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September 21, 2009

Secretary James McNulty
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Metropolitan Edison Company EE&C Plan- Docket No. M-2009-2092222
Pennsylvania Electric Company EE&C Plan - Docket No. M-2009-2112952
Pennsylvania Power Company EE&C Plan - Docket No. M-2009-2112956

Dear Secretary McNulty:

Enclosed for filing please find the Reply Brief of Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec") and Pennsylvania Power Company ("Penn Power"), in the above-referenced proceeding. This Reply Brief was filed electronically today. Copies have been served in accordance with the attached Certificate of Service.

If you have questions, please do not hesitate to contact me.

Sincerely,

STEVENS & LEE

Renardo L. Hicks

Renardo L. Hicks

Enclosures

cc: ALJ David Salapa
Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Metropolitan Edison Company Energy Efficiency and Conservation Plan	:	Docket No. M-2009-2092222
Pennsylvania Electric Company Energy Efficiency and Conservation Plan	:	Docket No. M-2009-2112952
Pennsylvania Power Company Energy Efficiency and Conservation Plan	:	Docket No. M-2009-2112956

REPLY BRIEF OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY AND PENNSYLVANIA POWER COMPANY

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Dated: September 21, 2009

Counsel for:
Metropolitan Edison Company,
Pennsylvania Electric Company and
Pennsylvania Power Company

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I. INTRODUCTION

On September 11, 2009, Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), and Pennsylvania Power Company ("Penn Power") (collectively, the "Companies") filed their Main Brief in this proceeding. The Main Brief explained how each of the Companies' individual Energy Efficiency & Conservation ("EE&C") Plans originally submitted by the Companies to the Commission on July 1, 2009 ("Original EE&C Plans" or "Original Plans") complied with Act 129 of 2008 ("Act 129"). In accordance with the procedural schedule established by Administrative Law Judge Salapa ("ALJ") the Companies hereby submit their Reply Brief in this matter in response to issues raised in the Main Briefs of (1) The Office of Consumer Advocate ("OCA"); (2) The Commission's Office of Trial Staff ("OTS"); (3) UGI Utilities, Inc.-Gas Division, UGI Penn Natural Gas, Inc. UGI Central Penn Gas, Inc., The Peoples Natural Gas Company d/b/a Dominion Peoples, and National Fuel Gas Distribution Corporation (collectively "NGDCs"); (4) The Pennsylvania Department of Environmental Protection ("DEP"); (5) Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, and Penn Power Users Group (collectively "the Industrials"); (6) The Office of Small Business Advocate ("OSBA"); (7) Association of Community Organizations for Reform Now ("ACORN"); (8) Field Diagnostic Services, Inc. ("Field Diagnostic"); (9) Comperio Energy d/b/a ClearChoice ("ClearChoice"); (10) Representative Camille George ("Rep. George") and (11) EnerNOC, Inc. ("EnerNOC").[1]

[1] Because the Companies anticipated many of the arguments presented by these parties in their Main Briefs, the Companies included responses to these arguments in their Main Brief, all of which are incorporated by reference herein. The Companies' failure to address an argument in this Reply Brief, or to provide a less detailed response herein than in their Main Brief, should not be construed as the Companies' acceptance of any party's position presented in its Main Brief.

II. PROCEDURAL HISTORY

The Companies incorporate herein by reference the Procedural History set forth on pages 3–7 of their Main Brief.

III. DESCRIPTION OF THE COMPANIES' REVISED PLANS

The Companies generally incorporate herein by reference the detailed Description of the Companies' Original Plans as set forth in the Joint Petition filed in this proceeding on July 1, 2009, and in the Companies' September 11, 2009 Main Brief at pages 7-14. However, while the Companies believe that the Original Plans fully comply with the requirements of Act 129, they nevertheless have continued to consider the suggestions of the other parties to this docket, specifically those parties that participated in the stakeholder process and settlement discussions, and provided constructive testimony in these proceedings. In response to some of these suggestions, the Companies have made certain changes to the Original Plans, including (i) an increased focus on, and budgets for, the Low Income customer segment; (ii) the development of a more comprehensive Evaluation Measurement and Verification (EM&V) process; and (iii) steps to identify and manage risks as well as to prepare for contingencies that may be necessary in each of the Companies' implementation activities during the period in which the Plan is in effect. Each of the changes incorporated into the Companies' Revised Plans filed on September 21, 2009 is summarized below:

A. Summary of Plan Amendments

- **Revised Plan Periods** – In response to the comments from several parties that the Companies used 43 months, rather than 48 months, of 2006 revenues when determining the two percent cost recovery limitation, the Companies have applied a "Revenue Adjustment Factor" to effectively compress the recovery of 48 months of revenue under Act 129's two percent limitation into 43 months (November 1, 2009 through May 31, 2013).[2]

- **<u>Revised 1307(e) Cost Caps</u>** - In response to comments from OSBA and OTS, the total cost to be collected through the 1307(e) Rider for the implementation of the Revised Plan will be limited to $99,467,568, for Met-Ed; $91,898,976, for Penelec; and $26,639,136 for Penn Power.[3]

- **<u>Revisions to EEC-C Tariff Riders</u>** – As a result of the changes in the plan period and costs to be collected through the 1307(e) Rider, the EEC-C Tariff Riders have also been revised. These changes are discussed in the Rebuttal Testimony of Witness Raymond Parrish (Met-Ed/Penelec/Penn Power Statement No. 3-R at pages 10-11), and are reflected in Appendix H of each Revised Plan.

- **<u>Reduction of Residential Direct Load Control Program</u>** - In response to comments made by OCA that the budgeted costs associated with the Residential Direct Load Control ("DLC") Programs were overstated, the Companies have reduced the budget for Residential DLC costs for the Revised Plan Period by approximately $12 million for Met- Ed; approximately $12.5 million, for Penelec; and approximately $1 million, for Penn Power.[4] These funds have been reallocated for (i) additional low income programs; (ii) enhanced evaluation, measurement and verification ("EM&V") processes; and (iii) a contingency reserve for unforeseen events that may arise during the period in which the Revised Plans are in effect.

- **<u>Low Income Programs</u>** – In an effort to respond to comments from Rep. George, OCA and ACORN, the Revised Plans include a number of targeted efforts designed specifically for low income customers (excluding current levels of WARM program results) in an amount designed to equal the percentage of low income customer usage, as compared to system usage.[5] The following specific program elements have been incorporated into the Revised Plans:

    a. Additional Act 129 WARM program funding reflecting a 25% expansion of the current WARM program at Met-Ed and Penelec and an increase of approximately 75 participants annually at Penn Power to treat additional homes.

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[2] Met-Ed/Penelec/Penn Power Statement No. 3-R at pages 9-10.
[3] Id. at 9-10.
[4] Met-Ed/Penelec/Penn Power Statement No. 2-R at pages 4-5.
[5] See Exhibit GLF-5, line 2, which is part of Met-Ed/Penelec/Penn Power Statement No. 2-R.

b. Target marketing and tracking expenditures for low income participation in an online and telephone audit program; increased marketing dollars as shown below to target the Residential Home Audit program, School Audit program additions, programmable thermostats, CFL bulbs regular programs, and appliance recycling programs to low-income customers to achieve the appropriate percentage of low income customer usage as compared to system usage (Exhibit GLF-5, line 2). The budget allocations for these changes are $706,000 for Met-Ed; (2) $1,015,000 for Penelec; and (3) $48,000 for Penn Power.

c. In response to an OCA suggestion, the Revised Plans include a $40 rebate toward replacement of a furnace fan with a high efficiency furnace fan as part of the residential energy efficiency ("EE") HVAC Program.

- **Increase to EM&V** – In response to suggestions from DEP and OCA, the Companies will increase the amount budgeted for the Companies' EM&V by as much as $6,000,000 (up to $2.6 million for Met-Ed and Penelec, and $ 0.8 million for Penn Power), which is consistent with national averages for similar EM&V activities.

- **Credit Requirements for CSPs** – The CSP credit requirements have been revised to now include a requirement that the CSP provide either (i) a minimum senior unsecured debt rating; or (ii) a parental guaranty, letter of credit, or cash deposit.[6]

- **Updates to the Commercial Industrial Demand Response Program** – In its supplemental filing made on July 31, 2009, the Companies also revised the Commercial Industrial Demand Response Programs included in Section 3 of the Original Plans so as to allow the Companies to recoup administrative costs out of funds received from PJM and to match the pricing set forth in other programs.[7] The Companies also increased the budgets for payments to program participants by a total of $760,000 for the summers of 2011 and 2012 for Met-Ed; and $1,140,000, for Penelec.

- **Updates to Multi Family Program and Multi Building Program** – The Companies revised Sections 3.2 and 3.3 of the Companies' lists of programs to include both a Residential and Small Commercial/Industrial Multi-Family Program description. As explained in the Supplemental Testimony of George Fitzpatrick at pages 7 and 8, both of these programs

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[6] Met-Ed/Penelec/Penn Power Statement No. 2-S at pages 4-6; Met-Ed/Penelec/Penn Power Exhibit GLF-2, at pages 1-2).

[7] Met-Ed/Penelec/Penn Power Statement 3-S at pages 4 through 7.

were included in the Companies' Original Plan, but the specific program descriptions were inadvertently omitted from the original filing.

- **Revisions to Company Tables** – The Revised Plans include revisions to (i) Company Table 3 to reflect the rate and cost recovery changes discussed in the Rebuttal Testimony of Witness Raymond Parrish, Met-Ed/Penelec/Penn Power Statement No. 3-R; (ii) Company Table 5 to reflect a $40 rebate for residential furnace fan installations; and (iii) Company Table 4a, which provides a summary description of the various programs.

- **Revisions to PUC Tables** – As a result of changes to the Residential DLC and low income programs mentioned above, and the modification of the Companies' 2011 and 2013 energy efficiency targets as suggested by OCA, the Revised Plans include revisions to PUC Tables 1, 2, 3, 4, 5, 6A, 6B, 6C and 7 B.

- **Revisions to Figure 2 (Timeline)** – The Companies are no longer seeking "fast track" treatment for certain programs that they had intended to launch prior to the anticipated plan approval date and will now instead launch them upon plan approval. These changes are more fully discussed in the Supplemental Testimony of George Fitzpatrick, Met-Ed/Penelec/Penn Power Statement No. 2-S, at pages 2-4 and are reflected in Figure 2 in each of the Revised Plans.

- **Revisions to Section 3 (Program Descriptions)** – The Revised Plans include revisions to various Program Descriptions to incorporate all of the changes discussed above.

- **Revisions to Section 8 -** Section 8 in each of the Revised Plans has been changed to reflect the changes made to the avoided costs reflected in the July 31, 2009 Supplemental Plan filing submitted to reflect the Commission's final order regarding the TRC test.

- **Revisions to Appendices** – The Revised Plans include revisions to Appendices D, E, F, G and H to incorporate all of the changes discussed above.

- **Stakeholder Process** – In response to OCA's suggestion, the Companies agree to meet quarterly through May 31, 2013 *with the parties to this proceeding* in stakeholder meetings.

IV. SUMMARY OF ARGUMENTS

The Companies submitted their Original Plans on July 1, 2009. With the July 31, 2009 submission to the Commission of the supplemental Total Resource Cost ("TRC") information, the Original Plans complied with all requirements set forth in both Act 129 and the Commission's Implementation Order entered January 16, 2009 ("Implementation Order.")[8] No party presented an alternative plan, instead simply picking and choosing changes or additions that some would like to have incorporated into the Companies' Original Plans. However, none of these parties presented any evidence to demonstrate that the Original Plans, if modified to accommodate the suggested changes and/or additions, would either (a) meet all Act 129 requirements; (b) improve the results that would otherwise arise from the Original Plans; or (c) pass the TRC test, either individually or on a comprehensive basis.[9] Therefore, the only EE&C plans supported by the evidence are those of the Companies.

Having said this, the Companies acknowledge and appreciate the valuable input provided by many of the parties. However, it is the Companies' plans that have been subject to comprehensive analysis and are ready to launch. The Companies know the program components, they know the costs and they have reasonable estimates of savings. Because of the aggressive timelines, the Companies must pursue the plans that they believe provide them with the best opportunity to comply with the law in a cost effective manner. Inasmuch as the Companies have committed to continue the stakeholder process and meet with the parties on a quarterly basis to review program results, discuss potential modifications to the programs and

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[8] Energy Efficiency and Conservation Plan, Docket No. M.-2008-2069887 (Implementation Order entered January 16, 2009).

[9] While the NGDCs presented some evidence related to the TRC results for certain suggested fuel switching programs, as explained in Section V.E.5 *infra*, their analysis is flawed.

potential additions to and deletions from the Companies' portfolio of programs, the Companies will be further reviewing and evaluating the suggestions and other valuable input provided by the parties and expect to incorporate some of their suggestions in the future.

Although the Companies believe that the Original Plans meet all statutory and regulatory directives, the Companies, in an attempt to accommodate certain suggestions of the various parties, made modifications to the Original Plans that are reflected in the Revised Plans being submitted concurrent with the submission of the Companies' Reply Brief. As the evidence clearly indicates, these Revised Plans also comply with both Act 129 and the Commission's Implementation Order and for all of the reasons set forth below, the Commission should find that the Revised Plans: (1) are consistent with Act 129 and the Commission's Implementation Order; (2) are in the public interest; (3) will benefit customers by providing them with genuine opportunities to reduce electricity consumption; (4) will provide the Companies with an opportunity to achieve the energy and demand reduction requirements set forth in Act 129; and (5) will provide the Companies with a reasonable opportunity to recover all just and reasonable costs incurred by the Companies for the development, implementation and management of the Plans.

Moreover, it is the Companies who may be subject to penalties should the Revised Plans fail to achieve the results required in Act 129. Therefore, deference should be given to the Companies' judgment and analyses. Accordingly, the Revised Plans should be approved as submitted.

V. ARGUMENTS

A. Act 129 Conservation and Demand Reduction Requirements

1. Overall Conservation Requirements

a. 2011 Energy Efficiency Requirements

b. 2013 Energy Efficiency Requirements

Only the OCA challenged the 2011 and 2013 energy efficiency requirements set forth in Act 129, suggesting that Met-Ed, Penelec and Penn Power each misstated both the 2011 and 2013 energy efficiency targets. According to OCA, the targets for each of the Companies should be as follows[10]:

	2011	2013
Met-Ed	148,650 MWh	445,951 MWh
Penelec	143,993 MWh	442,782 MWh
Penn Power	47,729 MWh	144,693 MWh

The Companies generally agree with OCA's observations and PUC Table 2 in the Revised Plans now reflect these new targets.[11]

2. Overall Demand Reduction Requirements

No party challenged the Companies' demand reduction targets set forth in the Original Plan. Accordingly, no response to this section is necessary.

[10] OCA Br. pp. 11-15.

[11] OCA also claims that Met-Ed "appears to slightly miss its [2013] consumption target by 973 MWh" based on OCA's suggested target of 445,951 MWh. (OCA Br. p. 14.) The Companies do not agree. As the Companies' Witness Fitzpatrick clearly states in his direct testimony, Met-Ed's projected energy savings in 2013 is 447,737 MWh, which clearly exceeds the target suggested by OCA. (Met-Ed/Penelec/Penn Power Statement No. 2, p. 6.)

3. Requirements for a Variety of Plans Equitably Distributed

Section 2806.1(a)(5) of Act 129 requires every EE&C plan to include "a variety of energy efficiency and conservation measures [as well as] provide the measures equitably to all classes of customers."[12] Only OCA, Rep. George and ACORN address this issue, with OCA simply suggesting "a more equitable balance in the [program] portfolio,[13] and Rep. George alleging that the Original Plans lack the "necessary variety" because they allegedly only expand the existing WARM services and make "vague references" to standard residential programs that low income customers (allegedly) cannot afford.[14] ACORN, on the other hand, simply concludes that there is not enough information provided in the Companies' Original Plans to determine if low income targets will be met,[15] which is odd given that neither OCA nor Rep. George had such difficulties.

Inasmuch as all of these issues involve low income programs, the Companies will address them in Section V.A.5. below when discussing the "Low Income Program Requirements."

4. 10% Government/Non-Profit Requirement

No party challenges the Companies' determination of the Companies' 10% government/non-profit levels required under Act 129. Rather, OSBA focuses on cost recovery, while DEP focuses on the use of rebates and how they may affect "whole building" programs.

OSBA argues that the Original Plans "should be modified in order to treat Government/Non-Profit as a separate class for cost recovery purposes" because it "*appears*" that

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[12] 66 Pa. C.S.A. § 2806.1(a)(5).
[13] OCA Br., p. 21.
[14] Rep. George Br., p. 10.
[15] ACORN Br. p. 8.

the small commercial and industrial ("C&I") class will subsidize this sector.[16] As a preliminary matter, OSBA's *conjecture* is not evidence. Moreover, as the Companies' Witness Parrish explained in his rebuttal testimony, the Companies have proposed a 1307(e) filing which requires the Companies to submit annual reconciliations and cost information. OSBA will have an opportunity each year to address its cross subsidization issues during the 1307 proceedings.[17] The Commission should refrain from making a decision in this proceeding and, instead, wait until actual costs, revenues and *facts* are before it in the annual reconciliation process contemplated in 66 Pa. C.S.A. § 1307(e). In so doing, the Commission can determine whether such cross subsidization actually exists, rather than rely on the speculation of OSBA.

DEP focuses more on the details of the programs included in the Original Plans, claiming that the Companies' reliance on prescriptive rebates "is not in the public interest."[18] DEP's entire argument is based on its flawed assumption that the lighting projects or use of rebates "impair[s] a government's ability to obtain significant long term energy consumption reductions through guaranteed energy savings contracts provided by energy service companies." Nothing in the Companies' Original Plans forces government entities to participate in *any* of the Companies' program offerings. Each government entity must decide for itself whether a "whole building" performance contract is economically more beneficial than a program offered by the Companies. They are free to choose. There is no impairment. Moreover, as the Companies' Witness Fitzpatrick explained in his rebuttal testimony, DEP is wrong in its fundamental assumption. The Original Plans do, indeed, include a "whole building" approach:

> The Companies have proposed a C/I Performance Contracting Program that is available to Government and Institutional and

[16] OSBA Br. p. 8.
[17] Met-Ed/Penelec/Penn Power Statement No. 3-R, p. 8.
[18] DEP Br., p. 6.

> Non-Profit facilities. Also, the Companies' plan includes payment for building audits for Federal, State, Local, Institutional and Non-Profit facilities. The C/I Performance Contracting Plan – or channel coupled with the building audit and our C/I Equipment Program – gives our Federal, State, Local, Institutional and Non-Profit facilities the flexibility to take a whole building approach advocated by the DEP. [19]

Inasmuch as DEP's underlying assumption is invalid, so too is its conclusion.

5. Low Income Program Requirements

Three parties (OCA, Rep. George and ACORN) challenge the Companies' Original Plans both on (i) the level of funds being earmarked for low income programs; and (ii) the design of the low income programs included in the plans.

OCA argues that the Companies should have determined the low income funding level based on census data, rather than the Companies' billing data,[20] without including existing WARM program results[21] or a pro rata share of other residential programs.[22] Rep. George also challenges the funding levels, but does not provide any details as to why he believes the funding levels are incorrect; nor does he offer any suggestions for correction, instead simply stating that "the Plans must provide additional measures with dedicated funding [to the low income sector.]"[23] ACORN claims that there is "insufficient information with which to determine how the [C]ompanies derived their low income targets and whether the budgets for their low income

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[19] Met-Ed/Penelec/Penn Power Statement No. 2-R, pp. 16-17; Multi-Family Program Description (Section 3.2 of the Original Plan.)
[20] OCA Br., p. 24
[21] Id. at 24-25.
[22] Id. at 25.
[23] Rep.George Br., pp. 8-9.

sector programs are adequate."[24] Given the OCA's and Rep. George's abilities to make such a determination, ACORN is obviously wrong.

a. WARM Results

OCA argues that "the existing savings from WARM should not be attributed to the Companies' low income reduction obligations under Act 129,"[25] even though, as the Companies' Witness Fitzpatrick explained, the Original Plans include enhancements to the existing WARM program -- such as CFL lighting and energy education materials for low income and low energy use customers -- that are being funded through programs included in the Companies' Original Plans.[26] The WARM program has since been further enhanced in the Revised Plans through a "WARM Plus" program which will create a 25% expansion of the WARM program included in the Original Plans of Met-Ed and Penelec, and an increase of up to 75 annual participants in the Penn Power revised program. In light of the foregoing, it is proper to include all of the results from the WARM program when determining the Companies' compliance with the low income targets set forth in Act 129.[27] Anything less would provide a "disincentive" for the Companies to fund the enhancements, given the Act 129 two percent spending limitations imposed upon them.

b. Standard residential program results

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[24] ACORN Br., p. 14.
[25] OCA Br., p. 25.
[26] Met-Ed/Penelec/Penn Power Statement No. 2-R, p. 2.
[27] See also *Implementation of Act 129 of 2008, Total Resource Cost (TRC) Test*, Docket No. M-2009-2108601 (Order entered June 23, 2009) (EDCs will be able to fully include a measure's benefit in the TRC test if any portion of the measure is attributable to Act 129.). Given the Act 129 spending caps imposed on the Companies, if they were not permitted to include the results from the WARM program, there would be no incentive for them to fund these enhancements through their respective EE&C plans.

The Companies should also be permitted to include a portion of the program results from standard residential programs in their low income results. OCA argues that the Companies' assumptions underlying their estimates of standard residential program results that can be attributed to low income customers are flawed.[28] In response, the Companies have agreed to implement specific targeting, tracking and reporting of low-income participation in standard residential programs, including the Residential Home Energy Audit program, the Residential Appliance Turn-in Program, Residential HVAC program, Residential Energy Efficient Products program, Residential Multi-Family program and school or community outreach initiatives. With these additional steps, the Companies will have the necessary data to support the levels of low income customer participation in standard residential EE&C programs, especially since such programs will also be subject to review by the Statewide Evaluator recently engaged on behalf of the Commission. Accordingly, the Companies should be permitted to attribute to low income customers the results from standard residential programs to the extent the Companies can support such results with appropriate data.

c. The calculation methodology

While the Companies do not agree with OCA's exclusion of WARM data results or the use of census data when determining the number of low income households, these are non-issues. As Mr. Fitzpatrick demonstrated in Exhibits GLF-4 and GLF-5, included with Mr. Fitzpatrick's rebuttal testimony (Met-Ed/Penelec/Penn Power Statement No. 2-R, at pages 3 and 4), regardless of whether the Companies use their methodology or that of the OCA to calculate low income targets and results, the Original and Revised Plans comply with Act 129's low

[28] OCA Br. p. 25.

income requirements -- especially with the additional low income programs discussed below, which are now included in the Revised Plans.

d. Additional Low Income Programs and Measures

OCA suggested that the Companies consider, among other things, (i) furnace fan replacements; (ii) the inclusion of programs that pay for additional measures for customers already served by the WARM program; and (iii) coordination with local housing providers to directly install electric savings measures such as CFLs, faucet aerators, water heater blankets and programmable thermostats.[29] Rep. George suggested that the Revised Plans "provide programs to low income customers that are provided to other residential customers and help them participate in those programs by providing substantial financial assistance where necessary. And, finally ACORN simply complained that the Companies' Original Plans fail to state the obvious: (i) that a miscount of low income customers below the 150% Federal Poverty Income Guidelines ("FPIG") will not occur;[30] (ii) that LIURP savings will not be counted toward Act 129 compliance;[31] and (iii) that the Original Plans will be coordinated with existing federal, state and Commission programs providing energy efficiency and conservation services to low income households.[32]

As a preliminary matter, neither OCA nor Rep. George offered any evidence to demonstrate that any of their respective suggestions were cost effective under the TRC test. Nevertheless, after considering all parties' suggestions, the Companies concluded that the OCA's modifications suggested above could be (and have been) incorporated into the Revised Plans in a

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[29] OCA Br., p. 27.
[30] ACORN Br., p. 16
[31] Id. at 18
[32] Id. at pp. 19-20.

cost effective manner.[33] As a result, the Original Plans have been revised to include the following additional program elements in the Low Income Sector:

- The "WARM Plus" program discussed above, with an additional low income budget allocation of $706,000 for Met-Ed; $1,015,000 for Penelec; and $48,000 for Penn Power.
- Additional funding as is necessary for EM&V and program enhancement so as to ensure that customers at or below 150% of the federal poverty guidelines are participating in these programs at the appropriate levels.
- Specific targeting, tracking and reporting of low-income participation in standard residential programs such as the Residential Home Energy Audit program, the Residential Appliance Turn-in Program, Residential HVAC program, Residential Energy Efficient Products program, Residential Multi-Family program and school or community outreach initiatives.

As demonstrated in Exhibit GLF-5, line 2, with all of the modifications discussed above, the Revised Plans include efforts targeted specifically to low income customers in an amount designed to equal the percentage of low income customer usage as compared to system usage. Accordingly the Commission should find this aspect of the Companies' Revised Plans to be in compliance with Act 129 low income requirements.[34]

e. ACORN's suggested modifications are unnecessary

ACORN's suggested modifications to the Original Plans, to state the obvious, are unnecessary. Nothing in either Act 129 or the Commission's Implementation Order which established the template to be followed when developing the Original Plans, requires the Companies to expressly state that they will not violate FPIG, LIURP and other state and federal statutes and regulations. Indeed, there is nothing to distinguish the few laws and regulations

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[33] The OCA is correct in stating in its Main Brief at page 27 the Companies' intention to work with appropriate community based organizations that are currently delivering WARM program services.

[34] The Companies rejected Rep. George's suggestion to significantly increase low income customer incentives to participate in standard residential energy efficiency programs, finding that more effective results could be achieved through the newly added programs described above.

cited by ACORN from the thousands of state, federal and local laws (including, for example, tax laws, housing codes, and environmental standards) that arguably would have to also be acknowledged in the Revised Plans should the Commission decide to accommodate ACORN's request. Implicit in any action taken by the Companies is a presumption that the action will be taken in accordance with then existing laws. There is no need to include in the Revised Plans affirmative statements that state the obvious. To require such statements would create the potential for formal modifications to the plans should new laws be added or existing laws be changed or repealed. ACORN's suggested changes to the Original Plans offer no substantive improvement to the plans and create unnecessary work for all involved. Its suggestions should be rejected.

6. Issues Relating to Individual Conservation and Demand Reduction Programs

a. Residential

OCA, DEP and the NGDCs each raised issues related to individual residential energy efficiency/conservation and demand reduction programs.[35] While OCA "strongly supported" the implementation of the residential DLC programs included in the Companies' Original Plans, OCA challenged the inclusion of many of these costs, arguing that "the majority of the proposed costs for the Program included in the budget are associated with future year operation expense and incentive costs."[36] OCA suggested that the funds budgeted for these future years be used instead to improve low income programs, or to implement other recommendations offered by

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[35] OSBA simply indicated that no cross subsidization should occur between the residential and small C&I classes. (OSBA Br., p. 9.) Inasmuch as there is no record evidence to indicate the existence of any such cross subsidization, there is nothing for the Commission to address on this issue.
[36] OCA Br., p. 29.

OCA.[37] As the Companies' Witness Fitzpatrick stated in his rebuttal testimony, the Companies agree with OCA's observation, however, they do not agree with the OCA's calculation of the DLC budgeted amount that should be adjusted.[38]

As Mr. Fitzpatrick explained, OCA failed to factor in the present value effect of the O&M cost streams when it determined a budget reduction of $14.3 million for Met-Ed and $13.1 million for Penelec.[39] (The parties agreed on the amount for Penn Power.)[40] Due to this oversight, OCA's suggested adjustment must be further adjusted to reflect budget reductions of $13.4 million for Met-Ed, $12.4 million for Penelec and $1 million for Penn Power.[41] The OCA did not dispute this correction.[42] Rather, OCA states that the Companies "do not plan, at this time, to increase the budget of any program as a result of this adjustment."[43] As already discussed in Section V.A.5.d. above, the Companies have addressed OCA's concern by including in the Revised Plans additional programs directed at low income customers.[44]

DEP argues that the Original Plans have a potential for fuel switching and that customers should be required to apply for residential rebates and to identify the type of fuel source currently being used, limiting customer eligibility to only those who currently use electric appliances.[45]

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[37] Id. at 30.
[38] Met-Ed/Penelec/Penn Power Statement No. 2-R, p. 2.
[39] OCA Br., p. 29.
[40] Id. at 30.
[41] Met-Ed/Penelec/Penn Power Statement No. 2-R, p. 2.
[42] *See* OCA Br. at 30.
[43] OCA Br., p. 30.
[44] With the removal of a portion of the DCL budget, along with several other adjustments already discussed, the Companies now have additional funds available. The Companies will use these additional funds to (i) fund the additional low income programs; (ii) fund additional EM&V functions; and (iii) maintain a reserve for unforeseen events that may transpire in the future. Given these uncertain economic times, the Companies may need to increase incentives or make certain other programmatic adjustments in order to achieve the levels of participation contemplated in the Revised Plans. Similarly, the Companies believe it to be reasonable and prudent to maintain a reserve, simply because of the newness of Act 129 and the unresolved issues related thereto which are bound to arise during the initial plan period.
[45] DEP Br., pp. 7-8.

The NGDCs also address fuel switching, taking the opposite position of that of DEP and arguing that the Original Plans fail to address fuel switching.[46] As discussed in detail in Section V.E.5, *infra*, the issue of fuel switching is beyond the scope of this proceeding. Given the diametrically opposite points of view presented by DEP and the NGDCs, this issue is clearly a subject better left to a separate proceeding in which all issues related to this complicated topic can be given the necessary level of attention.[47]

b. Commercial

Only OSBA and DEP raise issues related to individual commercial energy efficiency/conservation and demand reduction programs, with OSBA again arguing for the separation of the small C&I class for cost recovery purposes,[48] and DEP arguing that the Original Plans allegedly have the potential for commercial customers to increase their use of distributed generation.[49] As already discussed in Section V.A.4. above, OSBA's cost recovery issues are premature and should be addressed during the annual 1307 (e) reconciliation proceedings, rather than in this proceeding where there are no costs for which recovery is being sought.

DEP's argument is improperly raised, must not be considered, and should be summarily rejected as unsupported by the evidentiary record. As demonstrated by DEP's failure in its Main Brief to cite to the evidentiary record, there is no evidence to support DEP's *speculation* that the Companies' Original Plans have the *potential* to *indirectly* address peak demand through the

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[46] NGDC Br., pp. 11-13.
[47] The Commission has already indicated that it prefers this approach. *See* Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Site Management Resources - Technical Reference Manual Update, Docket No. -00051865 (Order entered June 1, 2009), at p. 9.
[48] OSBA Br., pp. 9-10.
[49] DEP Br., p. 8. DEP incorporates the same argument for purposes of discussing industrial conservation and demand reduction programs. (DEP, Br., p. 8.) Inasmuch as the arguments are identical for both the commercial and industrial classes, the Companies response is also identical for both classes.

increased use of distributed generation."[50] DEP had ample opportunity to review the Companies' Original Plans and raise this issue through expert testimony, which would have allowed the Companies to properly investigate DEP's claims and either cross examine DEP's expert witness who would have made this observation, or provide rebuttal testimony to refute the allegations. DEP chose not to raise this issue during the creation of the evidentiary record. It is improper for it to do so now for the first time in briefs. Moreover, DEP bases its position on an intricate discussion of the shortfalls of DEP regulations concerning emissions released by back up generators.[51] This, however, is not the forum in which to fix Pennsylvania's environmental regulations and the Companies' Revised Plans should not be held hostage due to such regulatory deficiencies.

Based upon the foregoing, DEP's arguments related to distributed generation should be summarily rejected.

c. Industrial

Only the Industrials raised an issue related to the individual industrial energy efficiency/conservation and demand reduction programs, focusing on the Companies' design of their C&I Demand Response Program and how it may impact an industrial customer's current and future participation in PJM's load response programs.[52] They also caution the Commission (i) to recognize the industrial customers' current ability to choose from multiple PJM Curtailment Service Providers, or act as their own;[53] (ii) "be vigilant" to ensure against "double

[50] DEP Br., p. 8. (Emphasis added.)
[51] Id. at pp. 9-10.
[52] Industrials Br., p. 8.
[53] Id. p. 10.

counting;"[54] and (iii) to have an understanding of the Companies' "first-come, first-served" approach to demand reduction and the integration of Penn Power into PJM, should FERC approve FirstEnergy's request to do so.[55] Inasmuch as all of these issues involve Curtailment Service Providers, the Companies will address these concerns raised by the Industrials in Section V. C, *infra*.

7. **Proposals for Improvement of the Companies' Plans**

a. **Residential**

OCA, ACORN, DEP, Field Diagnostic, and the NGDCs each suggest improvements to the residential aspects of the Companies' Original Plans. OCA suggests a furnace fan replacement program[56] which, as already discussed, has been incorporated into the Revised Plans. ACORN suggests a low income recruitment incentive for space heater removals,[57] while DEP suggests a statewide program similar to the Keystone HELP program.[58] Field Diagnostics and the NGDCs suggest HVAC and fuel switching programs that apply to more than one customer class and the Company has elected to address their issues in subsection A(7)(b) below.

As a preliminary matter, neither ACORN nor DEP presented any evidence to demonstrate that the adoption of any of their respective suggested improvements to programs would produce better results than those that can be achieved under the Original or Revised Plans; nor did they demonstrate that their suggestions were more cost effective either on an individual or comprehensive basis under the TRC test. Accordingly, each of these parties' suggestions

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[54] Id.
[55] Id. at 12.
[56] OCA Br., p. 31.
[57] ACORN Br., p. 20
[58] DEP Br., p. 11.

should be summarily rejected as unsupported by the evidentiary record.

Further, DEP argues that the Companies' failure to include a residential "whole home" performance program on a statewide basis "is not in the public interest."[59] DEP's position is not only internally inconsistent, but it is also inconsistent with reality and practicality. In essence, DEP proposes that an EDC participate in a statewide program similar to Keystone HELP, by providing Act 129 funding as supplemental funds for energy efficiency projects in their homes.[60] As a preliminary matter, DEP presented no evidence to demonstrate that the inclusion of such a program would be cost effective under the TRC test, or that the Companies Original or Revised Plans would be enhanced. Further, by insisting that "projects funded through Act 1 or the American Recovery and Reinvestment Act cannot be used to determine compliance with Act 129,"[61] DEP encourages the creation of a significant *disincentive* for an EDC to participate in any such program. Arguably it would be irresponsible for an EDC to elect to use Act 129 revenues to participate in a statewide home performance program if the EDC could not claim full "credit" for doing so – particularly when Act 129 limits the amount of funds that an EDC can spend for compliance purposes. If DEP's positions are adopted, the Commission would, in essence, be forcing the Companies to fund a program that produced no contribution toward compliance. Thus, for any or all of the reasons discussed above, DEP's suggested residential "whole home" program should be rejected.

In sum, the Companies have incorporated into the Revised Plans OCA's suggested improvement for furnace fan replacements. None of the other parties demonstrated that their respective suggestions will improve the Original or Revised Plans, and accordingly, the

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[59] DEP Br., p. 11.
[60] Id. at 10.
[61] Id. at 13.

Commission has no basis on which to adopt these suggestions. Moreover, DEP's suggestion is inconsistent with other positions it has taken in this proceeding. Accordingly, the Commission should reject the additional suggested improvements to the residential aspects of the Original Plans as submitted by both ACORN and DEP.

b. Commercial

OCA suggests that the Original Plans be modified to (i) provide for new C&I construction; (ii) include measures geared toward agricultural customers; and (iii) include initiatives targeted toward high value market subsets.[62] However, as evidenced by OCA's own analysis at pages 12-16 of its Main Brief, the suggested changes to the Companies' Original Plans are not necessary for the Companies to achieve Act 129 EE&C targets. Further, OCA provided no evidence to demonstrate that the adoption of its suggestions would be cost effective under the TRC test or that the Companies' Original or Revised Plans would be enhanced. Accordingly, the Commission should not impose OCA's suggestions on the Companies.

As indicated above, both the NGDCs and Field Diagnostics suggest potential improvements to the Original Plans – suggestions that affect more than one customer class. The Companies have elected to address the issues of these parties in this section.

In essence, the NGDCs are proposing that the Companies incent their customers to buy less of the Companies' product and instead buy more of the product of the NGDCs.[63] Inasmuch as all of NGDCs' arguments involve the subject of fuel switching, the Companies will address them in Section V.E.5, *infra,* where the Companies explain in detail why it is improper to include fuel switching programs in the EE&C plans proposed by the Companies.

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[62] OCA Br., pp. 31-33.
[63] *See generally* NGDC Br., pp. 16, 24.

Field Diagnostics makes several suggested improvements to the Original Plans, all focused in the area of commercial and industrial HVAC: (i) the inclusion of a separate HVAC program for commercial and industrial customers, with its own Conservation Service Provider; (ii) the inclusion of incentives for HVAC specific diagnostic testing and requiring the use of automated systems for such diagnostics; and (iii) the establishment of guidelines to ensure that HVAC tune-ups and other measures are performed in accordance with appropriate protocols and procedures.[64] Inasmuch as Field Diagnostics boasts of its abilities to provide "internationally recognized expertise for developing leading edge monitoring and diagnostic solutions for the HVAC&R industry,"[65] its self serving suggested "improvements" should be transparent to the Commission. Regardless, Field Diagnostics, like many of the other parties to this proceeding, failed to demonstrate that its suggestions will improve the results that will be achieved through the Original or Revised Plans, and accordingly, the Commission has no basis on which the Commission should adopt these suggestions. They should be rejected.

c. Industrial

No party raised any issues not previously addressed, and accordingly, there are no issues in this section that require any further response.

d. Summary

In sum, since filing their Original Plans, the Companies have considered virtually all recommendations made by the various parties, incorporating into their Revised Plans those recommendations that the Companies believe will improve the overall results in the most cost effective manner. No party presented any evidence to support a different conclusion. Inasmuch

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[64] Field Diagnostics Br., pp. 6-7.
[65] Field Diagnostics Website at www.fielddiagnostics.com/aboutus.cfm.

as (i) the Companies will be held liable if the Revised Plans fail to comply with Act 129's requirements; and (ii) the Companies have every intention of meeting quarterly with the parties to this proceeding to discuss the status of programs, potential changes to those programs, and potential new programs, the Commission should allow the Revised Plans to be implemented as filed.

B. Cost

1. Plan Cost Issues

The OTS, OSBA[66] and the Industrials each raised issues regarding the Companies' Plan Costs, which the Companies address below.

a. Align Program Costs with Recalculated Revenues

OTS argued that the Commission should direct the Companies to eliminate over-collections that will occur during the 43-month program period or expand spending budgets for their programs to match anticipated higher collected revenues.[67] As set forth in the Companies' Main Brief at page 33, the Companies committed to reflect the resulting modifications in the Revised Plan consistent with the modified Plan budget. And as already discussed, the Companies have included additional programs and expanded spending to match anticipated revenues in the Revised Plans.[68]

b. 2% Annual Plan Cost

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[66] The OSBA argues that the Companies' Plans appear to result in unnecessary subsidization of participating customers and that reasonableness of any subsidies should be reviewed as part of an annual reconciliation proceeding. This issue has been addressed in Section V.A.4. of this Reply Brief.
[67] OTS Main Brief at pp. 12-17. The OTS also argues that the costs for the statewide evaluator should be included within each of the Companies' 2% cap and that the Commission should continue to actively review the effectiveness of the Plans' programs and the level of costs incurred for the programs, which will be addressed in Sections V.B.4.d. and e. of this Reply Brief.
[68] *See*, Section I. A. above for a description of Plan revisions.

The Industrials argue that the Commission was wrong when it concluded in its Implementation Order that the limitation on the "total cost of any plan" should be an annual amount rather than an amount for the full term of that plan.[69] The Industrials have simply resurrected an argument from an earlier time – an argument that the Commission already addressed and rejected when it issued its Implementation Order in January 2009.[70] The Companies' Original and Revised Plans are both consistent with the Commission's Implementation Order. Therefore, the Industrials' argument on this issue should be rejected again.

2. <u>Cost Effectiveness/Cost-Benefit Issues</u>

As set forth in the Companies' Main Brief at page 33, as well as in each of the Companies' Original Plans (Met-Ed plan, pp. 103-104; Penelec plan, pp 104-105; Penn Power plan, pp. 98-99; and Tables 7A-7E of each Original Plan), both the Original and Revised Plans are based on the requirements and guidance set forth in the TRC test. No party has challenged these test results. Thus the Commission should find the Companies' Revised Plans to be cost-effective based on the TRC test.

Only the OCA and NGDCs discuss Cost Effectiveness/Cost Benefit Issues. OCA concluded that while aggressive, the Companies' Plans are cost effective.[71] The NGDCs simply reiterated their flawed argument that their recommended fuel switching programs would result in greater cost effectiveness. This argument is refuted in the Companies' Main Brief at pages 53-61 and below in Section V.E.5. of this Reply Brief.

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[69] Industrials Main Brief at pp. 14-15.
[70] Implementation Order at p. 33.
[71] OCA Main Brief at p. 35.

3. Cost Allocation Issues

Except for OSBA's concern about cross-subsidization by the small C&I customers through the government/non-profit programs, no party in this proceeding has disputed whether the programs and measures included in the Companies' Plans and financed by a particular customer class will directly benefit that class of customers. Inasmuch as OSBA's issue has already been addressed, *supra*, there is nothing to address in this section of the Reply Brief. In light of this, the Commission should find that the proposed cost assignments by customer classes presented by the Companies in the filings are reasonable and are based on the measures proposed therein and, accordingly, the Companies' Revised Plans comply with Section 2806.1(a)(11) of the Public Utility Code.

4. Cost Recovery Issues

OCA, OSBA, OTS, and the Industrials each address several Cost Recovery Issues, all of which are addressed by the Companies below.

a. Interest

The OCA supports the levelized cost recovery mechanism without interest on over- or under-collections; however, the OCA posits that interest should not be paid or collected on administrative start-up costs.[72] The OTS argues that interest on amortized start-up costs should be computed using simple rather than compound interest,[73] and also argues that the Commission should allow for interest charges of 8% per annum (i.e., legal rate of interest plus 2%) for over-

[72] OCA Main Brief at pp. 37-38.
[73] OTS Main Brief at pp. 20-22.

collections and 6% interest per annum for under-collections and direct that they be excluded as a recoverable plan cost.[74]

In his Rebuttal Testimony, Witness Parrish addressed the administrative start-up costs, testifying that the Companies' proposed methodology for interest computation as stated in Met-Ed/Penelec/Penn Power Exhibits RIP-1 through RIP-3 is consistent with the cost recovery of start-up costs for other 1307(e) mechanisms proposed by the Companies and agreed to by parties in other proceedings.[75] Witness Parrish concluded that the accrual of interest as proposed by the Companies on the initial start-up costs is appropriate given that these costs are being incurred by the Companies prior to the date on which they can commence recovery under the proposed cost recovery riders.[76] For these reasons, the Companies should be permitted to collect interest, on a compounded basis, on the administrative start-up costs related to the Plans.

The OTS' proposal for asymmetrical interest is misplaced. The proposed methodology offered by OTS Witness Morissey is not required under existing relevant Pennsylvania statutes, Commission regulations or orders. A specific requirement for interest on monthly over- or under-collection of costs is found in 66 Pa. C.S. § 1307(f); however, this section is not applicable to electric distribution companies ("EDCs") or the instant proceeding. This section is clearly only applicable to natural gas distribution companies with operating revenues in excess of $40,000,000 using a cost recovery mechanism under Section 1307(f). Consequently, Act 129 and 66 Pa. C.S. § 1307 are silent on this issue as it pertains to EDCs. The OTS reference to Section 1307(f) is simply misplaced.

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[74] OTS Main Brief at pp. 22-31.
[75] See Rebuttal Testimony of Raymond Parrish, Statement 3-R at p. 4.
[76] Id.

The OTS also references 52 Pa. Code §54.187 which is equally misplaced. As set forth in greater detail in the Companies' Main Brief at page 45, this regulation is specific to an EDCs' default service rate design. The Companies' proposed EEC-C Riders have nothing to do with default service costs.

Further, the fundamental reason to apply asymmetrical interest is to discourage a utility from deliberately over-collecting in a situation where revenues and costs are designed to match for an annual period. The Companies' cost recovery is levelized and the surcharge is not designed to match revenues and costs within each annual period. Therefore, as a result of the Companies' objective to maintain 43-months of levelized EEC-C rates billed to customers, it would not be appropriate to require the computation of interest on the monthly over- or under-collection of EEC-C Rider costs, and certainly such a calculation should not be made using asymmetrical interest rates.[77] Without any legal basis to impose an interest component, the OTS proposal should be rejected.

b. Bidding Energy Efficiency and Demand Response Resources into PJM RPM Auction

The OCA argues that Met-Ed and Penelec should be required to bid qualifying energy efficiency and demand response resources into the PJM RPM Auction and credit customers for the value received in the cost recovery mechanism.[78] The OCA agrees that the Companies should recover all reasonable costs of participation in the PJM RPM auction, and that the savings credited to ratepayers as a result of the Companies' participation should be reduced accordingly.[79] The Companies do not disagree. As set forth in Witness Fitzpatrick's Rebuttal

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[77] Met-Ed/Penelec/Penn Power Statement No. 3-R at p. 6.
[78] OCA Main Brief at pp. 38-39.
[79] OCA Main Brief at p. 39.

Testimony on behalf of the Companies, Met-Ed and Penelec have committed to pay the customers 100% of the dollars available from PJM to the customer for performance consistent with the PJM programs, less certain administrative and credit requirement costs to implement these programs, which the Companies estimate to be approximately 85% of the amount received from PJM as part of the RPM auction. No party disputed this estimate. Accordingly, the Commission should approve the Companies' proposed treatment of the costs and revenues associated with the PJM RPM auction.

c. Line Item on Bill vs. Distribution Rates

The OCA believes that the Companies' EEC-C cost recovery rider should be included in distribution rates and not as a separate line item on customer bills.[80] The OSBA and the Industrials, on the other hand, believe that the cost recovery mechanism should be separate from distribution charges and listed as a separate line item on customer bills rather than including that cost recovery within distribution rates.[81] As discussed in the Companies Main Brief at page 41, the Companies agree with the OSBA and Industrials because (i) a separate line item will provide transparency and allow customers to better understand the various charges that comprise their monthly bill; (ii) this approach is consistent with other cost recovery rider charges, such as Met-Ed's and Penelec's Transmission Service Charge and Consumer Education Charge riders that are applicable to multiple customer rate schedules; and (iii) specific identification of these EEC-C amounts on customers' bills should raise awareness of the EE&C plans which, in turn, should increase participation levels.[82] Accordingly, the Commission should authorize the Companies to

[80] OCA Main Brief at pp. 39-41.
[81] OSBA Main Brief at pp. 15-16; OTS Main Brief at pp 17-19; Industrials Main Brief at pp. 20-21.
[82] See Rebuttal Testimony of Raymond Parrish, Statement 3-R.

show amounts billed to customers through the EEC-C Rider as a separate line item on customer bills.

d. Statewide Evaluator Costs

The OCA, OTS and the Industrials argue that the costs to fund the Commission's statewide evaluator should be included within the 2% statutory cost limitation.[83]

As more fully discussed at pages 41-42 of the Companies' Main Brief, the Companies disagree. In his Direct Testimony, Witness Parrish explained why the costs to fund the statewide evaluator should not be included in the final determination of the Companies' Act 129 two percent limitation on the Companies' EE&C program costs. In establishing the cost cap, 66 Pa. C.S. § 2806.1(g) identified this limitation on costs as being the "total cost of any plan required under this section." The Commission's statewide evaluator contract costs are not part of the Companies' Energy Efficiency and Conservation Plans.[84] While 66 Pa. C.S. § 2806.1(h) states that the Commission "shall recover from electric distribution companies the costs of implementing the program established under this section," nowhere does this statute subject these costs to the two percent spending cap. Indeed, the costs to fund the Commission's statewide evaluator are akin to regulatory expenses assessed upon public utilities under 66 Pa. C.S. § 510 to implement and administer Commission oversight duties; they are costs to implement the Commission's evaluation of the EDCs' programs and *not* costs of the specific EDC EE&C plans.

Further, reasonable estimates of these costs are not currently available. It is the Companies' current understanding that the majority of these costs will be allocated to each EDC

[83] OCA Main Brief at pp. 41-42; Industrials Main Brief at pp. 22-23.
[84] Id. at p.3.

on a time and material basis. Without knowing the exact magnitude of these costs, or having the ability to manage these costs, the Companies should not be required to include them as part of their Plan costs that are subject to the two percent cost limitation. Consequently, the Commission should conclude that the statewide evaluator costs assessed to the Companies should be recovered through the EEC-C Riders but be excluded from the calculation of Act 129's statutory two-percent limitation on costs incurred by the Companies in the development, implementation and management of its EE&C plan.

e. Reconciliation

The OSBA argues that a reconciliation of the variations between forecasts and actual incurred costs and revenues of the recovery mechanism should be conducted on an annual basis.[85] OTS argues that the Commission should continue to actively review the effectiveness and the costs of the Companies' EE&C programs.[86] As discussed by the Companies' Witness Parrish in his Rebuttal Testimony, the Companies' Original (and Revised) Plans incorporate such a concept. As Mr. Parrish explained, the Companies will file annual reconciliation statements in accordance with 66 Pa. C.S. § 1307(e) detailing revenues and expenditures to date by customer class. These customer class specific reconciliation statements will address any cumulative over- or under-collections and will provide further information as to any revisions to the budget forecast for the remainder of the program period by customer class.[87] These reconciliation statements will provide the basis to re-forecast customer rate class expenditures over the remainder of the Companies' EE&C Plans and, if necessary, provide the basis for any interim EEC-C rate adjustments by rate class to more closely align revenues to costs through the entire

[85] OSBA Main Brief at p. 17.
[86] OTS Main Brief at pp. 19-20.
[87] Met-Ed/Penelec/Penn Power Statement No. 3-R at 7-8.

43-month period.[88] The statutory annual 1307(e) hearings will provide all interested parties with an opportunity to address any of their concerns with any revisions to customer class cost allocations proposed by the Companies.[89]

f. Charge for Large Commercial and Industrial Customers

The Industrials argue that the Companies should employ a customer or demand charge, or a combination of such charges, for recovering EE&C Plan costs from the large commercial and industrial customer class.[90]

As a preliminary matter, the Industrials did not submit any testimony in this proceeding. Moreover, their arguments in support of an alternative rate design structure are based on statements unsupported by the record (as evidenced by the Industrials' lack of citations thereto in their Main Brief). Moreover, these same statements involve rate making principles and rate design theory – subjects that should have been addressed by an expert whose testimony should have been pre-filed.[91] Inasmuch as no such testimony was filed, the Companies had no opportunity to challenge these statements or present rebuttal testimony. The Industrials' arguments in support of its proposed rate design modifications should be summarily rejected.

Further, and notwithstanding, as set forth in the Companies' Main Brief at pages 46-47, and supported by Witness Parrish,[92] since a significant portion of the EE&C Plans' measures focus on the goal to reduce *energy* consumption, recovery on a kWh basis from all customer

[88] Id.
[89] Id.
[90] Industrials Main Brief at pp. 16-20.
[91] See e.g., Industrials' Br., pp. 17-20.
[92] Met-Ed/Penelec/Penn Power Statement No. 3-R at p. 8.

classes is more appropriate.[93] Therefore, the Commission should approve the Companies' proposed rate design that assigns costs on a class-by-class, flat per kWh energy charge basis.

C. CSP Issues[94]

The Companies' Plans propose the selection of CSPs to secure and manage demand response programs.[95] The Companies subsequently modified certain aspects of the CSP Programs, as discussed in the Supplemental Testimony of Witness George Fitzpatrick and Exhibit GLF-2.[96] EnerNOC states in their Main Brief that they support the Companies' revised credit requirements as set forth in Witness Fitzpatrick's Supplemental Testimony.[97]

ClearChoice, EnerNOC and the Industrials raised several concerns in Direct Testimony or Comments related to the Companies' CSP proposals, none of which are valid as explained in the Companies' Main Brief at pages 48-52 and in this section of the Companies' Reply Brief. The Main Briefs of EnerNOC, ClearChoice and the Industrials essentially restate the same concerns that were previously stated in their Testimony or Comments.

1. EnerNOC Issues

EnerNOC believes that Act 129 does not allow the Companies to act as CSPs, and that the Companies should issue a competitive RFP for its Commercial Industrial Demand Response Program - CSP Mandatory and Voluntary Curtailment Program ("C&I Curtailment Program").[98] EnerNOC proposes that the Companies' C&I Curtailment Program be structured in a way in

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[93] Met-Ed/Penelec/Penn Power Statement No. 3-R at p. 8.
[94] While the Companies use the acronym "CSP" for "Conservation Service Providers", when used in the context of PJM activities, the acronym also refers to "Curtailment Service Providers."
[95] See Met-Ed EE&C Plan, at pages 87-89, Penelec EE&C Plan, at pages 87-89, and Penn Power EE&C Plan, at pages 81-83.
[96] Met-Ed/Penelec/Penn Power Statement 2-S, at pp. 3-6.
[97] EnerNOC Main Brief, at pp. 15-16.
[98] Id., at pp 6-7.

which it can continue to operate after the statutory deadline of May 31, 2013[99] and have a longer Ramp-Up period that will start before the third quarter of 2010.[100] EnerNOC supports a single CSP model for the C&I Curtailment Program, and opposes the Companies' "first come, first serve" approach to the C&I Curtailment Program.[101] Finally, EnerNOC argues that the level of incentive payment is substantially lower than necessary to attract customers and that the use of CSPs rather than EGSs will increase the likelihood of success of the C&I Curtailment Program.[102]

The Companies responded to EnerNOC's arguments in the Rebuttal Testimony of Witness Fitzpatrick and the Companies' Main Brief, at pages 51-53. EnerNOC's proposal to expand the C&I Curtailment Program's ramp-up period past the two-year period and operate the program after the statutory deadline of May 31, 2013 is not feasible. It would be premature to make such a commitment at this time since Act 129 limits the available funds to be spent only during the period of June 1, 2009 through May 31, 2013.[103] The Companies are required to comply with Act 129's requirement to reduce demand by a minimum of 4.5% by May 31, 2013. In order to comply with Act 129 and remain within the 2% spending limitation, the summer of 2011 and the summer of 2012 are critical to meet the intent of Act 129. Therefore, it is not reasonable to expend resources to attempt to begin the demand response programs prior to the summer of 2011 since demand response during summer 2010 would not count toward the Act 129 target.

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[99] Id., at pp. 7-10.
[100] Id., at pp 13-14.
[101] Id., at pp. 10-12; The Industrials also requested clarification of the Companies' "first come, first serve" proposal for engagement of CSPs for demand response activity. Industrials Main Brief at pp. 12.
[102] Id., at pp. 14-19.
[103] Met-Ed/Penelec/Penn Power Statement No. 2-R at p. 13.

EnerNOC's proposal to replace the Companies' "first-come, first-serve" approach securing load reduction is equally misplaced. The Companies' approach is rational, fair, and competitively neutral. As noted in the Met-Ed and Penelec EE&C Plans, qualifying CSPs will have the option to register available megawatts ("MWs") during an open registration period on a first-come, first-served basis, and each CSP will have the same performance requirements to which they must adhere. Met-Ed and Penelec are not providing any preferential treatment to any specific CSP. Met-Ed and Penelec will issue a notice to all PJM registered CSPs requesting the number of MWs that could be provided in the 2011/2012 and 2012/2013 planning years.[104] To the extent that the registered MWs with the same date stamp exceed the MWs required, Met-Ed and Penelec will offer registrants a pro-rata share of the MWs so offered and date stamped on the same day.[105] As such, there is no legitimate basis for forcing the Companies to use an RFP approach.

EnerNOC's suggestion for Penn Power to use CSPs rather than electric generation suppliers should also be rejected. Inasmuch as Penn Power is currently a member of MISO, which does not currently recognize the concept of a CSP, EnerNOC's suggestion is impossible to pursue at this time.[106] As the Companies explained in their Main Brief (at page 52), FirstEnergy recently filed with the Federal Energy Regulatory Commission asking that certain control areas, including Penn Power, be moved to PJM. In the event that Penn Power is moved into PJM, Penn Power has stated that it will consider modifying its demand response program to mirror those of Met-Ed and Penelec.[107]

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[104] Met-Ed/Penelec/Penn Power Statement No. 2-R at p.12; Met-Ed/Penelec/Penn Power Main Brief at p. 51.
[105] Id.
[106] Met-Ed/Penelec/Penn Power Statement No. 2-R at p.13.
[107] Id.

In light of the foregoing, all of EnerNOC's suggested modifications to the Companies' proposed CSP process should be rejected.

2. **<u>ClearChoice Issues</u>**

ClearChoice argues that the Companies' Plans unduly discriminate against competing CSPs and unnecessarily impedes participation by smaller CSPs, especially those that qualify as "disadvantaged businesses."[108] ClearChoice proposes that the Plans should open demand reduction programs to any PJM provider, and establish a minimum acceptable block for participation in Demand Reduction program at 1 MW, require that the maximum amount of demand reduction served by any one CSP cannot exceed 50% of the Plan's demand reduction, and set aside 25 % of MW required in the Demand Response Program for disadvantaged businesses.[109]

As set forth in the Companies' Main Brief, ClearChoice's allegations of unfair competition are unfounded. Both Met-Ed's and Penelec's Plans clearly state that Met-Ed and Penelec, acting as a CSP within the PJM program, will fill the gap between the total MWs needed for compliance with Act 129, less the amount expected from the Voluntary Load Reduction Program, less the amount committed by CSP's registration under the "Commercial Industrial Demand Response Program – CSP Mandatory" program.[110] Witness Fitzpatrick testified that Met-Ed and Penelec are offered as an alternative to the development of a competitive CSP demand program, essentially as a contingency plan, to ensure that Met-Ed and Penelec are able to secure the level of demand reduction needed, in the event that the

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[108] ClearChoice Main Brief, at pp. 11-14.
[109] ClearChoice Main Brief, at p. 17.
[110] Met-Ed/Penelec/Penn Power Statement No. 2-R at pp. 9-10.

"Commercial Industrial Demand Response Program-CSP Mandatory" program does not result in the MWs needed. If the CSPs do not contract with Met-Ed or Penelec for the required load necessary to be in compliance with Act 129, then Met-Ed and Penelec must have an alternative to fill in the gap in the demand response goals. This alternative will not affect the competitive nature of the CSP's demand response market.[111] Indeed, if Met-Ed and Penelec were to give preferential treatment to ClearChoice and other smaller CSPs, it may have an anti-competitive effect in the market.

Met-Ed and Penelec's proposals represent Demand Response programs that are competitively neutral and non-discriminatory. Met-Ed and Penelec will provide the same information and the same program structures to all CSPs. As noted in the Met-Ed and Penelec EE&C Plans, qualifying CSPs will have the option to register available MWs during an open registration period on a first-come, first-served basis, and each CSP will have the same performance requirements to which they must adhere. Met-Ed and Penelec are not providing any preferential treatment to any specific CSP. Further, as already discussed, Met-Ed's and Penelec's revised proposals to act as CSPs include a change that allows the Companies to retain 15% of the proceeds received from PJM for administrative and credit related costs. This reduction in payouts by the Companies should bring them more in line with other potential CSPs.

Because Met-Ed and Penelec have a fixed amount of funding available to pay for commercial demand response programs, it was necessary to cap the amount payable to CSPs and customers, otherwise the Companies will lose control over the amount that could be paid out through Act 129 funding.[112] Therefore, Met-Ed and Penelec did not seek competitive bids from

[111] Id.
[112] Id.

CSPs to determine the price paid under the demand response program. However, based on comments received from some of the CSPs, the Companies have increased the budgets for payments to program participants by a total of $760,000 for the summers of 2011 and 2012 for Met-Ed; and $1,140,000, for Penelec.

Likewise, ClearChoice's proposal to limit CSP participation is not prudent. As discussed by Witness Fitzpatrick in his Rebuttal Testimony, Met-Ed and Penelec disagree with this recommendation. Met-Ed and Penelec are obligated to meet the requirements of Act 129. The ClearChoice proposal to limit the potential MWs for which a given CSP could contract with each of the Companies increases the risk that the Companies would not be able to meet their reduction goals and would likely increase the cost of the program.[113] Witness Fitzpatrick observed that any time a limit is placed on the amount of a product or service that is provided (or the supply), without changing the demand for that service, simple economic theory suggests the overall price will go up for the product secured.[114] Met-Ed and Penelec have both indicated that they will contract with at least two CSPs should the registration process result in an oversubscription.[115]

And finally, the Companies are aware of both the Commission's encouragement in its Implementation Order to acquire bids from "disadvantaged businesses"[116] and the Commission's Policy Statement at 52 Pa. Code §69.804 *et seq*. regarding disadvantaged businesses. ClearChoice's suggestion for special treatment as a disadvantaged business, however, should be rejected for several reasons. First, the Companies maintain a proactive supplier diversity program as an extension of their commitment to promote diversity at every level of the

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[113] Met-Ed/Penelec/Penn Power Statement No. 2-R at p. 12.
[114] Id.
[115] Id.
[116] Implementation Order at p. 26.

organization. The Companies' supplier diversity program provides opportunities in a competitive environment for a small, woman-owned, minority-owned, HUBZone, veteran-owned and service disabled veteran-owned business in accordance with the Commission's aforementioned Policy Statement and in accordance with the Companies' Small Business Subcontracting Plan filed annually with the United States General Services Administration. The development of these special programs require a considerable amount of thought so as to ensure that the programs benefit as many minority businesses as practicable. It would not be prudent for the Companies (or good public policy for the Commission) to develop special arrangements for a minority business based simply on the assertions of one Company with self interests in mind. Further, in this instance, the minority business is seeking a relaxation of credit rules during economic conditions unseen since the Great Depression. Again, prudence dictates against adopting ClearChoice's recommendation, at least without some assurance from the Commission that if such small businesses failed to perform, or were unable to pay participants, the Companies would not be penalized. And finally, there are other avenues available to ClearChoice through which many of its concerns can be redressed. For example, there is nothing to preclude ClearChoice from entering into a subcontractor arrangement with a larger CSP. In so doing, the credit issues, the size limitations and other potential problems raised by ClearChoice are eliminated.

3. <u>Industrials' Concerns</u>

In addition to requesting clarification of the Companies' "first come, first serve" proposal for engagement of CSPs for demand response activity, the Industrials request that the Companies be vigilant to ensure that they do not "double count" demand response plan initiatives and current PJM programs.[117] They also raised concerns regarding how Penn Power will move from the Midwest ISO ("MISO") to PJM during the EE&C Plan period.[118] While the Companies recognize that these may be legitimate concerns, they are not germane to the Commission's approval of the Revised Plans. As discussed above, the CSP program proposed by the Companies is just, reasonable, and non-discriminatory. Accordingly, the Companies propose that the issues raised not only by the Industrials, but also by ClearChoice and EnerNOC, continue to be vetted during the Stakeholder process.

D. Implementation and Evaluation Issues

1. Implementation Issues

Only the NGDCs[119] raise implementation issues, once again reiterating their fuel switching proposal which is addressed in detail in Section V. E. below.[120]

2. QA Issues

DEP was the only party to raise an issue in the QA area, suggesting that the Companies include in the Revised Plan a "clearly defined stakeholder involvement process."[121] DEP fails to make any constructive suggestions on how this process should work. Nevertheless, as the Companies have stated throughout this Reply Brief, their intention to continue the stakeholder process on a quarterly basis, albeit, as proposed by the Companies, with participation limited to the parties to this proceeding. Further, given that this entire process is new and no party can

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[117] Id. at p. 10.
[118] Id. at p. 12.
[119] OSBA reiterates in all issues included in this Section I. D its desire for annual reviews. Inasmuch as the issue of an annual review is not in dispute, there is nothing included in OSBA's comments to which a response, or for which resolution, is necessary.
[120] NGDC Br., p. 26.
[121] DEP Br., p. 12. While not included in this Section of its Main Brief, OCA also advocates for the continuation of the stakeholder process, which the Companies have agreed to do on a quarterly basis.

foresee with any certainty the events that will transpire in the energy conservation and demand response arenas over the next several years, the Companies believe that their commitment in this proceeding, subject to Commission approval, is sufficient. To do otherwise and require the Revised Plans to describe in detail the process that will be undertaken, will do nothing but potentially create unnecessary reporting issues in the very likely event that the process must be modified. Moreover, with the newness of this entire Act 129 process, flexibility is a must, at least until the parties gain some experience in dealing with the plethora of issues awaiting them. Therefore, rather than require the inclusion in the Revised Plans of a detailed stakeholder process, the Commission should allow it to evolve and, if subsequently determined that there are problems, address them at that time. For all of the reasons set forth above, the Companies submit that the DEP's suggestion to include in the Revised Plans a detailed description of the Companies' stakeholder process is unnecessary at this time and should be rejected.

3. <u>Monitoring and Reporting Issues</u>

a. The NGDCs recommend that if the Commission rejects its fuel switching proposal, the Commission should order the Companies to report to the Commission the frequency of natural gas customers who receive an incentive payment pursuant to plans and switch to high efficiency electric appliances.[122] They try to justify this request by claiming that it will assist the Commission with its evaluation of "whether future adjustments to the Companies' Revised Plans are necessary" to address the NGDCs concerns voiced over and over again throughout their Main Brief.[123] As a preliminary matter, the NGDCs concerns are speculative at best. As Mr. Fitzpatrick explained, the Companies" EE&C plans do not have programs "that are

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[122] NGDCs Br., p. 27.
[123] Id.

specifically designed to promote the switching from gas to electric or from electric to gas."[124] Furthermore, there is absolutely no evidence to support a conclusion that natural gas customers will switch from natural gas to high efficiency electric appliances based on the relatively nominal incentives currently contemplated in the Companies' Revised Plans.[125] Not only are rate caps expiring and customers are facing potential increases in the cost of their electricity, but as Mr. Fitzpatrick explained, "If one were to switch from gas to electric they would have to abandon their gas service. They would have to install a 220 line to pick up a high efficiency electric water heater."[126] Further, until there is any evidence of harm to the NGDCs, such a request is unduly burdensome to the Companies, especially since customers may have numerous reasons for participating in the Companies' programs that go beyond fuel choice.

The Commission has indicated that it intends to address in a separate docket all of the issues pertaining to fuel switching. This should simply be another one of those issues to be addressed in that proceeding. Neither the Original or Revised Plans mention fuel switching and the NGDCs should not be permitted to dictate how the Companies intend to comply with Act 129, especially when the NGDCs' suggested programs have not be thoroughly evaluated within the portfolio of programs already selected by the Companies. The Commission should reject the NGDC's monitoring and reporting suggestion.

4. <u>Evaluation Issues</u>

OCA raises two evaluation related issues[127] and DEP makes several recommendations

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[124] Tr., p. 225.
[125] The programs included in the Revised Plan contemplate rebates of $50 for an efficient water heater and $290 for a high efficient water heater. (Tr. p. 226.)
[126] Id. at 226.
[127] OCA Br., pp. 43-44.

related to a potential approval process for future modifications to the EE&C plans ultimately approved by the Commission.[128] OCA suggests that the total evaluation budget should be "in the range of 1%-3% of total program spending."[129] As previously discussed, the Companies, have increased the EM&V budgets by up to $6 million ($2.6 million for Met-Ed and Penelec; $0.8 million, for Penn Power), which brings their budgeted EM&V levels in line with national averages for this type of work.

DEP observed that "[t]he process by which EDC Plans may be modified outside the annual review period was not specified in the Commission's Implementation Order."[130] As a result, DEP suggested mandatory approval before any program could be eliminated, or if an EDC determined a need to shift budgeted funds between or among various customer classes. It further suggested that no Commission approval be necessary provided that no more than 10% of budgeted funds on a class basis were shifted within the same customer class.[131] The Companies urge the Commission to reject these guidelines as being premature. As stated in various sections of this Reply Brief, no one can foresee the events that will transpire in the energy efficiency and demand response arenas during the next four years. Rather than prescribe rules at this juncture, the Commission should allow time to pass to see if, indeed, such rules are necessary. In so doing, if it is determined that such rules are necessary, the Commission will have the most current information available upon which to make better informed decisions. Furthermore, because the Companies may be subject to penalties if by chance their Revised Plans fail to comply with Act 129, they should be given significant latitude in modifying those plans as more

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[128] DEP Br., pp. 12-13.
[129] OCA Br. p. 44.
[130] DEP Br., p. 12.
[131] DEP Br., pp. 12-13.

information becomes available to them as well – especially since the Companies have committed to the continuation of the stakeholder process.

In light of the foregoing, the Commission should reject, at least for now, DEP's suggested procedure for modifications of the plans ultimately approved.

E. Other Issues

Five parties addressed "Other Issues" in their Main Briefs: OCA, OTS, DEP, the NGDCs and Field Diagnostic. Each is addressed below.

1. Stakeholder Process

The OCA recommends that the Companies formalize their commitment to an ongoing stakeholder process, which in principle is agreeable to the Companies.[132] However, as Witness Fitzpatrick proposed in his Rebuttal Testimony and as set forth in the Companies Main Brief at page 27, the Companies believe that such meetings should be held quarterly and be limited to the Companies and the parties to these proceedings.[133] Accordingly, the Companies urge the Commission to issue its Order consistent with this request.

2. Rate Recovery Beyond May 31, 2013

OTS recommends that the determination of any cost recovery rate to be established on a going-forward basis as a result of extending the EE&C programs beyond May 31, 2013, should be reviewed and adjusted on an annual basis.[134]

As set forth in the Companies' Main Brief at page 46 and discussed by Witness Parrish in

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[132] OCA Main Brief at p. 44.
[133] Met-Ed/Penelec/Penn Power Statement No. 2-R at pp. 4-5.
[134] OTS Main Brief at p. 32-34.

his Rebuttal Testimony, the Companies disagree with an annual rate adjustment requirement. The Companies' Plans involve new initiatives resulting from recently enacted legislation. All parties are just now starting the review, approval, and implementation process. In light of this, the Commission should defer the resolution of this issue until more information and further experience on the amount and recovery of these new costs is gathered over the initial four years of these Plans.

3. Rate Base Exclusion of Capital Assets

OTS recommends that any capital assets funded with EE&C revenues should be excluded from a rate base claim, should not be included as a corresponding depreciation expense claim and should not earn a return on equity.[135] Notwithstanding OTS' recommendation, Witness Parrish confirmed on behalf of the Companies in Statement No. 3-R, at page 6, that: "All Energy Efficiency and Conservation Plan costs and revenues included in the Companies' EEC-C Riders will be excluded from distribution base rate treatment and subject to Commission review and audit."[136] Furthermore, Witness Parrish testified that to the extent that the Companies are reimbursed through the EEC-C Riders for Company-owned property, it will be treated as a contribution-in-aid-of-construction resulting in a net-of-tax reduction in the amounts capitalized for those assets and those costs will be excluded from rate base in determining future distribution base rate case revenue requirements.[137] Consequently, the Commission should reject the OTS request as unnecessary.

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[135] OTS Main Brief at pp. 34-36.
[136] Met-Ed/Penelec/Penn Power Statement No. 3-R at p. 6.
[137] Id. at p. 6-7.

4. **Projects with Funding from Act 1 and the ARRA**

DEP in its Main Brief argues that if the Companies provide Act 129 funding to a project which also receives funds from Pennsylvania's Act 1 or the American Recovery and Reinvestment Act of 2009 ("ARRA"), the Companies counting of the full energy savings from such projects would equate to the Act 129 funds "supplanting" Act 1 or ARRA funds, in violation of the Commonwealth's commitments to the United Stated Department of Energy ("DOE").[138] Therefore, DEP requests that the Commission should prohibit EDCs from counting the full energy savings from projects partially funded by Act 129 and Act 1 or the ARRA.

The Companies' Main Brief at pages 33-38 provides a detailed discussion supporting why the Commission should find that DEP's analysis is flawed and reject DEP's request. First and foremost, this issue has been addressed and rejected in the Commission's Order approving and adopting the Total Resource Cost ("TRC") Test entered on June 23, 2009.[139] In that Order, the Commission stated:

> EDCs will be able to fully include a measure's benefits in the TRC test if *any portion* of the measure is attributable to Act 129. For purposes of TRC testing, if the end use customer is a recipient of an incentive/rebate from an Act 129 program, even if the customer is a recipient of an Act 1 incentive or rebate for the same equipment or service, we conclude that *the entire savings* of that equipment or service can also be claimed by the EDC for TRC testing purposes.[140] [Emphasis added.]

The same conclusion must apply if the customer receives federal stimulus funding or other funds from an entity other than the Companies (i.e., ARRA funding).

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[138] DEP Main Brief at p. 13.
[139] *Implementation of Act 129 of 2008, Total Resource Cost (TRC) Test*, Docket No. M-2009-2108601 (Order entered June 23, 2009).
[140] Id at p. 25.

Second, in crafting its "supplant" argument, DEP seems to avoid or ignore the clear language of the Guidelines and Applications it submitted to DOE for ARRA funding which specifically authorize the use of ARRA funds *to supplement other funds* made available to customers.[141] Further, apart from DEP's "supplant" argument referenced above, none of the evidence of record in this proceeding even mentions any limitations of "counting" or "taking credit" for energy savings in projects funded by multiple sources. As explained in the Companies' Main Brief at pages 33-38, based upon the clear statements contained in the Guidelines provided by DEP under which it has sought ARRA funding, there is no "conflict" created by the Companies providing Act 129 funding to customers who also receive ARRA funds, and no funding will be supplanted.

Third, the Commonwealth's application to the DOE for ARRA funding specifically references the expansion of Act 129 programs, and there are no restrictions upon claiming energy savings expressed in these applications. Therefore, the Commission should find that for purposes of TRC testing, if the end-use customer is a recipient of an incentive/rebate from an Act 129 program, even if the customer is also a recipient of an ARRA incentive or rebate for the same equipment or service, the entire savings of that equipment or service can be claimed by the EDC. As Witness Fitzpatrick observed in his Rebuttal Testimony, if the Commission changed course by adopting DEP's position on this issue, it is quite likely that the Companies would not be able to meet the prescribed savings targets in Act 129.[142]

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[141] See, FE Cross Examination Exhibit 3 at p. 23 and FE Cross Examination Exhibit 4 at p. 10.
[142] Met-Ed/Penelec/Penn Power Statement No. 2-R at p. 16.

And finally, as Field Diagnostics notes, if an artificial limitation is imposed, as suggested by DEP, customers would be hindered from participating in the Companies' programs. [143]

For any or all of the reasons set forth in the Companies' Main Brief and this Reply Brief, the Commission should reject the arguments of the DEP and find, consistent with Act 129 and the Commission's prior order in the TRC proceeding[144], that the Companies may fully include a measure's entire benefits/savings in the TRC test if *any portion* of the measure is attributable to Act 129.

5. **Fuel Switching**[145]

The NGDCs request that the Commission direct the Companies to amend their Plans to include three specific "fuel switching" programs – a Residential Space Heating Conversion Program, a Residential Water Heating Conversion Program and a Commercial Combined Heat and Power Program - even though such programs are not "necessary" to the Companies' achievement of required targets in electric service consumption and demand reduction. The NGDCs also argue for some wholly inappropriate reporting requirements for the Companies in order to support their self-serving fuel-switching agenda.[146]

In support of the position that "fuel switching" should not be ordered to become a part of the Companies' EE&C Plans, which is a position that is shared by the DEP[147], the Companies'

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[143] Field Diagnostic Main Brief at p. 18.
[144] *Implementation of Act 129 of 2008, Total Resource Cost (TRC) Test*, Docket No. M-2009-2108601 (Order entered June 23, 2009).
[145] The NGDCs' arguments for requiring "fuel switching" in the Companies' Plans are included in the following sections of their Main Brief: Introduction, Summary of Argument, Residential Conservation/Demand Reduction Programs, Proposals for Improvement, Cost-Effectiveness Issues, and Other Issues. In the interests of efficiency and clarity, the Companies will respond to the NGDCs fuel switching arguments in a consolidated manner in this section of the Reply Brief.
[146] NGDC Main Brief at pp. 27,29.
[147] Direct Testimony of Maureen Guttman, DEP Statement No. 1 at p. 24.

Main Brief provides in significant detail five reasons why the Commission should deny the NGDC request:

- **The Commission has already rejected requests to order fuel switching to be considered in the July 1, 2009 EE&C filings of the EDCs.** On June 1, 2009, the Commission entered its TRM Order, outlining the standards by which energy savings associated with various energy efficiency and conservation measure are to be determined under the Plans. The Commission concluded that since the TRM will provide vital guidance to EDCs in developing their EE&C plans, which were due to be filed one month later, there was not enough time to convene a working group to address all of the related issues, including fuel switching, and therefore, fuel switching would not be included in the first TRM."[148] The Commission recognized that fuel switching is a complicated issue that requires more time to address and, therefore, the Commission indicated that it would convene a working group in the near future to identify, research and address issues related to fuel switching. Depending on the outcome of this working group, fuel switching may be incorporated into a future version of the TRM. July 1, 2009 Order at p. 9.[149] With no standards for fuel-switching included in the TRM at this time, it is impossible for the NGDCs' proposed fuel-switching measures to be evaluated or considered in connection with the Companies' Plans. The NGDCs' Main Brief includes nothing to rebut this glaring problem and, simply put, the absence of fuel

[148] The refusal to include fuel switching in the TRM marked the third time that the Commission rejected the idea of using natural gas equipment to replace existing electric equipment in EDC EE&C plans. *See*, UGI Comments filed December 8, 2008 at p. 2 and UGI Reply Comments filed December 19, 2008 at p. 3 to the Commission's draft Implementation Order proceeding.

[149] See, Met-Ed/Penelec/Penn Power Main Brief at pp. 53-55.

switching measures in the current TRM should dispose of the NGDCs' fuel-switching proposals even before the Commission addresses the merits (or lack thereof) of their proposals and arguments.

- **The Commission should not expose EDCs to Potential Anticompetitive Liability Claims.** The Companies currently compete with fuel oil providers and NGDCs for customers within their service territories. In essence, the NGDCs' fuel switching proposals would mandate that the Companies' customers provide incentives for customers to switch from electric service appliances to appliances that use exclusively gas. These types of fuel switching incentives could expose the Companies to antitrust and anti-competition challenges. See also, *Yeager v. PP&L*, 22 F.3d 1260 (3d Cir. 1994).[150]

- **"Fuel-switching" is not an "energy efficiency" program in this Act 129 proceeding.** "Fuel switching" or "fuel substitution" is not specifically listed as an "energy efficiency and conservation measure" under Act 129.[151] Nowhere in this definition of "energy efficiency and conservation measures" is "natural gas or propane fuel-switching" listed or included.[152] Additionally, reducing electric consumption via fuel switching is not identified as one of the policy objectives of Act 129. The NGDCs' Main Brief glosses over Act 129's exclusion of fuel-switching, and instead points to obscure references to appendices to the TRC Order[153], excerpts from studies that are not in the record[154], and "simple economic

[150] See, Met-Ed/Penelec/Penn Power Main Brief at pp. 53-55.
[151] 66 Pa. C.S. § 2806.1(k)(2).
[152] See, Met-Ed/Penelec/Penn Power Main Brief at pp. 57-58.
[153] NGDC Main Brief at p.8.
[154] NGDC Main Brief at pp. 15-16.

theory"[155] to support their contention that fuel switching could be included in EE&C Plans. But none of the NGDCs' justifications for fuel switching cited in their Main Brief have been adopted by the Commission, and no other party to this proceeding agrees with the NGDCs' position that fuel-switching is a valid EE&C measure that can be included in an EDC's plan. In reality, fuel switching is contradictory to improving energy efficiency because while reductions in electric use may occur, increases in the consumption of natural gas will result.

- **The NGDC program proposals fail to pass the Commission's TRC test.** Witness Fullem provided oral rebuttal testimony[156] explaining that under the Companies' administration of the TRC test, the NGDC proposed programs failed the TRC test.[157] Witness Fullem testified that all three programs recommended by NGDC Witness Raab produced TRC test results of less than 1.[158] Witness Fullem concluded that the Residential Space Heating Conservation program produced a TRC test score of .86, when anything less than 1 is a failure.[159] Similarly, Witness Fullem testified that the Residential Water Heating

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155 NGDC Main Brief at p. 13.

156 In their Main Brief, the NGDC's allege that the Companies by introducing the oral rebuttal testimony of Witness Fullem raised an "eleventh hour challenge" with an "undisclosed and unannounced rebuttal witness." The NGDCs argue that the introduction of Witness Fullem was "untimely and contrary to standard hearing practice" which was a "highly unusual and unorthodox process" that denied the NGDCs of due process. *See*, NGDC Main Brief at pp. 17-18. However, the NGDCs fail to describe the entire situation leading up to the introduction of Witness Fullem. The Companies had filed a written Motion to Strike the Testimony of NGDC Witness Raab prior to the evidentiary hearings that had not been ruled upon up to that point. To the Companies' surprise, the ALJ denied the Companies' Motion to Strike and allowed the Testimony of Witness Raab to be included in the record. Due to this fact, as well as the fact that Witness Raab was unable to answer important questions on cross-examination regarding critical inputs used in his analysis of the TRC test for the three NGDC proposed fuel switching programs, the Companies were left with no other choice but to offer the expert testimony of Witness Fullem. Not allowing Witness Fullem to offer oral rebuttal testimony at the hearing would have been a violation of the Companies' due process rights and contrary to standard hearing process.

157 See, Tr. at pp. 280 – 283.

158 Id. at 280 – 283; See, Met-Ed/Penelec/Penn Power Main Brief at pp. 58-60.

159 See, Tr. At pp. 280-281.

Conservation program failed the TRC test with a score of .99 and the Commercial Combined Heat and Power program failed the TRC test with a score of .79.[160]

- **Requiring "fuel switching" in this proceeding may violate Section 410(a) of the ARRA.** Directing the inclusion of fuel switching in the Companies' EE&C Plans would run afoul of Section 410(a) of the ARRA and would be contrary to its requirement that utility financial incentives must be aligned with helping customers use energy more efficiently. Fuel switching would result in lost or decreased revenues to the Companies for which timely recovery is prohibited under Act 129. The inability to recover these lost revenues is inconsistent with Section 410(a) of the ARRA.[161]

In its Main Brief, the NGDCs challenge the Companies' analysis of whether the NGDC's proposed fuel switching programs pass the Commission's TRC test.[162] For the specific fuel switching programs proposed by NGDC Witness Raab, the Companies' analysis of the benefits of such programs employed the Companies' Weighted Average Cost of Capital ("WACC") to discount the avoided costs streams, since the utility is avoiding the investment in future energy and capacity costs. However, the examination of the programs discussed by the Companies' Witness Fullem included a review of the participant customers' cost side of these fuel switching programs. Witness Fullem's work papers do not, and should not, discount the natural gas costs streams at the Companies' WACC simply because these costs streams affect only fuel switching participants and not the Companies.

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[160] Id. at pp. 281-283.
[161] See, Met-Ed/Penelec/Penn Power Main Brief at pp. 58-60; See also, Section 410(a) of the ARRA
[162] NGDC Main Brief at pp. 14-19.

At page 18 of their Main Brief, the NGDCs attempt to discredit Witness Fullem's TRC analysis of the NGDCs Residential Water Heating Conversion Program. Witness Fullem's testimony regarding the 0.99 TRC result for the NGDC Residential Water Heating Conversion Program coincides with the $14.90 per mcf natural gas cost from the Commission's Annual Rate Comparison Report issued on April 15, 2008, which he discussed during his testimony.[163] While the model identified as Exhibit NGDC-6 (Highly Confidential) listed the gas price of $14.90, this price was to be used for residential programs and measures. The price used for the commercial program/measure discussed by the NGDCs was a lower price. The calculation in Exhibit NGDC-6 (Highly Confidential) inadvertently was based on the lower gas price, which was only to be used for commercial measures, but was incorrectly included in an input cell on another sheet entitled "Global Inputs" in the model for all three programs (residential and commercial) provided in response to an "on-the-record" data request. The lower price was not used for the Companies' analysis of the Residential Water Heating Conversion Program as testified to by Witness Fullem. Using the correct publicly recorded gas price of $14.90 for residential programs such as the Residential Water Heating Conversion Program produces a 0.99 TRC result, which fails the TRC test, consistent with Witness Fullem's Rebuttal Testimony.

Furthermore, the NGDCs failed to demonstrate that the Companies' proposed plans somehow failed to meet their required reductions in energy consumption and peak demand without the inclusion of fuel switching programs. The NGDCs have not submitted any evidence whatsoever that would allow the Commission to conclude that the Companies' Plans will not meet Act 129's consumption and peak demand reductions, the Act's requirements regarding a variety of program measures for all customer classes, the Act's cost allocation requirements or

[163] See, Tr. at p. 282-283.

any of the Act's other requirements for EE&C Plans. To the contrary, the Companies' have proven with record evidence that their EE&C Plans will comply with all aspects of Act 129. Unless and until the NGDCs can demonstrates that the Companies' plans do not meet the Act's requirements, there is no basis upon which to force a competitor's self-serving proposals upon the Companies.

Finally, even if fuel-switching measures were valid EE&C measures, and even if it were appropriate to consider them in the context of this proceeding, and even if they passed the TRC test, it is impossible to require their inclusion in the Companies' Plans because they are incomplete and lacking critical implementation, cost-effectiveness, and budgetary details. For example, the NGDCs' Statement No. 1 does not provide an assumed level of customer participation, any credible energy savings calculation, a net energy savings amount, or proper cost benefit calculations. These critical missing details are to be expected when fuel-switching proposals are made without any support in the TRM and without the results of the fuel switching working group proposed in the TRM Order. Simply put, with no approved standards for fuel-switching in the TRM, it is impossible to properly evaluate the impact that fuel switching proposals would have on an EDC's EE&C Plan, and therefore it would be reckless and unlawful to force these proposals upon the Companies.

For the reasons set forth herein and in the Companies' Main Brief, the Commission must reject the NGDCs' proposed fuel switching programs and measures.

VI. CONCLUSION

Based upon the Companies' July 1, 2009 Original EE&C Plans, the Companies' September 21, 2009 Revised EE&C Plans, the Testimony submitted by the Companies, and the evidence submitted at the evidentiary hearing, the Commission should find that the Companies' Revised EE&C Plans are consistent with Act 129 and the Commission's Implementation Order, are in the public interest, and should benefit customers by providing them with cost effective opportunities to reduce electricity consumption and peak demand. For all of the reasons set forth above in this Reply Brief and in the Companies' Main Brief, the Commission should enter an Order approving the Revised EE&C Plans of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company and authorizing the Companies to implement their respective EEC-C Riders and EEC-C rates, effective November 1, 2009.

VII. PROPOSED ORDERING PARAGRAPHS

1. The Revised EE&C Plans of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company ("the Companies") satisfy the requirements of Act 129, 66 Pa.C.S. § 2806.1 and the January 16, 2009 Energy Efficiency and Conservation Program Implementation Order at Docket No. M-2008-2069887 and the May 2, 2009 Reconsideration Order of the Commission and are hereby approved.

2. The programs and measures in the Revised EE&C Plans and associated costs of the Companies are hereby approved.

3. The cost recovery mechanism proposed by the Companies is hereby approved.

4. The EEC Rider proposed by the Companies is hereby approved.

5. The Companies shall file appropriate tariff supplements in accordance with the Revised EE&C Plans and this Order, to be effective on November 1, 2009.

6. Companies' request to apply the cost cap on a 43 month levelized basis is hereby approved.

7. The Companies shall facilitate an EE&C stakeholder process including quarterly meetings through May 31, 2013, with the parties to this proceeding.

8. Companies request to recover statewide evaluator contract costs assessed to Met-Ed, Penelec and Penn Power through the EEC-C Riders and exclude those costs from the Companies' Act 129 two percent limitation is approved.

9. The Companies shall be permitted to recover interest on start-up administrative costs as described in the Revised EE&C plans and testimony in this proceeding.

10. The Companies are hereby authorized to enter into contracts with CSPs as necessary to accomplish the programs and measures outlined in their Revised EE&C Plans.

11. The Companies' are hereby authorized to fully include a measure's benefits in the TRC test if any portion of the measure is attributable to Act 129, even if the customer is a recipient of an ARRA or Act 1 incentive or rebate for the same equipment or service, we conclude that the entire savings of that equipment or service can also be claimed by the Companies for TRC testing purposes.

12. The proceedings at Docket Nos. M-2009-2092222, M-2009-2112952 an M-2009-2112956 are hereby marked closed.

Respectfully submitted,

Dated: September 21, 2009

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Metropolitan Edison Company Energy and Conservation Plan	:	Docket No. M-2009-2092222
Pennsylvania Electric Company and Conservation Plan	:	Docket No. M-2009-2112952
Pennsylvania Power Company and Conservation Plan	:	Docket No. M-2009-2112956

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Reply Brief in the manner indicated below upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 and 1.55.

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