

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 805 Session of 2015

INTRODUCED BY BOSCOLA, MENSCH, YUDICHAK, BROWNE, ARGALL, ALLOWAY, AUMENT, HUTCHINSON, VULAKOVICH, GORDNER AND WARD, MAY 14, 2015

AS AMENDED ON SECOND CONSIDERATION, OCTOBER 24, 2016

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, in restructuring of electric utility
3 industry, further providing for energy efficiency and
4 conservation program.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Section 2806.1(b)(1)(ii) of Title 66 of the <--
8 Pennsylvania Consolidated Statutes is amended and the section is
9 amended by adding a subsection to read:

10 § 2806.1. Energy efficiency and conservation program.

11 * * *

12 (b) Duties of electric distribution companies.

13 (1) * * *

14 (ii) [A] For each plan filed for any applicable
15 phase of implementation of the program beginning after
16 May 31, 2021, a new plan shall be filed with the
17 commission every [five years or as otherwise required by
18 the commission] three years, unless a shorter duration is

1 ~~required by the commission. The plan shall set forth the~~
2 ~~manner in which the company will meet the required~~
3 ~~reductions in consumption under subsections (c) and (d).~~

4 * * *

5 ~~(j.1) Large customer opt out. Any customer that is part of~~
6 ~~the large commercial class or industrial class, as defined in~~
7 ~~the electric distribution company's initial plan under this~~
8 ~~section, shall have the ability to opt out of participation in~~
9 ~~the plan as follows:~~

10 ~~(1) By December 31, 2016, for each plan filed for the~~
11 ~~applicable phase of implementation of the program for the~~
12 ~~period June 1, 2016, to May 31, 2021, or 365 days prior to~~
13 ~~each new plan filed pursuant to subsection (b) (1) (ii) for any~~
14 ~~applicable phase of implementation of the program beginning~~
15 ~~after May 31, 2021, the electric distribution company shall~~
16 ~~provide each large commercial customer and industrial~~
17 ~~customer with the option to forgo participation in the plan.~~
18 ~~This option shall apply regardless of whether the customer~~
19 ~~purchases default service or supply from an alternate~~
20 ~~supplier. The customer may exercise this option for any or~~
21 ~~all accounts in this Commonwealth. If one or more of the~~
22 ~~electric distribution company's large commercial or~~
23 ~~industrial customers opts to forgo participation in the~~
24 ~~electric distribution company's plan filed for the applicable~~
25 ~~phase of implementation of the program for the period June 1,~~
26 ~~2016, to May 31, 2021, prior to December 31, 2016, the~~
27 ~~electric distribution company may file a revised plan with~~
28 ~~the commission to reflect the adjustments pursuant to~~
29 ~~paragraph (4).~~

30 ~~(2) A customer that forgoes participation in the plan~~

~~will not be eligible to receive funding or other measures contained in the plan for the opt out accounts during the applicable phase.~~

~~(3) A customer that forgoes participation in the plan will not be required to pay the cost recovery charge under subsection (k) for the opt out accounts.~~

~~(4) The electric distribution company may adjust its consumption and peak demand reduction goals, as well as its budget, under its plan to reflect the customers that have exercised the option to forgo participation in the plan.~~

~~(5) By December 1, 2016, the commission shall promulgate guidelines to administer this subsection.~~

~~* * *~~

~~Section 2. This act shall take effect in 60 days.~~

SECTION 1. SECTION 2806.1(A)(10), (B)(1) INTRODUCTORY
PARAGRAPH AND (I)(B) AND (I), (C)(3), (D)(2), (F)(1)(I) AND (II)
AND (2)(I) AND (II) INTRODUCTORY PARAGRAPH AND (A) AND THE
DEFINITION OF "CONSERVATION SERVICE PROVIDER" IN SUBSECTION (M)
OF TITLE 66 OF THE PENNSYLVANIA CONSOLIDATED STATUTES ARE
AMENDED, SUBSECTION (M) IS AMENDED BY ADDING A DEFINITION AND
THE SECTION IS AMENDED BY ADDING SUBSECTIONS TO READ:

§ 2806.1. ENERGY EFFICIENCY AND CONSERVATION PROGRAM.

(A) PROGRAM.--THE COMMISSION SHALL, BY JANUARY 15, 2009,
ADOPT AN ENERGY EFFICIENCY AND CONSERVATION PROGRAM TO REQUIRE
ELECTRIC DISTRIBUTION COMPANIES TO ADOPT AND IMPLEMENT COST-
EFFECTIVE ENERGY EFFICIENCY AND CONSERVATION PLANS TO REDUCE
ENERGY DEMAND AND CONSUMPTION WITHIN THE SERVICE TERRITORY OF
EACH ELECTRIC DISTRIBUTION COMPANY IN THIS COMMONWEALTH. THE
PROGRAM SHALL INCLUDE:

* * *

1 (10) A REQUIREMENT FOR THE [PARTICIPATION] UTILIZATION
2 OF CONSERVATION SERVICE PROVIDERS [IN] TO FACILITATE THE
3 IMPLEMENTATION OF ALL OR PART OF A PLAN.

4 * * *

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

6 (1) THE FOLLOWING APPLY:

7 (I) BY JULY 1, 2009, EACH ELECTRIC DISTRIBUTION
8 COMPANY SHALL DEVELOP AND FILE AN ENERGY EFFICIENCY AND
9 CONSERVATION PLAN WITH THE COMMISSION FOR APPROVAL TO
10 MEET THE REQUIREMENTS OF SUBSECTION (A) AND THE
11 REQUIREMENTS FOR REDUCTION IN CONSUMPTION UNDER
12 SUBSECTIONS (C) AND (D). THE PLAN SHALL BE IMPLEMENTED
13 UPON APPROVAL BY THE COMMISSION. THE FOLLOWING ARE THE
14 PLAN REQUIREMENTS:

15 * * *

16 [(B) A MINIMUM OF 10% OF THE REQUIRED REDUCTIONS
17 IN CONSUMPTION UNDER SUBSECTIONS (C) AND (D) SHALL BE
18 OBTAINED FROM UNITS OF FEDERAL, STATE AND LOCAL
19 GOVERNMENT, INCLUDING MUNICIPALITIES, SCHOOL
20 DISTRICTS, INSTITUTIONS OF HIGHER EDUCATION AND
21 NONPROFIT ENTITIES.]

22 * * *

23 (I) THE ELECTRIC DISTRIBUTION COMPANY SHALL
24 DEMONSTRATE THAT THE PLAN IS COST EFFECTIVE USING A
25 TOTAL RESOURCE COST TEST APPROVED BY THE COMMISSION
26 AND PROVIDES A DIVERSE CROSS SECTION OF ALTERNATIVES
27 FOR PARTICIPATING CUSTOMERS OF [ALL] RATE CLASSES
28 INCLUDED IN THE PLAN.

29 * * *

30 (C) REDUCTIONS IN CONSUMPTION.--THE PLANS ADOPTED UNDER

1 SUBSECTION (B) SHALL REDUCE ELECTRIC CONSUMPTION AS FOLLOWS:

2 * * *

3 (3) BY NOVEMBER 30, 2013, [AND EVERY FIVE YEARS
4 THEREAFTER,] THE COMMISSION SHALL EVALUATE THE COSTS AND
5 BENEFITS OF THE PROGRAM ESTABLISHED UNDER SUBSECTION (A) AND
6 OF APPROVED ENERGY EFFICIENCY AND CONSERVATION PLANS
7 SUBMITTED TO THE PROGRAM. THE EVALUATION SHALL BE CONSISTENT
8 WITH A TOTAL RESOURCE COST TEST OR A COST-BENEFIT ANALYSIS
9 DETERMINED BY THE COMMISSION. IF THE COMMISSION DETERMINES
10 THAT THE BENEFITS OF THE PROGRAM EXCEED THE COSTS, THE
11 COMMISSION SHALL ADOPT ADDITIONAL REQUIRED INCREMENTAL
12 REDUCTIONS IN CONSUMPTION. FOLLOWING MAY 31, 2021, THE TERM
13 OF A PLAN SHALL BE DETERMINED BY THE COMMISSION BUT SHALL NOT
14 EXCEED FIVE YEARS.

15 (C.1) OPTION.--

16 (1) PRIOR TO EACH PHASE OF IMPLEMENTATION OF THE PROGRAM
17 BEGINNING AFTER MAY 31, 2021, BY A DATE DETERMINED BY THE
18 COMMISSION, A CUSTOMER THAT IS A MEMBER OF A LARGE COMMERCIAL
19 CLASS OR INDUSTRIAL CLASS MAY OPT TO CEASE PARTICIPATION IN
20 THE ELECTRIC DISTRIBUTION COMPANY PLAN FOR ALL OF THE
21 CUSTOMER'S ELIGIBLE ACCOUNTS. A CUSTOMER THAT OPTS TO CEASE
22 PARTICIPATION IN A PLAN UNDER THIS PARAGRAPH SHALL REMAIN
23 OPTED OUT OF THE ELECTRIC DISTRIBUTION COMPANY PLAN FOR ALL
24 SUBSEQUENT PHASES OF IMPLEMENTATION OF THE PROGRAM UNLESS AND
25 UNTIL THE CUSTOMER, BY A DATE DETERMINED BY THE COMMISSION
26 PRIOR TO IMPLEMENTATION OF A SUBSEQUENT PHASE, OPTS TO RESUME
27 PARTICIPATION IN THE ELECTRIC DISTRIBUTION COMPANY PLAN.

28 (2) A CUSTOMER THAT OPTS OUT OF A PLAN UNDER PARAGRAPH
29 (1):

30 (I) SHALL NOT BE ELIGIBLE TO RECEIVE GRANTS, REBATES

1 OR OTHER FUNDING CONTAINED IN THE PLAN FOR THE OPT-OUT
2 ACCOUNTS DURING THE APPLICABLE PHASE; AND

3 (II) SHALL NOT BE REQUIRED TO PAY A RECOVERY UNDER
4 SUBSECTION (K) FOR THE OPT-OUT ACCOUNTS DURING THE
5 APPLICABLE PHASE.

6 (3) BY DECEMBER 31, 2017, THE COMMISSION SHALL ESTABLISH
7 GUIDELINES TO IMPLEMENT THIS SUBSECTION.

8 (C.2) REFUND.--ANY OVER COLLECTIONS OR UNDER COLLECTIONS
9 FROM ANY CUSTOMER CLASSES SHALL BE REFUNDED OR RECOVERED, AS
10 APPROPRIATE IN ACCORDANCE WITH THE COMMISSION'S IMPLEMENTATION
11 ORDER FOR THE SUBSEQUENT PHASE.

12 (D) PEAK DEMAND.--THE PLANS ADOPTED UNDER SUBSECTION (B)
13 SHALL REDUCE ELECTRIC DEMAND AS FOLLOWS:

14 * * *

15 (2) [BY NOVEMBER 30, 2013, THE COMMISSION SHALL COMPARE
16 THE TOTAL COSTS OF ENERGY EFFICIENCY AND CONSERVATION PLANS
17 IMPLEMENTED UNDER THIS SECTION TO THE TOTAL SAVINGS IN ENERGY
18 AND CAPACITY COSTS TO RETAIL CUSTOMERS IN THIS COMMONWEALTH
19 OR OTHER COSTS DETERMINED BY THE COMMISSION. IF THE
20 COMMISSION DETERMINES THAT THE BENEFITS OF THE PLANS EXCEED
21 THE COSTS, THE COMMISSION SHALL SET ADDITIONAL INCREMENTAL
22 REQUIREMENTS FOR REDUCTION IN PEAK DEMAND FOR THE 100 HOURS
23 OF GREATEST DEMAND OR AN ALTERNATIVE REDUCTION APPROVED BY
24 THE COMMISSION. REDUCTIONS IN DEMAND SHALL BE MEASURED FROM
25 THE ELECTRIC DISTRIBUTION COMPANY'S PEAK DEMAND FOR THE
26 PERIOD FROM JUNE 1, 2011, THROUGH MAY 31, 2012. THE
27 REDUCTIONS IN CONSUMPTION REQUIRED BY THE COMMISSION SHALL BE
28 ACCOMPLISHED NO LATER THAN MAY 31, 2017.] THE COMMISSION
29 SHALL NOT MANDATE ANY PEAK DEMAND REDUCTIONS IN ANY NEW PLAN
30 IMPLEMENTED AFTER MAY 31, 2021.

1 * * *

2 (F) PENALTIES.--

3 (1) THE FOLLOWING SHALL APPLY FOR FAILURE TO SUBMIT A
4 PLAN:

5 (I) AN ELECTRIC DISTRIBUTION COMPANY THAT FAILS TO
6 FILE A PLAN UNDER SUBSECTION (B) OR (C.1)(2) SHALL BE
7 SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN \$100,000 PER
8 DAY UNTIL THE PLAN IS FILED.

9 (II) AN ELECTRIC DISTRIBUTION COMPANY THAT FAILS TO
10 FILE A REVISED PLAN UNDER SUBSECTION (E)(2)(II) SHALL BE
11 SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN \$100,000 PER
12 DAY UNTIL THE PLAN IS FILED.

13 * * *

14 (2) THE FOLLOWING SHALL APPLY TO AN ELECTRIC
15 DISTRIBUTION COMPANY THAT FAILS TO ACHIEVE THE REDUCTIONS IN
16 CONSUMPTION REQUIRED [UNDER SUBSECTION (C) OR (D)] BY THE
17 COMMISSION UNDER SUBSECTION (C):

18 (I) THE ELECTRIC DISTRIBUTION COMPANY SHALL BE
19 SUBJECT TO A CIVIL PENALTY [NOT LESS THAN \$1,000,000 AND]
20 NOT TO EXCEED [\$20,000,000] \$5,000,000 FOR FAILURE TO
21 ACHIEVE THE [REQUIRED] REDUCTIONS IN CONSUMPTION [UNDER
22 SUBSECTION (C) OR (D)] REQUIRED BY THE COMMISSION UNDER
23 SUBSECTION (C). ANY PENALTY PAID BY AN ELECTRIC
24 DISTRIBUTION COMPANY UNDER THIS SUBPARAGRAPH SHALL NOT BE
25 RECOVERABLE FROM RATEPAYERS.

26 (II) IF AN ELECTRIC DISTRIBUTION COMPANY FAILS TO
27 ACHIEVE THE [REQUIRED] REDUCTIONS IN CONSUMPTION [UNDER
28 SUBSECTION (C) OR (D)] REQUIRED BY THE COMMISSION UNDER
29 SUBSECTION (C), RESPONSIBILITY TO ACHIEVE THE REDUCTIONS
30 IN CONSUMPTION SHALL BE TRANSFERRED TO THE COMMISSION.

1 THE COMMISSION SHALL DO ALL OF THE FOLLOWING:

2 (A) IMPLEMENT A PLAN TO ACHIEVE THE [REQUIRED]
3 REDUCTIONS IN CONSUMPTION [UNDER SUBSECTION (C) OR
4 (D)] REQUIRED BY THE COMMISSION UNDER SUBSECTION (C).

5 * * *

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

9 "CONSERVATION SERVICE PROVIDER." AN ENTITY THAT PROVIDES
10 INFORMATION AND TECHNICAL ASSISTANCE ON MEASURES TO ENABLE A
11 PERSON TO INCREASE ENERGY EFFICIENCY OR REDUCE ENERGY
12 CONSUMPTION [AND THAT HAS NO DIRECT OR INDIRECT OWNERSHIP,
13 PARTNERSHIP OR OTHER AFFILIATED INTEREST WITH AN ELECTRIC
14 DISTRIBUTION COMPANY].

15 * * *

16 "LARGE COMMERCIAL CLASS OR INDUSTRIAL CLASS." THE GROUP OF
17 CUSTOMERS CATEGORIZED AS LARGE COMMERCIAL OR AS INDUSTRIAL BY AN
18 ELECTRIC DISTRIBUTION COMPANY IN ITS ORIGINAL ENERGY EFFICIENCY
19 AND CONSERVATION PLAN UNDER SUBSECTION (B) (1) (I) OR AS FILED IN
20 THE COMPANY'S TARIFF.

21 * * *

22 SECTION 2. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.