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PUC EXTENDS ENERGY EFFICIENCY PROGRAM INTO SECOND PHASE, BUT SETS STAGE FOR ADDITIONAL ACT 129 PROCEEDINGS

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On August 3, 2012, pursuant to Act 129 of 2008 ("Act 129"), the Pennsylvania Public Utility Commission ("PUC") issued an order extending mandatory electricity consumption reduction targets in the Commonwealth into a second phase. Utilities can file petitions to appeal their targets no later than August 20, 2012 and interested parties can intervene on or before August 30, 2012.

Phase I of Act 129, which began in June 2009 and ends in May 2013, required Pennsylvania's seven largest Electric Distribution Companies ("EDCs") to adopt Energy Efficiency and Conservation programs (EE&C Programs) to reduce expected electricity consumption by three percent. The PUC's August 3rd "Implementation Order," the culmination of a five-month stakeholder process, establishes Phase II of the EE&C Program requiring each EDC to further reduce electricity consumption by approximately two percent between June 2013 and May 2016.

The 100+ page Implementation Order not only extends the EE&C Program into a second phase, but also makes many other changes and clarifications to the program. For example:

- The severe penalties under Act 129 for failure to achieve targets do not apply to the low-income or government carveouts;
- The EDCs must include Whole-House Energy Efficiency Programs in their EE&C Plans for the residential and small commercial sectors;
- Savings from private low-income multi-family properties can be used to meet the 4.5 percent low-income carve out; and,
- The Bureaus of Consumer Services and Technical Utility Services will initiate a working group to explore on-bill financing for energy efficiency measures.

Despite its extension of the Act 129 EE&C Program, ensuring the continued applicability of energy efficiency requirements, the Implementation Order also set in motion additional proceedings related to the implementation of Phase II. First, the PUC included a fast-track process for any EDC to appeal the savings targets in the Implementation Order, which at least one utility is expected to use. Second, the EDCs are allowed to carry forward all of the savings from their Phase I EE&C Programs that exceed their Phase I savings requirements, which may affect the EDCs' Phase II EE&C Program budgets and plans. Finally, the Implementation Order clarified that the EDCs may recover the revenue attributable to Act 129 reduction in demand in their ordinary revenue proceedings. As a result, despite the long public engagement process that preceded the Implementation Order, some fundamental details of Phase II remain subject to change, and further proceedings before the PUC are likely to result from the Implementation Order.

Case-by-Case Appeals

Unlike Phase I, in which all the EDCs had to achieve the same electricity savings, the PUC set different savings targets for each EDC in Phase II. PECO was allocated the highest savings target of 2.9 percent while West Penn Power has the lowest target of 1.6 percent. PECO strongly objected to the varying targets, raising due process objections. In light of PECO's objections, the Order provides for a fast-track appeal process of the savings targets. Because the targets are tentative pending appeal by the utilities, it remains to be seen what the ultimate Phase II consumption savings will be.

Savings Carryover

The Order also allows the EDCs that achieve savings greater than the three-percent (3%) required in Phase I to carryover the savings to fulfill their Phase II obligations.

The ability to carryover savings implies that the EDCs will only have to provide Phase II EE&C plans sufficient to achieve their ultimate savings target less any carried over Phase I savings. However, the PUC also included language requiring the EDCs to "not…stop spending their program budgets when they achieve their savings target within a phase, but rather…to seek out additional, cost-effective measures to implement."

The EDCs Phase II EE&C Program plans and budgets are due to the PUC by November 1, 2012. The Implementation Order removed the requirement for an automatic public hearing on each proposed plan. Therefore, for Phase II, parties seeking a public hearing on the EE&C Plans must submit a request.

Recovery of Act 129 Costs and Lost Revenue

Finally, the Implementation Order provided specific guidance on the EDCs' recovery of the costs of EE&C Programs and the revenue lost through energy efficiency. The Implementation Order stressed that the EDCs are prohibited to recover lost revenue from energy efficiency through their automatic cost recovery mechanism under Act 129. However, the PUC reinforced the Act 129 provision that allows for recovery of reduced revenue from energy efficiency through a regular rate proceeding.

With the Implementation Order, it is now certain that there will be a Phase II of the Act 129 EE&C Program. However, the Implementation Order also set the stage for additional proceedings, some with very tight deadlines, which will ultimately shape Phase II.

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