AN ACT

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

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

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

§ 2806.1. Energy efficiency and conservation program.

* * *

(b) Duties of electric distribution companies.--

(1) * * *

(ii) [A] For each plan filed for any applicable phase of implementation of the program beginning after May 31, 2021, a new plan shall be filed with the commission every [five years or as otherwise required by the commission] three years, unless a shorter duration is...
required by the commission. The plan shall set forth the
manner in which the company will meet the required
reductions in consumption under subsections (c) and (d).

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

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

(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:

* * *
(10) A requirement for the [participation] utilization
of conservation service providers [in] to facilitate the
implementation of all or part of a plan.

* * *

(B) Duties of Electric Distribution Companies.--

(1) The following apply:

(I) By July 1, 2009, each electric distribution
company shall develop and file an energy efficiency and
conservation plan with the commission for approval to
meet the requirements of subsection (A) and the
requirements for reduction in consumption under
subsections (C) and (D). The plan shall be implemented
upon approval by the commission. The following are the
plan requirements:

* * *

[(B) A minimum of 10% of the required reductions
in consumption under subsections (C) and (D) shall be
obtained from units of federal, state and local
government, including municipalities, school
districts, institutions of higher education and
nonprofit entities.]

* * *

(I) The electric distribution company shall
demonstrate that the plan is cost effective using a
total resource cost test approved by the commission
and provides a diverse cross section of alternatives
for participating customers of [all] rate classes
included in the plan.

* * *

(C) Reductions in consumption.--The plans adopted under
SUBSECTION (B) SHALL REDUCE ELECTRIC CONSUMPTION AS FOLLOWS:

* * *


(C.1) OPTION.--

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

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

(I) SHALL NOT BE ELIGIBLE TO RECEIVE GRANTS, REBATES
OR OTHER FUNDING CONTAINED IN THE PLAN FOR THE OPT-OUT ACCOUNTS DURING THE APPLICABLE PHASE; AND

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

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

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

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

* * *

(F) PENALTIES.--

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

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

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

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

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

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

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

* * *

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

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

* * *

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

* * *

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