

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 AND K. SMITH, JANUARY 15, 2008

AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF REPRESENTATIVES, AS AMENDED, FEBRUARY 5, 2008

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, further providing for definitions; and
3 providing for adoption of energy efficiency and demand-side
4 response.

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

7 Section 1. Section 2803 of Title 66 of the Pennsylvania
8 Consolidated Statutes is amended by adding definitions to read:
9 § 2803. Definitions.

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

13 "AFFILIATED INTEREST." AS DEFINED IN SECTION 2101 (RELATING <—
14 TO DEFINITION OF AFFILIATED INTEREST).

15 * * *

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

1 * * *

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

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

9 (2) The measure reduces the ~~consumption~~ PEAK DEMAND OR ←
10 COST of energy by the retail customer.

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

14 * * *

15 "Energy efficiency." Technologies, management practices or
16 other strategies or measures employed by retail customers that
17 reduce electricity consumption provided that:

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

21 (2) The measure reduces the consumption of energy by the
22 retail customer.

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

26 "INDEPENDENT ENTITY." AN ENTITY WITH NO DIRECT OR INDIRECT ←
27 OWNERSHIP, PARTNERSHIP OR OTHER AFFILIATED INTEREST WITH AN
28 ELECTRIC DISTRIBUTION COMPANY.

29 "Peak demand." The highest electrical requirement occurring
30 during a specified period. For an electric distribution company,

1 the term means the sum of the metered consumption for all retail
2 customers over that period.

3 * * *

4 "Total resources cost test." A standard test that is met if,
5 over the effective life of the program, the avoided supply-side
6 monetary costs are greater than the monetary costs of the
7 demand-side programs borne by both the electric distribution
8 company and the participants.

9 * * *

10 Section 2. Title 66 is amended by adding a section to read:

11 § 2806.1. Adoption of procedures encouraging energy efficiency
12 and demand-side response.

13 (a) Program.--The commission shall develop a program to
14 provide for the implementation of cost-effective programs that
15 reduce energy demand and consumption within the service
16 territories of all electric distribution companies throughout
17 this Commonwealth. The program shall include, but is not limited
18 to, the following:

19 (1) Selecting a program administrator to develop and
20 oversee the delivery of energy efficiency and demand-side
21 response programs within the service territory of each
22 electric distribution company within this Commonwealth.

23 (2) Implementing the necessary administrative and
24 financial mechanisms that will enable the program
25 administrator to develop and oversee the provision of energy
26 efficiency and demand-side response programs within the
27 service territory of each electric distribution company
28 within this Commonwealth, including the levying of
29 assessments in accordance with sections 510 (relating to
30 assessment for regulatory expenses upon public utilities),

1 1307 (relating to sliding scale of rates; adjustments) and
2 1308 (relating to voluntary changes in rates). The commission
3 shall not approve or implement and shall not assess or charge
4 to customers the costs of energy efficiency or demand-
5 response programs to the extent that the costs of such
6 programs exceed 2% of the total annual revenues of the
7 electric distribution company in whose service territory the
8 programs are implemented. THIS FUNDING LIMIT SHALL NOT ←
9 INCLUDE AMOUNTS PROVIDED FOR BY THE LOW-INCOME USAGE
10 REDUCTION PROGRAMS ESTABLISHED UNDER REGULATIONS AT 52 PA.
11 CODE CH. 58 (RELATING TO RESIDENTIAL LOW INCOME USAGE
12 REDUCTION PROGRAMS).

13 (3) Implementing the necessary administrative and
14 financial mechanisms that facilitate a system of third-party
15 entities to deliver all or portions of the energy efficiency
16 and demand-side response programs within the service
17 territory of each electric distribution company within this
18 Commonwealth, including the levying of assessments in
19 accordance with sections 510, 1307 and 1308. THE COMMISSION ←
20 MAY ORDER THE ELECTRIC DISTRIBUTION COMPANY TO PAY THE THIRD-
21 PARTY ENTITY FOR SERVICES RENDERED IN AN ELECTRIC
22 DISTRIBUTION COMPANY'S RESPECTIVE SERVICE TERRITORY PURSUANT
23 TO THIS SECTION. The electric distribution company may be a
24 third-party entity.

25 (b) Selection of program administrator.--The commission
26 shall implement the following procedures when selecting a
27 program administrator:

28 (1) The commission shall prepare a request for proposals
29 for a program administrator to provide for the development
30 and delivery of the energy efficiency and demand-side

1 response programs in the service territories of all electric
2 distribution companies and shall make the request for
3 proposals available for public comment.

4 (2) The commission shall, within 60 days of the
5 completion of the public comment period, issue the final
6 request for proposals.

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

10 (4) The commission shall include as a part of its
11 agreement with the program administrator a system of
12 performance parameters and a financial mechanism that
13 provides incentives for exceeding established performance
14 parameters and penalties for third parties not meeting
15 established performance parameters.

16 (c) Powers and duties of program administrator.--The program
17 administrator shall have powers and duties assigned by the
18 commission. The powers and duties shall include, but not be
19 limited to:

20 (1) Soliciting through a competitive procurement process
21 within each electric distribution company service territory a
22 program of providing energy efficiency and demand-side
23 response programs to residential, commercial and industrial
24 customers utilizing third-party entities.

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

27 (i) A clear delineation of how the program will be
28 conducted.

29 (ii) The types of specific program measures to be
30 offered.

1 (iii) The cost and benefit of each program to be
2 offered.

3 (iv) A process for monitoring and verifying results,
4 data collection and management procedures, program
5 evaluation processes and financial management strategies.

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

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

9 (ii) Finding that each program is cost effective and
10 that the portfolio of programs is designed to provide
11 every affected customer class with the opportunity to
12 participate and benefit economically.

13 (iii) Determining the cost-effectiveness of energy
14 efficiency and demand-side response measures using the
15 total resource cost test.

16 (4) Recommending to the commission those entities best
17 suited to provide energy efficiency and demand-side response
18 programs within the service territory of each electric
19 distribution company.

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

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

28 (ii) In subsequent years, utilizing the plan goals
29 unless no qualified proposals are received to conduct the
30 program activities that meet the plan goals, the program

1 administrator shall issue a subsequent request for
2 proposals in accordance with the procedures identified in
3 this subparagraph.

4 (6) Executing agreements ON BEHALF OF THE COMMISSION <—
5 with the selected entity in each electric distribution
6 company service territory to conduct the energy efficiency
7 and demand-side response program. As part of these agreements
8 the program administrator shall ensure that:

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

11 ~~(ii) The plan presents a portfolio of energy~~ <—
12 ~~efficiency measures targeted to households at or below~~
13 ~~150% of the poverty level at a level proportionate to~~
14 ~~those households' share of total annual utility revenues~~
15 ~~in this Commonwealth.~~

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

22 ~~(iv) (III) A system of incentives and penalties for~~ <—
23 ~~performance of contractual activities above and below~~
24 ~~predetermined levels is in place.~~

25 ~~(v) (IV) There is a set contract term which may~~ <—
26 ~~include an initial three-year term with renewal terms of~~
27 ~~varied length.~~

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

30 (d) Commission review of recommendations.--The commission

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

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

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

10 (ii) Any costs entered into are borne by the
11 appropriate parties and that costs, INCLUDING THE COSTS ←
12 OF SUBSECTION (C)(6)(IV) INCENTIVES, related to the
13 provision of the contracted services are borne by the
14 appropriate customer class.

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

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

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

29 (e) Plan goals.--The program administrator shall ensure that
30 each proposal submitted by a third-party entity to deliver a

1 program of energy efficiency and demand-side response measures
2 includes meeting the following energy saving goals:

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

4 (i) By May 31, 2013, total annual deliveries to
5 retail customers of electric distribution companies shall
6 be reduced by a minimum of 2.5%, WITH PROVISION MADE FOR ←
7 WEATHER ADJUSTMENTS AND EXTRAORDINARY LOAD THAT THE
8 ELECTRIC DISTRIBUTION COMPANY MUST SERVE. This load
9 reduction shall be measured against the expected load
10 forecasted by the commission for June 1, 2012, through
11 May 31, 2013, based on load for the period June 1, 2007,
12 through May 31, 2008. The commission shall determine and
13 make public the forecasts to be used for each electric
14 distribution company no later than August 31, 2008. The
15 program administrator shall ensure that a third-party
16 entity meets the goals contained in this section through
17 the implementation of a program of energy efficiency
18 measures throughout the service territory of the electric
19 distribution company.

20 (ii) By November 30, 2013, the program administrator
21 shall evaluate the costs and benefits of these energy
22 efficiency and conservation programs. If the benefits
23 have been shown to exceed the costs, consistent with the
24 total resource cost test, the program administrator, in
25 consultation with the commission, shall set additional,
26 incremental energy efficiency and conservation goals for
27 the period ending May 31, 2018.

28 (iii) After May 31, 2018, the program administrator
29 shall continue to evaluate the costs and benefits of
30 efficiency and conservation measures and, in consultation

1 with the commission, may adopt additional incremental
2 load reduction standards for electric distribution
3 companies.

4 (2) The following relate to demand-side response
5 measures:

6 (i) Cost-effective demand-side response measures to
7 reduce peak demand by a minimum of 4% in the 100 hours of
8 highest demand with provision made for weather
9 adjustments and extraordinary load that the electric
10 distribution company must serve SHALL BE IMPLEMENTED IN ←
11 EACH ELECTRIC DISTRIBUTION COMPANY'S SERVICE TERRITORY.
12 This reduction will be measured against the electric
13 distribution company's peak demand in the 100 hours of
14 greatest demand for June 1, 2007, through May 31, 2008.
15 The reductions shall be accomplished by May 31, 2012.

16 (ii) By November 30, 2012, the program administrator
17 shall compare the total costs of these demand-side
18 response measures to the total savings in energy and
19 capacity costs to retail customers of this Commonwealth.
20 If the benefits have been shown to exceed the costs,
21 consistent with the total resource cost test, the
22 commission shall order additional peak demand reductions
23 for the 100 hours of greatest demand or an alternative
24 measure adopted by the commission. The reductions shall
25 be measured from the electric distribution company's peak
26 demand for the period from June 1, 2011, through May 31,
27 2012. The mandated reductions shall be accomplished no
28 later than May 31, 2017.

29 (iii) After May 31, 2017, the program administrator
30 shall continue to evaluate the costs and benefits of

1 demand-side response measures and may, in consultation
2 with the commission, adopt additional incremental peak
3 load reduction standards.

4 (f) Measurements and verification.--The commission shall
5 establish standards by which the program administrator submits
6 to the commission an annual report, which includes that
7 information relating to the actions and results of the energy
8 efficiency and demand-side response programs undertaken within
9 each electric distribution service territory by each third-party
10 entity.

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

12 (i) Documentation of program expenditures.

13 (ii) Measurement and verification of savings
14 resulting from programs.

15 (iii) Evaluation of the cost-effectiveness of
16 expenditures.

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

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

25 (3) In the event an energy efficiency or demand-side
26 response program is terminated, the program administrator
27 shall require the third-party entity to submit a revised
28 program describing the actions to be undertaken to either
29 offer a substitute program or increase the availability of
30 existing programs to make up for the effect of the terminated

1 program on its overall program goals.

2 (g) Responsibilities of electric distribution companies.--

3 Each electric distribution company THAT DOES NOT SEEK TO BE A <—
4 THIRD-PARTY ENTITY shall:

5 (1) Cooperate with the program administrator as needed
6 in its efforts to competitively procure the services of a
7 third-party entity to provide an energy efficiency and
8 demand-side response program within the service territory of
9 the electric distribution company.

10 (2) Provide information necessary to effectively
11 facilitate the work of the selected third-party entity in
12 conducting the energy efficiency and demand-side response
13 program.

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

18 (4) Provide assistance as may be requested by the
19 program administrator to facilitate the successful execution
20 of the contract agreement with the third-party entities to
21 provide an energy efficiency and demand-side response program
22 within their service territories.

23 (h) Recovery of administrative AND PROGRAM costs.--An <—
24 electric distribution company may fully recover all
25 administrative costs, INCLUDING, BUT NOT LIMITED TO, COSTS <—
26 INCURRED UNDER SUBSECTIONS (A)(3) AND (G)(1), (2), (3) AND (4),
27 that the commission determines are prudently incurred AND <—
28 REASONABLE IN AMOUNT pursuant to implementing a program to
29 deliver cost-effective energy efficiency and demand-side
30 response activities through a third-party entity. PROGRAM AND <—

1 ADMINISTRATIVE COSTS SHALL BE RECOVERED ON A FULL AND CURRENT
2 BASIS BY THE ELECTRIC DISTRIBUTION COMPANY FROM CUSTOMERS
3 THROUGH A RECONCILABLE AUTOMATIC ADJUSTMENT CLAUSE PURSUANT TO
4 SECTION 1307. ENERGY EFFICIENCY AND DEMAND-SIDE RESOURCE
5 PROGRAMS SHALL BE DEEMED TO BE A NEW SERVICE OFFERED FOR THE
6 FIRST TIME UNDER SECTION 2804(4)(VI) (RELATING TO STANDARDS FOR
7 RESTRUCTURING OF ELECTRIC INDUSTRY).

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

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

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

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

18 (j) Definitions.--For purposes of this section, the term
19 "electric distribution company" shall mean a public utility
20 providing facilities for the jurisdictional transmission and
21 distribution of electricity to 100,000 or more retail customers
22 in this Commonwealth.

23 Section 3. This act shall take effect immediately.