

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL**No. 2200** Session of
2008

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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:

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.

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

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

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

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

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

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.

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

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

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.

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

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.

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

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

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

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.