION TO PROVIDE
8 PROSPECTIVE REGULATION IN THE BEST INTEREST OF ALL PARTIES
9 CONCERNED. SUCH STUDIES AND RESEARCH SHALL INCLUDE LONG RANGE
10 FORECASTING OF ENERGY NEEDS AND DEVELOPMENT; RESEARCH INTO THE
11 USE OF NEW, EFFICIENT AND ECONOMIC METHODS OF ENERGY PRODUCTION;
12 THE REVIEW OF THE EFFICIENCY OF THE PRESENT GENERATING SYSTEMS
13 OPERATED WITHIN THIS COMMONWEALTH; AND THE DEVELOPMENT OF AN
14 EFFECTIVE PROGRAM OF ENERGY CONSERVATION. THE COMMISSION SHALL
15 REQUIRE ALL ELECTRIC AND GAS PUBLIC UTILITIES SUBJECT TO ITS
16 JURISDICTION TO FILE WITH IT AN ANNUAL CONSERVATION REPORT WHICH
17 SHOWS THE PLANS AND PROGRESS ACHIEVED ON PROGRAMS OF ENERGY
18 CONSERVATION. THE COMMISSION SHALL, BY RULE, PRESCRIBE
19 GUIDELINES FOR THE FORM AND MANNER OF SUCH ANNUAL CONSERVATION
20 REPORT WHICH REPORT SHALL DESCRIBE THE CURRENT AND PROPOSED
21 PROGRAMS OF EACH SUCH UTILITY DESIGNED TO EDUCATE AND ENCOURAGE
22 ITS CUSTOMERS IN THE OPTIMUM, EFFECTIVE AND EFFICIENT USE BY
23 THEM OF ELECTRIC AND GAS ENERGY. THE REPORT SHALL INCLUDE AN
24 ACCOUNTING OF THE MONETARY AND PERSONNEL RESOURCES ACTUALLY OR
25 PROPOSED TO BE EXPENDED OR DEVOTED TO AND THE ACTUAL OR
26 ANTICIPATED RESULTS OF SUCH PROGRAMS. THE BUREAU SHALL REVIEW
27 ALL PROPOSALS FOR ELECTRIC AND GAS PUBLIC UTILITY PLANT
28 EXPANSION AND SHALL SUBMIT FOR CONSIDERATION OF THE COMMISSION
29 ITS FINDINGS ON WHAT IMPACT, IF ANY, THE ELECTRIC AND GAS PUBLIC
30 UTILITY PLANT EXPANSION WILL HAVE ON RATES CHARGED BY THE PUBLIC

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1 UTILITY.]

2 * * *

3 [(E) OFFICE OF SPECIAL ASSISTANTS.--THE OFFICE OF SPECIAL
4 ASSISTANTS SHALL BE A SUPPORT STAFF WHICH SHALL BE RESPONSIBLE
5 TO ASSIST IN THE PREPARATION OF COMMISSION ORDERS AND SHALL
6 PERFORM SUCH OTHER ADVISORY DUTIES AS MAY BE REQUIRED OF IT BY
7 THE COMMISSION. NO MEMBER OF THE OFFICE OF SPECIAL ASSISTANTS
8 SHALL PARTICIPATE IN ANY PROSECUTORY FUNCTION IN ANY MATTER
9 BEFORE THE COMMISSION. NO MEMBER OF THE OFFICE OF SPECIAL
10 ASSISTANTS SHALL ASSIST THE OFFICE OF TRIAL STAFF IN CARRYING
11 OUT THE DUTIES OF THE OFFICE OF TRIAL STAFF, NOR SHALL ANY
12 MEMBER OF THE OFFICE OF SPECIAL ASSISTANTS RECEIVE ASSISTANCE
13 FROM THE OFFICE OF TRIAL STAFF IN THE PERFORMANCE OF HIS DUTIES.
14 EXCEPT AS PROVIDED IN THIS SECTION, THE OFFICE OF SPECIAL
15 ASSISTANTS MAY RECEIVE ASSISTANCE FROM, OR PROVIDE ASSISTANCE
16 TO, ANY OTHER BUREAU OR OFFICE OF THE COMMISSION AS DETERMINED

17 TO BE NECESSARY.

18 (F) OTHER BUREAUS AND OFFICES.--THE COMMISSION SHALL
19 ESTABLISH SUCH BUREAU OR BUREAUS TO PERFORM SUCH DUTIES AS THE
20 COMMISSION MAY PRESCRIBE REGARDING ALL MATTERS RESPECTING RATES
21 OF PUBLIC UTILITIES AND ALL MATTERS RESPECTING COMMON CARRIERS
22 AND CONTRACT CARRIERS. THE ESTABLISHMENT OF THESE BUREAUS SHALL
23 NOT BE CONSTRUED TO PROHIBIT THE COMMISSION FROM ESTABLISHING
24 ANY ADDITIONAL BUREAUS WHICH THE COMMISSION FINDS NECESSARY TO
25 PROTECT THE INTERESTS OF THE PEOPLE OF THIS COMMONWEALTH. THE
26 BUREAUS MAY PERFORM SUCH OTHER DUTIES NOT INCONSISTENT WITH LAW
27 AS THE COMMISSION MAY DIRECT.

28 (G) STAFF TESTIMONY.--MEMBERS OF THE STAFF OF THE
29 COMMISSION, EXCEPT FOR THE OFFICE OF SPECIAL ASSISTANTS, SHALL
30 APPEAR AND PRESENT TESTIMONY IN ANY PROCEEDING BEFORE THE

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1 COMMISSION WHEN CALLED BY THE COMMISSION, THE CHIEF COUNSEL, THE
2 DIRECTOR OF TRIAL STAFF OR ANY OF THE PARTIES TO THE PROCEEDING.
3 IN ADDITION TO ANY CROSS-EXAMINATION BY THE OFFICE OF TRIAL
4 STAFF AS PROVIDED IN SECTION 306 (RELATING TO OFFICE OF TRIAL
5 STAFF) OR THE CHIEF COUNSEL, ANY MEMBER OF THE COMMISSION STAFF
6 WHO PARTICIPATES IN THE ANALYSIS, REVIEW AND CONCLUSIONS IN ANY
7 PROCEEDINGS BEFORE THE COMMISSION MAY, IN THE DISCRETION OF THE
8 OFFICE OF TRIAL STAFF OR THE CHIEF COUNSEL AND WITH THE CONSENT
9 OF THE PRESIDING OFFICER, CROSS-EXAMINE ANY WITNESS PRESENTED BY
10 THE PARTIES TO THE PROCEEDING AT THE PUBLIC HEARING.]

11 SECTION 1.3. TITLE 66 IS AMENDED BY ADDING A SECTION TO
12 READ:

13 § 308.2. OTHER BUREAUS, OFFICES AND POSITIONS.

14 (A) ESTABLISHMENT OF OTHER BUREAUS, OFFICES AND POSITIONS.--
15 IN ADDITION TO THE SPECIFIC BUREAUS ESTABLISHED IN THIS PART,
16 THE COMMISSION MAY ESTABLISH OTHER BUREAUS, OFFICES AND
17 POSITIONS TO PERFORM THE FOLLOWING FUNCTIONS:

18 (1) REVIEW AND PROVIDE ADVICE REGARDING APPLICATIONS,
19 PETITIONS, TARIFF FILINGS AND OTHER MATTERS FILED WITH THE
20 COMMISSION.

21 (2) PROVIDE ADVICE, REVIEW EXCEPTIONS AND PREPARE ORDERS
22 REGARDING MATTERS TO BE ADJUDICATED.

23 (3) CONDUCT FINANCIAL REVIEWS, EARNINGS ANALYSES AND
24 OTHER FINANCIAL STUDIES.

25 (4) CONDUCT ECONOMIC RESEARCH, FORECASTING, ENERGY
26 CONSERVATION STUDIES, COST STUDIES AND OTHER ECONOMIC STUDIES
27 RELATED TO PUBLIC UTILITIES.

28 (5) MONITOR INDUSTRY MARKETS TO DETECT ANTICOMPETITIVE,
29 DISCRIMINATORY OR OTHER UNLAWFUL CONDUCT.

30 (6) INSURE ADEQUATE MAINTENANCE, SAFETY AND RELIABILITY
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1 OF UTILITY NETWORKS.

2 (7) INSURE ADEQUATE SERVICE QUALITY, EFFICIENCY AND
3 AVAILABILITY AT JUST AND REASONABLE RATES.

4 (8) CONDUCT FINANCIAL, MANAGEMENT, OPERATIONAL AND
5 SPECIAL AUDITS.

6 (9) PROVIDE CONSUMER INFORMATION, CONSUMER PROTECTION
7 AND INFORMAL RESOLUTION OF COMPLAINTS.

8 (10) INSURE ADEQUATE SAFETY, INSURANCE, FITNESS AND
9 OTHER REQUIREMENTS RELEVANT TO TRANSPORTATION UTILITIES.

10 (11) TAKE APPROPRIATE ENFORCEMENT ACTIONS, INCLUDING
11 RATE PROCEEDINGS, SERVICE PROCEEDINGS AND ALLOCATION
12 PROCEEDINGS, NECESSARY TO INSURE COMPLIANCE WITH THIS TITLE,
13 COMMISSION REGULATIONS AND ORDERS.

14 (12) PERFORM OTHER FUNCTIONS THE COMMISSION DEEMS
15 NECESSARY FOR THE PROPER WORK OF THE COMMISSION.

16 (B) PROHIBITION ON COMMINGLING OF FUNCTIONS.--A COMMISSION
17 EMPLOYEE ENGAGED IN A PROSECUTORY FUNCTION MAY NOT, IN THAT
18 MATTER OR A FACTUALLY RELATED MATTER, PROVIDE ADVICE OR
19 ASSISTANCE TO A COMMISSION EMPLOYEE PERFORMING AN ADVISORY
20 FUNCTION AS TO THAT MATTER.

21 SECTION 1.4. SECTION 2803 OF TITLE 66 IS AMENDED BY ADDING
22 DEFINITIONS TO READ:

23 § 2803. DEFINITIONS.

24 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER

25 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
26 CONTEXT CLEARLY INDICATES OTHERWISE:

27 * * *

28 "BILATERAL CONTRACT." AN AGREEMENT, AS APPROVED BY THE
29 PENNSYLVANIA PUBLIC UTILITY COMMISSION, REACHED BY TWO PARTIES,
30 EACH ACTING IN ITS OWN INDEPENDENT SELF-INTEREST, AS A RESULT OF
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1 NEGOTIATIONS FREE OF UNDUE INFLUENCE, DURESS OR FAVORITISM, IN
2 WHICH THE ELECTRIC ENERGY SUPPLIER AGREES TO SELL AND THE
3 ELECTRIC DISTRIBUTION COMPANY AGREES TO BUY A QUANTITY OF
4 ELECTRIC ENERGY AT A SPECIFIED PRICE FOR A SPECIFIED PERIOD OF
5 TIME UNDER TERMS AGREED TO BY BOTH PARTIES, AND WHICH FOLLOWS A
6 STANDARD INDUSTRY TEMPLATE WIDELY ACCEPTED IN THE INDUSTRY OR
7 VARIATIONS THERETO ACCEPTED BY THE PARTIES. STANDARD INDUSTRY
8 TEMPLATES MAY INCLUDE THE EEI MASTER AGREEMENT FOR PHYSICAL
9 ENERGY PURCHASES AND SALES AND THE ISDA MASTER AGREEMENT FOR
10 FINANCIAL ENERGY PURCHASES AND SALES.

11 * * *

12 "DEFAULT SERVICE PROVIDER." AN ELECTRIC DISTRIBUTION COMPANY
13 WITHIN ITS CERTIFIED SERVICE TERRITORY OR AN ALTERNATIVE
14 SUPPLIER APPROVED BY THE PENNSYLVANIA PUBLIC UTILITY COMMISSION
15 THAT PROVIDES GENERATION SERVICE TO RETAIL ELECTRIC CUSTOMERS
16 WHO:

17 (1) CONTRACT FOR ELECTRIC POWER, INCLUDING ENERGY AND
18 CAPACITY, AND THE CHOSEN ELECTRIC GENERATION SUPPLIER DOES
19 NOT SUPPLY THE SERVICE; OR

20 (2) DO NOT CHOOSE AN ALTERNATIVE ELECTRIC GENERATION
21 SUPPLIER.

22 * * *

23 SECTION 2. TITLE 66 IS AMENDED BY ADDING SECTIONS TO READ:
24 § 2806.1. ENERGY EFFICIENCY AND CONSERVATION PROGRAM.

25 (A) PROGRAM.--THE COMMISSION SHALL, BY JANUARY 15, 2009,
26 ADOPT AN ENERGY EFFICIENCY AND CONSERVATION PROGRAM TO REQUIRE
27 ELECTRIC DISTRIBUTION COMPANIES TO ADOPT AND IMPLEMENT COST-
28 EFFECTIVE ENERGY EFFICIENCY AND CONSERVATION PLANS TO REDUCE
29 ENERGY DEMAND AND CONSUMPTION WITHIN THE SERVICE TERRITORY OF
30 EACH ELECTRIC DISTRIBUTION COMPANY IN THIS COMMONWEALTH. THE
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1 PROGRAM SHALL INCLUDE:

2 (1) PROCEDURES FOR THE APPROVAL OF PLANS SUBMITTED UNDER
3 SUBSECTION (B).

4 (2) AN EVALUATION PROCESS, INCLUDING A PROCESS TO
5 MONITOR AND VERIFY DATA COLLECTION, QUALITY ASSURANCE AND
6 RESULTS OF EACH PLAN AND THE PROGRAM.

7 (3) AN ANALYSIS OF THE COST AND BENEFIT OF EACH PLAN
8 SUBMITTED UNDER SUBSECTION (B) IN ACCORDANCE WITH A TOTAL
9 RESOURCE COST TEST APPROVED BY THE COMMISSION.

10 (4) AN ANALYSIS OF HOW THE PROGRAM AND INDIVIDUAL PLANS
11 WILL ENABLE EACH ELECTRIC DISTRIBUTION COMPANY TO ACHIEVE OR
12 EXCEED THE REQUIREMENTS FOR REDUCTION IN CONSUMPTION UNDER
13 SUBSECTIONS (C) AND (D).

14 (5) STANDARDS TO ENSURE THAT EACH PLAN INCLUDES A
15 VARIETY OF ENERGY EFFICIENCY AND CONSERVATION MEASURES AND
16 WILL PROVIDE THE MEASURES EQUITABLY TO ALL CLASSES OF
17 CUSTOMERS.

18 (6) PROCEDURES TO MAKE RECOMMENDATIONS AS TO ADDITIONAL
19 MEASURES THAT WILL ENABLE AN ELECTRIC DISTRIBUTION COMPANY TO
20 IMPROVE ITS PLAN AND EXCEED THE REQUIRED REDUCTIONS IN
21 CONSUMPTION UNDER SUBSECTIONS (C) AND (D).

22 (7) PROCEDURES TO REQUIRE THAT ELECTRIC DISTRIBUTION
23 COMPANIES COMPETITIVELY BID ALL CONTRACTS WITH CONSERVATION
24 SERVICE PROVIDERS.

25 (8) PROCEDURES TO REVIEW ALL PROPOSED CONTRACTS PRIOR TO
26 THE EXECUTION OF THE CONTRACT WITH CONSERVATION SERVICE
27 PROVIDERS TO IMPLEMENT THE PLAN. THE COMMISSION MAY ORDER THE
28 MODIFICATION OF A PROPOSED CONTRACT TO ENSURE THAT THE PLAN
29 MEETS THE REQUIREMENTS FOR REDUCTION IN DEMAND AND
30 CONSUMPTION UNDER SUBSECTIONS (C) AND (D).

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1 (9) PROCEDURES TO ENSURE COMPLIANCE WITH REQUIREMENTS
2 FOR REDUCTION IN CONSUMPTION UNDER SUBSECTIONS (C) AND (D).

3 (10) A REQUIREMENT FOR THE PARTICIPATION OF CONSERVATION
4 SERVICE PROVIDERS IN THE IMPLEMENTATION OF ALL OR PART OF A
5 PLAN.

6 (11) COST RECOVERY TO ENSURE THAT MEASURES APPROVED ARE
7 FINANCED BY THE SAME CUSTOMER CLASS THAT WILL RECEIVE THE
8 DIRECT ENERGY AND CONSERVATION BENEFITS.

9 (B) DUTIES OF ELECTRIC DISTRIBUTION COMPANIES.--

10 (1) (I) BY JULY 1, 2009, EACH ELECTRIC DISTRIBUTION
11 COMPANY SHALL DEVELOP AND FILE AN ENERGY EFFICIENCY AND
12 CONSERVATION PLAN WITH THE COMMISSION FOR APPROVAL TO
13 MEET THE REQUIREMENTS OF SUBSECTION (A) AND THE
14 REQUIREMENTS FOR REDUCTION IN CONSUMPTION UNDER
15 SUBSECTIONS (C) AND (D). THE PLAN SHALL BE IMPLEMENTED
16 UPON APPROVAL BY THE COMMISSION. THE FOLLOWING ARE THE
17 PLAN REQUIREMENTS:

18 (A) THE PLAN SHALL INCLUDE SPECIFIC PROPOSALS TO
19 IMPLEMENT ENERGY EFFICIENCY AND CONSERVATION MEASURES
20 TO ACHIEVE OR EXCEED THE REQUIRED REDUCTIONS IN
21 CONSUMPTION UNDER SUBSECTIONS (C) AND (D).

22 (B) A MINIMUM OF 10% OF THE REQUIRED REDUCTIONS
23 IN CONSUMPTION UNDER SUBSECTIONS (C) AND (D) SHALL BE
24 OBTAINED FROM UNITS OF FEDERAL, STATE AND LOCAL
25 GOVERNMENT, INCLUDING MUNICIPALITIES, SCHOOL
26 DISTRICTS, INSTITUTIONS OF HIGHER EDUCATION AND
27 NONPROFIT ENTITIES.

28 (C) THE PLAN SHALL EXPLAIN HOW QUALITY ASSURANCE
29 AND PERFORMANCE WILL BE MEASURED, VERIFIED AND
30 EVALUATED.

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1 (D) THE PLAN SHALL STATE THE MANNER IN WHICH THE
2 PLAN WILL ACHIEVE THE REQUIREMENTS OF THE PROGRAM
3 UNDER SUBSECTION (A) AND WILL ACHIEVE OR EXCEED THE
4 REQUIRED REDUCTIONS IN CONSUMPTION UNDER SUBSECTIONS
5 (C) AND (D).

6 (E) THE PLAN SHALL INCLUDE A CONTRACT WITH ONE
7 OR MORE CONSERVATION SERVICE PROVIDERS SELECTED BY
8 COMPETITIVE BID TO IMPLEMENT THE PLAN OR A PORTION OF
9 THE PLAN AS APPROVED BY THE COMMISSION.

10 (F) THE PLAN SHALL INCLUDE ESTIMATES OF THE COST
11 OF IMPLEMENTATION OF THE ENERGY EFFICIENCY AND
12 CONSERVATION MEASURES IN THE PLAN.

13 (G) THE PLAN SHALL INCLUDE SPECIFIC ENERGY
14 EFFICIENCY MEASURES FOR HOUSEHOLDS AT OR BELOW 150%
15 OF THE FEDERAL POVERTY INCOME GUIDELINES. THE NUMBER
16 OF MEASURES SHALL BE PROPORTIONATE TO THOSE
17 HOUSEHOLDS' SHARE OF THE TOTAL ENERGY USAGE IN THE
18 SERVICE TERRITORY. THE ELECTRIC DISTRIBUTION COMPANY
19 SHALL COORDINATE MEASURES UNDER THIS CLAUSE WITH
20 OTHER PROGRAMS ADMINISTERED BY THE COMMISSION OR
21 ANOTHER FEDERAL OR STATE AGENCY. THE EXPENDITURES OF
22 AN ELECTRIC DISTRIBUTION COMPANY UNDER THIS CLAUSE
23 SHALL BE IN ADDITION TO EXPENDITURES MADE UNDER 52
24 PA. CODE CH. 58 (RELATING TO RESIDENTIAL LOW INCOME
25 USAGE REDUCTION PROGRAMS).

26 (H) THE PLAN SHALL INCLUDE A PROPOSED COST-
27 RECOVERY TARIFF MECHANISM, IN ACCORDANCE WITH SECTION
28 1307 (RELATING TO SLIDING SCALE OR RATES;
29 ADJUSTMENTS), TO FUND THE ENERGY EFFICIENCY AND
30 CONSERVATION MEASURES AND TO ENSURE FULL AND CURRENT

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1 RECOVERY OF THE PRUDENT AND REASONABLE COSTS OF THE
2 PLAN, INCLUDING ADMINISTRATIVE COSTS, AS APPROVED BY
3 THE COMMISSION.

4 (I) THE ELECTRIC DISTRIBUTION COMPANY SHALL
5 DEMONSTRATE THAT THE PLAN IS COST-EFFECTIVE USING A
6 TOTAL RESOURCE COST TEST APPROVED BY THE COMMISSION
7 AND PROVIDES A DIVERSE CROSS SECTION OF ALTERNATIVES
8 FOR CUSTOMERS OF ALL RATE CLASSES.

9 (J) THE PLAN SHALL REQUIRE AN ANNUAL INDEPENDENT
10 EVALUATION OF ITS COST-EFFECTIVENESS AND A FULL
11 REVIEW OF THE RESULTS OF EACH FIVE-YEAR PLAN REQUIRED
12 UNDER SUBSECTION (C)(3) AND, TO THE EXTENT PRACTICAL,
13 HOW THE PLAN WILL BE ADJUSTED ON A GOING-FORWARD
14 BASIS AS A RESULT OF THE EVALUATION.

15 (K) THE PLAN SHALL INCLUDE AN ANALYSIS OF THE
16 ELECTRIC DISTRIBUTION COMPANY'S ADMINISTRATIVE COSTS.

17 (II) A NEW PLAN SHALL BE FILED WITH THE COMMISSION
18 EVERY FIVE YEARS OR AS OTHERWISE REQUIRED BY THE
19 COMMISSION. THE PLAN SHALL SET FORTH THE MANNER IN WHICH
20 THE COMPANY WILL MEET THE REQUIRED REDUCTIONS IN
21 CONSUMPTION UNDER SUBSECTIONS (C) AND (D).

22 (III) NO MORE THAN 2% OF FUNDS AVAILABLE TO
23 IMPLEMENT A PLAN UNDER THIS SUBSECTION SHALL BE ALLOCATED
24 FOR EXPERIMENTAL EQUIPMENT OR DEVICES.

25 (2) THE COMMISSION SHALL DIRECT AN ELECTRIC DISTRIBUTION
26 COMPANY TO MODIFY OR TERMINATE ANY PART OF A PLAN APPROVED
27 UNDER THIS SECTION IF, AFTER AN ADEQUATE PERIOD FOR
28 IMPLEMENTATION, THE COMMISSION DETERMINES THAT AN ENERGY
29 EFFICIENCY OR CONSERVATION MEASURE INCLUDED IN THE PLAN WILL
30 NOT ACHIEVE THE REQUIRED REDUCTIONS IN CONSUMPTION IN A COST-

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1 EFFECTIVE MANNER UNDER SUBSECTIONS (C) AND (D).

2 (3) IF PART OF A PLAN IS MODIFIED OR TERMINATED UNDER
3 PARAGRAPH (2), THE ELECTRIC DISTRIBUTION COMPANY SHALL SUBMIT
4 A REVISED PLAN DESCRIBING ACTIONS TO BE TAKEN TO OFFER
5 SUBSTITUTE MEASURES OR TO INCREASE THE AVAILABILITY OF
6 EXISTING MEASURES IN THE PLAN TO ACHIEVE THE REQUIRED
7 REDUCTIONS IN CONSUMPTION UNDER SUBSECTIONS (C) AND (D).

8 (C) REDUCTIONS IN CONSUMPTION.--THE PLANS ADOPTED UNDER
9 SUBSECTION (B) SHALL REDUCE ELECTRIC CONSUMPTION AS FOLLOWS:

10 (1) BY MAY 31, 2011, TOTAL ANNUAL WEATHER-NORMALIZED
11 CONSUMPTION OF THE RETAIL CUSTOMERS OF EACH ELECTRIC
12 DISTRIBUTION COMPANY SHALL BE REDUCED BY A MINIMUM OF 1%. THE
13 1% LOAD REDUCTION IN CONSUMPTION SHALL BE MEASURED AGAINST
14 THE ELECTRIC DISTRIBUTION COMPANY'S EXPECTED LOAD AS
15 FORECASTED BY THE COMMISSION FOR JUNE 1, 2009, THROUGH MAY
16 31, 2010, WITH PROVISIONS MADE FOR WEATHER ADJUSTMENTS AND
17 EXTRAORDINARY LOADS THAT THE ELECTRIC DISTRIBUTION COMPANY
18 MUST SERVE.

19 (2) BY MAY 31, 2013, THE TOTAL ANNUAL WEATHER-NORMALIZED
20 CONSUMPTION OF THE RETAIL CUSTOMERS OF EACH ELECTRIC
21 DISTRIBUTION COMPANY SHALL BE REDUCED BY A MINIMUM OF 3%. THE
22 3% LOAD REDUCTION IN CONSUMPTION SHALL BE MEASURED AGAINST
23 THE ELECTRIC DISTRIBUTION COMPANY'S EXPECTED LOAD AS
24 FORECASTED BY THE COMMISSION FOR JUNE 1, 2009, THROUGH MAY
25 31, 2010, WITH PROVISION MADE FOR WEATHER ADJUSTMENTS AND
26 EXTRAORDINARY LOADS THAT THE ELECTRIC DISTRIBUTION COMPANY
27 MUST SERVE.

28 (3) BY NOVEMBER 30, 2013, AND EVERY FIVE YEARS
29 THEREAFTER, THE COMMISSION SHALL EVALUATE THE COSTS AND
30 BENEFITS OF THE PROGRAM ESTABLISHED UNDER SUBSECTION (A) AND

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1 OF APPROVED ENERGY EFFICIENCY AND CONSERVATION PLANS
2 SUBMITTED TO THE PROGRAM. THE EVALUATION SHALL BE CONSISTENT
3 WITH A TOTAL RESOURCE COST TEST OR A COST-BENEFIT ANALYSIS
4 DETERMINED BY THE COMMISSION. IF THE COMMISSION DETERMINES
5 THAT THE BENEFITS OF THE PROGRAM EXCEED THE COSTS, THE
6 COMMISSION SHALL ADOPT ADDITIONAL REQUIRED INCREMENTAL
7 REDUCTIONS IN CONSUMPTION.

8 (D) PEAK DEMAND.--THE PLANS ADOPTED UNDER SUBSECTION (B)
9 SHALL REDUCE ELECTRIC DEMAND AS FOLLOWS:

10 (1) BY MAY 31, 2013, THE WEATHER-NORMALIZED DEMAND OF
11 THE RETAIL CUSTOMERS OF EACH ELECTRIC DISTRIBUTION COMPANY
12 SHALL BE REDUCED BY A MINIMUM OF 4.5% OF ANNUAL SYSTEM PEAK
13 DEMAND IN THE 100 HOURS OF HIGHEST DEMAND. THE REDUCTION
14 SHALL BE MEASURED AGAINST THE ELECTRIC DISTRIBUTION COMPANY'S
15 PEAK DEMAND FOR JUNE 1, 2007, THROUGH MAY 31, 2008.

16 (2) BY NOVEMBER 30, 2013, THE COMMISSION SHALL COMPARE

17 THE TOTAL COSTS OF ENERGY EFFICIENCY AND CONSERVATION PLANS
18 IMPLEMENTED UNDER THIS SECTION TO THE TOTAL SAVINGS IN ENERGY
19 AND CAPACITY COSTS TO RETAIL CUSTOMERS IN THIS COMMONWEALTH
20 OR OTHER COSTS DETERMINED BY THE COMMISSION. IF THE
21 COMMISSION DETERMINES THAT THE BENEFITS OF THE PLANS EXCEED
22 THE COSTS, THE COMMISSION SHALL SET ADDITIONAL INCREMENTAL
23 REQUIREMENTS FOR REDUCTION IN PEAK DEMAND FOR THE 100 HOURS
24 OF GREATEST DEMAND OR AN ALTERNATIVE REDUCTION APPROVED BY
25 THE COMMISSION. REDUCTIONS IN DEMAND SHALL BE MEASURED FROM
26 THE ELECTRIC DISTRIBUTION COMPANY'S PEAK DEMAND FOR THE
27 PERIOD FROM JUNE 1, 2011, THROUGH MAY 31, 2012. THE
28 REDUCTIONS IN CONSUMPTION REQUIRED BY THE COMMISSION SHALL BE
29 ACCOMPLISHED NO LATER THAN MAY 31, 2017.

30 (E) COMMISSION APPROVAL.--

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1 (1) THE COMMISSION SHALL CONDUCT A PUBLIC HEARING ON
2 EACH PLAN AND ALLOW FOR THE SUBMISSION OF RECOMMENDATIONS BY
3 THE OFFICE OF CONSUMER ADVOCATE AND THE OFFICE OF SMALL
4 BUSINESS ADVOCATE AND BY MEMBERS OF THE PUBLIC AS TO HOW THE
5 ELECTRIC DISTRIBUTION COMPANY COULD IMPROVE ITS PLAN OR
6 EXCEED THE REQUIRED REDUCTIONS IN CONSUMPTION UNDER
7 SUBSECTIONS (C) AND (D).

8 (2) THE COMMISSION SHALL APPROVE OR DISAPPROVE A PLAN
9 FILED UNDER SUBSECTION (B) WITHIN 120 DAYS OF SUBMISSION. THE
10 FOLLOWING SHALL APPLY TO AN ORDER DISAPPROVING A PLAN:

11 (I) THE COMMISSION SHALL DESCRIBE IN DETAIL THE
12 REASONS FOR THE DISAPPROVAL.

13 (II) THE ELECTRIC DISTRIBUTION COMPANY SHALL HAVE 60
14 DAYS TO FILE A REVISED PLAN TO ADDRESS THE DEFICIENCIES
15 IDENTIFIED BY THE COMMISSION. THE REVISED PLAN SHALL BE
16 APPROVED OR DISAPPROVED BY THE COMMISSION WITHIN 60 DAYS.

17 (F) PENALTIES.--

18 (1) THE FOLLOWING SHALL APPLY FOR FAILURE TO SUBMIT A
19 PLAN:

20 (I) AN ELECTRIC DISTRIBUTION COMPANY THAT FAILS TO
21 FILE A PLAN UNDER SUBSECTION (B) SHALL BE SUBJECT TO A
22 CIVIL PENALTY OF \$100,000 PER DAY UNTIL THE PLAN IS
23 FILED.

24 (II) AN ELECTRIC DISTRIBUTION COMPANY THAT FAILS TO
25 FILE A REVISED PLAN UNDER SUBSECTION (E)(2)(II) SHALL BE
26 SUBJECT TO A CIVIL PENALTY OF \$100,000 PER DAY UNTIL THE
27 PLAN IS FILED.

28 (III) PENALTIES COLLECTED UNDER THIS PARAGRAPH SHALL
29 BE DEPOSITED IN THE LOW-INCOME ELECTRIC CUSTOMER
30 ASSISTANCE PROGRAM OF THE ENERGY DISTRIBUTION COMPANY FOR

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1 THE RESPECTIVE SERVICE TERRITORY.

2 (2) THE FOLLOWING SHALL APPLY TO AN ELECTRIC
3 DISTRIBUTION COMPANY THAT FAILS TO ACHIEVE THE REDUCTIONS IN
4 CONSUMPTION REQUIRED UNDER SUBSECTION (C) OR (D):

5 (I) THE ELECTRIC DISTRIBUTION COMPANY SHALL BE
6 SUBJECT TO A CIVIL PENALTY NOT LESS THAN \$1,000,000 AND
7 NOT TO EXCEED \$20,000,000 FOR FAILURE TO ACHIEVE THE
8 REQUIRED REDUCTIONS IN CONSUMPTION UNDER SUBSECTION (C)
9 OR (D). ANY PENALTY PAID BY AN ELECTRIC DISTRIBUTION
10 COMPANY UNDER THIS SUBPARAGRAPH SHALL NOT BE RECOVERABLE
11 FROM RATEPAYERS.

12 (II) IF AN ELECTRIC DISTRIBUTION COMPANY FAILS TO
13 ACHIEVE THE REQUIRED REDUCTIONS IN CONSUMPTION UNDER
14 SUBSECTION (C) OR (D), RESPONSIBILITY TO ACHIEVE THE
15 REDUCTIONS IN CONSUMPTION SHALL BE TRANSFERRED TO THE
16 COMMISSION. THE COMMISSION SHALL DO ALL OF THE FOLLOWING:

17 (A) IMPLEMENT A PLAN TO ACHIEVE THE REQUIRED
18 REDUCTIONS IN CONSUMPTION UNDER SUBSECTION (C) OR
19 (D).

20 (B) CONTRACT WITH CONSERVATION SERVICE PROVIDERS
21 AS NECESSARY TO IMPLEMENT ANY PORTION OF THE PLAN.

22 (G) LIMITATION ON COSTS.--THE TOTAL COST OF ANY PLAN
23 REQUIRED UNDER THIS SECTION SHALL NOT EXCEED 2% OF THE ELECTRIC
24 DISTRIBUTION COMPANY'S TOTAL ANNUAL REVENUE AS OF DECEMBER 31.

25 2006. THE PROVISIONS OF THIS PARAGRAPH SHALL NOT APPLY TO THE
26 COST OF LOW-INCOME USAGE REDUCTION PROGRAMS ESTABLISHED UNDER 52
27 PA. CODE CH. 58 (RELATING TO RESIDENTIAL LOW INCOME USAGE
28 REDUCTION PROGRAMS).

29 (H) COSTS.--THE COMMISSION SHALL RECOVER FROM ELECTRIC
30 DISTRIBUTION COMPANIES THE COSTS OF IMPLEMENTING THE PROGRAM
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1 ESTABLISHED UNDER THIS SECTION.

2 (I) REPORT.--THE FOLLOWING SHALL APPLY:

3 (1) EACH ELECTRIC DISTRIBUTION COMPANY SHALL SUBMIT AN
4 ANNUAL REPORT TO THE COMMISSION RELATING TO THE RESULTS OF
5 THE ENERGY EFFICIENCY AND CONSERVATION PLAN WITHIN EACH
6 ELECTRIC DISTRIBUTION SERVICE TERRITORY. THE REPORT SHALL
7 INCLUDE ALL OF THE FOLLOWING:

8 (I) DOCUMENTATION OF PROGRAM EXPENDITURES.

9 (II) MEASUREMENT AND VERIFICATION OF ENERGY SAVINGS
10 UNDER THE PLAN.

11 (III) EVALUATION OF THE COST-EFFECTIVENESS OF
12 EXPENDITURES.

13 (IV) ANY OTHER INFORMATION REQUIRED BY THE
14 COMMISSION.

15 (2) BEGINNING FIVE YEARS FOLLOWING THE EFFECTIVE DATE OF
16 THIS SECTION AND ANNUALLY THEREAFTER, THE COMMISSION SHALL
17 SUBMIT A REPORT TO THE CONSUMER PROTECTION AND PROFESSIONAL
18 LICENSURE COMMITTEE OF THE SENATE AND THE CONSUMER AFFAIRS
19 COMMITTEE OF THE HOUSE OF REPRESENTATIVES.

20 (J) EXISTING FUNDING SOURCES.--EACH ELECTRIC DISTRIBUTION
21 COMPANY SHALL, UPON REQUEST BY ANY PERSON, PROVIDE A LIST OF ALL
22 ELIGIBLE FEDERAL AND STATE FUNDING PROGRAMS AVAILABLE TO
23 RATEPAYERS FOR ENERGY EFFICIENCY AND CONSERVATION. THE LIST
24 SHALL BE POSTED ON THE ELECTRIC DISTRIBUTION COMPANY'S INTERNET
25 WEBSITE.

26 (K) RECOVERY.--

27 (1) AN ELECTRIC DISTRIBUTION COMPANY SHALL RECOVER ON A
28 FULL AND CURRENT BASIS FROM CUSTOMERS, THROUGH A RECONCILABLE
29 ADJUSTMENT CLAUSE UNDER SECTION 1307, ALL REASONABLE AND
30 PRUDENT COSTS INCURRED IN THE PROVISION OR MANAGEMENT OF A

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1 PLAN PROVIDED UNDER THIS SECTION. THIS PARAGRAPH SHALL APPLY
2 TO ALL ELECTRIC DISTRIBUTION COMPANIES, INCLUDING ELECTRIC
3 DISTRIBUTION COMPANIES SUBJECT TO GENERATION OR OTHER RATE
4 CAPS.

5 (2) EXCEPT AS SET FORTH IN PARAGRAPH (3), DECREASED
6 REVENUES OF AN ELECTRIC DISTRIBUTION COMPANY DUE TO REDUCED
7 ENERGY CONSUMPTION OR CHANGES IN ENERGY DEMAND SHALL NOT BE A
8 RECOVERABLE COST UNDER A RECONCILABLE AUTOMATIC ADJUSTMENT
9 CLAUSE.

10 (3) DECREASED REVENUE AND REDUCED ENERGY CONSUMPTION MAY
11 BE REFLECTED IN REVENUE AND SALES DATA USED TO CALCULATE
12 RATES IN A DISTRIBUTION-BASE RATE PROCEEDING FILED BY AN
13 ELECTRIC DISTRIBUTION COMPANY UNDER SECTION 1308 (RELATING TO
14 VOLUNTARY CHANGES IN RATES).

15 (L) APPLICABILITY.--THIS SECTION SHALL NOT APPLY TO AN
16 ELECTRIC DISTRIBUTION COMPANY WITH FEWER THAN 100,000 CUSTOMERS.

17 (M) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
18 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
19 SUBSECTION:

20 "CONSERVATION SERVICE PROVIDER." AN ENTITY THAT PROVIDES
21 INFORMATION AND TECHNICAL ASSISTANCE ON MEASURES TO ENABLE A
22 PERSON TO INCREASE ENERGY EFFICIENCY OR REDUCE ENERGY
23 CONSUMPTION AND THAT HAS NO DIRECT OR INDIRECT OWNERSHIP,
24 PARTNERSHIP OR OTHER AFFILIATED INTEREST WITH AN ELECTRIC
25 DISTRIBUTION COMPANY.

26 "ELECTRIC DISTRIBUTION COMPANY TOTAL ANNUAL REVENUE."
27 AMOUNTS PAID TO THE ELECTRIC DISTRIBUTION COMPANY FOR
28 GENERATION, TRANSMISSION, DISTRIBUTION AND SURCHARGES BY RETAIL
29 CUSTOMERS.

30 "ENERGY EFFICIENCY AND CONSERVATION MEASURES."

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1 (1) TECHNOLOGIES, MANAGEMENT PRACTICES OR OTHER MEASURES
2 EMPLOYED BY RETAIL CUSTOMERS THAT REDUCE ELECTRICITY
3 CONSUMPTION OR DEMAND IF ALL OF THE FOLLOWING APPLY:

4 (I) THE TECHNOLOGY, PRACTICE OR OTHER MEASURE IS
5 INSTALLED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION
6 AT THE LOCATION OF A RETAIL CUSTOMER.

7 (II) THE TECHNOLOGY, PRACTICE OR OTHER MEASURE
8 REDUCES CONSUMPTION OF ENERGY OR PEAK LOAD BY THE RETAIL
9 CUSTOMER.

10 (III) THE COST OF THE ACQUISITION OR INSTALLATION OF
11 THE MEASURE IS DIRECTLY INCURRED IN WHOLE OR IN PART BY
12 THE ELECTRIC DISTRIBUTION COMPANY.

13 (2) ENERGY EFFICIENCY AND CONSERVATION MEASURES SHALL
14 INCLUDE SOLAR OR SOLAR PHOTOVOLTAIC PANELS, ENERGY EFFICIENT
15 WINDOWS AND DOORS, ENERGY EFFICIENT LIGHTING, INCLUDING EXIT
16 SIGN RETROFIT, HIGH BAY FLUORESCENT RETROFIT AND PEDESTRIAN
17 AND TRAFFIC SIGNAL CONVERSION, GEOTHERMAL HEATING,
18 INSULATION, AIR SEALING, REFLECTIVE ROOF COATINGS, ENERGY
19 EFFICIENT HEATING AND COOLING EQUIPMENT OR SYSTEMS AND ENERGY
20 EFFICIENT APPLIANCES AND OTHER TECHNOLOGIES, PRACTICES OR
21 MEASURES APPROVED BY THE COMMISSION.

22 "PEAK DEMAND." THE HIGHEST ELECTRICAL REQUIREMENT OCCURRING
23 DURING A SPECIFIED PERIOD. FOR AN ELECTRIC DISTRIBUTION COMPANY,
24 THE TERM SHALL MEAN THE SUM OF THE METERED CONSUMPTION FOR ALL
25 RETAIL CUSTOMERS OVER THAT PERIOD.

26 "QUALITY ASSURANCE." ALL OF THE FOLLOWING:

27 (1) THE AUDITING OF BUILDINGS, EQUIPMENT AND PROCESSES
28 TO DETERMINE THE COST-EFFECTIVENESS OF ENERGY EFFICIENCY AND
29 CONSERVATION MEASURES USING NATIONALLY RECOGNIZED TOOLS AND
30 CERTIFICATION PROGRAMS.

1 (2) INDEPENDENT INSPECTION OF COMPLETED ENERGY
2 EFFICIENCY AND CONSERVATION MEASURES COMPLETED BY THIRD-PARTY
3 ENTITIES TO EVALUATE THE QUALITY OF THE COMPLETED MEASURE.

4 "REAL-TIME PRICE." A RATE THAT DIRECTLY REFLECTS THE
5 DIFFERENT COST OF ENERGY DURING EACH HOUR.

6 "TIME-OF-USE RATE." A RATE THAT REFLECTS THE COSTS OF
7 SERVING CUSTOMERS DURING DIFFERENT TIME PERIODS, INCLUDING OFF-
8 PEAK AND ON-PEAK PERIODS, BUT NOT AS FREQUENTLY AS EACH HOUR.

9 "TOTAL RESOURCE COST TEST." A STANDARD TEST THAT IS MET IF,
10 OVER THE EFFECTIVE LIFE OF EACH PLAN NOT TO EXCEED 15 YEARS, THE
11 NET PRESENT VALUE OF THE AVOIDED MONETARY COST OF SUPPLYING
12 ELECTRICITY IS GREATER THAN THE NET PRESENT VALUE OF THE
13 MONETARY COST OF ENERGY EFFICIENCY CONSERVATION MEASURES.

14 § 2806.2. ENERGY EFFICIENCY AND CONSERVATION.

15 (A) REGISTRY.--THE COMMISSION SHALL, BY MARCH 1, 2009,
16 ESTABLISH A REGISTRY OF APPROVED PERSONS QUALIFIED TO PROVIDE
17 CONSERVATION SERVICES TO ALL CLASSES OF CUSTOMERS. IN ORDER TO
18 BE INCLUDED IN THE REGISTRY, A CONSERVATION SERVICE PROVIDER
19 MUST MEET EXPERIENCE AND OTHER QUALIFICATIONS DETERMINED BY THE
20 COMMISSION.

21 (B) APPLICATION.--THE COMMISSION SHALL DEVELOP AN
22 APPLICATION FOR REGISTRATION UNDER SUBSECTION (A) AND MAY CHARGE
23 A REASONABLE REGISTRATION FEE.

24 SECTION 3. SECTION 2807(E) OF TITLE 66 IS AMENDED AND THE
25 SECTION IS AMENDED BY ADDING SUBSECTIONS TO READ:

26 § 2807. DUTIES OF ELECTRIC DISTRIBUTION COMPANIES.

27 * * *

28 (E) OBLIGATION TO SERVE.--[AN ELECTRIC DISTRIBUTION
29 COMPANY'S] A DEFAULT SERVICE PROVIDER'S OBLIGATION TO PROVIDE
30 ELECTRIC GENERATION SUPPLY SERVICE FOLLOWING [IMPLEMENTATION OF

1 RESTRUCTURING AND THE CHOICE OF ALTERNATIVE GENERATION BY A
2 CUSTOMER] THE EXPIRATION OF A GENERATION RATE CAP SPECIFIED
3 UNDER SECTION 2804(4) (RELATING TO STANDARDS FOR RESTRUCTURING
4 OF ELECTRIC INDUSTRY) OR A RESTRUCTURING PLAN UNDER SECTION
5 2806(F) (RELATING TO IMPLEMENTATION, PILOT PROGRAMS AND
6 PERFORMANCE-BASED RATES) IS REVISED AS FOLLOWS:

7 (1) WHILE AN ELECTRIC DISTRIBUTION COMPANY COLLECTS
8 EITHER A COMPETITIVE TRANSITION CHARGE OR AN INTANGIBLE

9 TRANSITION CHARGE OR UNTIL 100% OF ITS CUSTOMERS HAVE CHOICE,
10 WHICHEVER IS LONGER, THE ELECTRIC DISTRIBUTION COMPANY SHALL
11 CONTINUE TO HAVE THE FULL OBLIGATION TO SERVE, INCLUDING THE
12 CONNECTION OF CUSTOMERS, THE DELIVERY OF ELECTRIC ENERGY AND
13 THE PRODUCTION OR ACQUISITION OF ELECTRIC ENERGY FOR
14 CUSTOMERS.

15 [(2) AT THE END OF THE TRANSITION PERIOD, THE COMMISSION
16 SHALL PROMULGATE REGULATIONS TO DEFINE THE ELECTRIC
17 DISTRIBUTION COMPANY'S OBLIGATION TO CONNECT AND DELIVER AND
18 ACQUIRE ELECTRICITY UNDER PARAGRAPH (3) THAT WILL EXIST AT
19 THE END OF THE PHASE-IN PERIOD.

20 (3) IF A CUSTOMER CONTRACTS FOR ELECTRIC ENERGY AND IT
21 IS NOT DELIVERED OR IF A CUSTOMER DOES NOT CHOOSE AN
22 ALTERNATIVE ELECTRIC GENERATION SUPPLIER, THE ELECTRIC
23 DISTRIBUTION COMPANY OR COMMISSION-APPROVED ALTERNATIVE
24 SUPPLIER SHALL ACQUIRE ELECTRIC ENERGY AT PREVAILING MARKET
25 PRICES TO SERVE THAT CUSTOMER AND SHALL RECOVER FULLY ALL
26 REASONABLE COSTS.]

27 (3.1) FOLLOWING THE EXPIRATION OF AN ELECTRIC
28 DISTRIBUTION COMPANY'S OBLIGATION TO PROVIDE ELECTRIC
29 GENERATION SUPPLY SERVICE TO RETAIL CUSTOMERS AT CAPPED
30 RATES, IF A CUSTOMER CONTRACTS FOR ELECTRIC GENERATION SUPPLY

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1 SERVICE AND THE CHOSEN ELECTRIC GENERATION SUPPLIER DOES NOT
2 PROVIDE THE SERVICE OR IF A CUSTOMER DOES NOT CHOOSE AN
3 ALTERNATIVE ELECTRIC GENERATION SUPPLIER, THE DEFAULT SERVICE
4 PROVIDER SHALL PROVIDE ELECTRIC GENERATION SUPPLY SERVICE TO
5 THAT CUSTOMER PURSUANT TO A COMMISSION-APPROVED COMPETITIVE
6 PROCUREMENT PLAN. THE ELECTRIC POWER ACQUIRED SHALL BE
7 PROCURED THROUGH COMPETITIVE PROCUREMENT PROCESSES AND SHALL
8 INCLUDE ONE OR MORE OF THE FOLLOWING:

9 (I) AUCTIONS.

10 (II) REQUESTS FOR PROPOSAL.

11 (III) BILATERAL AGREEMENTS ENTERED INTO AT THE SOLE
12 DISCRETION OF THE DEFAULT SERVICE PROVIDER WHICH SHALL BE
13 AT PRICES WHICH ARE:

14 (A) NO GREATER THAN THE COST OF OBTAINING
15 GENERATION UNDER COMPARABLE TERMS IN THE WHOLESALE
16 MARKET, AS DETERMINED BY THE COMMISSION AT THE TIME
17 OF EXECUTION OF THE CONTRACT; OR

18 (B) CONSISTENT WITH A COMMISSION-APPROVED
19 COMPETITION PROCUREMENT PROCESS. ANY AGREEMENT
20 BETWEEN AFFILIATED PARTIES SHALL BE SUBJECT TO REVIEW
21 AND APPROVAL OF THE PENNSYLVANIA PUBLIC UTILITY
22 COMMISSION UNDER CHAPTER 21 (RELATING TO RELATIONS
23 WITH AFFILIATED INTERESTS). IN NO CASE SHALL THE COST
24 OF OBTAINING GENERATION FROM ANY AFFILIATED INTEREST
25 BE GREATER THAN THE COST OF OBTAINING GENERATION
26 UNDER COMPARABLE TERMS IN THE WHOLESALE MARKET AT THE
27 TIME OF EXECUTION OF THE CONTRACT.

28 (3.2) THE ELECTRIC POWER PROCURED PURSUANT TO PARAGRAPH
29 (3.1) SHALL INCLUDE A PRUDENT MIX OF THE FOLLOWING:

30 (I) SPOT MARKET PURCHASES.

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1 (II) SHORT-TERM CONTRACTS.

2 (III) LONG-TERM PURCHASE CONTRACTS, ENTERED INTO AS
3 A RESULT OF AN AUCTION, REQUEST FOR PROPOSAL OR BILATERAL
4 CONTRACT THAT IS FREE OF UNDUE INFLUENCE, DURESS OR
5 FAVORITISM, OF MORE THAN FOUR AND NOT MORE THAN 20 YEARS.
6 THE DEFAULT SERVICE PROVIDER SHALL HAVE SOLE DISCRETION
7 TO DETERMINE THE SOURCE AND FUEL TYPE. LONG-TERM PURCHASE
8 CONTRACTS UNDER THIS SUBPARAGRAPH MAY NOT CONSTITUTE MORE
9 THAN 25% OF THE DEFAULT SERVICE PROVIDER'S PROJECTED
10 DEFAULT SERVICE LOAD UNLESS THE COMMISSION, AFTER A
11 HEARING, DETERMINES FOR GOOD CAUSE THAT A GREATER PORTION
12 OF LOAD IS NECESSARY TO ACHIEVE LEAST COST PROCUREMENT.
13 THIS SUBPARAGRAPH SHALL NOT APPLY TO CONTRACTS EXECUTED
14 UNDER PARAGRAPH (5).

15 (3.3) THE COMMISSION MAY DETERMINE THAT A CONTRACT IS
16 REQUIRED TO BE EXTENDED FOR A LONGER TERM OF UP TO 20 YEARS.

17 IF THE EXTENSION IS NECESSARY TO ENSURE ADEQUATE AND RELIABLE
18 SERVICE AT LEAST COST TO CUSTOMERS OVER TIME.

19 (3.4) THE PRUDENT MIX OF CONTRACTS ENTERED INTO PURSUANT
20 TO PARAGRAPHS (3.2) AND (3.3) SHALL BE DESIGNED TO ENSURE:

21 (I) ADEQUATE AND RELIABLE SERVICE.

22 (II) THE LEAST COST TO CUSTOMERS OVER TIME.

23 (III) COMPLIANCE WITH THE REQUIREMENTS OF PARAGRAPH

24 (3.1).

25 (3.5) EXCEPT AS SET FORTH IN PARAGRAPH (5)(II), THE
26 PROVISIONS OF THIS SECTION SHALL APPLY TO ANY TYPE OF ENERGY
27 PURCHASED BY A DEFAULT SERVICE PROVIDER TO PROVIDE ELECTRIC
28 GENERATION SUPPLY SERVICE, INCLUDING ENERGY OR ALTERNATIVE
29 ENERGY PORTFOLIO STANDARDS CREDITS REQUIRED TO BE PURCHASED
30 UNDER THE ACT OF NOVEMBER 30, 2004 (P.L.1672, NO.213), KNOWN

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1 AS THE ALTERNATIVE ENERGY PORTFOLIO STANDARDS ACT. THE
2 COMMISSION SHALL APPLY PARAGRAPH (3.4) TO COMPARABLE TYPES OF
3 ENERGY SOURCES.

4 (3.6) THE DEFAULT SERVICE PROVIDER SHALL FILE A PLAN FOR
5 COMPETITIVE PROCUREMENT WITH THE COMMISSION AND OBTAIN
6 COMMISSION APPROVAL OF THE PLAN CONSIDERING THE STANDARDS IN
7 PARAGRAPHS (3.1), (3.2), (3.3) AND (3.4) BEFORE THE
8 COMPETITIVE PROCESS IS IMPLEMENTED. THE COMMISSION SHALL HOLD
9 HEARINGS AS NECESSARY ON THE PROPOSED PLAN. IF THE COMMISSION
10 FAILS TO ISSUE A FINAL ORDER ON THE PLAN WITHIN NINE MONTHS
11 OF THE DATE THAT THE PLAN IS FILED, THE PLAN SHALL BE DEEMED
12 TO BE APPROVED AND THE DEFAULT SERVICE PROVIDER MAY IMPLEMENT
13 THE PLAN AS FILED. COSTS INCURRED THROUGH AN APPROVED
14 COMPETITIVE PROCUREMENT PLAN SHALL BE DEEMED TO BE THE LEAST
15 COST OVER TIME AS REQUIRED UNDER PARAGRAPH (3.4)(II).

16 (3.7) AT THE TIME THE COMMISSION EVALUATES THE PLAN AND
17 PRIOR TO APPROVAL, IN DETERMINING IF THE DEFAULT ELECTRIC
18 SERVICE PROVIDER'S PLAN OBTAINS GENERATION SUPPLY AT THE
19 LEAST COST, THE COMMISSION SHALL CONSIDER THE DEFAULT SERVICE
20 PROVIDER'S OBLIGATION TO PROVIDE ADEQUATE AND RELIABLE
21 SERVICE TO CUSTOMERS AND THAT THE DEFAULT SERVICE PROVIDER
22 HAS OBTAINED A PRUDENT MIX OF CONTRACTS TO OBTAIN LEAST COST
23 ON A LONG-TERM, SHORT-TERM AND SPOT MARKET BASIS AND SHALL
24 MAKE SPECIFIC FINDINGS WHICH SHALL INCLUDE THE FOLLOWING:

25 (I) THE DEFAULT SERVICE PROVIDER'S PLAN INCLUDES
26 PRUDENT STEPS NECESSARY TO NEGOTIATE FAVORABLE GENERATION
27 SUPPLY CONTRACTS.

28 (II) THE DEFAULT SERVICE PROVIDER'S PLAN INCLUDES
29 PRUDENT STEPS NECESSARY TO OBTAIN LEAST COST GENERATION
30 SUPPLY CONTRACTS ON A LONG-TERM, SHORT-TERM AND SPOT

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1 MARKET BASIS.

2 (III) NEITHER THE DEFAULT SERVICE PROVIDER NOR ITS
3 AFFILIATED INTEREST HAS WITHHELD FROM THE MARKET ANY
4 GENERATION SUPPLY IN A MANNER THAT VIOLATES FEDERAL LAW.

5 (3.8) NOTWITHSTANDING SECTIONS 508 (RELATING TO POWER OF
6 COMMISSION TO VARY, REFORM AND REVISE CONTRACTS) AND 2102
7 (RELATING TO APPROVAL OF CONTRACTS WITH AFFILIATED
8 INTERESTS), THE COMMISSION MAY MODIFY CONTRACTS OR DISALLOW
9 COSTS ONLY WHEN THE PARTY SEEKING RECOVERY OF THE COSTS OF A
10 PROCUREMENT PLAN IS, AFTER HEARING, FOUND TO BE AT FAULT FOR
11 THE FOLLOWING:

12 (I) NOT COMPLYING WITH THE COMMISSION-APPROVED
13 PROCUREMENT PLAN; OR

14 (II) THE COMMISSION OF FRAUD, COLLUSION OR MARKET
15 MANIPULATION WITH REGARD TO THESE CONTRACTS.

16 (3.9) THE DEFAULT SERVICE PROVIDER SHALL HAVE THE RIGHT
17 TO RECOVER ON A FULL AND CURRENT BASIS, PURSUANT TO A
18 RECONCILABLE AUTOMATIC ADJUSTMENT CLAUSE UNDER SECTION 1307
19 (RELATING TO SLIDING SCALE OF RATES; ADJUSTMENTS), ALL
20 REASONABLE COSTS INCURRED UNDER THIS SECTION AND A
21 COMMISSION-APPROVED COMPETITIVE PROCUREMENT PLAN.

22 (4) IF A CUSTOMER THAT CHOOSES AN ALTERNATIVE SUPPLIER
23 AND SUBSEQUENTLY DESIRES TO RETURN TO THE LOCAL DISTRIBUTION
24 COMPANY FOR GENERATION SERVICE, THE LOCAL DISTRIBUTION

25 COMPANY SHALL TREAT THAT CUSTOMER EXACTLY AS IT WOULD ANY NEW
26 APPLICANT FOR ENERGY SERVICE.

27 (5) (I) NOTWITHSTANDING PARAGRAPH [(3)] ~~(3.1)~~, THE
28 ELECTRIC DISTRIBUTION COMPANY OR COMMISSION-APPROVED
29 ALTERNATIVE SUPPLIER MAY, IN ITS SOLE DISCRETION, OFFER
30 LARGE CUSTOMERS WITH A PEAK DEMAND OF 15 MEGAWATTS OR

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1 GREATER AT ONE METER AT A LOCATION IN ITS SERVICE
2 TERRITORY ANY NEGOTIATED RATE FOR SERVICE AT ALL OF THE
3 CUSTOMERS' LOCATIONS WITHIN THE SERVICE TERRITORY FOR ANY
4 DURATION AGREED UPON BY THE ELECTRIC DISTRIBUTION COMPANY
5 OR COMMISSION-APPROVED ALTERNATIVE SUPPLIER AND THE LARGE
6 CUSTOMER. THE COMMISSION SHALL PERMIT, BUT SHALL NOT
7 REQUIRE, AN ELECTRIC DISTRIBUTION COMPANY OR COMMISSION-
8 APPROVED ALTERNATIVE SUPPLIER TO PROVIDE SERVICE TO LARGE
9 CUSTOMERS UNDER THIS PARAGRAPH. CONTRACT RATES ENTERED
10 INTO UNDER THIS PARAGRAPH SHALL BE SUBJECT TO REVIEW BY
11 THE COMMISSION IN ORDER TO ENSURE THAT ALL COSTS RELATED
12 TO THE RATES ARE BORNE BY THE PARTIES TO THE CONTRACT AND
13 THAT NO COSTS RELATED TO THE RATES ARE BORNE BY OTHER
14 CUSTOMERS OR CUSTOMER CLASSES. IF NO COSTS RELATED TO THE
15 RATES ARE BORNE BY OTHER CUSTOMERS OR CUSTOMER CLASSES,
16 THE COMMISSION SHALL APPROVE THE CONTRACT WITHIN 90 DAYS
17 OF ITS FILING, OR IT SHALL BE DEEMED APPROVED BY
18 OPERATION OF LAW UPON EXPIRATION OF THE 90 DAYS.
19 INFORMATION SUBMITTED UNDER THIS PARAGRAPH SHALL BE
20 SUBJECT TO THE COMMISSION'S PROCEDURES FOR THE FILING OF
21 CONFIDENTIAL AND PROPRIETARY INFORMATION.

22 (II) FOR PURPOSES OF PROVIDING SERVICE UNDER THIS
23 PARAGRAPH TO CUSTOMERS WITH A PEAK DEMAND OF 20 MEGAWATTS
24 OR GREATER AT ONE METER AT A LOCATION WITHIN THAT
25 DISTRIBUTION COMPANY'S SERVICE TERRITORY, AN ELECTRIC
26 DISTRIBUTION COMPANY THAT HAS COMPLETED ITS RESTRUCTURING
27 TRANSITION PERIOD AS OF THE EFFECTIVE DATE OF THIS
28 PARAGRAPH MAY, IN ITS SOLE DISCRETION, ACQUIRE AN
29 INTEREST IN A GENERATION FACILITY OR CONSTRUCT A
30 GENERATION FACILITY SPECIFICALLY TO MEET THE ENERGY

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1 REQUIREMENTS OF THE CUSTOMERS, INCLUDING THE ELECTRIC
2 REQUIREMENTS OF THE CUSTOMERS' OTHER BILLING LOCATIONS
3 WITHIN ITS SERVICE TERRITORY. THE ELECTRIC DISTRIBUTION
4 COMPANY MUST COMMENCE CONSTRUCTION OF THE GENERATION
5 FACILITY OR CONTRACT TO ACQUIRE THE GENERATION INTEREST
6 WITHIN THREE YEARS AFTER THE EFFECTIVE DATE OF THIS
7 PARAGRAPH, EXCEPT THAT THE ELECTRIC DISTRIBUTION COMPANY
8 MAY ADD TO THE GENERATION FACILITIES IT COMMENCED
9 CONSTRUCTION OR CONTRACTED TO ACQUIRE AFTER THIS THREE-
10 YEAR PERIOD TO SERVE ADDITIONAL LOAD OF CUSTOMERS FOR
11 WHOM IT COMMENCED CONSTRUCTION OR CONTRACTED TO ACQUIRE
12 GENERATION WITHIN THREE YEARS. NOTHING IN THIS PARAGRAPH
13 REQUIRES OR AUTHORIZES THE COMMISSION TO REQUIRE AN
14 ELECTRIC DISTRIBUTION COMPANY TO COMMENCE CONSTRUCTION OR
15 ACQUIRE AN INTEREST IN A GENERATION FACILITY. THE
16 ELECTRIC DISTRIBUTION COMPANY'S INTEREST IN THE
17 GENERATION FACILITY IT BUILT OR CONTRACTED TO ACQUIRE
18 SHALL BE NO LARGER THAN NECESSARY TO MEET PEAK DEMAND OF
19 CUSTOMERS SERVED UNDER THIS SUBPARAGRAPH. DURING TIMES
20 WHEN THE CUSTOMER'S DEMAND IS LESS THAN THE ELECTRIC
21 DISTRIBUTION COMPANY'S GENERATION INTEREST, THE ELECTRIC
22 DISTRIBUTION COMPANY MAY SELL EXCESS POWER ON THE
23 WHOLESALE MARKET. AT NO TIME SHALL THE COSTS ASSOCIATED
24 WITH THE GENERATING FACILITY INTERESTS BE INCLUDED IN
25 RATE BASE OR OTHERWISE REFLECTED IN RATES. THE GENERATION
26 FACILITY INTERESTS SHALL NOT BE COMMISSION-REGULATED
27 ASSETS.

28 (6) A DEFAULT SERVICE PLAN APPROVED BY THE COMMISSION
29 PRIOR TO THE EFFECTIVE DATE OF THIS SECTION SHALL REMAIN IN
30 EFFECT THROUGH ITS APPROVED TERM. AT ITS SOLE DISCRETION, THE

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1 DEFAULT SERVICE PROVIDER MAY PROPOSE AMENDMENTS TO ITS
2 APPROVED PLAN THAT ARE CONSISTENT WITH THIS SECTION, AND THE
3 COMMISSION SHALL ISSUE A DECISION WHETHER TO APPROVE OR
4 DISAPPROVE THE PROPOSED AMENDMENTS WITHIN NINE MONTHS OF THE
5 DATE THAT THE AMENDMENTS ARE FILED. IF THE COMMISSION FAILS
6 TO ISSUE A FINAL ORDER WITHIN NINE MONTHS, THE AMENDMENTS
7 SHALL BE DEEMED TO BE APPROVED AND THE DEFAULT SERVICE
8 PROVIDER MAY IMPLEMENT THE AMENDMENTS AS FILED.

9 (7) THE DEFAULT SERVICE PROVIDER SHALL OFFER RESIDENTIAL
10 AND SMALL BUSINESS CUSTOMERS A GENERATION SUPPLY SERVICE RATE
11 THAT SHALL CHANGE NO MORE FREQUENTLY THAN ON A QUARTERLY
12 BASIS. ALL DEFAULT SERVICE RATES SHALL BE REVIEWED BY THE
13 COMMISSION TO ENSURE THAT THE COSTS OF PROVIDING SERVICE TO
14 EACH CUSTOMER CLASS ARE NOT SUBSIDIZED BY ANY OTHER CLASS.

15 (F) SMART METER TECHNOLOGY AND TIME OF USE RATES.--

16 (1) WITHIN NINE MONTHS AFTER THE EFFECTIVE DATE OF THIS
17 PARAGRAPH, ELECTRIC DISTRIBUTION COMPANIES SHALL FILE A SMART
18 METER TECHNOLOGY PROCUREMENT AND INSTALLATION PLAN WITH THE
19 COMMISSION FOR APPROVAL. THE PLAN SHALL DESCRIBE THE SMART
20 METER TECHNOLOGIES THE ELECTRIC DISTRIBUTION COMPANY PROPOSES
21 TO INSTALL IN ACCORDANCE WITH PARAGRAPH (2).

22 (2) ELECTRIC DISTRIBUTION COMPANIES SHALL FURNISH SMART
23 METER TECHNOLOGY AS FOLLOWS:

24 (I) UPON REQUEST FROM A CUSTOMER THAT AGREES TO PAY
25 THE COST OF THE SMART METER AT THE TIME OF THE REQUEST.

26 (II) IN NEW BUILDING CONSTRUCTION.

27 (III) IN ACCORDANCE WITH A DEPRECIATION SCHEDULE NOT
28 TO EXCEED 15 YEARS.

29 (3) ELECTRIC DISTRIBUTION COMPANIES SHALL, WITH CUSTOMER
30 CONSENT, MAKE AVAILABLE DIRECT METER ACCESS AND ELECTRONIC

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1 ACCESS TO CUSTOMER METER DATA TO THIRD PARTIES, INCLUDING
2 ELECTRIC GENERATION SUPPLIERS AND PROVIDERS OF CONSERVATION
3 AND LOAD MANAGEMENT SERVICES.

4 (4) IN NO EVENT SHALL LOST OR DECREASED REVENUES BY AN
5 ELECTRIC DISTRIBUTION COMPANY DUE TO REDUCED ELECTRICITY
6 CONSUMPTION OR SHIFTING ENERGY DEMAND BE CONSIDERED ANY OF
7 THE FOLLOWING:

8 (I) A COST OF SMART METER TECHNOLOGY RECOVERABLE
9 UNDER A RECONCILABLE AUTOMATIC ADJUSTMENT CLAUSE UNDER
10 SECTION 1307(B), EXCEPT THAT DECREASED REVENUES AND
11 REDUCED ENERGY CONSUMPTION MAY BE REFLECTED IN THE
12 REVENUE AND SALES DATA USED TO CALCULATE RATES IN A
13 DISTRIBUTION RATE BASE RATE PROCEEDING FILED UNDER
14 SECTION 1308 (RELATING TO VOLUNTARY CHANGE IN RATES).

15 (II) A RECOVERABLE COST.

16 (5) BY JANUARY 1, 2010, OR AT THE END OF THE APPLICABLE
17 GENERATION RATE CAP PERIOD, WHICHEVER IS LATER, A DEFAULT
18 SERVICE PROVIDER SHALL SUBMIT TO THE COMMISSION ONE OR MORE
19 PROPOSED TIME-OF-USE RATES AND REAL-TIME PRICE PLANS. THE
20 COMMISSION SHALL APPROVE OR MODIFY THE TIME-OF-USE RATES AND
21 REAL-TIME PRICE PLAN WITHIN SIX MONTHS OF SUBMITTAL. THE
22 DEFAULT SERVICE PROVIDER SHALL OFFER THE TIME-OF-USE RATES
23 AND REAL-TIME PRICE PLAN TO ALL CUSTOMERS THAT HAVE BEEN
24 PROVIDED WITH SMART METER TECHNOLOGY UNDER PARAGRAPH
25 (2)(III). RESIDENTIAL OR COMMERCIAL CUSTOMERS MAY ELECT TO
26 PARTICIPATE IN TIME-OF-USE RATES OR REAL-TIME PRICING. THE
27 DEFAULT SERVICE PROVIDER SHALL SUBMIT AN ANNUAL REPORT TO THE
28 PRICE PROGRAMS AND THE EFFICACY OF THE PROGRAMS IN AFFECTING
29 ENERGY DEMAND AND CONSUMPTION AND THE EFFECT ON WHOLESALE
30 MARKET PRICES.

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1 (6) THE PROVISIONS OF THIS SUBSECTION SHALL NOT APPLY TO
2 AN ELECTRIC DISTRIBUTION COMPANY WITH 100,000 OR FEWER
3 CUSTOMERS.

4 (7) AN ELECTRIC DISTRIBUTION COMPANY MAY RECOVER
5 REASONABLE AND PRUDENT COSTS OF PROVIDING SMART METER
6 TECHNOLOGY UNDER PARAGRAPH (2)(II) AND (III), AS DETERMINED
7 BY THE COMMISSION. THIS PARAGRAPH INCLUDES ANNUAL
8 DEPRECIATION AND CAPITAL COSTS OVER THE LIFE OF THE SMART

9 METER TECHNOLOGY AND THE COST OF ANY SYSTEM UPGRADES THAT THE
10 ELECTRIC DISTRIBUTION COMPANY MAY REQUIRE TO ENABLE THE USE
11 OF THE SMART METER TECHNOLOGY WHICH ARE INCURRED AFTER THE
12 EFFECTIVE DATE OF THIS PARAGRAPH LESS OPERATING AND CAPITAL
13 COST SAVINGS REALIZED BY THE ELECTRIC DISTRIBUTION COMPANY
14 FROM THE INSTALLATION AND USE OF THE SMART METER TECHNOLOGY.
15 SMART METER TECHNOLOGY SHALL BE DEEMED TO BE A NEW SERVICE
16 OFFERED FOR THE FIRST TIME UNDER SECTION 2804(4)(VI). AN
17 ELECTRIC DISTRIBUTION COMPANY MAY RECOVER SMART METER
18 TECHNOLOGY COSTS:

19 (I) THROUGH BASE RATES, INCLUDING A DEFERRAL FOR
20 FUTURE BASE RATE RECOVERY OF CURRENT BASIS WITH CARRYING
21 CHARGE AS DETERMINED BY THE COMMISSION; OR

22 (II) ON A FULL AND CURRENT BASIS THROUGH A
23 RECONCILABLE AUTOMATIC ADJUSTMENT CLAUSE UNDER SECTION
24 1307.

25 (G) DEFINITION.--AS USED IN THIS SECTION, THE TERM "SMART
26 METER TECHNOLOGY" MEANS TECHNOLOGY, INCLUDING METERING
27 TECHNOLOGY AND NETWORK COMMUNICATIONS TECHNOLOGY CAPABLE OF
28 BIDIRECTIONAL COMMUNICATION, THAT RECORDS ELECTRICITY USAGE ON
29 AT LEAST AN HOURLY BASIS, INCLUDING RELATED ELECTRIC
30 DISTRIBUTION SYSTEM UPGRADES TO ENABLE THE TECHNOLOGY. THE

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1 TECHNOLOGY SHALL PROVIDE CUSTOMERS WITH DIRECT ACCESS TO AND USE
2 OF PRICE AND CONSUMPTION INFORMATION. THE TECHNOLOGY SHALL ALSO:

3 (1) DIRECTLY PROVIDE CUSTOMERS WITH INFORMATION ON THEIR
4 HOURLY CONSUMPTION.

5 (2) ENABLE TIME-OF-USE RATES AND REAL-TIME PRICE
6 PROGRAMS.

7 (3) EFFECTIVELY SUPPORT THE AUTOMATIC CONTROL OF THE
8 CUSTOMER'S ELECTRICITY CONSUMPTION BY ONE OR MORE OF THE
9 FOLLOWING AS SELECTED BY THE CUSTOMER:

10 (I) THE CUSTOMER;

11 (II) THE CUSTOMER'S UTILITY; OR

12 (III) A THIRD PARTY ENGAGED BY THE CUSTOMER OR THE
13 CUSTOMER'S UTILITY.

14 SECTION 4. SECTION 2811 OF TITLE 66 IS AMENDED BY ADDING A
15 SUBSECTION TO READ:

16 § 2811. MARKET POWER REMEDIATION.

17 * * *

18 (E.1) MARKET MISCONDUCT.--

19 (1) IF AN ELECTRIC DISTRIBUTION COMPANY OR ANY OF ITS
20 AFFILIATED COMPANIES OR ANY COMPANY THAT AN ELECTRIC
21 DISTRIBUTION COMPANY HAS PURCHASED GENERATION FROM IS FOUND
22 GUILTY OF MARKET MANIPULATION, EXERCISING MARKET POWER OR
23 COLLUSION BY THE FEDERAL ENERGY REGULATORY COMMISSION OR ANY
24 FEDERAL OR STATE COURT OR, IF AN ELECTRIC DISTRIBUTION
25 COMPANY OR ANY ONE OF ITS AFFILIATED COMPANIES OR ANY COMPANY
26 THAT AN ELECTRIC DISTRIBUTION COMPANY HAS PURCHASED
27 GENERATION FROM SETTLES A CLAIM OF MARKET MANIPULATION,
28 EXERCISING MARKET POWER OR COLLUSION THAT IS BROUGHT BY A
29 REGIONAL TRANSMISSION OPERATOR'S MARKET MONITORING UNIT, THE
30 FEDERAL ENERGY REGULATORY COMMISSION OR ANOTHER ENTITY, THE

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1 COMMISSION:

2 (I) SHALL DIRECT THE ELECTRIC DISTRIBUTION COMPANY
3 TO TAKE ANY AND ALL REASONABLE ACTION TO QUANTIFY THE
4 EFFECT OF THE MARKET MISCONDUCT UPON PENNSYLVANIA
5 RATEPAYERS.

6 (II) FOLLOWING PUBLIC HEARING ON THE MATTER AND A
7 FINDING OF PUBLIC INTEREST, MAY DIRECT THE ELECTRIC
8 DISTRIBUTION COMPANY TO TAKE ANY AND ALL REASONABLE LEGAL
9 ACTION, INCLUDING THE FILING OF A LAWSUIT AS MAY BE
10 NECESSARY, TO RECOVER THE QUANTIFIED DAMAGES WHICH SHALL
11 BE USED TO RECOMPENSE PENNSYLVANIA RATEPAYERS AFFECTED BY
12 THE MARKET MISCONDUCT.

13 (2) IF THE ELECTRIC DISTRIBUTION COMPANY FAILS TO PURSUE
14 REASONABLE ACTION TO QUANTIFY OR SEEK RECOVERY OF DAMAGES FOR
15 PENNSYLVANIA RATEPAYERS AFFECTED BY MARKET MANIPULATION, THE
16 EXERCISE OF MARKET POWER OR COLLUSION, THE COMMISSION IS

17 AUTHORIZED, FOLLOWING NOTICE AND AN OPPORTUNITY OF THE
18 ELECTRIC DISTRIBUTION COMPANY TO COMPLY OR CONTEST, TO ASSESS
19 A CIVIL PENALTY, WHICH SHALL NOT BE RECOVERED IN RATES, OF
20 NOT MORE THAN \$10,000 PER DAY FOR FAILURE OR NEGLECT TO OBEY
21 AN ORDER OF THE COMMISSION, THE CONTINUANCE OF THE FAILURE OR
22 NEGLECT BEING A SEPARATE OFFENSE.

23 (3) ANY MONETARY DAMAGES RECOVERED BY THE ELECTRIC
24 DISTRIBUTION COMPANY SHALL BE PAID TO AFFECTED PENNSYLVANIA
25 RATEPAYERS IN THE FORM OF A CREDIT TO THEIR ELECTRIC BILLS OR
26 AS REFUNDS.

27 (4) THE PROVISIONS OF THIS SUBSECTION SHALL BE HELD TO
28 BE IN ADDITION TO AND NOT IN SUBSTITUTION FOR OR LIMITATION
29 OF ANY OTHER PROVISIONS OF THIS TITLE.

30 * * *

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1 SECTION 5. TITLE 66 IS AMENDED BY ADDING SECTIONS TO READ:
2 § 2813. PROCUREMENT OF POWER.

3 EXCEPT AS PROVIDED UNDER THE ACT OF NOVEMBER 30, 2004
4 (P.L.1672, NO.213), KNOWN AS THE ALTERNATIVE ENERGY PORTFOLIO
5 STANDARDS ACT, THE COMMISSION MAY NOT ORDER A DEFAULT SERVICE
6 PROVIDER TO PROCURE POWER FROM A SPECIFIC GENERATION SUPPLIER,
7 FROM A SPECIFIC GENERATION FUEL TYPE OR FROM NEW GENERATION
8 ONLY.

9 § 2814. ADDITIONAL ALTERNATIVE ENERGY SOURCES.

10 (A) ALTERNATIVE ENERGY SOURCES.--THE TERM "ALTERNATIVE
11 ENERGY SOURCES" AS DEFINED UNDER SECTION 2 OF THE ACT OF
12 NOVEMBER 30, 2004 (P.L.1672, NO.213), KNOWN AS THE ALTERNATIVE
13 ENERGY PORTFOLIO STANDARDS ACT, SHALL ALSO INCLUDE LOW-IMPACT
14 HYDROPOWER CONSISTING OF ANY TECHNOLOGY THAT PRODUCES ELECTRIC
15 POWER AND THAT HARNESSSES THE HYDROELECTRIC POTENTIAL OF MOVING
16 WATER IMPOUNDMENTS IF ONE OF THE FOLLOWING APPLIES:

17 (1) (I) THE HYDROPOWER SOURCE HAS A FEDERAL ENERGY
18 REGULATORY COMMISSION LICENSED CAPACITY OF 21 MEGAWATTS
19 OR LESS; AND

20 (II) THE LICENSE FOR THE HYDROPOWER SOURCE WAS
21 ISSUED BY THE FEDERAL ENERGY REGULATORY COMMISSION ON OR
22 PRIOR TO JANUARY 1, 1984, AND HELD ON JULY 1, 2007, IN
23 WHOLE OR IN PART BY A MUNICIPALITY LOCATED WHOLLY WITHIN
24 THIS COMMONWEALTH OR BY AN ELECTRIC COOPERATIVE
25 INCORPORATED IN THIS COMMONWEALTH.

26 (2) THE INCREMENTAL HYDROELECTRIC DEVELOPMENT:

27 (I) DOES NOT ADVERSELY CHANGE EXISTING IMPACTS TO
28 AQUATIC SYSTEMS;

29 (II) MEETS THE CERTIFICATION STANDARDS ESTABLISHED
30 BY THE LOW IMPACT HYDROPOWER INSTITUTE AND AMERICAN

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1 RIVERS, INC., OR THEIR SUCCESSORS;

2 (III) PROVIDES AN ADEQUATE WATER FLOW FOR PROTECTION
3 OF AQUATIC LIFE AND FOR SAFE AND EFFECTIVE FISH PASSAGE;

4 (IV) PROTECTS AGAINST EROSION; AND

5 (V) PROTECTS CULTURAL AND HISTORIC RESOURCES.

6 (B) BIOMASS.--THE TERM "BIOMASS ENERGY" AS DEFINED UNDER
7 SECTION 2 OF THE ALTERNATIVE ENERGY PORTFOLIO STANDARDS ACT
8 SHALL ALSO INCLUDE THE GENERATION OF ELECTRICITY UTILIZING BY-
9 PRODUCTS OF THE PULPING PROCESS AND WOOD MANUFACTURING PROCESS,
10 INCLUDING BARK, WOOD CHIPS, SAWDUST AND LIGNINS IN SPENT PULPING
11 LIQUORS. ELECTRICITY FROM BIOMASS ENERGY UNDER THIS SUBSECTION
12 GENERATED INSIDE THIS COMMONWEALTH SHALL BE ELIGIBLE AS A TIER I
13 ALTERNATIVE ENERGY SOURCE. ELECTRICITY FROM BIOMASS ENERGY UNDER
14 THIS SUBSECTION GENERATED OUTSIDE THIS COMMONWEALTH SHALL BE
15 ELIGIBLE AS A TIER II ALTERNATIVE ENERGY SOURCE.

16 (C) INCREASE IN TIER I.--THE COMMISSION SHALL AT LEAST
17 QUARTERLY INCREASE THE PERCENTAGE SHARE OF TIER I ALTERNATIVE
18 ENERGY SOURCES REQUIRED TO BE SOLD BY AN ELECTRIC DISTRIBUTION
19 COMPANY OR ELECTRIC GENERATION SUPPLIER UNDER SECTION 3(B)(1) OF
20 THE ALTERNATIVE ENERGY PORTFOLIO STANDARDS ACT TO REFLECT ANY
21 NEW BIOMASS ENERGY OR LOW-IMPACT HYDROPOWER RESOURCES THAT
22 QUALIFY AS A TIER I ALTERNATIVE ENERGY SOURCE UNDER THIS
23 SECTION. NO NEW RESOURCE QUALIFYING AS BIOMASS ENERGY OR LOW-
24 IMPACT HYDROPOWER UNDER THIS SECTION SHALL BE ELIGIBLE TO

25 GENERATE TIER I ALTERNATIVE ENERGY CREDITS UNTIL THE COMMISSION
26 HAS INCREASED THE PERCENTAGE SHARE OF TIER I TO REFLECT THESE
27 ADDITIONAL RESOURCES.

28 § 2815. CARBON DIOXIDE SEQUESTRATION NETWORK.

29 (A) ASSESSMENT.--

30 (1) BY APRIL 1, 2009, THE DEPARTMENT SHALL COMPLETE A
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1 STUDY TO IDENTIFY SUITABLE GEOLOGICAL FORMATIONS, INCLUDING
2 SITES WITHIN OR IN PROXIMITY TO THE MEDINA, TUSCARORA OR
3 ORISKANY SANDSTONE FORMATION FOR THE LOCATION OF A STATE
4 NETWORK.

5 (2) BY JUNE 1, 2009, THE DEPARTMENT, IN CONSULTATION
6 WITH THE COMMISSION, SHALL HIRE ONE OR MORE INDEPENDENT
7 EXPERTS PURSUANT TO 62 PA.C.S. PT. I (RELATING TO
8 COMMONWEALTH PROCUREMENT CODE), AS NECESSARY, TO CONDUCT AN
9 ASSESSMENT OF THE FOLLOWING:

10 (I) ESTIMATES OF CAPITAL REQUIREMENTS AND
11 EXPENDITURES NECESSARY FOR THE ESTABLISHMENT, OPERATION
12 AND MAINTENANCE OF A STATE NETWORK.

13 (II) THE COLLECTION OF DATA TO ALLOW A SAFETY
14 ASSESSMENT.

15 (III) AN ASSESSMENT OF ALL POTENTIAL RISK TO
16 INDIVIDUALS, PROPERTY AND THE ENVIRONMENT ASSOCIATED WITH
17 THE GEOLOGICAL SEQUESTRATION OF CARBON DIOXIDE IN A STATE
18 NETWORK. THE ASSESSMENT, WHICH SHALL BE COMPLETED BY
19 OCTOBER 1, 2009, SHALL INCLUDE AN ANALYSIS OF THE
20 FOLLOWING:

21 (A) EXISTING FEDERAL AND STATE REGULATORY
22 STANDARDS FOR THE STORAGE OF CARBON DIOXIDE.

23 (B) FACTORS CONTAINED IN THE UNITED STATES
24 ENVIRONMENTAL PROTECTION AGENCY'S VULNERABILITY
25 EVALUATION FRAMEWORK FOR GEOLOGIC SEQUESTRATION OF
26 CARBON DIOXIDE (EPA 430-R-08-009, DATED JULY 10,
27 2008).

28 (C) THE DIFFERENT TYPES OF INSURANCE, BONDS,
29 OTHER INSTRUMENTS AND RECOMMENDED LEVELS OF INSURANCE
30 WHICH SHOULD BE CARRIED BY THE OPERATOR OF THE STATE

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1 NETWORK DURING THE CONSTRUCTION AND OPERATION OF THE
2 STATE NETWORK.

3 (D) THE AVAILABILITY OF COMMERCIAL INSURANCE.

4 (E) MODELS FOR THE ESTABLISHMENT OF A
5 COMMONWEALTH FUND TO PROVIDE PROTECTION AGAINST RISK
6 TO BE FUNDED BY THE OPERATOR.

7 (B) TRANSMISSION OF STUDY AND ASSESSMENT.--

8 (1) THE DEPARTMENT SHALL SUBMIT THE STUDY CONDUCTED
9 UNDER SUBSECTION (A)(1) TO THE GOVERNOR, THE CHAIRMAN AND
10 MINORITY CHAIRMAN OF THE ENVIRONMENTAL RESOURCES AND ENERGY
11 COMMITTEE OF THE SENATE, THE CHAIRMAN AND MINORITY CHAIRMAN
12 OF THE ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE OF THE
13 HOUSE OF REPRESENTATIVES AND THE DEPARTMENT NO LATER THAN MAY
14 1, 2009.

15 (2) THE INDEPENDENT EXPERT SHALL SUBMIT THE FINAL
16 ASSESSMENT UNDER SUBSECTION (A)(2) TO THE GOVERNOR, THE
17 CHAIRMAN AND MINORITY CHAIRMAN OF THE ENVIRONMENTAL RESOURCES
18 AND ENERGY COMMITTEE OF THE SENATE, THE CHAIRMAN AND MINORITY
19 CHAIRMAN OF THE ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE
20 OF THE HOUSE OF REPRESENTATIVES AND THE DEPARTMENT NO LATER
21 THAN NOVEMBER 1, 2009.

22 (C) DEPARTMENT.--THE FOLLOWING SHALL APPLY:

23 (1) THE DEPARTMENT SHALL REVIEW THE ASSESSMENT SUBMITTED
24 UNDER SUBSECTION (A)(2) AND ALL GEOLOGIC SEQUESTRATION
25 REQUIREMENTS ASSOCIATED WITH A STATE NETWORK, INCLUDING
26 GEOLOGICAL SITE CHARACTERIZATION, MODELING AND VERIFICATION
27 OF FLUID MOVEMENT, CORRECTIVE ACTION, WELL CONSTRUCTION,
28 OPERATION, MECHANICAL INTEGRITY TESTING, MONITORING AND SITE
29 CLOSURE.

30 (2) FOLLOWING THE REVIEW UNDER PARAGRAPH (1), THE

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1 DEPARTMENT MAY CONDUCT A PILOT PROJECT TO DETERMINE THE
2 VIABILITY OF ESTABLISHING A STATE NETWORK IN THIS
3 COMMONWEALTH.

4 (D) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
5 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
6 SUBSECTION:

7 "CARBON DIOXIDE SEQUESTRATION." THE STORAGE OF CARBON
8 DIOXIDE IN A SUPERCRITICAL PHASE WITHIN A GEOLOGICAL SUBSURFACE
9 FORMATION SUCH AS A DEEP SALINE AQUIFER WITH SUITABLE CAP ROCK,
10 SEALING FAULTS AND ANTICLINES THAT INCLUDES COMPRESSION,
11 DEHYDRATION AND LEAK DETECTION MONITORING EQUIPMENT AND
12 PIPELINES TO TRANSPORT CARBON DIOXIDE CAPTURED BY AN ADVANCED
13 COAL COMBUSTION WITH LIMITED CARBON EMISSIONS PLANT TO AN
14 UNDERGROUND STORAGE SITE. THE TERM SHALL NOT INCLUDE USE OF THE
15 CARBON DIOXIDE FOR ENHANCED OIL RECOVERY.

16 "DEPARTMENT." THE DEPARTMENT OF CONSERVATION AND NATURAL
17 RESOURCES OF THE COMMONWEALTH.

18 "STATE NETWORK." A CARBON DIOXIDE SEQUESTRATION NETWORK
19 ESTABLISHED ON LANDS OWNED BY THE COMMONWEALTH, OR LANDS ON
20 WHICH THE COMMONWEALTH HAS ACQUIRED THE RIGHT TO STORE CARBON
21 DIOXIDE, THAT HAVE BEEN DESIGNATED BY THE DEPARTMENT OF
22 CONSERVATION AND NATURAL RESOURCES FOR THE STORAGE OF CARBON
23 DIOXIDE.

24 SECTION 6. THIS ACT SHALL TAKE EFFECT IN 30 DAYS.

Appendix M

Cohen	Hickernell	Oliver	Swanger
Conklin	Hornaman	Pallone	Tangretti
Costa	Hutchinson	Parker	Taylor, J.
Cox	James	Pashinski	Taylor, R.
Creighton	Josephs	Payne	Thomas
Cruz	Kauffman	Payton	True
Curry	Keller, M.	Peifer	Turzai
Cutler	Keller, W.	Perry	Vereb
Daley	Kenney	Petrarca	Vitali
Dally	Kessler	Petri	Vulakovich
DeLuca	Killion	Petrone	Wagner
Denlinger	King	Phillips	Walko
DePasquale	Kirkland	Pickett	Wansacz
Dermody	Kortz	Preston	Waters
DeWeese	Kotik	Pyle	Watson
DiGirolamo	Kula	Quigley	Wheatley
Donatucci	Leach	Quinn	White
Eachus	Lentz	Ramaley	Williams
Ellis	Levdansky	Rapp	Wojnarowski
Evans, D.	Longietti	Raymond	Yewcic
Evans, J.	Mackereth	Readshaw	Youngblood
Everett	Maher	Reed	Yudichak
Fabrizio	Mahoney	Reichley	
Fairchild	Major	Roae	O'Brien, D., Speaker
Fleck	Manderino	Rock	
Frankel	Mann	Roebuck	

NAYS-0

NOT VOTING-0

EXCUSED-2

Perzel Shimkus

The majority having voted in the affirmative, the question was determined in the affirmative and the resolution was adopted.

SUPPLEMENTAL CALENDAR B

BILL ON SECOND CONSIDERATION

The House proceeded to second consideration of **HB 2200, PN 3176**, entitled:

An Act amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, further providing for definitions; and providing for adoption of energy efficiency and demand-side response.

On the question,
Will the House agree to the bill on second consideration?

Mr. **FREEMAN** offered the following amendment No. **A05751**:

Amend Sec. 2 (Sec. 2806.1), page 4, lines 7 and 8, by striking out "in whose service territory the programs are implemented." and inserting

from all sources, including default service generation revenues as of January 1, 2007.

Amend Sec. 2 (Sec. 2806.1), page 9, by inserting between lines 3 and 4

(i) By May 31, 2011, total annual deliveries to retail customers of electric distribution companies shall be reduced by a minimum of 1%. This load reduction shall be measured against the expected load forecasted by the commission for June 1, 2010, through May 31, 2011,

based on load for the period June 1, 2007, through May 31, 2008, with provision made for weather adjustments and extraordinary load that the electric distribution company must serve. The commission shall determine and make public the forecasts to be used for each electric distribution company no later than August 31, 2008. The program administrator shall ensure that a third-party entity meets the goals contained in this section through the implementation of a program of energy efficiency measures throughout the service territory of the electric distribution company.

Amend Sec. 2 (Sec. 2806.1), page 9, line 4, by striking out "(i)" and inserting

(ii)

Amend Sec. 2 (Sec. 2806.1), page 9, line 6, by inserting a period after "2.5%"

Amend Sec. 2 (Sec. 2806.1), page 9, lines 6 through 8, by striking out "WITH PROVISIONS MADE FOR" in line 6, all of line 7 and "ELECTRIC DISTRIBUTION COMPANY MUST SERVE." in line 8

Amend Sec. 2 (Sec. 2806.1), page 9, line 12, by inserting after "2008"

, with provision made for weather adjustments and extraordinary load that the electric distribution company must serve

Amend Sec. 2 (Sec. 2806.1), page 9, line 20, by striking out "(ii)" and inserting

(iii)

Amend Sec. 2 (Sec. 2806.1), page 9, line 28, by striking out "(iii)" and inserting

(iv)

On the question,
Will the House agree to the amendment?

The SPEAKER. The Chair recognizes Representative Freeman on the amendment.

Mr. FREEMAN. Thank you, Mr. Speaker.

Mr. Speaker, this amendment does a number of things. First, it adds clarifying language dealing with the 2-percent cost cap that is currently contained in the legislation. It would add generation to the list of items that go into calculating the final figure. Currently it only deals with transmission and distribution, but we add generation, and generation makes up roughly 60 percent of the revenues of a public utility. So it is important to put generation in to make sure that we have a higher figure to work off of.

Second, we add an incremental figure of 1 percent. Currently in the bill the goal, or target goal, is going to be 2.5 percent, in terms of target, of making demand go down by 2013, and we have an interim goal of 1 percent that would kick in in 2011, and that is important to provide for in this legislation as a means of expediting the efforts on the part of the electric utility companies to put in place their efforts to reduce demand and to make conservation a real priority.

And third, we provide language in this amendment to deal with the issue of adjusting the figure, the load figure, based on weather conditions and the like, those kinds of extraordinary factors that are beyond the control of the utility company, in order to take that into consideration.

I would urge a "yes" vote on this amendment.

The SPEAKER. Representative Ross, on the amendment.

Mr. ROSS. Thank you, Mr. Speaker.

I believe this is a good amendment, and I intend to support it.

The SPEAKER. Representative McCall.

Mr. McCALL. Thank you, Madam Speaker – Mr. Speaker.

The SPEAKER. The Chair will remind the gentleman to be judicious in his comments.

Mr. McCALL. I was referring to Sue, Mr. Speaker.

Mr. Speaker, I would also ask for an affirmative vote on the Freeman amendment.

It does a number of things, but more importantly, it accelerates the energy efficiency goals as set in HB 2200 and implements that 1-percent reduction by 2011, and I think what that does, it ensures that the implementation of the 2.5 goal, that they can in fact meet that goal and we could benchmark that early on in 2011 to see that they are well on their way to implementation of the 2 1/2-percent conservation goal as set in HB 2200.

But I think, more importantly, that it can in fact help customers mitigate rate increases as they come off in 2010 by having the conservation measure of 1 percent implemented before those caps come off, and I would ask for an affirmative vote on the Freeman amendment.

The SPEAKER. Representative Bud George.

Mr. GEORGE. Mr. Speaker, I would echo the sentiments of the gentleman, Mr. McCall. It would seem, and hopefully I am right, that the big wall has gone down and we are about to pursue what those of us on both sides of the aisle feel is most necessary in regard to conservation, in regard to controlling the spiraling of electric rates, and I would urge the passage of this amendment.

Thank you.

On the question recurring,
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—198

Adolph	Frankel	Manderino	Rohrer
Argall	Freeman	Mann	Ross
Baker	Gabig	Mantz	Rubley
Barrar	Galloway	Markosek	Sabatina
Bastian	Geist	Marshall	Sainato
Bear	George	Marsico	Samuelson
Belfanti	Gerber	McCall	Santoni
Benninghoff	Gergely	McGeehan	Saylor
Bennington	Gibbons	McI. Smith	Scavello
Beyer	Gillespie	McIlhattan	Schroder
Bianucci	Gingrich	Melio	Seip
Bishop	Godshall	Mensch	Shapiro
Blackwell	Goodman	Micozzie	Siptroth
Boback	Grell	Millard	Smith, K.
Boyd	Grucela	Miller	Smith, M.
Brennan	Haluska	Milne	Smith, S.
Brooks	Hanna	Moul	Solobay
Buxton	Harhai	Moyer	Sonney
Caltagirone	Harhart	Mundy	Staback
Cappelli	Harkins	Murt	Stairs
Carroll	Harper	Mustio	Steil
Casorio	Harris	Myers	Stern
Causser	Helm	Nailor	Stevenson
Civera	Hennessey	Nickol	Sturla
Clymer	Hershey	O'Brien, M.	Surra
Cohen	Hess	O'Neill	Swanger
Conklin	Hickernell	Oliver	Tangretti
Costa	Hornaman	Pallone	Taylor, J.
Cox	Hutchinson	Parker	Taylor, R.
Creighton	James	Pashinski	Thomas
Cruz	Josephs	Payton	True

Curry	Kauffman	Peifer	Turzai
Cutler	Keller, M.	Petrarca	Vereb
Daley	Keller, W.	Petri	Vitali
Dally	Kenney	Petrone	Vulakovich
DeLuca	Kessler	Phillips	Wagner
Denlinger	Killion	Pickett	Walko
DePasquale	King	Preston	Wansacz
Dermody	Kirkland	Pyle	Waters
DeWeese	Kortz	Quigley	Watson
DiGirolamo	Kotik	Quinn	Wheatley
Donatucci	Kula	Ramaley	White
Eachus	Leach	Rapp	Williams
Ellis	Lentz	Raymond	Wojnaroski
Evans, D.	Levdansky	Readshaw	Yewcic
Evans, J.	Longiatti	Reed	Youngblood
Everett	Mackereth	Reichley	Yudichak
Fabrizio	Maher	Roae	
Fairchild	Mahoney	Rock	O'Brien, D., Speaker
Fleck	Major	Roebuck	

NAYS—3

Metcalf	Payne	Perry
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NOT VOTING—0

EXCUSED—2

Perzel	Shimkus
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The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question,
Will the House agree to the bill on second consideration as amended?

Mr. FREEMAN offered the following amendment No. **A05807**:

Amend Title, page 1, line 2, by striking out "and"
Amend Title, page 1, line 4, by removing the period after "response" and inserting

; and further providing for duties of electric distribution companies.

Amend Sec. 1 (Sec. 2803), page 3, line 3, by striking out all of said line and inserting

"Real-time price." A rate that directly reflects the different cost of energy during each hour.

* * *

"Smart meter technology." Technology, including, but not limited to, metering technology and network communications technology capable of bidirectional communication and that records electricity usage on at least an hourly basis, including related electric distribution system upgrades to enable the technology. The technology shall provide customers with direct access to and use of price and consumption information. The technology shall also:

(1) Directly provide customers with information on their hourly consumption.

(2) Enable time-of-use rates and real-time price programs.

(3) Effectively support the automatic control of the customer's electricity consumption by one or more of the following as selected by the customer:

- (i) the customer;
- (ii) the customer's utility; or

(iii) a third party engaged by the customer or the customer's utility.

"Time-of-use rate." A rate that reflects the costs of serving customers during different time periods, including off-peak and on-peak periods, but not as frequently as each hour.

Amend Bill, page 13, by inserting between lines 22 and 23

Section 3. Section 2807(e) of Title 66 is amended by adding a paragraph to read:

§ 2807. Duties of electric distribution companies.

* * *

(e) Obligation to serve.—* * *

(6) (i) Within nine months after the effective date of this paragraph, electric distribution companies shall file a smart meter technology procurement and installation plan with the commission for approval and make the plan available for public comment for a minimum of 30 days. The plan shall describe the smart meter technologies the electric distribution company proposes to install, how the smart meter technology meets the requirements of this paragraph and how the smart meter technology shall be installed according to this paragraph. In addition, the plan shall ensure that all smart meter technology installation and maintenance work shall be performed by adequately trained and qualified personnel and that, to the extent practical, such work shall be offered initially to employees of the electric distribution company.

(ii) Electric distribution companies shall furnish smart meter technology to:

(A) Customers responsible for 40% of the distribution company's annual peak demand within four years after the effective date of this paragraph.

(B) Customers responsible for 75% of the distribution company's annual peak demand within six years after the effective date of this paragraph.

(C) One hundred percent of its customers within ten years after the effective date of this paragraph.

Electric distribution companies shall, with customer consent, make available electronic access to customer meter data to third parties, including electric generation suppliers and providers of conservation and load management services.

(iii) Electric distribution companies shall be permitted to recover all reasonable and prudent costs, as determined by the commission, of providing smart meter technology, including annual depreciation and capital costs over the life of the smart meter technology, that are incurred after the effective date of this paragraph, less all operating and capital costs savings realized by the electric distribution company from the introduction and use of the smart meter technology. An electric distribution company may, at its option, recover such smart meter technology costs:

(A) through base rates, including a deferral for future base rate recovery of current costs, with carrying charges equal to 6%; or

(B) on a full and current basis through a reconcilable automatic adjustment clause under section 1307 (relating to sliding scale of rates; adjustments).

In no event shall lost or decreased revenues by an electric distribution company due to reduced electricity consumption or shifting energy demand be considered a cost of smart meter technology. Smart meter technology shall be deemed to be a new service offered for the

first time under section 2804(4)(vi) (relating to standards for restructuring of electric industry).

(iv) By January 1, 2010, or at the end of the applicable generation rate cap period, whichever is later, a default service provider shall submit to the commission one or more proposed time-of-use rates and a real-time price plan. The commission shall approve or modify the time-of-use rates and real-time price plan within six months of submittal. The default service provider shall offer commission-approved time-of-use rates and a real-time price plan to all residential and commercial customers that have been provided with smart meter technology within 60 days of installation of the smart meter technology or commission approval of the time-of-use rates and a real-time price plan, whichever is later. Customer participation in time-of-use rates or real-time pricing shall be voluntary and shall only be provided with the affirmative consent of the customer. The default service provider shall submit an annual report to the commission on the participation in the time-of-use and real-time price programs and the efficacy of the programs in affecting energy demand and consumption and the effect on wholesale market prices.

(v) For purposes of this paragraph, the term "electric distribution company" shall mean a public utility providing facilities for the jurisdictional transmission and distribution of electricity to 100,000 or more retail customers in this Commonwealth.

Amend Sec. 3, page 13, line 23, by striking out "3" and inserting

4

On the question,

Will the House agree to the amendment?

The SPEAKER. The Chair recognizes Representative Freeman on the amendment.

Mr. FREEMAN. Thank you, Mr. Speaker.

Mr. Speaker, this amendment would require that all public utilities, electric utilities, install smart meters for residential and business customers across the Commonwealth. Smart meters are a very important technology which is available to us, which would save both customers and utilities a considerable amount of money by allowing the customer to be able to opt in – and it is optional – in to a purchasing process where they could purchase their electricity at off-peak hours, thereby saving on cost.

Currently the electric rate that all of us receive as utility customers is an averaging of peak-hour costs, which are high, and off-peak-hour costs, which are low. With smart meters, which are a bidirectional mechanism to let both the utility know when electricity is being used and also the customer, the customer has the option of being able to purchase their electricity at off-peak periods at considerable savings to them in terms of their electric utility bill.

In terms of the provision of the amendment, the utility companies would be required to file procurement plans with the PUC (Public Utility Commission), I believe within a 9-month period. They would have to provide for the installation of these meters by people who have been trained, giving the current employees of those utility companies the opportunity to do that work. There would be a phase-in of the smart meters over a 10-year period – 40 percent in the first 4 years, 75 percent in the 6-year period, with 100 percent at the end of the 10-year period.

Obviously, a utility company would be able to recover their costs for the installation of these meters, but only their net cost,

and there is a tremendous savings to the utility company. In fact, when PPL, which is one of the utility companies that actually has installed smart meters, installed their meters, it was their belief that the meters actually paid for themselves. So there was little cost to be passed on to the utility customer.

I should note, too, that the customers will not be billed for the smart meter. It becomes part of the rate base and one that the utility company would have to file for, but it is important to note that there are savings both for the utility customer as well as for the utility company.

Within this amendment is the time-of-use plan, which I mentioned or referred to earlier. The customer would be able to purchase their electricity at off-peak periods, and that is important. That is a cheaper period of time in which to get your electricity. So there are quite a bit of savings that can be realized by the consumer by using the smart meter technology and opting in to that plan.

Smart meters are already used in a number of sections of the State. As I mentioned, PPL has installed smart meters at a considerable savings to their customers as well as to the utility company. Smart meters allow customers, as I mentioned, to voluntarily sign up for that optional plan to buy their electricity at off-peak periods, and it has been shown that if only 1 percent of utility customers were to use the smart meter technology to reduce their cost of electricity, it could mean a savings of 10 percent overall for all utility customers.

Smart meters also benefit the utility company in providing for better knowledge as to blackouts, as to thefts, as to being able to address and cut down on consumer complaints. Smart meters truly are a win-win proposition for the utility customers here in Pennsylvania and also for those who generate the electricity because it will save them on the amount of money that needs to go in to creating new generating facilities and transmission lines.

I would urge a "yes" vote for this conservation measure.

The SPEAKER. Representative Pyle, on the amendment.

Mr. PYLE. Will the maker of the amendment please answer a few questions?

The SPEAKER. The gentleman, Representative Freeman, indicates he will stand for interrogation. Representative Pyle is in order and may proceed.

Mr. PYLE. Thank you, Mr. Speaker.

Mr. Speaker, I am having trouble here understanding this bidirectional communication ability. What vehicle might be used to enable this communication?

Mr. FREEMAN. The smart meter.

Mr. PYLE. The smart meter has to connect to something for the EDC (electric distribution company) to read usage. I am asking, what is the vehicle for communication?

Mr. FREEMAN. I am sorry. I am having trouble following the gentleman's line of questioning.

Mr. PYLE. I am asking if Internet access is essential to make this idea work.

Mr. FREEMAN. I do not believe it is, if I recall my readings of the smart meter technology.

Mr. PYLE. Could the gentleman please fill me in on how this meter is going to be hooked up to an electric company? By the wording in your bill, it says it can kind of step in and monitor day usage, time-of-day usage, et cetera?

Mr. FREEMAN. Correct.

Mr. PYLE. That is the part I am curious about, Mr. Speaker.

Mr. FREEMAN. Well, the meter, as is true of any meter, reads your usage of electricity, and with smart meters, you are able to read both peak and off-peak periods. The generation of electricity is cheaper in an off-peak period. So there is the opportunity for the utility customer, the consumer, to be able to purchase that electricity at an off-peak period of time, and that would be noted through the smart meter, saving the utility customer, the consumer, considerable dollars.

Mr. PYLE. Another question, Mr. Speaker. I am curious about section (3) here, "Effectively support the automatic control of the customer's electricity consumption by one or more of the following...." I am looking at section (ii), "the customer's utility...." In any way does that have any bearing on the electric customer's ability to use electricity as they see fit?

Mr. FREEMAN. No, not in any way, Mr. Speaker.

Mr. PYLE. Is there a potential for the EDC, the electric distribution company, to effect a rolling blackout by readings on these smart meters?

Mr. FREEMAN. Could you add clarity to that question? I am not quite sure where you are going with it.

Mr. PYLE. What I am asking is, is there a potential utilizing these smart meters and customers' electrical usage for the electric distribution company to choose to selectively route electricity to areas showing peak and off-peak usage?

Mr. FREEMAN. No. Keep in mind that opting in to this program is an optional opportunity for customers, and they would not be able to selectively pick certain customers to be blacked out versus others.

It should be noted, too, that, if anything, this technology actually will reduce the possibility of blackouts and brownouts, because if you reduce the amount of electricity that is demanded at peak times, you limit or reduce the possibility of blackouts. One of the problems with our system now is that when we hit a peak time, particularly in the hottest days of the year, you have the system being overloaded. If you can shift some of that use to nonpeak periods, or off-peak periods, rather, you save considerably in terms of money for the consumer but you also save in the amount of money the utility company has to expend in purchasing far more expensive energy at peak times. So it is a win-win for both the customer and the utility, but in addition to that, you also reduce the possibility of blackouts and brownouts because you have already incentivized the shifting to nonpeak periods, which will reduce the potential of overstraining the system.

Mr. PYLE. What is confusing me, Mr. Speaker, is the wording that says, and I quote, "Effectively support the automatic control of the customer's electricity consumption by one or more of the following...: the customer;" – which I am all right with – "the customer's utility...." Is there a potential, is what I am asking, for the customer's utility to exercise automatic control over the amount of electricity a customer may purchase?

Mr. FREEMAN. I would direct the gentleman's attention, Mr. Speaker, to the word "support" that appears on line 23. It is to support in that effort. It is not to wrest control from the consumer.

Mr. PYLE. Sorry; automatic control is what is throwing me off here.

Mr. FREEMAN. Again, I would direct the gentleman's attention to the word "support." Keep in mind, it is a bidirectional system, so there is information being transmitted to the utility as well as to the customer.

Mr. PYLE. Thank you, Mr. Speaker.

The SPEAKER. Representative Hutchinson, on the amendment.

Mr. HUTCHINSON. Thank you, Mr. Speaker.

I rise in opposition to this amendment.

Mr. Speaker, I think that this amendment makes absolutely no common sense at this time. The consumers of Pennsylvania are about to experience an increase in the electricity costs over the next couple of years because rate caps will be phasing out in various areas over the next 2 or 3 years, and with that, consumers are going to see their electric rates increased. By passing this amendment, we are going to be piling on the consumers because they will be mandated, although in an indirect way, they will be mandated to pay for these new meters to be installed in their home whether they save on their electric costs or not.

It only makes sense to say smart meters should go to consumers who can save money by installing them. Those who can save by having a smart meter, it would make sense for them to have smart meters in their home. Mandating it across the board mandates that everybody pays whether they save or not, and that just does not make sense.

I am very concerned that we continue to ignore the consumers by making more mandates and increasing their costs, whether it is through mandating the meters, through trying to have some kind of a surcharge, all these things at a time when their electric costs are going up anyways.

So although on a case-by-case basis, smart meters might be a good thing to do, making a 100-percent mandate does not make sense. So I am opposing this amendment.

Thank you, Mr. Speaker.

The SPEAKER. Representative Godshall, on the amendment.

Mr. GODSHALL. I would like to interrogate the maker of the amendment, please.

The SPEAKER. Representative Freeman indicates he will stand for interrogation. Representative Godshall is in order and may proceed.

Mr. GODSHALL. Thank you, Mr. Speaker.

On these smart meters, I understand that PPL has smart meters installed already in their service area. Is that correct?

Mr. FREEMAN. That is correct, Mr. Speaker.

Mr. GODSHALL. Is that in their full service area?

Mr. FREEMAN. To the best of my knowledge, it is.

Mr. GODSHALL. I questioned in our caucus this morning. I am in a PPL service area. If I have a smart meter installed, I do not know it. I have not been told that, nor do I have any idea what it is doing to save me energy. I do not know.

Mr. FREEMAN. I should note that PPL did install smart meters. They would need to upgrade that technology that they installed to make it bidirectional. The benefits being realized by smart meters in the PPL service area really are to the utility at this point, because it allows them to better track theft, to track blackouts, to track out shortages, anything that they could respond to more quickly, which also helps them in terms of their cost savings and cutting down on consumer complaints. At this point in time, they do not offer the optional requirement that we are putting in with this amendment, which would allow the consumer to be able to pick and choose their off-peak periods, if they so choose, in order to run their dishwasher or their laundry to save in terms of their electric utility costs.

So the technology is there in the PPL territory. It needs a slight upgrade to be able to be bidirectional, but the benefits from the utility standpoint of being able to be better on top of blackouts, thefts, shortages is already being accrued to the utility. What we would be able to do with this is to ensure that the customer will now have the option of buying their electricity at off-peak periods and thereby saving considerable dollars.

Mr. GODSHALL. So at this point the benefit of the smart meter supposedly that is on my home is benefiting the company, and I am still not sure how that— I have no knowledge as far as turning this appliance off or buying my electric at whatever. If it is there, it is of little use, and if there is going to be any conservation, it would be on my part, not on the company's part.

Mr. FREEMAN. Keep in mind again, Mr. Speaker, that when PPL—

Mr. GODSHALL. Mr. Speaker, I am having trouble hearing. Just one second.

I am sorry.

Mr. FREEMAN. That is okay.

Mr. Speaker, the meters as installed by the PPL utility really are for the benefit of the company in their current configuration. With this amendment, we would be able to realize the benefits for the consumer as well.

The company understood that this technology was a cost savings for them, because again, they could capture blackouts, they could capture shortages, they could capture cases of theft through this technology. It will require on the part of PPL somewhat of an upgrade in order to be able to realize a bidirectional reporting system, but in doing so, we then afford to the consumer the option of saving money by being able to purchase their electricity at cheaper off-peak periods as opposed to the current system where they are stuck with the averaging out, which is a much higher rate than an off-peak period.

Mr. GODSHALL. As of right now, I believe, in going to PJM (Pennsylvania-Jersey-Maryland Interconnection), you know, they look at the peak demand, and everybody is really charged the same rate when PPL or PECO or whoever is buying electric. It is based on the last amount of energy needed coming in to PJM before it goes out. I still do not understand how that is going to relate to each individual household, you know, when you are talking about millions of households in the system.

And the costs, we had a cost, I believe, from the PUC of \$1.2 billion or \$1.3 billion to install these around in the State of Pennsylvania, and I do not know if that has taken off because PPL has them already, and you know, if they are in place or not, I have no idea. But I am not sure how each individual home is going to be able to purchase based on the way our electric is being distributed today and the various companies charge, the distribution companies charge for that electric by the PJM, who distributes the electric.

Mr. FREEMAN. Just for the members' information, Mr. Speaker, I would point to the fact that PPL, by their own estimates, has stated that they believe that the cost of installation has paid for itself in terms of the savings that the company has realized, which is good news for the consumer if this becomes a statewide program.

The other factor to be kept in mind, too, is that even if only 1 percent, only 1 percent of all utility customers, all consumers, utilize smart meter technology by purchasing their power at off-peak hours, that reduces dramatically the amount of demand on peak-hour periods of generation. Bringing that number down can result in a 10-percent savings for all utility customers,

whether they use the smart meter technology or not, and the reason for that is the fact that if you can reduce the peak-hour demand, you reduce the period of time when any utility company is forced to buy the most expensive amount of energy. It is at peak periods that energy costs the most. You bring that demand down in those peak periods and you have a cost savings for both the utility company and the consumer. So even just 1 percent of utility customers utilizing smart meter technology, purchasing their electricity at off-peak hours, will result in a 10-percent savings for everyone.

Mr. GODSHALL. Do you have any idea how many people – are there any projections based on how many people would actually use this? Have there been any kind of test markets done showing how many people are going to use this technology and how many people are going to be sitting up there watching this meter on their computer or whatever?

Mr. FREEMAN. Well, there are a couple of factors to be kept in mind, Mr. Speaker, in that regard. One is the fact that a statewide poll that was conducted last year showed that 67 percent of registered Democrats and 62 percent of registered Republicans support smart meter technology and have expressed their support for the concept.

In terms of usage, obviously there has got to become a greater awareness on the part of the consumer that they have this option, and that will become part of the process as the utilities move forward with their procurement plans.

I do recall an article I came across – I do not have it with me on the floor today – but an article that I came across where smart meter technology was utilized in the Province of Ontario in Canada, and it has met with a great response on the part of customers. They have voluntarily bought into the optional plan. They are saving money and energy demand at peak periods is dropping. So at least in the case of Ontario, there shows a real response to it, and I think given the nature of our consumer-oriented society where in the last 10 to 15 years in particular, we have given more and more options of choice to consumers in an array of different utility service areas, it only makes common sense to be able to give them this choice, to give the consumer the opportunity to be able to purchase their power at a cheaper rate. In particular, when you are dealing with those very mundane household chores like doing laundry or washing the dishes in a dishwasher, why run those activities during a period of peak hour when you can save money in an off-peak period?

I would also note, and you will see this in the amendment, there is the option to the consumer of getting the services of a third party so that that third party can guarantee, through the consumer's consent, the ability of purchasing the power through a computer-programmed period. There is no need for the consumer to have to keep watching when the peak hour and off-peak hour is. They could actually purchase that service and have that third party make sure that the purchase of electricity occurs in an off-peak period for whatever the consumer wants that electricity purchased for.

So there are a lot of options that we lay out with this amendment that will benefit the consumer, reduce their utility bill, and save money for both the utility company and definitely for the customer themselves.

Mr. GODSHALL. In this case are we not taking the choice away from the consumer by saying you have to put this in service in your district rather than you may or you have a choice? Are we not saying that you must do it? We are taking

that choice away from the consumer, I believe, and I would have no problem with this if we do it on a choice basis, as you used the word "choice" before. We are taking that choice away.

Mr. FREEMAN. Well, I would only point out, Mr. Speaker, that we are requiring the utility company to install the meter, not the customer, and it is the utility company. If we are going to see the kind of cost savings that will reduce the price of electricity for consumers throughout the State, it has got to be done on a statewide basis by the utility companies. To do it piecemeal really would not result in a lot of savings to the individual customer, but if we do it statewide, the economies of scale begin to kick in and you see a savings statewide to all customers.

And as I mentioned before, a very important statistic, if just 1 percent, just 1 percent of utility customers decide that they want to utilize this technology, everyone saves a minimum of 10 percent because peak-hour demand goes down, and that is the most expensive time to purchase electricity both for a utility company and for a customer. So there is a savings for everyone, and they have the choice to either opt in to those smart meters or to not opt in, but at least through this process, we can guarantee that through the economies of scale, that will be there and the savings can be realized by all customers across the Commonwealth.

Mr. GODSHALL. Thank you, Mr. Speaker.

That concludes my interrogation. I would like to make a few comments.

The SPEAKER. The gentleman is in order and may proceed.

Mr. GODSHALL. In looking at this, I totally agree with the gentleman that we need to conserve energy, we need to save energy. I totally agree that smart meters are a big step in doing this. What I am not in full agreement on in any way is that everyone is mandated to, whether they intend to use it or not, whether they know how to use it or not, everyone is mandated, under this legislation, to go ahead with the smart meter technology.

And again, the gentleman mentioned there were polls taken. If there is a poll taken and said, do you believe in the use of smart meters, my answer to that would be yes. I would have absolutely no problem in answering yes, but then if there was a question at the bottom that says you are going to be paying \$300 for the installation through your utility bill for this meter and the software that goes with it, I am not sure what the answer would be.

And the other thing I am not quite certain of is why we are addressing this in HB 2200 when the smart meter technology part of it is in HB 2201, which remains in committee. We did not move that out of committee as of 2 weeks ago, I believe it was. It is still there, and the smart meter part of the discussion that we are doing today on the smart meters is in HB 2201, which remains in the Consumer Affairs Committee.

As I said, I agree with the bulk of what the gentleman says. I agree we have got to conserve. I agree on everything else he said, but I am just totally not in agreement that somebody who has no intention of using this technology should be assessed by the utility companies approximately, until it is finished, at least \$300 to get this in place in his residence and he is going to be paying for it. It is going to be paid for by the consumer whether they use it or not.

So anyway, those are my feelings on the bill, and you have to vote accordingly.

The SPEAKER. Representative Ross.

Mr. ROSS. Thank you, Mr. Speaker.

I think that we have gotten engaged in a very technical discussion about the particular technology here, but underneath this, there is a larger issue, and that is that regardless of what we do here today, the Public Utility Commission is moving us toward real-time pricing, real-time pricing basically reflecting the actual demands and costs at any particular time in the day. In order to be able to react to that, we will need technology sufficient to help customers understand and save money on their usage.

It is inherent in the discussion that we ultimately get this technology one way or another. We can dispute about whether this is the best way to go at getting that technology deployed, whether a voluntary or incentive-based program might be better, but ultimately we will need, in order to save money for our customers and reduce peak demand and achieve our goals in that regard, we will need some form of technology that will enable communications with devices within the house and enable us to manage our electric usage in real time in a better way.

So although I recognize some valid points by some of my colleagues here, Mr. Speaker, I will personally be voting in favor of this amendment.

The SPEAKER. Representative McCall.

Mr. McCALL. Thank you, Mr. Speaker.

Mr. Speaker, I would ask the members to support the Freeman amendment, and I would submit to the members that this is one of the most important tools that we will have at our disposal for us to achieve the energy conservation and demand-side management that we need. And there is no question with this technology that if it is implemented and implemented properly, that we will save both the consumers money and we will save the utilities money. The bottom line is that if we give people the tools and the ability to reduce peak demand, that reduction in peak demand reduces everybody's energy bill, not just one-sided. Everybody gets a reduction in their energy bill when we start managing peak demand in this Commonwealth.

And the other thing that it does, when you reduce that peak demand, you reduce the probability that we are going to have to build more generation in this Commonwealth. The reason why we are here today is because of the growth and demand on the energy front, and if we continue to rely on the energy or consume the energy that we are consuming today, 10 years down the road we are going to have to build at least five new generating facilities at exorbitant costs, at costs of like \$25 to \$30 billion, and they are costs that our consumers are going to have to pay unless we start giving them the tools to manage, and the Freeman amendment does precisely that. It gives people the ability to, voluntarily, by the way – and I think that is the key to this whole debate, is voluntarily – we are going to allow them to decide whether they want time-of-use pricing.

Just like we do with cell phones today – you get free calls on the weekend or cheaper rates in the evening – you could choose on your electric utility bill with smart meter technology time-of-day pricing, because maybe you are not home during the day, but at nighttime or weekends you want to run the dryer and you know it is going to be a cheaper price, so time-of-use pricing is the way for you to go. Or if you are more savvy, and I know a lot of us in this chamber do not have the time, but you could go for real-time pricing. You will have the ability as the

consumer – voluntarily, by the way; understand this is a voluntary program – voluntarily you will have the ability to use real-time pricing that will allow you as a consumer to look at your electric meter on an hour-to-hour, minute-to-minute basis to see where energy consumption is and where peak demand is, and you could make that decision as a consumer, looking at what that kilowatt average is on that meter and decide whether or not you want to run the oven, an iron, or whatever else. If you are savvy enough, you will have that ability under this legislation. Or you could be just like me right now. I will just use same-day pricing. That is what most of us use right now. If you do not want to worry about where the peak demand is, just give me a bill with real-time pricing. You have that ability, under this amendment, to just keep your electric bill the way it is.

But I think we need to give our consumers the ability and the tools to make those kinds of decisions to help reduce peak demand. If we reduce peak demand, we can reduce that certain probability that we are going to have to build more generation. And when you consider peak demand, the demand side of this equation, where we are telling the utility companies that the 100 highest hours of any peak demand in a utility's year, which is generally July or August, the hottest, hottest days of the week where air conditioners are running constantly, that we want you to have the ability to reduce that demand and understand what the consequences of that are.

It is not just all of this money that we are spending on those peak-demand prices, but we can actually help air pollution in this State because utilities have to buy energy on the spot market, which is very expensive. They have to turn on facilities that burn maybe not as efficiently as we would all like. There are increased mercury emissions, increased carbon dioxide emissions by virtue of these 100 highest peak hours that utilities have to turn up extra generation.

Mr. Speaker, I think it is extremely important that we give our consumers this necessary tool, help utilities with the issue of reliability because it will help with reliability when you reduce that peak demand. This is a very, very strong component of the overall energy conservation and demand-side management program, and I would certainly urge each and every one of you to look at this hard and vote affirmatively on the Freeman amendment.

The SPEAKER. Representative Bud George.

Mr. GEORGE. Mr. Speaker, we sit here not only as legislators but also as consumers, and there are none of us that do not understand the concept of supply and demand.

Now, for someone to engage in an argument about why nonpeak hours cost more is simply because the utility had to procure, unassured of what was going to be delivered. And when it is not delivered, the truth of the matter is, it is not cliché, that it is literal and it is factual that you are basically paying more for those hours at nonpeak. So the truth is, you are paying more for power you do not use than for power you do use.

Where there are many, many ways, I am sure, that we can get around to where we are going, the most positive way for the utilities and mostly for the consumer is what we are trying to do with this amendment. So in all fact, if you want to eliminate what is now pressing us very hard, this matter of deregulation and rate cap, the best way to do this is to work with one and all and to give these individuals who pay for power they do not use

an opportunity to look at a meter and make a decision of when they should turn off this or turn off that.

So really and truly, what better way is it for us to understand supply and demand and the concept of needing to pay for something you do not use than it is to look at your bill every month and understand that now there will be an opportunity for the bill to be somewhat less because you are not going to pay for something you did not use.

I would urge that we would support this amendment.

The SPEAKER. The Chair recognizes the minority leader, Representative Smith.

Mr. S. SMITH. Thank you, Mr. Speaker.

Mr. Speaker, when I first started looking into this issue of the smart meters, there was certainly a component of it that makes a lot of sense, and I think one of the previous speakers touched on that, meaning that it would give individual homeowners or businesses the opportunity to adjust their usage based on that actual time-of-day pricing.

What I think is inconsistent with how this amendment has been put forth, though, and what we are saying here on the floor of the House is that members are saying that this is entirely voluntary. That is not completely accurate, Mr. Speaker, because what this amendment would require is for the electric distribution company to put the cost of a smart meter, distribute it to every user in that service territory, into your rate base, and to install those, whatever is involved in the smart meter, on every meter.

What is voluntary is whether you actually use it or not. What I think the difference is in the way we should be approaching this is to allow the individuals who want to take advantage of smart meter technology, allow them to sign up for it to have it installed, then they engage in the program, as opposed to many of the people who might have the availability of the technology, the cost of the technology, but not the desire to use it.

So, Mr. Speaker, while I certainly support the voluntary utilization of smart meters, what I think is going to be a costly measure that many people will not reap the benefits of is the fact that the smart meters will be put onto your bill. The overall cost of distributing, installing, and setting up that smart meter technology will be put onto every consumer of the Commonwealth whether or not they use it.

If we really want to encourage people to use it, I think we ought to allow them to engage it themselves as opposed to forcing them to pay for something they may not use, and that is really the difference, Mr. Speaker, in what I think is right or wrong with this amendment. While I certainly appreciate the direction it is trying to go, I think the fact that it forces the cost of the meters onto every consumer of electricity in Pennsylvania, I think that is the wrong direction to go and would ask for a vote against the amendment.

Thank you, Mr. Speaker.

The SPEAKER. Representative Saylor, on the amendment.

Mr. SAYLOR. Mr. Speaker, I want to make it clear to everybody, this is a mandate. This is not voluntary; it is a mandate required to use smart meters in Pennsylvania. And while I agree, again, with my colleague on the other side of the aisle that this is all great, the Adams Electric, the Rural Cooperatives of Pennsylvania, have been very effective in using smart meter technology to help lower consumers' bills, the choice is up to the consumer to use that technology and whether they want that smart meter installed on their house. The key is, should we in the General Assembly mandate something on

consumers that is going to cost them more dollars in their electric bill?

Every year we hear from people who need more money to pay their electric bills throughout this Commonwealth through LIHEAP (Low-Income Home Energy Assistance Program) and their fuel bills, and we constantly are asking the Federal government to put more money into LIHEAP and other programs similar to that, installation programs and so on and so forth, to help consumers.

This issue in particular should be a choice by consumers, not a mandate by the General Assembly onto an additional cost to electric bills in Pennsylvania. So remember, voting for this amendment, while I think it has great goals and where the gentleman wants to get to is very admirable and where we need to get to at some point in time, it still needs to be a consumer choice, not a General Assembly mandate onto consumers that is going to cost them more in their electric bill.

Thank you, Mr. Speaker.

The SPEAKER. Representative Vitali, on the amendment.

Mr. VITALI. Thank you, Mr. Speaker.

I rise in support of the Freeman amendment. This is truly a voluntary measure for consumers, and I think the interesting thing is, going to the gentleman from Jefferson County's point about increased costs with regard to smart metering, it should be noted that PPL installed smart metering in every one of its customers' homes or businesses while they were under a rate cap. In other words, PPL put smart metering in because it benefited them and saved them money, even when they were in a rate-cap situation, so they could not recover the costs. I think that is an important point to make here, because smart meters do save money. They do save the utilities money, because when there is a power outage, they can get the power up faster. They have less problems with customers' bills. It is a money savings.

Another point, Mr. Speaker, is I sat in on the Consumer Affairs Committee meeting on this issue last week, and one thing I was surprised about is many of the major utility companies in Pennsylvania support smart metering. I thought it would be just the opposite. But utility company after utility company testified they supported this.

Mr. Speaker, listen to this; this is from Reliant Energy: "HB 2201 also directs deployment of smart meters, an initiative Reliant fully supports. In fact, Reliant urges the committee to speed up the implementation of advanced metering...." So you have utility companies supporting smart metering.

Listen to this; this is from PECO: "PECO supports the section of H.B. 2201 that provides for a phased-in deployment of smart-meter technology and the availability of time-of-use rates for all customers. Such offerings will provide customers with tools to help enable them to manage their energy consumption...." The same with EPGA (Electric Power Generation Association). Mr. Speaker, this is something, quite surprisingly, that is also supported by utilities.

The next point. Mr. Speaker, I know some of us are hunters. We respect game land. We are fans of our parks and forests. The problem is, if we do not enact things like smart metering, we put them in jeopardy, and here is the connection. There is a national transmission corridor. Huge swaths of Pennsylvania have been designated by the Federal government to be part of this corridor because of the country's need for power lines, and these power lines, if we increase and increase and increase our demand for electricity, will go through Pennsylvania's wooded areas near the view scapes of our national parks. Smart metering

helps us protect our parks and forests and historical places by preventing the need for additional transmission lines.

The next point. Mr. Speaker, consumers need to be aware that rate hikes are coming. In the PECO service area, for example, PECO experts predicted that rates could go as high as 26 percent between 2010 and 2011. Utility rates could increase as high as 26 percent. We need to do something about that. The Freeman amendment does something about that by dealing with reducing demand. It is a very basic economic principle that price is a function of supply and demand, and one thing Freeman does is keep down the lid on the demand for electricity, so when these rate caps come off in 2011, our constituents are not going to be paying these big predicted rate increases because we have helped reduce demand. That is why we are saving consumers money if we can enact measures that will reduce demand.

Mr. Speaker, finally, smart metering helps consumers who do not opt for the time-of-use rates in a number of ways. One, even if you do not opt in, the power goes out, if you have a smart meter in your home, even though you did not opt in to the time-of-use rates, your utility company knows that; it can get your power up much more quickly. So even if you do not use the time-of-use rating, having a smart meter in your home will help you.

Also, Mr. Speaker, another reason why it is necessary to do this in a comprehensive way, as the Freeman bill does, is you can capture the economies of scale if all these meters are installed in a systematic program instead of having an installer go out one by one as people volunteer for this.

Mr. Speaker, for all these reasons I urge the adoption of the Freeman amendment. Thank you.

The SPEAKER. Representative Benninghoff, on the amendment.

Mr. BENNINGHOFF. Thank you, Mr. Speaker.

I wish to see if the maker of the amendment would stand for a couple of questions, please?

The SPEAKER. The gentleman, Representative Freeman, indicates he will stand for interrogation. Representative Benninghoff is in order and may proceed.

Mr. BENNINGHOFF. Thank you.

I was just curious if the maker could tell me how many other States have done this and whether their program was a mandate.

Mr. FREEMAN. I cannot say how many States have done it. I know that the Province of Ontario in Canada has done this.

Mr. BENNINGHOFF. All right. Well, my follow-up question was going to be, obviously, from an economic perspective. I am curious if we know of any savings, but if no other State in the Commonwealth has done that, then I will assume that there are no savings to those States.

My second question concerns, if people in the Commonwealth are mandated to put a meter in their home and prices fluctuate from time to time, is the potential there for a company or a supplier to absorb or inherit a windfall of money or revenue or proceeds? I just cannot imagine that the company is going to be adjusting cost every time that it is adjusted for them back to the consumer. So therefore, I would think that they could inherently see a windfall of profits, as we see oftentimes when the gas pump prices are going up every other day and we know the fuel in the ground has already been paid for a week in advance. Will that not be the same case in this scenario?

Mr. FREEMAN. No, it really will not, and I will tell you why, Mr. Speaker. Keep in mind that the utility company has to

purchase energy at various times of the day to meet demand. If that demand is being purchased during peak hour, when you are at the maximum of the system, it is going to be more expensive energy. So we realize two savings with this legislation with my amendment. One is for the consumer – for the customer. They have the opportunity, if they want to opt in to this optional program, to be able to choose their electricity at an off-peak time when it is cheaper than what it is at peak times.

Currently what we get is an averaging of the expensive and the less expensive. So when you pay your electric bill, even if you were to be someone today who runs their electricity at off-peak periods – you are doing it at a time when the actual cost of electricity is cheaper – you are not realizing a savings. You might be doing the utility company a favor, you might be doing the environment a favor, but you are not realizing a savings, because the average cost, or the cost, rather, that you will pay is going to be an averaged-out cost of high peak and low peak.

So even though you are someone who is being conservation-minded, thinking about the environment, thinking about the purchase of electricity, under the current system, you will not realize a savings. Under this amendment, you have the option of entering into that program to realize a savings by buying your electricity at off-peak periods. That reduces the cost for everyone. Again, I go back to the statistic that if just 1 percent of all utility customers were to buy into the optional purchasing proposal, it would be a cost savings for everyone of 10 percent, because it reduces peak-hour demand.

Now, obviously that also helps the utility company, because they do not have to purchase as much energy during a high-peak period, but it is not going to be a windfall situation because they have to justify their rates, obviously. If they do not, it causes the possibility of going to a different utility company. So there is not going to be a windfall of savings in that regard.

Mr. BENNINGHOFF. I appreciate your thorough answer. I think you and I share some obviously common ground where we want to see energy efficiency and energy savings.

Again, under your answer, I am still having difficulty understanding why a company would not try to purchase the bulk of their energy at the lowest cost and know what time period that is, how that subsequently is not going to be sold to me at a higher peak time, and thus I pay a higher rate than what they may have purchased at a lower peak time. And as a customer, how am I going to know that on my bill?

Mr. FREEMAN. Well, once you have the smart meter technology, you will be able to either choose by yourself or by contracting with a third party who can monitor it for you as to when the off-peak periods are. You will know that information, and as such, you will be able to make an informed decision as to when to purchase your electricity.

Maybe you want to run your laundry in the middle of the night when the cost of electricity is down considerably because of it being an off-peak period. Maybe you will set your dishwasher to kick in in the middle of the night, again, when electricity is cheaper. So you will have that information through the smart meter technology, and that will enable you to be able to make smart choices and to reduce your electric bill.

Mr. BENNINGHOFF. And the last question, if you would.

I as a consumer, if this is voluntary, do I have the ability to acquire one of those meters right now? If this is the best thing to come down the road for me and it is going to have the

opportunity for me to save money, can I go and get a meter right now and have it installed in my house?

Mr. FREEMAN. Because of the simple reason that without this amendment, there is no requirement for the utility company to recognize your personal smart meter. You might be able to know when you are purchasing, but keep in mind, under current procedures, utility companies do not give you rates at a cheaper time of day or a more expensive time of day. The only way they bill you is on an average of the overall cost of the electricity.

So unless we can put into place my amendment which will require them to have the optional buy-in program where you can purchase your electricity at a cheaper rate, you will never be able to realize that savings on your own by going out and purchasing a smart meter. You might be able to monitor it, you might be able to see when your rates are higher or lower, but there is nothing that is going to require the utility company to charge you based upon your usage. It requires this amendment to achieve that and to, in essence, require the utility company to give you the savings that they are realizing by you using it at an off-peak period.

Mr. BENNINGHOFF. Thank you. And if I may clarify one last question on that.

Mr. FREEMAN. Sure.

Mr. BENNINGHOFF. So I understand, the part that is actually voluntary is not the installation of the meter statewide by your amendment; it is the billing process by the companies—

Mr. FREEMAN. Well, I would say that—

Mr. BENNINGHOFF. —how I am going to be billed. If this passes, I am going to get a meter whether I want it or not. The only option is going to be on the rates of energy that I would be paying for. So it is the billing that is the optional part?

Mr. FREEMAN. Yeah. I would say that in order for everyone to realize the savings of smart meter technology, it has to be done as a requirement statewide because of economies of scale. But you are right, what we are requiring here is the installation of those meters.

And keep in mind, utility companies change their meters, roughly 5 or 10 percent of their meters, every year. So in a 10-year period of time, whether you want it or not, you as the customer are going to have to pay for the installation currently of a new meter. The difference is, the current meters they install every 10-year cycle is a dumb meter. We are requiring a smart meter. So you will have the opportunity to then buy into that optional plan in which you can purchase your electricity at a cheaper period of time and realize the savings in your electric bill.

Mr. BENNINGHOFF. Thank you.

Mr. Speaker, a quick comment on the amendment itself.

The SPEAKER. The gentleman is in order and may proceed.

Mr. BENNINGHOFF. Thank you, Mr. Speaker.

And again I thank the maker of the amendment for his time in answering those questions. I guess my reservation, obviously, is do we want a statewide mandate? Do we want the government telling you that you have to have a meter put in your property? I think the majority of us appreciate the fact that we want to be more energy conscious, have more efficient appliances, and I think a lot of us are moving that way.

I just struggle with the fact that there is no other State in the Commonwealth that has done this in the past, although I would like to see Pennsylvania obviously be a leader. It gives me some reservations that if this technology is so accurate and so helpful and such a cost reduction savings for the consumer, why is it

not being used unilaterally across this great nation? I would ask the members to keep that in mind.

I think it is important that we are smart about our energy use, but I also think we have to think about what government's role is in mandating such a thing.

Mr. Speaker, thank you very much for your time.

The SPEAKER. Representative Bennington, on the amendment.

Ms. BENNINGTON. Thank you, Mr. Speaker.

If Pennsylvania does nothing to reduce its electricity consumption, our State will need to make room for at least 12 new power plants.

Opponents of this amendment talk about the cost to the consumer. All told, not passing Representative Freeman's amendment and HB 2200 will cost \$17 billion in capital, fuel, and other costs associated with meeting increases in electricity demand. Smart meters and Representative Freeman's amendment will help reduce this demand.

Again, in response to the queries regarding the cost of this technology, I ask, what is the cost of clean air to our children? What is the cost of clean water to our children? When they ask us, should we tell them that it costs too much? Please vote "yes" on the Freeman amendment.

Thank you, Mr. Speaker.

The SPEAKER. Representative Gabig, on the amendment.

Mr. GABIG. Thank you, Mr. Speaker.

Would the maker of the amendment stand for brief interrogation?

The SPEAKER. The gentleman, Representative Freeman, indicates he will stand for interrogation. Representative Gabig is in order and may proceed.

Mr. GABIG. Thank you, Mr. Speaker.

I have been listening to the debate, and I need to get a few answers that I have not heard yet.

How much would it cost a customer to have a smart meter installed? What would be the cost of that?

Mr. FREEMAN. Excuse me, Mr. Speaker. Are you referring to the actual price of a smart meter? Is that what the question is?

Mr. GABIG. Well, I think there is a cost— As I understand it, there is a cost of the meter and a cost of installation, and so I was trying to find out what that cost would be to an electric customer.

Mr. FREEMAN. Now, this question came up in the Environmental Resources and Energy Committee when we discussed this issue previously. It is difficult to ascertain an actual cost for a variety of reasons. Let me explain, if I may.

If you are looking at the actual cost of a meter, it could be as high as \$240, or it could be \$175, as was the case with PPL. But what you have to figure in to the actual costs, what will be realized, is the fact that the utility company makes considerable savings with smart meter technology. By installing the smart meters, they will realize savings which will bring the actual cost down dramatically for the actual customer. So in fact, in the case of PPL, they felt that the cost of the meters paid for themselves simply by being able to use this technology to be able to get a hold of outages, blackouts, theft of electricity, to be able to lower the amount of customer complaints, because with this technology, they know how to respond quickly before the complaints overload the system. All of that brings the cost down dramatically.

And one final point, if I may, to answer the gentleman's question, and that is the fact that the cost itself is not going to be

that significant when you think of the overall savings, and we have to think long term. If you are thinking about trying to reduce the amount of electricity that is consumed in this Commonwealth, that is used in this Commonwealth, if you are thinking about saving energy and saving money for the consumer, you need conservation technology like smart meters to bring it down. The actual cost of the meter will be considerably less because of economies of scale, because of the savings that will be realized by the consumer, and because of the simple fact that the utility will only be able to recoup that percentage of the cost that is an actual cost for them. Whatever savings they realize they will not be able to charge the customer for, and the savings to them is considerable.

Mr. GABIG. Wow, what an answer. Now, if I understood the answer, I think the gentleman said between \$175 and \$240 for a smart meter, for the cost of the meter. Did that include per customer? Does that cost of the meter, the installation, does that include installation or just the cost of the physical meter?

Mr. FREEMAN. Again, with all due respect to the gentleman, Mr. Speaker, it is mixing apples and oranges. That is not the actual cost under this amendment for the simple reason that you have economies of scale which bring that price down, and you have cost savings by the utility which are not borne by the customer. Since the utility actually realizes cost savings under this amendment, it is nowhere near \$175 for the meter. When you stop and realize the exact cost savings that occur to the company as well as to the consumer, it is far less.

It is difficult to give the gentleman a precise figure, but I can guarantee the fact that it is considerably less based on the fact that there are cost savings for the utility and obvious savings for those customers who wish to participate in the optional program as well as all utility ratepayers who will realize the benefit from even a small percentage of those customers opting to purchase their electricity at off-peak periods.

Mr. GABIG. All right. I understood that from the gentleman's first response to the question, but if I understood the earlier advocacy of this amendment, it said that the big corporations, the utility companies, are not going to be paying for this installation. It is going to be borne by the customer. So the gentleman keeps bringing up in his responses matters dealing with the utility – it may be savings down the road or not. I am just talking about how much it is going to cost the electric customer to have this installed, and I do not know why it is such a State secret. It is going to cost so much money to go on an electric bill, and I think, to respond to the gentleman's answer, I think we have a duty as the House to tell the people in Pennsylvania how much it is going to cost them. This might be the greatest thing since sliced bread, as the gentleman seems to think. I am not debating that right now. All I want to know is how much we are going to be charging? How much does it cost to do this? And you said it has been done in Ottawa or someplace in Canada—

Mr. FREEMAN. Ontario.

Mr. GABIG. Ontario; I am sorry, and it has also been done by other utilities. We heard that Adams Electric has done it. So how much is it going to cost them to put these meters in? That is the simple question. There should be a dollar figure. If it is not \$175 to do it, we should have at least a range that we can tell people. Does the gentleman have that information, after all these hearings he has been to, all this research that he has done, all the investment that he has looked at? I just want to know how much it is initially costing a customer in Pennsylvania to

put one of these in their house or in their business. That is a simple question. I hope I can get a simple response from the gentleman.

Mr. FREEMAN. Unfortunately, Mr. Speaker, not all complex issues can be boiled down to a simple answer. That is why they are complex issues.

However, to give the gentleman greater clarity, there is a reasonable and prudent standard within the legislation, within the amendment, rather, and the PUC will determine how much the utility can recoup their costs for on a reasonable and prudent basis. They can only recoup the net costs. Any savings they realize they cannot charge the customer for.

And I think there is a bit of a misunderstanding on the part of the gentleman, Mr. Speaker, when the gentleman said that this is a cost to the—

Mr. GABIG. Well, Mr. Speaker, if I could rephrase the question since it was—

Mr. FREEMAN. Just let me answer—

Mr. GABIG. —complicated.

The SPEAKER. The gentlemen will suspend.

The Chair will remind the gentleman to ask a question and wait for the responder to give his answer and request that the gentlemen not speak over each other in interrogation.

Mr. FREEMAN. Thank you, Mr. Speaker.

Just to finish my—

Mr. GABIG. Thank you, Mr. Speaker.

If I could just—

The SPEAKER. The Chair will ask the gentlemen to suspend.

The Chair will ask the gentleman, Mr. Gabig, to ask his question and then ask Representative Freeman to respond.

Mr. GABIG. Thank you, Mr. Speaker.

I am going to ask it one more time. Three times can be good, and three times you can be out. Is it fair to say that the gentleman cannot tell the people of Pennsylvania how much it is going to cost them to put these meters in their homes and businesses? Is that fair to say? You just do not know?

Mr. FREEMAN. In answer to your question, it is the PUC which determines the cost based upon a reasonable and prudent decision, and it is wrong for the gentleman to insist that somehow this is a cost that gets directly put at the door of the consumer. It is the utility that has to pay for it. They then have to go to the PUC, as they do for the installation of current meters.

Any expense by a utility in terms of equipment has to go before the PUC to recover the costs. If you expend money as a utility, that gets passed on to the consumer, but under this amendment, there is a savings to the utility company which dramatically brings down the cost of installation, and on top of that, there is a savings to the customer by having the option of purchasing cheaper electricity.

These meters more than pay for themselves. That is the bottom line, and any customer will have to pay for the installation of a dumb meter or a smart meter. If you pay for the installation of a smart meter, you save money. That is the bottom line.

Mr. GABIG. All right. I appreciate the gentleman's candid response to those questions.

Mr. Speaker, I have another question that I do not know if I am going to get any more of a response to or not. But in my district, there are apartment buildings, apartment buildings, where people live in apartment buildings, and there are senior

centers where people live in individual, sort of apartment-style units. And so what I am wondering, is each person that lives in an apartment going to be mandated under this Freeman amendment to get a meter or not? Or if there is an apartment building or a townhouse that has many different units in it that has one meter currently, will each individual apartment dweller in such a situation be required to get one of these meters?

Mr. FREEMAN. With all due respect to the gentleman, Mr. Speaker, we are making the mandate on the utility company to install smart meters. The individual customer does not have to go out and purchase a smart meter. That requirement is being borne by the utility. They have to replace their meters every 10 years anyway. They can either replace it with a dumb meter that does little to save energy and save dollars for the consumer, or we can, through this amendment, require them to purchase and install smart meters that save money for the consumer and the utility company by cutting down on the amount of energy that is consumed.

Mr. GABIG. So if I understand the gentleman's response, it will be in the power of the utility company to decide whether or not they are going to require each person in an apartment building or not to have a meter or not. It will be in their power to decide whether to do that and whether to pass that cost on to their customers. Is that correct?

Mr. FREEMAN. No, Mr. Speaker. It is not the power—

Mr. GABIG. There is no protection in this legislation—

Mr. FREEMAN. Mr. Speaker, can I please answer the question?

The SPEAKER. The Chair will again remind the gentlemen not to speak over each other.

Mr. FREEMAN. I would like to be able to—

Mr. GABIG. I thought he was done when he said no, Mr. Speaker.

The SPEAKER. The gentleman will suspend. The gentleman is not in order. Representative Freeman will respond.

Mr. FREEMAN. Thank you, Mr. Speaker.

It is not the power of the utility company; it is a requirement in our conservation efforts here in this Commonwealth with this amendment that they install smart meters.

A utility company has the requirement to have meters for all of its customers. They have to replace those meters every 10 years because they wear out. Now, they can either put in a dumb meter that does not allow the customer to choose what time of day they wish to purchase their electricity, either at a cheaper off-peak period or at a more expensive high-demand period, or through this amendment, we can require those utility companies to utilize smart meter technology to save money in terms of the purchase of electricity for them and, most importantly, for the customer. If we wish to save money for the customer, you need smart meter technology, and it has to be done on a statewide basis if you are to realize economies of scale. It is a basic point of economics.

Mr. GABIG. Thank you, Mr. Speaker.

That concludes my attempts to question the maker of the amendment. If I might speak on the amendment.

The SPEAKER. The gentleman is in order and may proceed.

Mr. GABIG. The problem I am having with the amendment is I think if I were called on the telephone and asked, are you for a smart legislator or a dumb legislator, are you for a smart card or a dumb card, are you for a smart meter or a dumb meter, I would probably answer, I am for the smart legislator, the smart card, the smart meter. But if they start saying, well,

for the smart legislator you are going to pay five times more money and for the dumb legislator you are going to pay five times less money, for the smart card you are going to pay five times more money and for the dumb card you are going to pay five times less money, for the smart meter you are going to pay we do not know how much more money because we will not tell you, but it is not going to be the utilities that pay for it because we took care of them in our amendment; they are taken care of in this Freeman amendment. The big utility companies and corporations, they are all right with it; they support this, but the customer, well, you are going to pay the freight for this mandate, this State mandate.

You know, I think some of you know I was in the Navy before I came here to the House, and we were under orders. I was overseas, I can remember, and the command said, hey, we are running out of water. I was stationed in Guantanamo Bay, Cuba – there has been a lot in the news about it – and they did not have fresh water down there. They had to desalinate the water, and the Army would come with their big desalination things and they would have to take the salt out of the water so that we could use it. And we would start running out of water, and they would come down and say, you cannot wash your clothes between such and such a time and such and such a time; you can only do it, you know, midnight to 2 o'clock in the morning. You can only wash your clothes on Tuesdays and Thursdays; you cannot do it Wednesdays. And there were other regulation and command and control items that we had to abide by. And I was in the Navy; I said "yes, sir" and saluted. Some people got in trouble for washing their clothes on the wrong day. That is what this is. This is a mandate to people saying you have to buy this whether this is good for you or not good for you; we are telling them what to do.

And it is going to cost them money. The average apartment person, their electric bill is, I do not know, when I used to live in an apartment it was \$30, maybe, a month or something like that. It was not that much money. The gentleman would not answer the question. I do not know what the answer is. I heard different figures. I heard it could be up to \$300 to install one of these smart meters, for the cost of the meter and to install it. So somebody is paying \$30 a month, or a senior citizen that is on a fixed income, to have that passed on by the big utility company to pay for this because somehow it is going to, in the long run, be a cost benefit to us. Now, maybe it is, and maybe these things are great, but it should not be forced upon people to have to do it who live on fixed incomes. It should be something that is voluntary and that the market drives.

I think that the gentleman from York, Stan Saylor, mentioned that Adams Electric Co-op has a similar program, but it is not forced on people; it is a voluntary program, and they can use the market to decide whether they want to do it or not.

We also have heard that you have to have Internet capability to do this, and in rural areas – I know in the big cities and other areas I am told that there is Internet capability. I do not know if that is true in all cities across Pennsylvania. But in some of the areas that I represent, they do not have that out there yet, so they are going to be forced to buy this \$300, this cost will be passed on to them, and they will not get the benefit of it. They will not get the benefit of it.

So I appreciate the intent of this amendment. I think there are some serious questions, unresolved questions, that have not been satisfactorily dealt with, and that is why the gentleman, who is a very good friend of mine, by the way, was unable to

give me direct answers to and to answer the people in Pennsylvania the questions that need to be answered before we go to such a strong mandate, a very expensive mandate.

So for that reason, I am not going to be able to support this amendment, Mr. Speaker.

The SPEAKER. The Chair will ask all members to take their seats and reduce the noise level on the floor. Is there any other member seeking recognition on the amendment, because the Chair is about to recognize the prime sponsor for the second time.

Representative Levdansky, on the amendment.

Mr. LEVDANSKY. Thank you, Mr. Speaker.

Mr. Speaker, I just want to make a clarification in case people understand the way markets are supposed to work. You know, if you read Adam Smith and the classical economic doctrines, prices are accurate and fair when buyers and sellers in a perfectly competitive marketplace have access to goods and services and to information. Capitalism assumes perfect competition and perfect access of buyers and sellers to information. That is when markets work.

Essentially what the Freeman amendment does is requires the electric utility industries to roll out a plan to provide all consumers with smart meters, smart meters so that consumers will know how much electric costs at a given time of the day so that they can adjust their purchasing habits according to their preferences for what they want to pay for electricity.

If Adam Smith were here, if Adam Smith, the father of capitalism, were here, he would say you have got to vote for this. If you want markets to work, if you want markets to work, then consumers have to have access to perfect information. This amendment gives consumers access to perfect information so capitalism and the market distribution of electricity will work. If you are a conservative economist and a conservative legislator, you have got to vote for this.

Support it. Thank you.

The SPEAKER. Is there any member seeking recognition before the Chair recognizes the prime sponsor of the amendment?

The Chair recognizes Representative Freeman for the second time.

Mr. FREEMAN. Thank you, Mr. Speaker.

Mr. Speaker, there are a number of points to be kept in mind in regard to this amendment and what it will achieve. First, to clear up some misunderstandings that were expressed on the floor.

Participating in the optional program, deciding whether you want to choose whether to purchase your electricity at peak times or off-peak times, that is an optional voluntary program. We are not mandating that people have to buy into that process, but they will be advised to do so, because it would empower them to be informed and to purchase their electricity at a cheaper time. No one is saying they have to run their laundry in the middle of the night, no one is saying they have to use their dishwasher in the middle of the night, but if they so choose, in order to realize great savings on their utility bill, under this amendment, they would have that opportunity.

One of the things that has to be kept in mind, utility companies replace their meters every 10 years. Somewhere between 5 and 10 percent of all current dumb meters have to be replaced every 10 years. So why not replace those dumb meters with smart meters that can give consumers options and allow them to control their own destiny as far as electric utility rates

by purchasing electricity at a cheaper off-peak period, if they choose to do so?

In this amendment we provide for a reasonable and prudent standard in terms of the utility's ability to recoup its cost, so it is the cost of the meter minus the savings to the utility. And if you ask people from PPL, they say the meters pay for themselves. The cost savings to the utility company are tremendous, and therefore, the cost to be borne by the customer is limited and in fact will result in tremendous savings to customers because of the ability to purchase power at a cheaper off-peak period.

I have to drive home one very critical point once again. If only 1 percent of all utility customers, of all consumers, decide to opt in to the program to be able to purchase their electricity at a cheaper off-peak period, that means a savings, a minimum of 10 percent, to all utility customers, because it reduces the purchasing of electricity at the most expensive, high-peak periods of time. That is a savings for everyone. This legislation is a win-win situation for utility companies but more importantly for consumers, allowing utility customers to reduce the cost of their electricity bill. That is the bottom line.

One speaker said that this made no common sense. It makes a great deal of common sense. It is the essence of common sense to utilize technology in a period of energy crisis in order to reduce costs for the consumer and to conserve energy. For too long we have buried our head in the sand when it comes to making good measures to conserve energy here in this Commonwealth and throughout our nation. Today, with this amendment, we have the opportunity to make a tremendous stride forward in conserving energy and reducing the cost of electricity for our consumers, and therefore, I urge a "yes" vote.

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:

YEAS—128

Adolph	George	McGeehan	Scavello
Argall	Gerber	McI. Smith	Schroder
Belfanti	Gergely	Melio	Seip
Bennington	Gibbons	Mensch	Shapiro
Beyer	Goodman	Micozzie	Siptroth
Biancucci	Grucela	Milne	Smith, K.
Bishop	Haluska	Moyer	Smith, M.
Blackwell	Hanna	Mundy	Solobay
Brennan	Harhai	Murt	Staback
Buxton	Harkins	Myers	Sturla
Caltagirone	Harper	O'Brien, M.	Surra
Carroll	Hornaman	O'Neill	Tangretti
Casorio	James	Oliver	Taylor, J.
Civera	Josephs	Pallone	Taylor, R.
Cohen	Keller, W.	Parker	Thomas
Conklin	Kenney	Pashinski	Vereb
Costa	Kessler	Payton	Vitali
Cruz	Killion	Petrarca	Wagner
Curry	King	Petri	Walko
Daley	Kirkland	Petrone	Wansacz
Dally	Kortz	Preston	Waters
DeLuca	Kotik	Quinn	Watson
DePasquale	Kula	Ramaley	Wheatley
Dermody	Leach	Raymond	White
DeWeese	Lentz	Readshaw	Williams
DiGirolamo	Levdansky	Roebuck	Wojnaroski
Donatucci	Longiotti	Ross	Yewic
Eachus	Mahoney	Rubley	Youngblood
Evans, D.	Manderino	Sabatina	Yudichak
Fabrizio	Mann	Sainato	

Frankel	Mantz	Samuelson	O'Brien, D.,
Freeman	Markosek	Santoni	Speaker
Galloway	McCall		

SUPPLEMENTAL CALENDAR B CONTINUED

CONSIDERATION OF HB 2200 CONTINUED

The SPEAKER. The Chair returns to HB 2200.

On the question recurring,
Will the House agree to the bill on second consideration as amended?

Mr. KORTZ offered the following amendment No. **A05750**:

Amend Title, page 1, line 2, by inserting after "Statutes,"
providing for recovery of certain labor relations
expenses;

Amend Bill, page 1, lines 7 and 8, by striking out all of said lines
and inserting

Section 1. Title 66 of the Pennsylvania Consolidated Statutes is
amended by adding a section to read:

§ 1329. Recovery of certain labor relations expenses.

No public utility may charge its customers as a permissible
operating expense for ratemaking purposes any portion of the direct or
indirect cost of meetings, publications, consultants, attorneys or other
professional services and expenses associated with the utility's efforts
to dissuade the employees of the utility, or the employees of any
affiliated interest of the utility as defined in section 2101 (relating to
definition of affiliated interest), from becoming or remaining a member
in, or otherwise being represented by, any labor union.

Section 2. Section 2803 of Title 66 is amended by adding
definitions to read:

Amend Sec. 2, page 3, line 10, by striking out "2" and inserting
3

Amend Sec. 3, page 13, line 23, by striking out "3" and inserting
4

On the question,
Will the House agree to the amendment?

The SPEAKER. The Chair recognizes Representative Kortz
on the amendment.

Mr. KORTZ. Thank you, Mr. Speaker.

Mr. Speaker, amendment A5750 deals with the labor
relations expenses of public utilities. Mr. Speaker, there is a
right under the laws of this country and the Commonwealth of
Pennsylvania for employees to form a union and bargain
collectively to secure various protections and benefits on the
job. Basically, Mr. Speaker, this amendment says that utilities
may not charge its customers the cost of dissuading employees
from joining a union or remaining a member of the union.

Mr. Speaker, I would urge all of my colleagues to support
this amendment.

The SPEAKER. The Chair recognizes Representative Ross
on the amendment.

Mr. ROSS. Thank you, Mr. Speaker.

My understanding of the current functioning of the
Public Utility Commission and what they would or would not
allow into the rate base would prevent the elements that my
colleague from Allegheny County wishes to not be included in a
rate case anyway. So I do not think that this amendment really
advances things further, neither does it do any harm.

The SPEAKER. Will the House agree to the amendment?
The Chair recognizes the majority whip.

NAYS—73

Baker	Fleck	Maher	Quigley
Barrar	Gabig	Major	Rapp
Bastian	Geist	Marshall	Reed
Bear	Gillespie	Marsico	Reichley
Benninghoff	Gingrich	McIlhattan	Roae
Boback	Godshall	Metcalfe	Rock
Boyd	Grell	Millard	Rohrer
Brooks	Harhart	Miller	Saylor
Cappelli	Harris	Moul	Smith, S.
Causer	Helm	Mustio	Sonney
Clymer	Hennessey	Nailor	Stairs
Cox	Hershey	Nickol	Steil
Creighton	Hess	Payne	Stern
Cutler	Hickernell	Peifer	Stevenson
Denlinger	Hutchinson	Perry	Swanger
Ellis	Kauffman	Phillips	True
Evans, J.	Keller, M.	Pickett	Turzai
Everett	Mackereth	Pyle	Vulakovich
Fairchild			

NOT VOTING—0

EXCUSED—2

Perzel Shimkus

The majority having voted in the affirmative, the question
was determined in the affirmative and the amendment was
agreed to.

On the question recurring,
Will the House agree to the bill on second consideration as
amended?

The SPEAKER. The House will be at ease.

The Chair announces his intention to recess regular session,
go over HB 2200 temporarily, and go into special session at
3:26 p.m.

BILL PASSED OVER TEMPORARILY

The SPEAKER. HB 2200 will be over temporarily.

RECESS

The SPEAKER. Regular session will now be in recess.

AFTER RECESS

The time of recess having expired, the House was called to
order.

Mr. McCALL. Thank you, Mr. Speaker.

Mr. Speaker, I would agree that there are provisions in the law, but this will make sure that those provisions are enforced, and I would ask that we support the Kortz amendment.

On the question recurring,
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—137

Adolph	Galloway	Markosek	Santoni
Argall	George	Marshall	Scavello
Baker	Gerber	McCall	Seip
Barrar	Gergely	McGeehan	Shapiro
Belfanti	Gibbons	McI. Smith	Siptroth
Bennington	Godshall	Melio	Smith, K.
Beyer	Goodman	Mensch	Smith, M.
Bianucci	Grell	Micozzie	Solobay
Bishop	Grucela	Moyer	Sonney
Blackwell	Haluska	Mundy	Staback
Brennan	Hanna	Murt	Stairs
Buxton	Harhai	Mustio	Sturla
Caltagirone	Harhart	Myers	Surra
Carroll	Harkins	O'Brien, M.	Tangretti
Casorio	Harper	O'Neill	Taylor, J.
Civera	Hornaman	Oliver	Taylor, R.
Cohen	James	Pallone	Thomas
Conklin	Josephs	Parker	Verbe
Costa	Keller, M.	Pashinski	Vitali
Cruz	Keller, W.	Payne	Vulakovich
Curry	Kenney	Payton	Wagner
Daley	Kessler	Petrarca	Walko
Dally	Killion	Petrone	Wansacz
DeLuca	King	Preston	Waters
DePasquale	Kirkland	Pyle	Wheatley
Dermody	Kortz	Ramaley	White
DeWeese	Kotik	Raymond	Williams
DiGirolo	Kula	Readshaw	Wojnaroski
Donatucci	Leach	Reed	Yewcic
Eachus	Lentz	Reichley	Youngblood
Evans, D.	Levdansky	Roebuck	Yudichak
Evans, J.	Longietti	Ross	
Fabrizio	Mahoney	Sabatina	O'Brien, D.,
Frankel	Manderino	Sainato	Speaker
Freeman	Mann	Samuelson	

NAYS—64

Bastian	Fleck	Mantz	Quinn
Bear	Gabig	Marsico	Rapp
Benninghoff	Geist	McIlhattan	Roae
Boback	Gillespie	Metcalfe	Rock
Boyd	Gingrich	Millard	Rohrer
Brooks	Harris	Miller	Rubley
Cappelli	Helm	Milne	Saylor
Causser	Hennessey	Moul	Schroder
Clymer	Hershey	Nailor	Smith, S.
Cox	Hess	Nickol	Steil
Creighton	Hickernell	Peifer	Stern
Cutler	Hutchinson	Perry	Stevenson
Denlinger	Kauffman	Petri	Swanger
Ellis	Mackereth	Phillips	True
Everett	Maher	Pickett	Turzai
Fairchild	Major	Quigley	Watson

NOT VOTING—0

EXCUSED—2

Perzel	Shimkus
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The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question recurring,
Will the House agree to the bill on second consideration as amended?

Mr. ROSS offered the following amendment No. **A05747**:

Amend Sec. 2 (Sec. 2806.1), page 7, line 21, by inserting after "established."

The program administrator, or its appointed fiscal agent, shall administer any and all funds to be used as payments to the third-party entities, and shall disburse said funds upon finding by the program administrator that the selected third-party entity complied with the terms of the agreement between the program administrator and the selected third-party entity.

Amend Sec. 2 (Sec. 2806.1), page 8, lines 20 and 21, by striking out all of line 20 and inserting

(2) Upon approval by the commission of a recommendation by the program administrator for selection of a third-party entity to

Amend Sec. 2 (Sec. 2806.1), page 8, lines 29 and 30; pages 9 and 10, lines 1 through 30; page 11, lines 1 through 3, by striking out all of said lines on said pages and inserting

(e) Plan goals.—

(1) The program administrator shall ensure that each proposal submitted by a third-party entity to deliver a program of energy efficiency measures includes meeting the goal of reaching an incremental annual energy savings based on a percentage of all electricity sold in calendar year 2007 of 0.4% in 2010 and 2.5% in 2014 and each year thereafter. The program administrator shall ensure that a third-party entity meets the goals contained in this section through the implementation of a program of energy efficiency measures throughout the service territory of the electric distribution company. After December 31, 2014, the commission, in consultation with the program administrator, may adopt additional incremental energy efficiency goals. These additional incremental goals may be based upon, but not limited to: the costs and benefits associated with energy efficiency measures, updated or new technologies and economic conditions that may exist at the time the additional incremental goals are being considered. The commission shall undertake a public hearing process to receive input regarding new proposed new incremental goals prior to their implementation.

(2) The program administrator shall ensure that each proposal submitted by a third-party entity to deliver a program of demand-side response measures includes meeting the goal of reducing peak demand from a target year being the calendar year 2007 on a weather-normalized basis and adjusted to eliminate the effect of emergency load control procedures implemented by a regional transmission organization by an amount equal to 2.0% in the 100 hours of highest demand in 2010, 4.0% in the 100 hours of highest demand in 2012 and each year thereafter. The program administrator shall ensure a third-party entity meets the goals contained in this section through the implementation of a program of demand-side resources measures throughout the service territory of the electric distribution company. After December 31, 2012, the commission, in consultation with the program administrator, may adopt additional incremental peak load reduction goals. These additional incremental goals may be based upon, but not limited to: the costs and benefits associated with demand-side response measures, updated load growth forecasts and economic conditions that may exist at the time the additional incremental goals are being considered.

The commission shall undertake a public hearing process to receive input regarding new proposed new incremental goals prior to their implementation.

On the question,
Will the House agree to the amendment?

The SPEAKER. The Chair recognizes Representative Ross on the amendment.

Mr. ROSS. Thank you, Mr. Speaker.

Amendment A05747 cleans up several elements in the bill which I think were, when it was redrafted, made a little less clear. In particular, it attempts to make it quite clear exactly how the payments would flow through the program administrator to the third-party organizations, not necessarily going through the electric distribution companies. It also makes it clear that the commission, once the commission has approved a recommendation for the third-party administrator, that this process move forward.

And finally, we go through the planned goals one more time. Obviously, the first section is less important now because the interim goal on energy efficiency had been established by the Freeman amendment, but I would point out that there is no interim goal in the demand-side management portion, and I think that that is an important element for us to get some interim cost savings as price caps come off.

That is all that is contained in this particular amendment, and I urge the members to have a positive vote.

The SPEAKER. Representative McCall.

Mr. McCALL. Thank you, Mr. Speaker.

Mr. Speaker, I would ask that the members oppose the Ross amendment.

Two fronts. On the first section of his amendment, he removes the language concerning the program administrator or its appointed fiscal agent. The problem with that is there is a question on funding, a fiscal concern by the removal of that language in this amendment. The question, you know, arises, where does the money come from to pay the third-party entities? You know, does it come out of the General Fund budget or General Fund appropriations, or does it come out of the PUC budget? And the amendment really does not speak to that.

But secondly and even more importantly is, he leaves the cap in place on the energy conservation provisos in the law or in this bill. We cap or put a hard cap on the amount of money the utilities can spend each year to achieve their energy conservation goals, 2 percent of their gross revenues. The problem I see is that the gentleman leaves the cap in place but he raises the goal line or the bar as far as how much or what percentage of reductions are necessary, and because of the fact that the cap is maintained yet the goal has been raised, we do not feel that there is enough money there to take care of the goals that he implements in the legislation or in the amendment, and therefore, I would ask for a negative vote on the amendment.

The SPEAKER. Is there any member seeking recognition before the Chair recognizes the prime sponsor of the amendment for the second time?

Representative Vitali.

Mr. VITALI. Thank you, Mr. Speaker.

I just want to rise to acknowledge all of the excellent work the Representative from Chester County has done, not only on

this particular amendment but on the bill as a whole. His ideas and his hard work have really brought us in large measure to what we are. So if I would vote against this measure, which I very well may, it is not a reflection of the ideas contained in this amendment but it is more a matter of the overall strategy of getting a bill to the other side and getting it signed into law.

So I just wanted to tip my hat to Representative Ross for all the good work he has done.

The SPEAKER. The Chair thanks the gentleman – and his hat.

Representative Ross, for the second time.

Mr. ROSS. Mr. Speaker, with some reluctance, I ask the members to read my amendment. My amendment does not change any of the goal targets. That is a misreading of my amendment. It uses the underlying goal targets in the bill.

Secondly, the other provision which was referred to earlier in debate is also in error. I believe that the gentleman in question was reading the wrong amendment. Please refer all members to 5747, not 5730, and once again I urge a positive vote on this amendment.

On the question recurring,
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—103

Adolph	Fleck	Marsico	Reed
Argall	Freeman	McIlhattan	Reichley
Baker	Gabig	Mensch	Roae
Barrar	Geist	Metcalfe	Rock
Bastian	Gillespie	Micozzie	Rohrer
Bear	Gingrich	Millard	Ross
Benninghoff	Godshall	Miller	Rubley
Bennington	Grell	Milne	Samuelson
Beyer	Harhart	Moul	Saylor
Boback	Harper	Moyer	Scavello
Boyd	Harris	Murt	Schroder
Brooks	Helm	Mustio	Smith, S.
Cappelli	Hennessey	Nailor	Sonney
Causar	Hershey	Nickol	Stairs
Civera	Hess	O'Neill	Steil
Clymer	Hickernell	Payne	Stern
Cox	Hutchinson	Peifer	Stevenson
Creighton	Kauffman	Perry	Swanger
Cutler	Keller, M.	Petri	Taylor, J.
Dally	Kenney	Phillips	True
Denlinger	Killion	Pickett	Turzai
DiGirolamo	Mackereth	Pyle	Vereb
Ellis	Maher	Quigley	Vitali
Evans, J.	Major	Quinn	Vulakovich
Everett	Mantz	Rapp	Watson
Fairchild	Marshall	Raymond	

NAYS—98

Belfanti	George	Manderino	Shapiro
Bianucci	Gerber	Mann	Siproth
Bishop	Gergely	Markosek	Smith, K.
Blackwell	Gibbons	McCall	Smith, M.
Brennan	Goodman	McGeehan	Solobay
Buxton	Gruclera	McI. Smith	Staback
Caltagirone	Haluska	Melio	Sturla
Carroll	Hanna	Mundy	Surra
Casorio	Harhai	Myers	Tangretti
Cohen	Harkins	O'Brien, M.	Taylor, R.
Conklin	Hornaman	Oliver	Thomas
Costa	James	Pallone	Wagner
Cruz	Josephs	Parker	Walko

Curry	Keller, W.	Pashinski	Wansacz
Daley	Kessler	Payton	Waters
DeLuca	King	Petrarca	Wheatley
DePasquale	Kirkland	Petrone	White
Dermody	Kortz	Preston	Williams
DeWeese	Kotik	Ramaley	Wojnaroski
Donatucci	Kula	Readshaw	Yewcic
Eachus	Leach	Roebuck	Youngblood
Evans, D.	Lentz	Sabatina	Yudichak
Fabrizio	Levdansky	Sainato	
Frankel	Longietti	Santoni	O'Brien, D.,
Galloway	Mahoney	Seip	Speaker

NOT VOTING—0

EXCUSED—2

Perzel	Shimkus
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The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question recurring,

Will the House agree to the bill on second consideration as amended?

The SPEAKER. The Chair recognizes Representative Ross. Mr. ROSS. Thank you, Mr. Speaker.

I would like to withdraw the other amendments that I had previously offered.

The SPEAKER. The Chair thanks the gentleman.

The Chair is not aware of any other amendments pending to the bill.

On the question recurring,

Will the House agree to the bill on second consideration as amended?

AMENDMENT A05747 RECONSIDERED

The SPEAKER. It has been moved by Representative McCall and Representative Surra that the vote by which amendment A05747 was passed to HB 2200, PN 3176, on the 11th day of February 2008 be reconsidered.

On the question,

Will the House agree to the motion?

The following roll call was recorded:

YEAS—102

Belfanti	Galloway	Manderino	Shapiro
Bennington	George	Mann	Siptroth
Bianucci	Gerber	Markosek	Smith, K.
Bishop	Gergely	McCall	Smith, M.
Blackwell	Gibbons	McGeehan	Solobay
Brennan	Goodman	McI. Smith	Staback
Buxton	Grucela	Melio	Sturla
Caltagirone	Haluska	Mundy	Surra
Carroll	Hanna	Myers	Tangretti
Casorio	Harhai	O'Brien, M.	Taylor, R.
Cohen	Harkins	Oliver	Thomas
Conklin	Hornaman	Pallone	Vitali
Costa	James	Parker	Wagner

Cruz	Josephs	Pashinski	Walko
Curry	Keller, W.	Payton	Wansacz
Daley	Kessler	Petrarca	Waters
DeLuca	King	Petrone	Wheatley
DePasquale	Kirkland	Preston	White
Dermody	Kortz	Ramaley	Williams
DeWeese	Kotik	Readshaw	Wojnaroski
Donatucci	Kula	Roebuck	Yewcic
Eachus	Leach	Sabatina	Youngblood
Evans, D.	Lentz	Sainato	Yudichak
Fabrizio	Levdansky	Samuelson	
Frankel	Longietti	Santoni	O'Brien, D.,
Freeman	Mahoney	Seip	Speaker

NAYS—99

Adolph	Fleck	Marsico	Raymond
Argall	Gabig	McIlhattan	Reed
Baker	Geist	Mensch	Reichley
Barrar	Gillespie	Metcalfe	Roae
Bastian	Gingrich	Micozzie	Rock
Bear	Godshall	Millard	Rohrer
Benninghoff	Grell	Miller	Ross
Beyer	Harhart	Milne	Rublely
Boback	Harper	Moul	Saylor
Boyd	Harris	Moyer	Scavello
Brooks	Helm	Murt	Schroder
Cappelli	Hennessey	Mustio	Smith, S.
Causar	Hershey	Nailor	Sonney
Civera	Hess	Nickol	Stairs
Clymer	Hickernell	O'Neill	Steil
Cox	Hutchinson	Payne	Stern
Creighton	Kauffman	Peifer	Stevenson
Cutler	Keller, M.	Perry	Swanger
Dally	Kenney	Petri	Taylor, J.
Denlinger	Killion	Phillips	True
DiGirolamo	Mackereth	Pickett	Turzai
Ellis	Maher	Pyle	Vereb
Evans, J.	Major	Quigley	Vulakovich
Everett	Mantz	Quinn	Watson
Fairchild	Marshall	Rapp	

NOT VOTING—0

EXCUSED—2

Perzel	Shimkus
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The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question recurring,

Will the House agree to the amendment?

The clerk read the following amendment No. **A05747**:

Amend Sec. 2 (Sec. 2806.1), page 7, line 21, by inserting after "established."

The program administrator, or its appointed fiscal agent, shall administer any and all funds to be used as payments to the third-party entities, and shall disburse said funds upon finding by the program administrator that the selected third-party entity complied with the terms of the agreement between the program administrator and the selected third-party entity.

Amend Sec. 2 (Sec. 2806.1), page 8, lines 20 and 21, by striking out all of line 20 and inserting

(2) Upon approval by the commission of a recommendation by the program administrator for selection of a third-party entity to

Amend Sec. 2 (Sec. 2806.1), page 8, lines 29 and 30; pages 9 and 10, lines 1 through 30; page 11, lines 1 through 3, by striking out all of said lines on said pages and inserting

(e) Plan goals.—

(1) The program administrator shall ensure that each proposal submitted by a third-party entity to deliver a program of energy efficiency measures includes meeting the goal of reaching an incremental annual energy savings based on a percentage of all electricity sold in calendar year 2007 of 0.4% in 2010 and 2.5% in 2014 and each year thereafter. The program administrator shall ensure that a third-party entity meets the goals contained in this section through the implementation of a program of energy efficiency measures throughout the service territory of the electric distribution company. After December 31, 2014, the commission, in consultation with the program administrator, may adopt additional incremental energy efficiency goals. These additional incremental goals may be based upon, but not limited to: the costs and benefits associated with energy efficiency measures, updated or new technologies and economic conditions that may exist at the time the additional incremental goals are being considered. The commission shall undertake a public hearing process to receive input regarding new proposed new incremental goals prior to their implementation.

(2) The program administrator shall ensure that each proposal submitted by a third-party entity to deliver a program of demand-side response measures includes meeting the goal of reducing peak demand from a target year being the calendar year 2007 on a weather-normalized basis and adjusted to eliminate the effect of emergency load control procedures implemented by a regional transmission organization by an amount equal to 2.0% in the 100 hours of highest demand in 2010, 4.0% in the 100 hours of highest demand in 2012 and each year thereafter. The program administrator shall ensure a third-party entity meets the goals contained in this section through the implementation of a program of demand-side resources measures throughout the service territory of the electric distribution company. After December 31, 2012, the commission, in consultation with the program administrator, may adopt additional incremental peak load reduction goals. These additional incremental goals may be based upon, but not limited to: the costs and benefits associated with demand-side response measures, updated load growth forecasts and economic conditions that may exist at the time the additional incremental goals are being considered. The commission shall undertake a public hearing process to receive input regarding new proposed new incremental goals prior to their implementation.

On the question recurring,
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—98

Adolph	Fleck	Marsico	Raymond
Argall	Gabig	McIlhatten	Reed
Baker	Geist	Mensch	Reichley
Barrar	Gillespie	Metcalf	Roe
Bastian	Gingrich	Micozzie	Rock
Bear	Godshall	Millard	Rohrer
Benninghoff	Grell	Miller	Ross
Beyer	Harhart	Milne	Ruble
Boback	Harper	Moul	Saylor
Boyd	Harris	Moyer	Scavello
Brooks	Helm	Murt	Schroder
Cappelli	Hennessey	Mustio	Smith, S.
Causar	Hershey	Nailor	Sonney
Civera	Hess	Nickol	Stairs

Clymer	Hickernell	O'Neill	Steil
Cox	Hutchinson	Peifer	Stern
Creighton	Kauffman	Perry	Stevenson
Cutler	Keller, M.	Petri	Swanger
Dally	Kenney	Phillips	Taylor, J.
Denlinger	Killion	Pickett	True
DiGirolamo	Mackereth	Pyle	Turzai
Ellis	Maher	Quigley	Vereb
Evans, J.	Major	Quinn	Vulakovich
Everett	Mantz	Rapp	Watson
Fairchild	Marshall		

NAYS—103

Belfanti	George	Mann	Shapiro
Bennington	Gerber	Markosek	Sipthro
Bianucci	Gergely	McCall	Smith, K.
Bishop	Gibbons	McGeehan	Smith, M.
Blackwell	Goodman	McI. Smith	Solobay
Brennan	Grucela	Melio	Staback
Buxton	Haluska	Mundy	Sturla
Caltagirone	Hanna	Myers	Surra
Carroll	Harhai	O'Brien, M.	Tangretti
Casorio	Harkins	Oliver	Taylor, R.
Cohen	Hornaman	Pallone	Thomas
Conklin	James	Parker	Vitali
Costa	Josephs	Pashinski	Wagner
Cruz	Keller, W.	Payne	Walko
Curry	Kessler	Payton	Wansacz
Daley	King	Petrarca	Waters
DeLuca	Kirkland	Petron	Wheatley
DePasquale	Kortz	Preston	White
Dermody	Kotik	Ramaley	Williams
DeWeese	Kula	Readshaw	Wojnaroski
Donatucci	Leach	Roebuck	Yewic
Eachus	Lentz	Sabatina	Youngblood
Evans, D.	Levdansky	Sainato	Yudichak
Fabrizio	Longietti	Samuelson	
Frankel	Mahoney	Santoni	O'Brien, D., Speaker
Freeman	Manderino	Seip	
Galloway			

NOT VOTING—0

EXCUSED—2

Perzel	Shimkus
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Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

On the question recurring,
Will the House agree to the bill on second consideration as amended?

The SPEAKER. Does Representative Ross still wish to withdraw the other amendments?

Mr. ROSS. I have no interest in wasting the time of the body.
The SPEAKER. The Chair thanks the gentleman.

On the question recurring,
Will the House agree to the bill on second consideration as amended?

Bill as amended was agreed to.

(Bill as amended will be reprinted.)

Appendix N

CALENDAR CONTINUED

BILLS ON THIRD CONSIDERATION

The House proceeded to third consideration of **HB 2200, PN 3218**, entitled:

An Act amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, providing for recovery of certain labor relations expenses; further providing for definitions; providing for adoption of energy efficiency and demand-side response; and further providing for duties of electric distribution companies.

On the question,
Will the House agree to the bill on third consideration?

Mr. **GEORGE** offered the following amendment No. **A05845**:

Amend Sec. 3 (Sec. 2806.1), page 9, line 19, by striking out "(c)(6)(iv)" and inserting
(c)(6)(iii)

On the question,
Will the House agree to the amendment?

The **SPEAKER**. The Chair recognizes Representative George on the amendment.

Mr. **GEORGE**. Mr. Speaker, this is a technical amendment that just makes a technical change. It does not change the bill in any way. I ask that we put that in the bill.

The **SPEAKER**. Will the House agree to the amendment? Representative Ross.

Mr. **ROSS**. Thank you, Mr. Speaker.

Although I think this is an excellent amendment, because it exactly mirrors a provision that I suggested, is it not true that we need to suspend the rules in order to do this on third?

The **SPEAKER**. This is a technical amendment. It does not require a suspension of the rules.

Mr. **ROSS**. In that case, I urge a positive vote on this excellent amendment.

The **SPEAKER**. The Chair thanks the gentleman.

On the question recurring,
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—198

Adolph	Gabig	Marshall	Ross
Argall	Galloway	Marsico	Rubley
Baker	Geist	McCall	Sabatina
Barrar	George	McGeehan	Sainato
Bear	Gerber	McI. Smith	Samuelson
Belfanti	Gergely	McIlhattan	Santoni
Benninghoff	Gibbons	Melio	Saylor
Bennington	Gillespie	Mensch	Scavello
Beyer	Gingrich	Metcalfe	Schroder
Biancucci	Godshall	Micozzie	Seip
Bishop	Goodman	Millard	Shapiro
Blackwell	Grell	Miller	Shimkus
Boback	Grucela	Milne	Siptroth
Boyd	Haluska	Moul	Smith, K.
Brennan	Harhai	Moyer	Smith, M.
Brooks	Harhart	Mundy	Smith, S.

Buxton	Harkins	Murt	Solobay
Caltagirone	Harper	Mustio	Sonney
Cappelli	Harris	Myers	Staback
Carroll	Helm	Nailor	Stairs
Casorio	Hennessey	Nickol	Steil
Causer	Hershey	O'Brien, M.	Stern
Civera	Hess	O'Neill	Stevenson
Clymer	Hickernell	Oliver	Sturla
Cohen	Hornaman	Pallone	Surra
Conklin	Hutchinson	Parker	Swanger
Costa	James	Pashinski	Tangretti
Cox	Josephs	Payne	Taylor, J.
Creighton	Kauffman	Payton	Taylor, R.
Cruz	Keller, W.	Peifer	Thomas
Curry	Kenney	Perry	True
Cutler	Kessler	Petrarca	Turzai
Daley	Killion	Petri	Vereb
Dally	King	Petrone	Vitali
DeLuca	Kirkland	Phillips	Vulakovich
Denlinger	Kortz	Pickett	Wagner
DePasquale	Kotik	Preston	Walko
Dermody	Kula	Pyle	Wansacz
DeWeese	Leach	Quigley	Waters
DiGirolamo	Lentz	Quinn	Watson
Eachus	Levdansky	Ramaley	Wheatley
Ellis	Longiotti	Rapp	White
Evans, D.	Mackereth	Raymond	Williams
Evans, J.	Maher	Readshaw	Wojnaroski
Everett	Mahoney	Reed	Yewcic
Fabrizio	Major	Reichley	Youngblood
Fairchild	Manderino	Roae	Yudichak
Fleck	Mann	Rock	
Frankel	Mantz	Roebuck	O'Brien, D., Speaker
Freeman	Markosek	Rohrer	

NAYS—0

NOT VOTING—0

EXCUSED—5

Bastian	Hanna	Keller, M.	Perzel
Donatucci			

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question,
Will the House agree to the bill on third consideration as amended?

The **SPEAKER**. The House will be at ease.

The House will come to order.

On the question recurring,
Will the House agree to the bill on third consideration as amended?
Bill as amended was agreed to.

The **SPEAKER**. This bill has been considered on three different days and agreed to and is now on final passage.

(Bill analysis was read.)

The **SPEAKER**. The question is, shall the bill pass finally?

The Chair recognizes Representative Ross.

Mr. ROSS. Thank you, Mr. Speaker.

Back in 2004 when we passed the Alternative Energy Portfolio Standards, many of us were concerned about the effect that that would have in the long run on electricity pricing when the price caps came off. And over the next couple of years, I and others worked very hard on an idea to try and bring conservation and demand-side management forward as an alternative to reduce the cost of electricity when the price caps came off. A good deal of us worked on that and we made some significant progress on that over the last year or so, and I am pleased to see that much of what I was looking for in my legislation is contained in this bill as it currently is before us.

I am, of course, also disappointed, because it could be better. I am disappointed that we did not have more conversation, despite my efforts to reach across the aisle. And I would say that we have many speeches about bipartisanship, and I think they are important. But we have to also, in addition to having speeches about bipartisanship, we actually have to have conversations. We have to talk to each other, and I am disappointed that we did not have those conversations until after the voting was taken yesterday.

After the voting is taken, it is really too late. The conversations need to be had previous to that, when the language can be improved. It does not matter whose name is on this bill. When it goes to the Governor's desk, the names come off the bill and the language is left, and that is why it is important to improve the language, not with just one-half of the body but with the whole body, with every intelligent member participating fully and involved in the discussions.

I am hoping we are going to change. I am hoping we are going to start talking to each other in a useful way so that we can improve the quality of the legislation that we give to the public. It is important for the public, and I think that this is a good time to start making that change.

I urge a positive vote on this, and I urge all the members, Republicans, Democrats, Mr. Speaker, to work together more effectively in the future.

The SPEAKER. Representative Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Speaker.

Mr. Speaker, I rise in opposition to passage of HB 2200, and let me tell you why.

I believe that in its original, unamended form, before it came to the House floor, there were a lot of redeeming qualities in the bill. It did promote conservation, and that is a laudable goal for Pennsylvania, to try to conserve energy use. However, by the amendments passed yesterday, which mandated universal smart meters across Pennsylvania, that is a fatal flaw that makes this bill a bad idea for Pennsylvania. It is bad for the consumers of Pennsylvania who will have to pay for those smart meters, whether they save on their electric bills or not. It makes no sense whatsoever to force people to pay for those smart meters and then, in addition, still pay higher and higher utility bills.

It was said yesterday that if only 1 percent of the people used smart meters, we would have huge savings in energy use in Pennsylvania, and, Mr. Speaker, I agree with that statement. But my idea is, let us get the smart meters only to those 1 percent of the people and get this same savings in energy use. That is the smart way to move forward to promote energy conservation, to use technology like smart meters in a targeted and commonsense way instead of a mandated, across-the-board

consumer tax – that is what it is, a couple hundred dollars per person – that will have to be paid to pay for these smart meters.

So after adding that fatal flaw to this bill, I think it is incumbent upon everyone in this chamber to vote against HB 2200, and I ask them to join me in that vote. Thank you, Mr. Speaker.

LEAVE OF ABSENCE

The SPEAKER. The Chair recognizes the minority whip, who requests that Representative Sam ROHRER be placed on leave for the remainder of the day. The Chair sees no objection. Leave will be granted.

CONSIDERATION OF HB 2200 CONTINUED

The SPEAKER. The Chair recognizes Representative George.

Mr. GEORGE. Mr. Speaker, again, I echo the gentleman, Mr. Ross—

The SPEAKER. If the gentleman will suspend.

The Chair will ask the members to please take their seats and quiet their conversations. Conferences will break up. Conferences will break up. The House will come to order.

Representative George is in order and may proceed.

Mr. GEORGE. Mr. Speaker, do you think there is a possibility they do not want to hear what I have to say?

The SPEAKER. I do not think that is a possibility, Representative.

Mr. GEORGE. Well, as I said at the start, I admire Representative Ross's courage to do the best thing for all whom we serve, regardless of principle or party, and I commend him for his positive approach to what we should do for our constituents in that HB 2200 gives utilities and consumers the framework that they must have to counter the looming increases in generation charges.

In a nutshell, HB 2200 institutes rewards rather than penalties for conserving energy. Under HB 2200, utilities would be required to reduce overall output by 2 1/2 percent and peak demand, when energy prices are at their highest, by 4 percent.

HB 2200 would direct the State Public Utility Commission to establish the criteria for implementing conservation and efficiency programs and to select a program administrator to oversee the program's implementation within each utility. Under HB 2200, programs would be designed to benefit all classes of ratepayers – all classes – from the homeowners and the renters to the largest of industrial users. For the utilities, HB 2200 would establish a clearly defined process for financial compensation for meeting performance benchmarks.

Other States have realized – hear this – other States have realized a \$2 savings for constituents for every dollar invested by the utilities in efficiency measures. Currently, however, Pennsylvania ranks 44th among States in per capita spending on energy efficiency for utilities.

My colleagues, we thank you for your consideration of HB 2200. Thank you, Mr. Speaker.

The SPEAKER. Representative Preston.

Mr. PRESTON. Thank you, Mr. Speaker.

HB 2200 really takes us into the term of 2000. Last year when I had a hearing, I had a person who was involved in marketing and advertising and had talked to me about that she

did the first ad in 1985 for smart meters. Now, I do not know, but I had heard some gentleman previously talk about, well, we do not need to do this or do that – since 1985. It is time to move forward. It is time to get the business on today. Think of all the energy we could have conserved instead of listening to somebody with a laissez-faire attitude about, let us hold off; let us hold off; let us stop doing this. Let us just get this on today so that we can save energy for the future and the generations of tomorrow.

Let us vote 2200 today.

On the question recurring,
Shall the bill pass finally?

The SPEAKER. Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS—152

Table listing names of members who voted 'YEAS' (152 total). Includes names like Adolph, Argall, Barrar, Bear, Belfanti, Benninghoff, Bennington, Beyer, Biancucci, Bishop, Blackwell, Boback, Boyd, Brennan, Buxton, Caltagirone, Carroll, Casorio, Civera, Cohen, Conklin, Costa, Cruz, Curry, Cutler, Daley, Dally, DeLuca, DePasquale, Dermody, DeWeese, DiGirolamo, Eachus, Evans, D., Evans, J., Fabrizio, Fairchild, Frankel, Freeman, Gabig, Galloway, George, Gerber, Gergely, Gibbons, Godshall, Goodman, Grell, Grucela, Haluska, Harhai, Harkins, Harper, Helm, Hennessey, Hickernell, Hornaman, James, Josephs, Keller, W., Kenney, Kessler, Killion, King, Kirkland, Kortz, Kotik, Kula, Leach, Lentz, Levdansky, Longietti, Mahoney, Major, Manderino, Mann, Mantz, Markosek, Marsico, McCall, McGeehan, McI. Smith, Melio, Mensch, Micozzie, Milne, Moyer, Mundy, Murt, Myers, Nailor, Nickol, O'Brien, M., O'Neill, Oliver, Pallone, Parker, Pashinski, Payne, Payton, Petrarca, Petri, Petrone, Phillips, Preston, Quigley, Quinn, Ramaley, Raymond, Readshaw, Reed, Roebuck, Ross, Rubley, Sabatina, Sainato, Samuelson, Santoni, Scavello, Schroder, Seip, Shapiro, Shimkus, Siptroth, Smith, K., Smith, M., Solobay, Staback, Stairs, Steil, Sturla, Surra, Tangretti, Taylor, J., Taylor, R., Thomas, True, Vereb, Vitali, Wagner, Walko, Wansacz, Waters, Watson, Wheatley, White, Williams, Wojnaroski, Yewcic, Youngblood, Yudichak.

NAYS—45

Table listing names of members who voted 'NAYS' (45 total). Includes names like Baker, Brooks, Cappelli, Causer, Clymer, Cox, Creighton, Denlinger, Ellis, Everett, Gillespie, Gingrich, Harhart, Harris, Hershey, Hess, Hutchinson, Kauffman, Mackereth, Maher, McIlhatten, Metcalfe, Millard, Miller, Moul, Mustio, Peifer, Perry, Pickett, Pyle, Reichley, Roae, Rock, Saylor, Smith, S., Sonney, Stern, Stevenson, Swanger, Turzai.

Table listing names of members who were absent: Fleck, Geist, Marshall, Geist, Rapp, Vulakovich.

NOT VOTING—0

EXCUSED—6

Table listing names of members who were excused: Bastian, Donatucci, Hanna, Keller, M., Perzel, Rohrer.

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

* * *

The House proceeded to third consideration of **HB 949, PN 2933**, entitled:

An Act amending the act of July 10, 1990 (P.L.404, No.98), known as the Real Estate Appraisers Certification Act, further providing for real estate appraiser certification required, for State Board of Certified Real Estate Appraisers, for powers and duties of board, for application and qualifications, for reciprocity, for certification and licensure renewal, for disciplinary and corrective measures, for reinstatement, for reporting of multiple certification, for surrender of suspended or revoked certificate, for penalties and for injunctive relief.

On the question,
Will the House agree to the bill on third consideration?
Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

(Bill analysis was read.)

The SPEAKER. The question is, shall the bill pass finally?
Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS—197

Table listing names of members who voted 'YEAS' (197 total). Includes names like Adolph, Argall, Baker, Barrar, Bear, Belfanti, Benninghoff, Bennington, Beyer, Biancucci, Bishop, Blackwell, Boback, Boyd, Brennan, Brooks, Buxton, Caltagirone, Cappelli, Gabig, Galloway, Geist, George, Gerber, Gergely, Gibbons, Gillespie, Gingrich, Godshall, Goodman, Grell, Grucela, Haluska, Harhai, Harhart, Harkins, Harper, Harris, Marshall, Marsico, McCall, McGeehan, McI. Smith, McIlhatten, Melio, Mensch, Metcalfe, Micozzie, Millard, Miller, Milne, Moul, Moyer, Mundy, Murt, Mustio, Myers, Rubley, Sabatina, Sainato, Samuelson, Santoni, Saylor, Scavello, Schroder, Seip, Shapiro, Siptroth, Smith, K., Smith, M., Smith, S., Solobay, Sonney, Staback, Stairs.

Appendix O

SB 1107 (Pr. No. 2472) (Rereported) (Concurrence)

An Act amending Titles 23 (Domestic Relations) and 51 (Military Affairs) of the Pennsylvania Consolidated Statutes, further providing for modification of existing custody orders; and providing for protection of deployed members of the Pennsylvania National Guard and reserve components in child custody arrangements.

SB 1504 (Pr. No. 2454) (Rereported) (Concurrence)

An Act providing for the highway capital budget project itemization for the fiscal year 2008-2009 to be financed from current revenue or by the incurring of debt.

CONSIDERATION OF CALENDAR RESUMED

BILL ON CONCURRENCE IN HOUSE AMENDMENTS TO SENATE AMENDMENTS AS AMENDED

SENATE CONCURS IN HOUSE AMENDMENTS TO SENATE AMENDMENTS AS AMENDED

HB 1096 (Pr. No. 4527) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act, further providing for definitions; establishing the Uniform Construction Code Review and Advisory Council; and further providing for revised or successor codes and for training of inspectors.

On the question,

Will the Senate concur in the amendments made by the House to Senate amendments, as further amended by the Senate, to House Bill No. 1096?

Senator PILEGGI. Mr. President, I move that the Senate do concur in the amendments made by the House to Senate amendments, as further amended by the Senate, to House Bill No. 1096.

On the question,

Will the Senate agree to the motion?

The yeas and nays were required by Senator PILEGGI and were as follows, viz:

YEA-50

Armstrong	Fontana	O'Pake	Tartaglione
Baker	Fumo	Orie	Tomlinson
Boscola	Gordner	Piccola	Vance
Browne	Greenleaf	Pileggi	Washington
Brubaker	Hughes	Pippy	Waugh
Corman	Kasunic	Punt	White, Donald
Costa	Kitchen	Rafferty	White, Mary Jo
Dinniman	LaValle	Regola	Williams, Anthony H.
Earl	Logan	Rhoades	Williams, Constance
Eichelberger	Madigan	Robbins	Wonderling
Erickson	McIlhinney	Scarnati	Wozniak
Ferlo	Mellow	Stack	
Folmer	Musto	Stout	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

THIRD CONSIDERATION CALENDAR RESUMED

BILLS ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 2200 (Pr. No. 4526) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, further providing for director of operations, secretary, employees and consultants; repealing provisions relating to office of trial staff; further providing for bureaus and offices; providing for other bureaus, offices and positions; further providing for electric utility definitions; providing for energy efficiency and conservation program and for energy efficiency and conservation; further providing for duties of electric distribution companies and for market power remediation; and providing for procurement, for additional alternative energy sources and for carbon dioxide sequestration network.

Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,

Shall the bill pass finally?

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Bucks, Senator Tomlinson.

Senator TOMLINSON. Mr. President, I rise to ask for support for House Bill No. 2200 as amended by the Senate. I think this is very, very important legislation for our consumers today who consume power and energy in Pennsylvania. House Bill No. 2200 is, I think, a large step forward. The Governor of the State of Pennsylvania, Ed Rendell, has been a leader in a new energy policy, and this legislation contains many of those items in there.

It includes demand-side reduction, conservation, that I think is going to help the consumer, in the long run, to reduce the demand on power. We are requiring a reduction of 3 percent by the year 2013 and 4 1/2 percent for peak power, and I think that is extremely important as we go forward with an energy policy, Mr. President. It also contains language in there that we will have smart meters. It is not mandated, but it allows for the deployment of smart meters through a depreciation process, through new home construction process, and through the depreciation of 15 years, and for anyone who wants to purchase a smart meter which they feel will help them manage their electric load better.

I think probably the most important reason that we do this is the procurement language. As many of you know, we fought, in the last few months, trying to get mitigation for rate caps coming off. So that is a year or 2 away in some instances, and I think we have more time to fight that battle, but something that I think will help the consumer immediately will be the fact that we have new procurement standards. We no longer are going to use market pricing. We are going to use best pricing or least price for the consumer, and I think that helps the consumer in the end, when utilities are able to go out and compete for power as they purchase it for the distribution company.

I think that by offering these different tools and giving some latitude, people are not locked into buying power in 1 day for the rest of their contracts. Many of you are aware of the Pike County

situation, where after the episode of Katrina, Pike County and that utility up there were forced to buy their power the day after the hurricane, and of course, the rates were extremely high. Under our provisions here for procurement, we would be able to prevent that. And so for that reason, I think that would be a huge step forward in trying to bring electric rates down for the consumers in Pennsylvania.

I am disappointed. I fought hard to try to get mitigation. I do not think that is possible now, but I do not think that chapter is closed. I think that we are going to stand here and fight hard in these next 2 years and fight for mitigation or fight to make sure that any rate increases when the caps come off are not onerous for our consumers. But I think it is important today that we step forward and take these steps when it comes to demand-side reduction, to energy conservation, and to procurement, to make sure that we are moving forward with a very sensible energy policy in Pennsylvania.

I want to thank several people here. I want to thank Senator Boscola, my counterpart on the committee, for her hard fight and her cooperation. I want to thank my counterparts in the House, Representative McCall and Representative Preston. I want to thank our staffs. Fran Cleaver and Kathy Eakin have worked extremely hard, along with Bernie Kieklak and Christopher Craig, who have done an outstanding job, particularly, I think, in representing the interests of the consumer in this.

We are very, very fortunate in Pennsylvania to have some very strong utility companies, and we are, in fact, an exporter of power. We are, in fact, very energy-independent. We export probably 40 percent of the power we produce. Thirty-five percent of our power is produced by nuclear, and we are, of course, very, very rich in coal resources in Pennsylvania. So I think we have a great base in our energy policies and in our energy companies here to be able to go on and move into some of our alternative energies, to move into a better energy policy, as the Governor has asked for.

So I think this is a great compromise bill. It has been hard-fought. There are very, very strong and passionate positions on both sides of this issue. But I think it is time now to move forward, help the consumer, move forward with a forward-thinking energy policy that the Governor has put forward, and pass this bill today. So for that reason, Mr. President, I ask for a favorable vote on House Bill No. 2200 as amended by the Senate.

The PRESIDENT pro tempore. The Chair recognizes the gentlewoman from Northampton, Senator Boscola.

Senator BOSCOLA. Mr. President, as we all know, electric rate caps are scheduled to expire in Pennsylvania's five largest electric companies in 2010. And if we do nothing, if we do nothing to protect millions of electric customers from rate shock, the people we represent will see their bills go up by 30, 40, 50, and up to 70 percent in some areas, and that will be overnight.

Today, in House Bill No. 2200, we can finally do something to help millions of ratepayers hold on to more of their money instead of having to send it to their electric company. The procurement provisions contained in this bill will force power companies to purchase least-cost fuel instead of purchasing coal or natural gas or uranium at prevailing market rates, which is more expensive. It also gives Pennsylvania's Consumer Advocate the

tools he needs to keep electric prices as low as possible in the future. That is why our Consumer Advocate endorses this bill today, and personally assured me late last night that passing House Bill No. 2200 today is the right thing to do.

The other major provision of this bill deals with energy conservation and some very important steps that we all need to take for electric use. So-called smart meters by themselves are not magically -- anyone's monthly electric bill is not going to go down just because you are getting a smart meter. That will not happen. But this new technology will reward customers who are smart enough to realize that they can use electricity when it is cheapest during off-peak hours and pay a lower rate. We also made sure that smart meters would not be mandated for every single ratepayer. Not only is that a smarter approach to smart meter deployment, but it will also save electric customers hundreds of millions of dollars paying for something that will not provide a real benefit in their own households.

There is also strong market manipulation language in House Bill No. 2200, and that is what Senator Mellow insisted on being part of this bill. He should be commended for that, and we should not overlook that critical provision, because it will insure that real competition will not be undermined by existing power companies manipulating the wholesale market or the retail market to their own advantage.

What is not contained in this bill, unfortunately, is a real rate relief mitigation plan that I think the Senate needs to pass eventually. As everyone in this Chamber knows, that is what I have been fighting for for the past 2 years, and I do not doubt anybody knows that I am passionate about it, and this is just the beginning of this fight. Now, have we reached an agreement on mitigation yet? No. Despite our best efforts and ongoing negotiations that lasted into early morning, we have not. But I believe we are getting there.

And I know for a fact that we are closer to real rate mitigation now than we were 2 weeks ago or 2 months ago or 2 years ago. If there is anyone who wants to dispute that, you just have to take my word for it. And you can ask Senator Pileggi and Senator Tomlinson. They both sat in marathon sessions, negotiating sessions, and they want what we all want. We want Pennsylvania power companies to put up their own money to make it easier for customers to afford the new deregulated electric rates in 2010 and 2011. To do that will cost billions of dollars, billions, billions, that the companies would have given to their shareholders or slickly added to their profits.

So real rate relief, not just some Christmas card program or a plan to add some coupons, stuff some coupons in your pocket and save \$10 off your next purchase of a \$30,000 solar panel, that is not real rate relief. Just because it did not all come together at the eleventh hour like it does in the movies does not mean that we are done and that mitigation is dead. I have too much respect for Senator Pileggi, Chairman Tomlinson, Senator Fumo, and Senator Mellow to doubt that we will have a mitigation plan in place before rate caps come off. I also know that Governor Rendell will not rest until we have a mitigation plan in place that helps the ratepayers, small businesses, and our most vulnerable industries from this rate shock.

Together, we have put a tremendous amount of time into making this bill good for ratepayers and good for Pennsylvania. I

want to thank Senator Pileggi and Kathy Eakin and Dave Woods on his staff, Senator Tomlinson for going above and beyond the call of duty on this very, very complicated issue, and of course, my shopping partner, Fran Cleaver on his staff. I want to also thank Senator Mellow and Senator Fumo for their faith in me during these times when the obstacles seemed almost insurmountable, and both Gladys Brown and Christopher "Wing Man" Craig, who distinguished themselves in the heat of so many battles here and so many late, late nights and early mornings of hard, hard work.

Our job is not finished. There is still a lot of work to do. As of today, we have 449 days left to get it done before the rate caps come off, and get it done right. And as of today, after talking to Governor Rendell, he had indicated that he will take the bus that he goes around in across the State, and we are going to talk rate mitigation come January and February and take that bus to every corner of the State until we get a rate mitigation plan in effect before 2010.

Thank you, Mr. President. I thank everybody for all their hard work, and let us try to move forward. Thank you.

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Schuylkill, Senator Rhoades.

Senator RHOADES. Mr. President, first, I want to applaud everyone who has worked so hard on this particular issue - Senator Tomlinson and his staff, Senator Pileggi, and everyone who has been involved and committed to this. I really do think we have a good piece of legislation, but I am going to agree with the gentlewoman from Northampton, because I will tell you what, 10 years ago may have been--and I say may have been--the first and the only time I voted for deregulation.

But the decision I made then was based on what I perceived to be the statements made to me, and as I saw it, that this would result in lower or at least the same level playing field rates for consumers. There was no talk then of a cost increase. There was no talk of a projection increase. There was no talk of a 35- or 40-percent increase at the end. And we still allowed the stranded costs. Then I look over that 10-year period, and the local company I have has made billions of dollars of profit, has been able to distribute very fine dividends to its stockholders. That is fine. That is excellent. That is good.

We have gone from a regulated monopoly to an unregulated monopoly, and I have problems with that. I do not want to move on any piece of legislation until I see the mitigation piece and how it is going to affect the consumers. Then I will say we should do the whole thing. I want to see how it affects the consumers, what it is going to mean to them, and how we are going to put it in place. I know, I hear, well, we will give them a 75-percent break, then a 50-percent break, then a 25-percent break, but as a company borrows that money, you know who is going to end up paying the interest on it. Or I will tell you what, you put your deposit in, and I will give you 6 percent now. Why do I have to go through that gyration when I should have had an understanding, at least it was projected to me, that all things will remain basically the same, except now, you will be able to go out and be at least more competitive. I have not seen that.

Another grave concern I have, too, is I want to make sure that PPL retirees, and those are the people I am talking about, have their pension system put in a separate account. I do not want to

end up like Bethlehem Steel, where it ended up that they closed down, and then I had people looking for pensions. I want these kinds of things to be understood, and I want to know what the consumer is really going to have to pay before I can pass on anything. So for that reason, I will be voting "no."

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Allegheny, Senator Ferlo.

Senator FERLO. Mr. President, with all due respect to all the self-congratulatory accolades being expressed, I am very disappointed in the final outcome represented in this bill, House Bill No. 2200, and it quite honestly represents a sucker punch in the face of electric ratepayers, both individual homeowners and ratepayers at a residential level, as well as those in the small business community, and even larger businesses that are going to have to continue to bear exorbitant rate hikes and rate increases when it comes to electricity.

I am disappointed mostly because as a benchmark piece of legislation, this legislation does not admit or declare in some type of form the horrendous failure that so-called electric choice has been. The State legislature should be held accountable for a bad decision made over 10 years ago in creating so-called electric choice. The only electric choice we have, basically, is to continue to pay exorbitant electric rates.

There is no true competition. There is basically an almost fraudulent methodology by which electricity is purchased on the PJM marketplace. We have companies going to Wall Street, blatantly and with very clear annual statements and reports, even documenting the amount of profiteering that they are going to make off the backs of ratepayers. And as one of my most brilliant colleagues reported at a press conference in June, the rate hikes will basically represent probably the largest tax increase on the backs of Pennsylvania residents and businesses, although it will not be in the form of taxes. It will come through the back door in the form of higher electric rates.

Needless to say, I am less than pleased. I have three amendments here. Two deal, actually, with the issue that everybody seems to say they want, and that is rate mitigation. Well, I have two amendments right here. One is to extend the rate caps to 2013. Another one is to implement a more modified rate cap over a 5-year period at 9 percent per year, which would at least create less pain for residents and small businesses. I am also concerned, at a third level, about the fact that this legislature, just 2 1/2 years ago, removed the so-called Chapter 14 provisions, which at least provided some consumer protections under the Public Utility Commission code.

We have had over 60 house fires in this State in the last 2 years since the removal of the Chapter 14 consumer rights provisions, where people have actually died in their houses, people trying to keep gas and light on either illegally or inappropriately, or during the winter months, trying to use kerosene heaters, lighting wood and fuel. That is a horrendous situation, and given the harsh reality of the economics of this country right now, today, and what everybody admits is going to be hard times for the next several years, I find it reprehensible that we are not able to proceed with some level of rate cap mitigation in this bill and, as well, some restoration of consumer rights to provide opportunities to ban winter shutoffs, to allow a more rational and reasonable reconnect policy as to how much people have to pay to get

their gas and light put back on by the utility company, to allow the Public Utility Commission to reenter as the mediator between the utility companies' narrow self-interests and the ratepayer. Right now, say you are on the phone with some operator, you do not even know if the operator works in China or India or Asia, and you are trying to argue about some consumer right that you feel you have to try to get a more reasonable reconnection. You have no rights whatsoever. We should restore that. And I have amendments that do that.

It is clear, however, that there are important elements in this bill that I certainly would not want to oppose or argue with, because I have fought hard. I have fought hard for some of the provisions that are in this bill, including the provision for the least-cost purchase price, and that is very important. And there are other elements of this bill that none of us would want to argue about, because, in fact, they are moving forward in trying to create a more level playing field between outright profiteering and the ability of small businesses and residences to survive in our Commonwealth with a needed, basic right to electricity.

So I am betwixt and between. There is not majority support to support these amendments, so I am not going to go forward in a Don Quixote fashion and offer amendments on the mitigation side of the equation, and I believe that come January, when people will be freezing to death, maybe there will be an ability for both sides of the aisle, in a nonpartisan way, to come together to talk about restoring some of the consumer protections.

So at this eleventh hour, as my colleague reported, I think it is important that we move forward on the bill, but I do think it is inappropriate that we were not able—and we keep saying we are rushed, it is the eleventh hour. I mean, we do not set the agenda on this side of the aisle. You all do on the aisle opposite. I do not know what says that we have to leave today. I know there is an election coming up in a few weeks. I do not know what says that we cannot reconvene to really deal with the rate cap mitigation. It is not rocket science.

So I am very disappointed, but I think it is important that we try to move forward on this bill, and accordingly, Mr. President, I will not be offering the amendments. Thank you.

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Beaver, Senator LaValle.

Senator LaVALLE. Mr. President, as most people probably know, up until about an hour ago, I was prepared to vote "no" on this bill simply because I really wanted to see rate cap mitigation included. I thought that was the direction we were going. Since that time, and I want to be on record, the Governor has assured us that beginning in January, he will do all that he can to address that issue. Senator Boscola has been committed to addressing the issue and working as hard as she can possibly work to get the rate cap mitigation included, or at least address that issue next year. So although I am not very happy with not having it in now, I am prepared to vote "yes."

As Senator Ferlo said, there are some good things in the bill. However, you know, I am not going to be here next year, so the guy who takes my place when the rates go sky high, he can take all the complaining, and I will be one of the complainers. So, hopefully, we will do something to relieve him of that pain.

Thank you, Mr. President.

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Mr. President, I want to thank Senator Ferlo for not offering his amendments today, because I think that would have ultimately denied us the opportunity of voting on House Bill No. 2200. I want to thank Senator LaValle and the other Members of my Caucus who were negative and are now positive. But I also want to echo some of the comments, in two particular areas.

This is not a bad bill. This is not a vote against mitigation, which we all seem to want, in one form or another, but this is a step in the right direction. The procurement portions of this bill will result in immediate ratepayer savings. As was mentioned earlier, and I just want to reemphasize, this legislation will change the current law and force utilities to purchase their electricity at the least possible rate, the lowest-cost rate, not the phony market rate that the current law allows them to do.

Secondly, it will require them to have a mix in their portfolio of long-term, short-term, and middle-term contracts, which will ultimately also benefit the consumer. It will require them, in that portfolio, to have at least some long-term contracts, more than 4 years, but not less than 20. And as was also said, the amendment will impose significant safeguards intended to prevent market manipulation and self-dealing.

In addition to that, the bill has been amended to say that the maximum fine will not be \$5 million, which to some of these large utilities is just merely the cost of operation, but rather \$20 million, which is some pain.

Then, on the demand side, we do have long-term goals and positions that will save us energy in the long run. But like everything else, no one wants to hear about that, because it is not going to really kick in for 8 to 10 years. But it is there, and future generations will be the beneficiaries of that. In addition, we did not mandate smart meters, but we made them optional. We did say in new construction, where they really are practical, they will be put in.

So this is not a bad vote for anybody. What has been explained to me in the main argument that I have heard is that, gee, we blew an opportunity. We had some leverage. We had no leverage with utility companies on this bill. This was similar to the guy who stands there with a gun to his head and says to the other guy, if you move, I will shoot. There was no leverage against utility companies in this bill.

Next, I want to address, because I, too, will not be here, but I was here in 1996 when I not only voted against deregulation, I predicted that there would not be any competition, and regrettably, my prediction has come true. But then I sued PECO, and I was the one who got the 8-percent reduction and the current caps that we have. Now I am beginning to think it was the right thing to do. We saved people billions of dollars, but when it comes off, they are going to be upset.

In addition to that, the people have not yet gotten the message. That is why I think the utility companies have made a major strategic mistake by not attempting to resolve mitigation at this stage. What is going to happen is every day they delay in coming to the table, and every day we do not do anything about mitigation in the next Session, more and more pressure is going to be built up

against them. And I know the reality here, having served here over 30 years. We are usually dealing with this lobbyist versus that lobbyist, this union versus this construction company, and all these special interests. For the first time, when this begins to become a reality, the power base will not be with any lobbyist, will not be with any special interest group. It will be with those who are with the people. The people will rebel. The people will demand mitigation far in excess, far in excess to what we are willing to compromise with today. But the utilities will ultimately pay for that arrogance.

Lastly, because I will not be here, the way to serve consumers is not to get \$1.5 billion, \$2 billion, \$5 billion, \$10 billion, \$20 billion into this, because we are now dealing with an unregulated utility industry. We have never done that before. They were always regulated, until 1996, when we deregulated, and then immediately, they had the caps imposed upon them so no one ever suffered or saw the reality of an unregulated monopoly, and that is what we have here. So when that happens, getting \$1 billion or \$10 billion is not going to help, because they are not regulated. They will just get it back again. It is a shell game. The only real way to protect the consumer is to devise a scheme that would have in it some sort of index with a ceiling that would go forth in perpetuity, and that ceiling might be inflation plus 2 percent, 3 percent, or whatever. But that will do two things. That will give consumers predictability in where their rates are going, it will protect them from the gouging, and it will also give utility companies predictability. That should be the goal you strive for in the next Session.

But in the end, voting for this bill is a major step forward, and this will save consumers and ratepayers money right now. It is not that we are not doing anything for them. We are. We would like to do more. We will do this now, given the reality. So I urge everyone to vote in the affirmative, and from what I understand on our side of the aisle, that will be a reality. I am very happy about that, and I want to thank my colleagues for that, and I would hope on the other side that we can get very near that unanimous number as well, to show the public that we do care, that we do have concerns for what is going to hit them. Because right now, they are getting beat up every which way from Sunday with the stock market, with their IRAs, savings accounts, the cost of food, the cost of gasoline, the cost of heating oil. We can help them with this. This is a step in that direction, and we should do more, and I am positive we will do more in the next Session.

Thank you, Mr. President.

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Bucks, Senator Tomlinson.

Senator TOMLINSON. Mr. President, I will be brief. I just want to reiterate that the utilities were never held at leverage. The utilities were never who we could get anything out of. It was always the Governor's proposal on energy. It was the Governor whom I was looking forward to bringing in to help us, against the utilities, to bring about mitigation. The Governor stepped up, the Governor stepped in, and the Governor had meetings.

The Governor called in all the CEOs and executives from the utility companies. I was in some of those meetings, and my colleagues from the other side of the aisle were in some of those meetings, and we tried very, very hard. And some utilities

stepped up. Some utilities offered some plans. Some utilities did not. I do not think it is something we can do piecemeal. I do not think it is something we can do with one utility and not with another utility. We just did not get all of the utilities together. But that is not a reason not to vote for this legislation.

This legislation-- I cannot believe that the utilities can be happy about the procurement language that we are about to propose. I think this procurement language helps the consumer, gives the PUC oversight over these contracts, allows them to look at these contracts to make sure that there is not any manipulation in the contracts. So I think we have given more tools to the consumer by allowing this.

Right now, there are actually two cases before the PUC. If we vote this out and the Governor signs this, that will give the PUC the power to actually help the consumer in those two rate cases because we changed the standards from market to best price or least price for the consumer, instead of market price. So I think it is extremely important to the consumer that we move this forward. It is extremely important when we start moving this energy policy into the new technologies, into the meters. Not everyone believes in universal meters and mandatory meters, but it is a technology that we have to move into. It is a technology that I think, in the future, is going to show more benefit to the consumer. And certainly, we should start to manage our demand side. We have to bring that peak power load down.

So there is a lot of good in this legislation. It is extremely important, I think, that we move forward, and the fight is not over. I want to thank Senator LaValle for his passion in the meetings that we have had on this. He has done a wonderful job standing up for the consumer. I want to thank Senator Ferlo for his passion, and I know he is going to continue to be here to help us fight that fight. But the leverage is not on this legislation, the leverage was on the Governor holding up his legislation to help me leverage the utilities. The Governor has done that, and I am confident the Governor is going to continue to help us fight the utilities and fight and bring about an equitable settlement with them.

So, with that, I think this is a very good bill. It is a good compromise bill. I think the administration has given up a lot to get this done, and I think we have given up a lot to get this done. Not everybody is totally happy with this. I know the Governor would like to have seen a little bit more. I would like to have seen a little bit more. I think it is a good compromise bill, and I ask for an affirmative vote. I would also like to thank Senator Fumo, whom I did not mention before, who has worked very, very hard to try to bring this thing together. And I thank Senator Fumo very much for his help on this.

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Delaware, Senator Pileggi.

Senator PILEGGI. Mr. President, I will be brief. I do not want to repeat all of the comments that have been made, many of them valid. I do want to address a couple of comments made, the comments by Senator Ferlo regarding the shutoff legislation that was contained in an amendment he planned to offer. I had told him privately, and I will repeat publicly, that I am willing to work with him on that important issue as we move toward the next Session, and hopefully we can reach an improvement in the cur-

rent law as it pertains to people facing both shutoff notices and the difficult task of being reconnected to utilities once they go through a shutoff process.

As to the issue of mitigation, I share Senator Boscola's comments as to the importance of that litigation being worked on and addressed here. I have said publicly that that was probably the most important topic that we needed to address in the various topics of energy legislation. Unfortunately, we simply were not able to reach an agreement on legislation to deal with that now, but I will continue to work with Senator Boscola and the other Members of the Senate who are interested in this topic. It is something that we absolutely have to do for consumers in Pennsylvania going forward.

I do want to commend Senator Tomlinson for his leadership on this issue and his patience over, now, almost 2 years in working through these issues; Senator Boscola and the leadership on the other side of the aisle, Senator Mellow and Senator Fumo, in working through these difficult issues; and also their staffs who worked very long hours. Although not complete because we do not have the mitigation legislation as part of this package, I think this is a tremendous improvement in the law in Pennsylvania on demand-side management and on procurement, and it is certainly something worthy of support by every Member of this body. I urge an affirmative vote.

Thank you, Mr. President.

LEGISLATIVE LEAVE

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Delaware, Senator Pileggi.

Senator PILEGGI. Mr. President, I request a legislative leave for Senator Punt.

The PRESIDENT pro tempore. Senator Pileggi requests a legislative leave for Senator Punt. Without objection, the leave will be granted.

And the question recurring,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-47

Armstrong	Fumo	O'Pake	Tartaglione
Baker	Gordner	Orie	Tomlinson
Boscola	Greenleaf	Piccola	Vance
Browne	Hughes	Pileggi	Washington
Brubaker	Kasunic	Pippy	Waugh
Corman	Kitchen	Punt	White, Donald
Costa	LaValle	Rafferty	White, Mary Jo
Dinniman	Logan	Regola	Williams, Anthony H.
Earll	Madigan	Robbins	Williams, Constance
Erickson	Mellhinney	Scarnati	Wonderling
Ferlo	Mellow	Stack	Wozniak
Fontana	Musto	Stout	

NAY-3

Eichelberger	Folmer	Rhoades
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A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same with amendments in which concurrence of the House is requested.

HB 2294 (Pr. No. 4525) -- The Senate proceeded to consideration of the bill, entitled:

An Act providing for the licensure of persons providing debt management services and for the powers and duties of the Department of Banking; requiring surety bonds; prohibiting certain fees and costs; providing for debt management plans; and prohibiting certain acts by persons providing debt management services.

Considered the third time and agreed to,
And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Allegheny, Senator Costa.

Senator COSTA. Mr. President, I offer remarks for the record.

The PRESIDENT pro tempore. The remarks will be spread upon the record.

(The following prepared remarks were made part of the record at the request of the gentleman from Allegheny, Senator COSTA:)

Mr. President, I rise in support of this bill and to make a few brief remarks.

First, I would like to thank Senator Browne, Senator Greenleaf, Senator Stack, and Senator Fumo for their work on this important piece of legislation. Their efforts helped to address many of the concerns expressed by nonprofit consumer credit counseling agencies and made this bill a much better product.

For the first time, this legislation establishes a regulatory framework governing consumer credit counseling agencies, both for-profit and nonprofit agencies. We are in the midst of one of the greatest financial crises in our nation's history. A large part of the problem we are experiencing has to do with consumer debt. For better or worse, many in our communities have gotten in over their heads. In this atmosphere, many will rely on credit counseling agencies to provide advice and guidance, as well as assistance to put them into a debt management or debt settlement program.

Now is a great time for this legislation because it will impose strong regulation through the Department of Banking on the entities that will provide this important advice and services to consumers. Currently, there is no requirement to be licensed to offer debt management services or debt settlement services in Pennsylvania.

The bill would require that those offering debt management services be licensed, bonded, and certified. Further, the bill offers significant enforcement powers to the Department of Banking as well as remedies for aggrieved persons. The bill sets limitations on fees a consumer may be charged. This is an important consumer protection change to the law, as there currently are no limitations on the fees a consumer may be charged.

The legislation requires entities offering debt management services or debt settlement services to be licensed by the department and to operate according to regulations promulgated by the department. Those offering debt management services would also be required to renew their license on a yearly basis.

The application for a license would require the applicant to disclose any ownership interest of any officer, director, agent, or employee in an

Appendix P



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17120

IN REPLY PLEASE
REFER TO OUR FILE
Ch. Corrsp.
#2018.051

March 20, 2018

Monica Smith and Mike Williams
32 Kestrel Street
Kutztown, 19530

Re: Objection to Smart Meter installation

Dear Ms. Smith & Mr. Williams:

I am counsel to the Pennsylvania Public Utility Commission ("Commission"). I am in receipt of your letter which details why you object to the installation of a smart meter on your property. Your letter was addressed to Gladys M Brown, Chairman of the Commission. I am responding to your letter on behalf of Ms. Brown and the Pennsylvania Public Utility Commission.

The Commission has ruled on many proceedings regarding this subject matter. It has done so based on the specific issues in each case and within the bounds of applicable law. Your general contention that the Commission is not lawfully implementing Act 129 requirements for smart meters is incorrect. Until the General Assembly amends Act 129 or an appellate court rejects the Commission's interpretation of Act 129, the Commission will continue to adjudicate smart meter installation disputes based on the existing law and the facts of each case.

Sincerely,

Rhonda L. Daviston
Assistant Counsel

cc: Arlene MacMillan,
Chairman Brown's Office
Gov. Wolf's Office (COR.0395929)

Appendix Q

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held April 15, 2010

Commissioners Present:

James H. Cawley, Chairman, Statement
Tyrone J. Christy, Vice Chairman, Dissenting
Wayne E. Gardner, Statement
Robert F. Powelson

Joint Petition of Metropolitan Edison
Company, Pennsylvania Electric Company
and Pennsylvania Power Company for
Approval of Smart Meter Technology
Procurement and Installation Plan

Docket No. M-2009-2123950

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OPINION AND ORDER

BY THE COMMISSION:

I. Introduction

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Initial Decision (I.D.) issued in these proceedings by Administrative Law Judge (ALJ) Susan D. Colwell on January 28, 2010, and the Exceptions filed with respect thereto. Specifically, Exceptions have been filed by Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec) and Pennsylvania Power Company (Penn Power) (collectively, FirstEnergy or the Companies); the Pennsylvania Department of Environmental Protection (DEP); the Office of Consumer Advocate (OCA); and the Office of Trial Staff (OTS). Reply Exceptions have been filed by the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance and the Penn Power Users Group (collectively, MEIUG *et al.*); the OTS; the OCA; the Companies; and the Office of Small Business Advocate (OSBA). For the reasons set forth herein, we will adopt the ALJ's Initial Decision, as modified by this Opinion and Order.

V. Discussion

In Commission proceedings, the proponent of a rule or order bears the burden of proof. 66 Pa. C.S. § 332(a). To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *Se-Ling Hosiery v. Margulies*, 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 or Exception 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); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

A. Non-Cost Issues

1. Deployment Process and Timeframe

a. FirstEnergy's Plan

As stated previously, the Companies' Plan contains both a short-term plan and a long-term time line based on information currently available. Joint Petition at ¶ 9; FirstEnergy MB at 3. The Companies intend to use the Assessment Period to assess

needs, select technology, secure vendors, train personnel, and install and support test equipment. The Companies anticipate that the vendor and selection process will start in September, 2010 and continue for almost ten months. The Companies will then conduct an evaluation of the current legacy systems to assess network design. This task is expected to commence in January, 2011, and be completed before the end of 2013. FirstEnergy MB at 4. The Companies expect to submit the Deployment Plan to the Commission for approval in April 2012, and they project that the Commission will approve the Deployment Plan about October 2012 (when the Grace Period expires). Plan at 6.

The Companies currently anticipate commencing the build-out of necessary infrastructure in April, 2013. They will then perform a technical trial involving 5,000 to 10,000 meters prior to December 31, 2013. The Companies anticipate completing the build-out of necessary infrastructure approximately March 2016. They will then “debug” the system with at least 60,000 meters. Full scale deployment of smart meters is expected to occur in a tiered roll out beginning about April 2017, and ending about March 2022. Joint Petition at ¶¶ 25-26; Plan at 6.

b. ALJ’s Recommendation

The ALJ approved the deployment timeframe set forth in the Companies’ Plan. The ALJ found that the *Implementation Order* is not a regulation and does not have the full force and effect of law. Instead, it acts as a policy to provide guidelines to EDCs regarding the Commission’s expectations about smart meter plans. The ALJ found the Companies’ proposed time frame for deployment reasonable. I.D. at 19-23.