

No. 2008-129

AN ACT

HB 2200

Amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, further providing for director of operations, secretary, employees and consultants; repealing provisions relating to office of trial staff; further providing for bureaus and offices; providing for other bureaus, offices and positions; further providing for electric utility definitions; providing for energy efficiency and conservation program and for energy efficiency and conservation; further providing for duties of electric distribution companies and for market power remediation; and providing for procurement, for additional alternative energy sources and for carbon dioxide sequestration network.

The General Assembly recognizes the following public policy findings and declares that the following objectives of the Commonwealth are served by this act:

(1) The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account any benefits of price stability over time and the impact on the environment.

(2) It is in the public interest to adopt energy efficiency and conservation measures and to implement energy procurement requirements designed to ensure that electricity obtained reduces the possibility of electric price instability, promotes economic growth and ensures affordable and available electric service to all residents.

(3) It is in the public interest to expand the use of alternative energy and to explore the feasibility of new sources of alternative energy to provide electric generation in this Commonwealth.

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

Section 1. Section 305(a) of Title 66 of the Pennsylvania Consolidated Statutes is amended to read:

§ 305. Director of operations, secretary, employees and consultants.

(a) Director of operations.—The commission may appoint a director of operations who shall serve at the pleasure of the commission and shall be responsible for the day-to-day administration and operation of the bureaus and offices of the commission, except that the director of operations shall have responsibility for the **[Office of Trial Staff] prosecutorial function** only with regard to administrative matters.

* * *

Section 1.1. Section 306 of Title 66 is repealed:
[§ 306. Office of Trial Staff.

(a) **General rule.**—The Office of Trial Staff to the Pennsylvania Public Utility Commission is hereby created. The Director of Trial Staff, who shall be the chief prosecutor of the commission, shall be appointed by the commission and hold office at its pleasure. The commission shall assign a permanent staff of such legal, technical and other employees of the commission as may be required for the proper conduct of the work of the Office of Trial Staff. Employees assigned to the Office of Trial Staff shall be under the supervision of the Director of Trial Staff and shall not be assigned to any duties other than with the Office of Trial Staff, except as the commission may on a temporary case-by-case basis permit where the performance of such other duties will not represent, or create the appearance of, a conflict of interest. The commission may designate employees of the Office of Trial Staff to serve as deputies to the Director of Trial Staff. The Director of Trial Staff may recommend persons for consideration by the commission as employees under his supervision. Attorneys assigned to the Office of Trial Staff may be removed by the commission only for good cause. The compensation of the Director of Trial Staff and the employees under his supervision shall be fixed by the commission. The Director of Trial Staff shall report and be responsible directly to the commission, provided that the Director of Trial Staff shall be responsible to the commission through the Director of Operations only for purposes of administrative matters.

(b) **Power and duties.**—

(1) The Office of Trial Staff shall be responsible for and shall assist in the development of, challenge of and representation on the record of all matters in the public interest in all commission proceedings except those involving transportation, safety, eminent domain, siting, service issues having no impact on rates and ability to pay, provided that the Director of Trial Staff may petition the commission or may be directed by the commission to intervene to protect the public interest in any proceeding involving transportation, safety, eminent domain, siting, service issues having no impact on rates and ability to pay. To assist in carrying out his powers and duties under this section, the Director of Trial Staff shall supervise the activities of the Office of Trial Staff in all commission proceedings in which he participates. If the Director of Trial Staff is of the opinion that the initiation of a proceeding is necessary to protect the public interest, he shall request that the commission initiate the appropriate proceeding. When he participates in a commission proceeding, it shall be the duty and responsibility of the Director of Trial Staff to prosecute in that proceeding.

(2) In addition to any other responsibility conveyed upon it by the commission, the Office of Trial Staff shall submit a report to the commission recommending whether the commission should enter upon a hearing in order to investigate the justness and

reasonableness of a tariff filed pursuant to section 1308 (relating to voluntary changes in rates), to suspend the effectiveness of such tariff, to allow such tariff to be suspended by operation of law or to allow temporary rates pursuant to section 1310 (relating to temporary rates). The report:

(i) shall recommend only the initial action which the commission should take and shall not contain an opinion as to the portion of a proposed rate increase which appears to be just and reasonable, unless the report includes a finding that the proposed rate increase appears to be just and reasonable in its entirety;

(ii) shall be released to the public if the report recommends that no hearings need to be held regarding the proposed tariff or that the proposed tariff should not be suspended, and may be released to the public in other circumstances when, in the opinion of the commission, such release would be in the public interest;

(iii) shall be considered only as an indication of the Office of Trial Staff's opinion regarding whether there should be a hearing on the proposed tariff or whether the proposed tariff should be suspended; and

(iv) shall not be considered as evidence of the Office of Trial Staff's opinion regarding the justness and reasonableness of any proposed tariff in any subsequent commission proceeding.

(3) Except for the duties set out in paragraph (2), neither the Director of Trial Staff nor any employee whom the Director of Trial Staff supervises shall communicate with the commission, an administrative law judge or any other employee of the commission who is deciding or advising in the decision in an on-the-record proceeding, whether contested or uncontested, as defined in section 332(c) (relating to procedures in general), except through the practice and procedure available to all parties to commission proceedings.]

Section 1.2. Section 308(a)(2) and (4), (b), (c), (e), (f) and (g) of Title 66 are amended to read:

§ 308. Bureaus and offices.

(a) Enumeration.—There shall be established within the commission the following bureaus and functions:

* * *

[(2) Bureau of Conservation, Economics and Energy Planning.]

* * *

[(4) Office of Special Assistants.]

(b) Law Bureau.—The Law Bureau shall be a multifunction legal staff, consisting of a prosecutory function, an advisory function, a representational function and an enforcement function. The Director of the Law Bureau shall be the chief counsel of the commission and shall serve at the pleasure of the commission. The commission may also, from time to time, appoint such assistant counsel to the commission as may be required for the proper

conduct of the work of the Law Bureau. Assistant counsel may be removed by the commission only for good cause. The Law Bureau shall advise the commission on any and all matters. No counsel shall in the same case or a factually related case perform duties in the prosecutory and advisory functions, if such performance would represent a conflict of interest. Except for litigation referred to the Attorney General or other appropriate outside counsel, the Law Bureau solely shall be responsible to represent the commission upon appeals and other hearings in the courts of common pleas and in the Commonwealth Court, Supreme Court or other courts of this Commonwealth or in any Federal court or agency and in actions instituted to recover penalties and to enforce regulations and orders of the commission. **[No member of the Law Bureau shall participate in any prosecutory function in any matter]** *If necessary to protect the public interest, the Law Bureau, pursuant to its prosecutorial function, may initiate and participate in proceedings* before the commission unless directed by the commission to do so in a proceeding involving transportation, safety, eminent domain, siting, service issues having no impact on rates or ability to pay or assist the Office of Trial Staff in carrying out the duties of the Office of Trial Staff, nor shall any member of the Law Bureau receive assistance from the Office of Trial Staff in the performance of his duties. Except as provided in this section, the Law Bureau may receive assistance from any other bureau or office of the commission as determined to be necessary.

[(c) Bureau of Conservation, Economics and Energy Planning.—The Bureau of Conservation, Economics and Energy Planning shall conduct studies and research all matters within the commission's jurisdiction and advise the commission of the results thereof in order to enable the commission to provide prospective regulation in the best interest of all parties concerned. Such studies and research shall include long range forecasting of energy needs and development; research into the use of new, efficient and economic methods of energy production; the review of the efficiency of the present generating systems operated within this Commonwealth; and the development of an effective program of energy conservation. The commission shall require all electric and gas public utilities subject to its jurisdiction to file with it an annual conservation report which shows the plans and progress achieved on programs of energy conservation. The commission shall, by rule, prescribe guidelines for the form and manner of such annual conservation report which report shall describe the current and proposed programs of each such utility designed to educate and encourage its customers in the optimum, effective and efficient use by them of electric and gas energy. The report shall include an accounting of the monetary and personnel resources actually or proposed to be expended or devoted to and the actual or anticipated results of such programs. The bureau shall review all proposals for electric and gas public utility plant expansion and shall submit for consideration of the commission its findings on what impact,

if any, the electric and gas public utility plant expansion will have on rates charged by the public utility.]

* * *

[(e) Office of Special Assistants.—The Office of Special Assistants shall be a support staff which shall be responsible to assist in the preparation of commission orders and shall perform such other advisory duties as may be required of it by the commission. No member of the Office of Special Assistants shall participate in any prosecutory function in any matter before the commission. No member of the Office of Special Assistants shall assist the Office of Trial Staff in carrying out the duties of the Office of Trial Staff, nor shall any member of the Office of Special Assistants receive assistance from the Office of Trial Staff in the performance of his duties. Except as provided in this section, the Office of Special Assistants may receive assistance from, or provide assistance to, any other bureau or office of the commission as determined to be necessary.]

(f) Other bureaus and offices.—The commission shall establish such bureau or bureaus to perform such duties as the commission may prescribe regarding all matters respecting rates of public utilities and all matters respecting common carriers and contract carriers. The establishment of these bureaus shall not be construed to prohibit the commission from establishing any additional bureaus which the commission finds necessary to protect the interests of the people of this Commonwealth. The bureaus may perform such other duties not inconsistent with law as the commission may direct.

(g) Staff testimony.—Members of the staff of the commission, except for the Office of Special Assistants, shall appear and present testimony in any proceeding before the commission when called by the commission, the chief counsel, the Director of Trial Staff or any of the parties to the proceeding. In addition to any cross-examination by the Office of Trial Staff as provided in section 306 (relating to Office of Trial Staff) or the chief counsel, any member of the commission staff who participates in the analysis, review and conclusions in any proceedings before the commission may, in the discretion of the Office of Trial Staff or the chief counsel and with the consent of the presiding officer, cross-examine any witness presented by the parties to the proceeding at the public hearing.]

Section 1.3. Title 66 is amended by adding a section to read:

§ 308.2. Other bureaus, offices and positions.

(a) Establishment of other bureaus, offices and positions.—In addition to the specific bureaus established in this part, the commission may establish other bureaus, offices and positions to perform the following functions:

(1) Review and provide advice regarding applications, petitions, tariff filings and other matters filed with the commission.

(2) Provide advice, review exceptions and prepare orders regarding matters to be adjudicated.

(3) Conduct financial reviews, earnings analyses and other financial studies.

(4) Conduct economic research, forecasting, energy conservation studies, cost studies and other economic studies related to public utilities.

(5) Monitor industry markets to detect anticompetitive, discriminatory or other unlawful conduct.

(6) Insure adequate maintenance, safety and reliability of utility networks.

(7) Insure adequate service quality, efficiency and availability at just and reasonable rates.

(8) Conduct financial, management, operational and special audits.

(9) Provide consumer information, consumer protection and informal resolution of complaints.

(10) Insure adequate safety, insurance, fitness and other requirements relevant to transportation utilities.

(11) Take appropriate enforcement actions, including rate proceedings, service proceedings and allocation proceedings, necessary to insure compliance with this title, commission regulations and orders.

(12) Perform other functions the commission deems necessary for the proper work of the commission.

(b) Prohibition on commingling of functions.—A commission employee engaged in a prosecutory function may not, in that matter or a factually related matter, provide advice or assistance to a commission employee performing an advisory function as to that matter.

Section 1.4. Section 2803 of Title 66 is amended by adding definitions to read:

§ 2803. Definitions.

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

* * *

“Bilateral contract.” An agreement, as approved by the commission, reached by two parties, each acting in its own independent self-interest, as a result of negotiations free of undue influence, duress or favoritism, in which the electric energy supplier agrees to sell and the electric distribution company agrees to buy a quantity of electric energy at a specified price for a specified period of time under terms agreed to by both parties, and which follows a standard industry template widely accepted in the industry or variations thereto accepted by the parties. Standard industry templates may include the EEI Master Agreement for physical energy purchases and sales and the ISDA Master Agreement for financial energy purchases and sales.

“Default service provider.” An electric distribution company within its certified service territory or an alternative supplier approved by the commission that provides generation service to retail electric customers who:

- (1) contract for electric power, including energy and capacity, and the chosen electric generation supplier does not supply the service; or*
- (2) do not choose an alternative electric generation supplier.*

Section 2. Title 66 is amended by adding sections 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) Procedures for the approval of plans submitted under subsection (b).

(2) An evaluation process, including a process to monitor and verify data collection, quality assurance and results of each plan and the program.

(3) An analysis of the cost and benefit of each plan submitted under subsection (b) in accordance with a total resource cost test approved by the commission.

(4) An analysis of how the program and individual plans will enable each electric distribution company to achieve or exceed the requirements for reduction in consumption under subsections (c) and (d).

(5) Standards to ensure that each plan includes a variety of energy efficiency and conservation measures and will provide the measures equitably to all classes of customers.

(6) Procedures to make recommendations as to additional measures that will enable an electric distribution company to improve its plan and exceed the required reductions in consumption under subsections (c) and (d).

(7) Procedures to require that electric distribution companies competitively bid all contracts with conservation service providers.

(8) Procedures to review all proposed contracts prior to the execution of the contract with conservation service providers to implement the plan. The commission may order the modification of a proposed contract to ensure that the plan meets the requirements for reduction in demand and consumption under subsections (c) and (d).

(9) Procedures to ensure compliance with requirements for reduction in consumption under subsections (c) and (d).

(10) A requirement for the participation of conservation service providers in the implementation of all or part of a plan.

(11) Cost recovery to ensure that measures approved are financed by the same customer class that will receive the direct energy and conservation benefits.

(b) Duties of electric distribution companies.—

(1) (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:

(A) The plan shall include specific proposals to implement energy efficiency and conservation measures to achieve or exceed the required reductions in consumption under subsections (c) and (d).

(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.

(C) The plan shall explain how quality assurance and performance will be measured, verified and evaluated.

(D) The plan shall state the manner in which the plan will achieve the requirements of the program under subsection (a) and will achieve or exceed the required reductions in consumption under subsections (c) and (d).

(E) The plan shall include a contract with one or more conservation service providers selected by competitive bid to implement the plan or a portion of the plan as approved by the commission.

(F) The plan shall include estimates of the cost of implementation of the energy efficiency and conservation measures in the plan.

(G) The plan shall include specific energy efficiency measures for households at or below 150% of the Federal poverty income guidelines. The number of measures shall be proportionate to those households' share of the total energy usage in the service territory. The electric distribution company shall coordinate measures under this clause with other programs administered by the commission or another Federal or State agency. The expenditures of an electric distribution company under this clause shall be in addition to expenditures made under 52 Pa. Code Ch. 58 (relating to residential low income usage reduction programs).

(H) The plan shall include a proposed cost-recovery tariff mechanism, in accordance with section 1307 (relating to sliding scale of rates; adjustments), to fund the energy efficiency and conservation measures and to ensure full and current recovery of the prudent and reasonable costs of the plan, including administrative costs, as approved by the commission.

(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 customers of all rate classes.

(J) The plan shall require an annual independent evaluation of its cost-effectiveness and a full review of the results of each five-year plan required under subsection (c)(3) and, to the extent practical, how the plan will be adjusted on a going-forward basis as a result of the evaluation.

(K) The plan shall include an analysis of the electric distribution company's administrative costs.

(ii) A new plan shall be filed with the commission every five years or as otherwise 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).

(iii) No more than 2% of funds available to implement a plan under this subsection shall be allocated for experimental equipment or devices.

(2) The commission shall direct an electric distribution company to modify or terminate any part of a plan approved under this section if, after an adequate period for implementation, the commission determines that an energy efficiency or conservation measure included in the plan will not achieve the required reductions in consumption in a cost-effective manner under subsections (c) and (d).

(3) If part of a plan is modified or terminated under paragraph (2), the electric distribution company shall submit a revised plan describing actions to be taken to offer substitute measures or to increase the availability of existing measures in the plan to achieve the required reductions in consumption under subsections (c) and (d).

(c) Reductions in consumption.—The plans adopted under subsection (b) shall reduce electric consumption as follows:

(1) By May 31, 2011, total annual weather-normalized consumption of the retail customers of each electric distribution company shall be reduced by a minimum of 1%. The 1% load reduction in consumption shall be measured against the electric distribution company's expected load as forecasted by the commission for June 1, 2009, through May 31, 2010, with provisions made for weather adjustments and extraordinary loads that the electric distribution company must serve.

(2) *By May 31, 2013, the total annual weather-normalized consumption of the retail customers of each electric distribution company shall be reduced by a minimum of 3%. The 3% load reduction in consumption shall be measured against the electric distribution company's expected load as forecasted by the commission for June 1, 2009, through May 31, 2010, with provisions made for weather adjustments and extraordinary loads that the electric distribution company must serve.*

(3) *By November 30, 2013, and every five years thereafter, the commission shall evaluate the costs and benefits of the program established under subsection (a) and of approved energy efficiency and conservation plans submitted to the program. The evaluation shall be consistent with a total resource cost test or a cost-benefit analysis determined by the commission. If the commission determines that the benefits of the program exceed the costs, the commission shall adopt additional required incremental reductions in consumption.*

(d) *Peak demand.—The plans adopted under subsection (b) shall reduce electric demand as follows:*

(1) *By May 31, 2013, the weather-normalized demand of the retail customers of each electric distribution company shall be reduced by a minimum of 4.5% of annual system peak demand in the 100 hours of highest demand. The reduction shall be measured against the electric distribution company's peak demand for June 1, 2007, through May 31, 2008.*

(2) *By November 30, 2013, the commission shall compare the total costs of energy efficiency and conservation plans implemented under this section to the total savings in energy and capacity costs to retail customers in this Commonwealth or other costs determined by the commission. If the commission determines that the benefits of the plans exceed the costs, the commission shall set additional incremental requirements for reduction in peak demand for the 100 hours of greatest demand or an alternative reduction approved by the commission. Reductions in demand shall be measured from the electric distribution company's peak demand for the period from June 1, 2011, through May 31, 2012. The reductions in consumption required by the commission shall be accomplished no later than May 31, 2017.*

(e) *Commission approval.—*

(1) *The commission shall conduct a public hearing on each plan and allow for the submission of recommendations by the Office of Consumer Advocate and the Office of Small Business Advocate and by members of the public as to how the electric distribution company could improve its plan or exceed the required reductions in consumption under subsections (c) and (d).*

(2) The commission shall approve or disapprove a plan filed under subsection (b) within 120 days of submission. The following shall apply to an order disapproving a plan:

(i) The commission shall describe in detail the reasons for the disapproval.

(ii) The electric distribution company shall have 60 days to file a revised plan to address the deficiencies identified by the commission. The revised plan shall be approved or disapproved by the commission within 60 days.

(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) shall be subject to a civil penalty of \$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 \$100,000 per day until the plan is filed.

(iii) Penalties collected under this paragraph shall be deposited in the low-income electric customer assistance program of the energy distribution company for the respective service territory.

(2) The following shall apply to an electric distribution company that fails to achieve the reductions in consumption required under subsection (c) or (d):

(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 for failure to achieve the required reductions in consumption under subsection (c) or (d). 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), 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).

(B) Contract with conservation service providers as necessary to implement any portion of the plan.

(g) Limitation on costs.—The total cost of any plan required under this section shall not exceed 2% of the electric distribution company's total annual revenue as of December 31, 2006. The provisions of this paragraph shall not apply to the cost of low-income usage reduction programs established under 52 Pa. Code Ch. 58 (relating to residential low income usage reduction programs).

(h) Costs.—The commission shall recover from electric distribution companies the costs of implementing the program established under this section.

(i) Report.—The following shall apply:

(1) Each electric distribution company shall submit an annual report to the commission relating to the results of the energy efficiency and conservation plan within each electric distribution service territory. The report shall include all of the following:

(i) Documentation of program expenditures.

(ii) Measurement and verification of energy savings under the plan.

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

(iv) Any other information required by the commission.

(2) Beginning five years following the effective date of this section and annually thereafter, the commission shall submit a report to the Consumer Protection and Professional Licensure Committee of the Senate and the Consumer Affairs Committee of the House of Representatives.

(j) Existing funding sources.—Each electric distribution company shall, upon request by any person, provide a list of all eligible Federal and State funding programs available to ratepayers for energy efficiency and conservation. The list shall be posted on the electric distribution company's Internet website.

(k) Recovery.—

(1) An electric distribution company shall recover on a full and current basis from customers, through a reconcilable adjustment clause under section 1307, all reasonable and prudent costs incurred in the provision or management of a plan provided under this section. This paragraph shall apply to all electric distribution companies, including electric distribution companies subject to generation or other rate caps.

(2) Except as set forth in paragraph (3), decreased revenues of an electric distribution company due to reduced energy consumption or changes in energy demand shall not be a recoverable cost under a reconcilable automatic adjustment clause.

(3) Decreased revenue and reduced energy consumption may be reflected in revenue and sales data used to calculate rates in a distribution-base rate proceeding filed by an electric distribution company under section 1308 (relating to voluntary changes in rates).

(l) Applicability.—This section shall not apply to an electric distribution company with fewer than 100,000 customers.

(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.

“Electric distribution company total annual revenue.” Amounts paid to the electric distribution company for generation, transmission, distribution and surcharges by retail customers.

“Energy efficiency and conservation measures.”

(1) Technologies, management practices or other measures employed by retail customers that reduce electricity consumption or demand if all of the following apply:

(i) The technology, practice or other measure is installed on or after the effective date of this section at the location of a retail customer.

(ii) The technology, practice or other measure reduces consumption of energy or peak load by the retail customer.

(iii) The cost of the acquisition or installation of the measure is directly incurred in whole or in part by the electric distribution company.

(2) Energy efficiency and conservation measures shall include solar or solar photovoltaic panels, energy efficient windows and doors, energy efficient lighting, including exit sign retrofit, high bay fluorescent retrofit and pedestrian and traffic signal conversion, geothermal heating, insulation, air sealing, reflective roof coatings, energy efficient heating and cooling equipment or systems and energy efficient appliances and other technologies, practices or measures approved by the commission.

“Peak demand.” The highest electrical requirement occurring during a specified period. For an electric distribution company, the term shall mean the sum of the metered consumption for all retail customers over that period.

“Quality assurance.” All of the following:

(1) The auditing of buildings, equipment and processes to determine the cost-effectiveness of energy efficiency and conservation measures using nationally recognized tools and certification programs.

(2) Independent inspection of completed energy efficiency and conservation measures completed by third-party entities to evaluate the quality of the completed measure.

“Real-time price.” A rate that directly reflects the different cost of energy during each hour.

“Time-of-use rate.” A rate that reflects the costs of serving customers during different time periods, including off-peak and on-peak periods, but not as frequently as each hour.

“Total resource cost test.” A standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary cost of supplying electricity is greater than the net

present value of the monetary cost of energy efficiency conservation measures.

§ 2806.2. Energy efficiency and conservation.

(a) Registry.—The commission shall, by March 1, 2009, establish a registry of approved persons qualified to provide conservation services to all classes of customers. In order to be included in the registry, a conservation service provider must meet experience and other qualifications determined by the commission.

(b) Application.—The commission shall develop an application for registration under subsection (a) and may charge a reasonable registration fee.

Section 3. Section 2807(e) of Title 66 is amended and the section is amended by adding subsections to read:

§ 2807. Duties of electric distribution companies.

(e) Obligation to serve.—[An electric distribution company's] A default service provider's obligation to provide electric generation supply service following [implementation of restructuring and the choice of alternative generation by a customer] the expiration of a generation rate cap specified under section 2804(4) (relating to standards for restructuring of electric industry) or a restructuring plan under section 2806(f) is revised as follows:

(1) While an electric distribution company collects either a competitive transition charge or an intangible transition charge or until 100% of its customers have choice, whichever is longer, the electric distribution company shall continue to have the full obligation to serve, including the connection of customers, the delivery of electric energy and the production or acquisition of electric energy for customers.

[(2) At the end of the transition period, the commission shall promulgate regulations to define the electric distribution company's obligation to connect and deliver and acquire electricity under paragraph (3) that will exist at the end of the phase-in period.

(3) If a customer contracts for electric energy and it is not delivered or if a customer does not choose an alternative electric generation supplier, the electric distribution company or commission-approved alternative supplier shall acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs.]

(3.1) Following the expiration of an electric distribution company's obligation to provide electric generation supply service to retail customers at capped rates, if a customer contracts for electric generation supply service and the chosen electric generation supplier does not provide the service or if a customer does not choose an alternative electric generation supplier, the default service provider shall provide electric generation supply service to that customer

pursuant to a commission-approved competitive procurement plan. The electric power acquired shall be procured through competitive procurement processes and shall include one or more of the following:

(i) Auctions.

(ii) Requests for proposal.

(iii) Bilateral agreements entered into at the sole discretion of the default service provider which shall be at prices which are:

(A) no greater than the cost of obtaining generation under comparable terms in the wholesale market, as determined by the commission at the time of execution of the contract; or

(B) consistent with a commission-approved competition procurement process. Any agreement between affiliated parties shall be subject to review and approval of the commission under Chapter 21 (relating to relations with affiliated interests). In no case shall the cost of obtaining generation from any affiliated interest be greater than the cost of obtaining generation under comparable terms in the wholesale market at the time of execution of the contract.

(3.2) The electric power procured pursuant to paragraph (3.1) shall include a prudent mix of the following:

(i) Spot market purchases.

(ii) Short-term contracts.

(iii) Long-term purchase contracts, entered into as a result of an auction, request for proposal or bilateral contract that is free of undue influence, duress or favoritism, of more than four and not more than 20 years. The default service provider shall have sole discretion to determine the source and fuel type. Long-term purchase contracts under this subparagraph may not constitute more than 25% of the default service provider's projected default service load unless the commission, after a hearing, determines for good cause that a greater portion of load is necessary to achieve least cost procurement. This subparagraph shall not apply to contracts executed under paragraph (5).

(3.3) The commission may determine that a contract is required to be extended for a longer term of up to 20 years, if the extension is necessary to ensure adequate and reliable service at least cost to customers over time.

(3.4) The prudent mix of contracts entered into pursuant to paragraphs (3.2) and (3.3) shall be designed to ensure:

(i) Adequate and reliable service.

(ii) The least cost to customers over time.

(iii) Compliance with the requirements of paragraph (3.1).

(3.5) Except as set forth in paragraph (5)(ii), the provisions of this section shall apply to any type of energy purchased by a default service provider to provide electric generation supply service, including energy

or alternative energy portfolio standards credits required to be purchased under the act of November 30, 2004 (P.L.1672, No.213), known as the Alternative Energy Portfolio Standards Act. The commission shall apply paragraph (3.4) to comparable types of energy sources.

(3.6) The default service provider shall file a plan for competitive procurement with the commission and obtain commission approval of the plan considering the standards in paragraphs (3.1), (3.2), (3.3) and (3.4) before the competitive process is implemented. The commission shall hold hearings as necessary on the proposed plan. If the commission fails to issue a final order on the plan within nine months of the date that the plan is filed, the plan shall be deemed to be approved and the default service provider may implement the plan as filed. Costs incurred through an approved competitive procurement plan shall be deemed to be the least cost over time as required under paragraph (3.4)(ii).

(3.7) At the time the commission evaluates the plan and prior to approval, in determining if the default electric service provider's plan obtains generation supply at the least cost, the commission shall consider the default service provider's obligation to provide adequate and reliable service to customers and that the default service provider has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis and shall make specific findings which shall include the following:

(i) The default service provider's plan includes prudent steps necessary to negotiate favorable generation supply contracts.

(ii) The default service provider's plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis.

(iii) Neither the default service provider nor its affiliated interest has withheld from the market any generation supply in a manner that violates Federal law.

(3.8) Notwithstanding sections 508 (relating to power of the commission to vary, reform and revise contracts) and 2102 (relating to approval of contracts with affiliated interests), the commission may modify contracts or disallow costs only when the party seeking recovery of the costs of a procurement plan is, after hearing, found to be at fault for the following:

(i) not complying with the commission-approved procurement plan; or

(ii) the commission of fraud, collusion or market manipulation with regard to these contracts.

(3.9) The default service provider shall have the right to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause under section 1307 (relating to sliding scale of rates;

adjustments), all reasonable costs incurred under this section and a commission-approved competitive procurement plan.

(4) If a customer that chooses an alternative supplier and subsequently desires to return to the local distribution company for generation service, the local distribution company shall treat that customer exactly as it would any new applicant for energy service.

(5) (i) Notwithstanding paragraph [(3)] (3.1), the electric distribution company or commission-approved alternative supplier may, in its sole discretion, offer large customers with a peak demand of 15 megawatts or greater at one meter at a location in its service territory any negotiated rate for service at all of the customers' locations within the service territory for any duration agreed upon by the electric distribution company or commission-approved alternative supplier and the large customer. The commission shall permit, but shall not require, an electric distribution company or commission-approved alternative supplier to provide service to large customers under this paragraph. Contract rates entered into under this paragraph shall be subject to review by the commission in order to ensure that all costs related to the rates are borne by the parties to the contract and that no costs related to the rates are borne by other customers or customer classes. If no costs related to the rates are borne by other customers or customer classes, the commission shall approve the contract within 90 days of its filing, or it shall be deemed approved by operation of law upon expiration of the 90 days. Information submitted under this paragraph shall be subject to the commission's procedures for the filing of confidential and proprietary information.

(ii) For purposes of providing service under this paragraph to customers with a peak demand of 20 megawatts or greater at one meter at a location within that distribution company's service territory, an electric distribution company that has completed its restructuring transition period as of the effective date of this paragraph may, in its sole discretion, acquire an interest in a generation facility or construct a generation facility specifically to meet the energy requirements of the customers, including the electric requirements of the customers' other billing locations within its service territory. The electric distribution company must commence construction of the generation facility or contract to acquire the generation interest within three years after the effective date of this paragraph, except that the electric distribution company may add to the generation facilities it commenced construction or contracted to acquire after this three-year period to serve additional load of customers for whom it commenced construction or contracted to acquire generation within three years. Nothing in this paragraph requires or authorizes the commission to require an electric distribution company to commence construction or acquire an interest in a generation facility. The electric distribution

company's interest in the generation facility it built or contracted to acquire shall be no larger than necessary to meet peak demand of customers served under this subparagraph. During times when the customer's demand is less than the electric distribution company's generation interest, the electric distribution company may sell excess power on the wholesale market. At no time shall the costs associated with the generating facility interests be included in rate base or otherwise reflected in rates. The generation facility interests shall not be commission-regulated assets.

(6) A default service plan approved by the commission prior to the effective date of this section shall remain in effect through its approved term. At its sole discretion, the default service provider may propose amendments to its approved plan that are consistent with this section, and the commission shall issue a decision whether to approve or disapprove the proposed amendments within nine months of the date that the amendments are filed. If the commission fails to issue a final order within nine months, the amendments shall be deemed to be approved and the default service provider may implement the amendments as filed.

(7) The default service provider shall offer residential and small business customers a generation supply service rate that shall change no more frequently than on a quarterly basis. All default service rates shall be reviewed by the commission to ensure that the costs of providing service to each customer class are not subsidized by any other class.

(f) Smart meter technology and time of use rates.—

(1) Within nine months after the effective date of this paragraph, electric distribution companies shall file a smart meter technology procurement and installation plan with the commission for approval. The plan shall describe the smart meter technologies the electric distribution company proposes to install in accordance with paragraph (2).

(2) Electric distribution companies shall furnish smart meter technology as follows:

(i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.

(ii) In new building construction.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

(3) Electric distribution companies shall, with customer consent, make available direct meter access and electronic access to customer meter data to third parties, including electric generation suppliers and providers of conservation and load management services.

(4) In no event shall lost or decreased revenues by an electric distribution company due to reduced electricity consumption or shifting energy demand be considered any of the following:

(i) A cost of smart meter technology recoverable under a reconcilable automatic adjustment clause under section 1307(b), except that decreased revenues and reduced energy consumption may be reflected in the revenue and sales data used to calculate rates in a distribution rate base rate proceeding filed under section 1308 (relating to voluntary changes in rates).

(ii) A recoverable cost.

(5) By January 1, 2010, or at the end of the applicable generation rate cap period, whichever is later, a default service provider shall submit to the commission one or more proposed time-of-use rates and real-time price plans. The commission shall approve or modify the time-of-use rates and real-time price plan within six months of submittal. The default service provider shall offer the time-of-use rates and real-time price plan to all customers that have been provided with smart meter technology under paragraph (2)(iii). Residential or commercial customers may elect to participate in time-of-use rates or real-time pricing. The default service provider shall submit an annual report to the price programs and the efficacy of the programs in affecting energy demand and consumption and the effect on wholesale market prices.

(6) The provisions of this subsection shall not apply to an electric distribution company with 100,000 or fewer customers.

(7) An electric distribution company may recover reasonable and prudent costs of providing smart meter technology under paragraph (2)(ii) and (iii), as determined by the commission. This paragraph includes annual depreciation and capital costs over the life of the smart meter technology and the cost of any system upgrades that the electric distribution company may require to enable the use of the smart meter technology which are incurred after the effective date of this paragraph, less operating and capital cost savings realized by the electric distribution company from the installation and use of the smart meter technology. Smart meter technology shall be deemed to be a new service offered for the first time under section 2804(4)(vi). An electric distribution company may recover smart meter technology costs:

(i) through base rates, including a deferral for future base rate recovery of current basis with carrying charge as determined by the commission; or

(ii) on a full and current basis through a reconcilable automatic adjustment clause under section 1307.

(g) Definition.—As used in this section, the term “smart meter technology” means technology, including metering technology and network communications technology capable of bidirectional communication, that records electricity usage on at least an hourly basis,

including related electric distribution system upgrades to enable the technology. The technology shall provide customers with direct access to and use of price and consumption information. The technology shall also:

- (1) Directly provide customers with information on their hourly consumption.*
- (2) Enable time-of-use rates and real-time price programs.*
- (3) Effectively support the automatic control of the customer's electricity consumption by one or more of the following as selected by the customer:*
 - (i) the customer;*
 - (ii) the customer's utility; or*
 - (iii) a third party engaged by the customer or the customer's utility.*

Section 4. Section 2811 of Title 66 is amended by adding a subsection to read:

§ 2811. Market power remediation.

* * *

(e.1) Market misconduct.—

(1) If an electric distribution company or any of its affiliated companies or any company that an electric distribution company has purchased generation from is found guilty of market manipulation, exercising market power or collusion by the Federal Energy Regulatory Commission or any Federal or State court or, if an electric distribution company or any one of its affiliated companies or any company that an electric distribution company has purchased generation from settles a claim of market manipulation, exercising market power or collusion that is brought by a regional transmission operator's market monitoring unit, the Federal Energy Regulatory Commission or another entity, the commission:

(i) Shall direct the electric distribution company to take any and all reasonable action to quantify the effect of the market misconduct upon Pennsylvania ratepayers.

(ii) Following public hearing on the matter and a finding of public interest, may direct the electric distribution company to take any and all reasonable legal action, including the filing of a lawsuit as may be necessary, to recover the quantified damages which shall be used to recompense Pennsylvania ratepayers affected by the market misconduct.

(2) If the electric distribution company fails to pursue reasonable action to quantify or seek recovery of damages for Pennsylvania ratepayers affected by market manipulation, the exercise of market power or collusion, the commission is authorized, following notice and an opportunity of the electric distribution company to comply or contest, to assess a civil penalty, which shall not be recovered in rates, of not more than \$10,000 per day for failure or neglect to obey an order

of the commission, the continuance of the failure or neglect being a separate offense.

(3) Any monetary damages recovered by the electric distribution company shall be paid to affected Pennsylvania ratepayers in the form of a credit to their electric bills or as refunds.

(4) The provisions of this subsection shall be held to be in addition to and not in substitution for or limitation of any other provision of this title.

** * **

Section 5. Title 66 is amended by adding sections to read:

§ 2813. Procurement of power.

Except as provided under the act of November 30, 2004 (P.L.1672, No.213), known as the Alternative Energy Portfolio Standards Act, the commission may not order a default service provider to procure power from a specific generation supplier, from a specific generation fuel type or from new generation only.

§ 2814. Additional alternative energy sources.

(a) Alternative energy sources.—The term “alternative energy sources” as defined under section 2 of the act of November 30, 2004 (P.L.1672, No.213), known as the Alternative Energy Portfolio Standards Act, shall also include low-impact hydropower consisting of any technology that produces electric power and that harnesses the hydroelectric potential of moving water impoundments if one of the following applies:

(1) (i) the hydropower source has a Federal Energy Regulatory Commission licensed capacity of 21 megawatts or less; and

(ii) the license for the hydropower source was issued by the Federal Energy Regulatory Commission on or prior to January 1, 1984, and held on July 1, 2007, in whole or in part by a municipality located wholly within this Commonwealth or by an electric cooperative incorporated in this Commonwealth.

(2) The incremental hydroelectric development:

(i) does not adversely change existing impacts to aquatic systems;

(ii) meets the certification standards established by the Low Impact Hydropower Institute and American Rivers, Inc., or their successors;

(iii) provides an adequate water flow for protection of aquatic life and for safe and effective fish passage;

(iv) protects against erosion; and

(v) protects cultural and historic resources.

(b) Biomass.—The term “biomass energy” as defined under section 2 of the Alternative Energy Portfolio Standards Act shall also include the generation of electricity utilizing by-products of the pulping process and wood manufacturing process, including bark, wood chips, sawdust and lignins in spent pulping liquors. Electricity from biomass energy under this subsection generated inside this Commonwealth shall be eligible as a Tier

I alternative energy source. Electricity from biomass energy under this subsection generated outside this Commonwealth shall be eligible as a Tier II alternative energy source.

(c) Increase in Tier I.—The commission shall at least quarterly increase the percentage share of Tier I alternative energy sources required to be sold by an electric distribution company or electric generation supplier under section 3(b)(1) of the Alternative Energy Portfolio Standards Act to reflect any new biomass energy or low-impact hydropower resources that qualify as a Tier I alternative energy source under this section. No new resource qualifying as biomass energy or low-impact hydropower under this section shall be eligible to generate Tier I alternative energy credits until the commission has increased the percentage share of Tier I to reflect these additional resources.

§ 2815. Carbon dioxide sequestration network.

(a) Assessment.—

(1) By April 1, 2009, the department shall complete a study to identify suitable geological formations, including sites within or in proximity to the Medina, Tuscarora or Oriskany Sandstone formation for the location of a State network.

(2) By June 1, 2009, the department, in consultation with the commission, shall hire one or more independent experts pursuant to 62 Pa.C.S. Pt. I (relating to Commonwealth Procurement Code), as necessary, to conduct an assessment of the following:

(i) Estimates of capital requirements and expenditures necessary for the establishment, operation and maintenance of a State network.

(ii) The collection of data to allow a safety assessment.

(iii) An assessment of all potential risk to individuals, property and the environment associated with the geological sequestration of carbon dioxide in a State network. The assessment, which shall be completed by October 1, 2009, shall include an analysis of the following:

(A) Existing Federal and State regulatory standards for the storage of carbon dioxide.

(B) Factors contained in the United States Environmental Protection Agency's Vulnerability Evaluation Framework for Geologic Sequestration of Carbon Dioxide (EPA 430-R-08-009, dated July 10, 2008).

(C) The different types of insurance, bonds, other instruments and recommended levels of insurance which should be carried by the operator of the State network during the construction and operation of the State network.

(D) The availability of commercial insurance.

(E) Models for the establishment of a Commonwealth fund to provide protection against risk to be funded by the operator.

(b) Transmission of study and assessment.—

(1) The department shall submit the study conducted under subsection (a)(1) to the Governor, the chairman and minority chairman of the Environmental Resources and Energy Committee of the Senate, the chairman and minority chairman of the Environmental Resources and Energy Committee of the House of Representatives and the department no later than May 1, 2009.

(2) The independent expert shall submit the final assessment under subsection (a)(2) to the Governor, the chairman and minority chairman of the Environmental Resources and Energy Committee of the Senate, the chairman and minority chairman of the Environmental Resources and Energy Committee of the House of Representatives and the department no later than November 1, 2009.

(c) Department.—The following shall apply:

(1) The department shall review the assessment submitted under subsection (a)(2) and all geologic sequestration requirements associated with a State network, including geological site characterization, modeling and verification of fluid movement, corrective action, well construction, operation, mechanical integrity testing, monitoring and site closure.

(2) Following the review under paragraph (1), the department may conduct a pilot project to determine the viability of establishing a State network in this Commonwealth.

(d) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Carbon dioxide sequestration.” The storage of carbon dioxide in a supercritical phase within a geological subsurface formation such as a deep saline aquifer with suitable cap rock, sealing faults and anticlines that includes compression, dehydration and leak detection monitoring equipment and pipelines to transport carbon dioxide captured by an advanced coal combustion with limited carbon emissions plant to an underground storage site. The term shall not include use of the carbon dioxide for enhanced oil recovery.

“Department.” The Department of Conservation and Natural Resources of the Commonwealth.

“State network.” A carbon dioxide sequestration network established on lands owned by the Commonwealth, or lands on which the Commonwealth has acquired the right to store carbon dioxide, that have been designated by the Department of Conservation and Natural Resources for the storage of carbon dioxide.

Section 6. This act shall take effect in 30 days.

APPROVED—The 15th day of October, A.D. 2008.

EDWARD G. RENDELL