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July 12, 2011

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA HAND DELIVERY

RE: Met-Ed Request for Proposal Process for Energy Efficiency and Demand Response Consulting Services; Docket No. M-2009-2092222

Penelec Request for Proposal Process for Energy Efficiency and Demand Response Consulting Services; Docket No. M-2009-2112952

Penn Power Request for Proposal Process for Energy Efficiency and Demand Response Consulting Services; Docket No. M-2009-2112956

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the original and nine (9) copies of the Main Brief of the Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, and Penn Power Users Group, in the above-referenced proceedings.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and the Main Brief, and kindly return them for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By *Vasiliki Karandrikas*
Vasiliki Karandrikas

Counsel to Met-Ed Industrial Energy Users Group, Penelec Industrial Customer Alliance, and Penn Power Users Group

VK/sds

Enclosures

c: Administrative Law Judge Dennis J. Buckley (via E-mail and Hand Delivery)
Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Met-Ed Request for Proposal Process for Energy Efficiency and Demand Response Consulting Services	:	Docket No.	M-2009-2092222
	:		
	:		
Penelec Request for Proposal Process for Energy Efficiency and Demand Response Consulting Services	:	Docket No.	M-2009-2112952
	:		
	:		
Penn Power Request for Proposal Process for Energy Efficiency and Demand Response Consulting Services	:	Docket No.	M-2009-2112956
	:		

**MAIN BRIEF OF THE MET-ED INDUSTRIAL USERS GROUP,
THE PENELEC INDUSTRIAL CUSTOMER ALLIANCE,
AND THE PENN POWER USERS GROUP**

Air Liquide Industrial U.S. LP
American Refining Group Inc.
Appleton Papers Inc.
Cambridge-Lee Industries, LLC
Cargill Taylor Beef
Carpenter Technology Corporation
Dixie Consumer Products, LLC, Lehigh Valley
E.I. du Pont de Nemours and Company
East Penn Manufacturing Company
Electralloy, a G.O. Carlson, Inc., Co.
Ellwood National Steel
Ellwood Quality Steels Company
Erie Forge & Steel, Inc.
Exide Technologies, Inc.
Farmers Pride, Inc.
Glen-Gery Corporation

Harley-Davidson Motor Company – York Division
Knouse Foods Cooperative, Inc.
Magnesita Refractories Co.
Pittsburgh Glass Works, L.L.C.
PPG Industries, Inc.
Procter & Gamble Paper Products Company
RH Sheppard Co., Inc. – Foundry Division
Royal Green LLC
Sheetz, Inc.
Standard Steel
Sweet Street Desserts, Inc.
Team Ten, LLC - American Eagle Paper Mills
The Plastek Group, Inc.
Tray-Pak Corporation
U.S. Silica Company
Wegmans Food Markets, Inc.

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Dated: July 12, 2011

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I. INTRODUCTION

A. **Procedural History**

On February 18, 2011, Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), and Pennsylvania Power Company ("Penn Power"), filed a Joint Petition for Amendment of the Orders Approving Energy Efficiency and Conservation Plans and Petition for Approval of First Amended Energy Efficiency and Conservation ("EE&C") Plans ("Joint Petition"),¹ seeking approval of proposed modifications to the Companies' EE&C Plans, including a significant budget increase for Large Commercial and Industrial ("C&I") programs, by May 19, 2011, for implementation by June 1, 2011.²

On March 10, 2011, the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), and the Pennsylvania Power Users Group ("PPUG") filed Answers in response to the Companies' Joint Petition.³ MEIUG/PICA are ad hoc associations of energy-intensive commercial and industrial customers receiving electric service in Met-Ed's and Penelec's service territory, respectively. As some of the Companies' largest customers, whose manufacturing processes require significant amounts of electricity, any

¹ While Met-Ed, Penelec, and Penn Power jointly submitted this filing, this Main Brief focuses solely on the proposed modifications requested by Met-Ed and Penelec. Thus, Met-Ed and Penelec collectively are referred to herein as the "Companies."

² On February 18, 2011, Met-Ed, Penelec, and Penn Power also submitted a Joint Petition for Expedited Approval of Amendments to the Residential HVAC Program and Governmental & Institutional Components of the C&I Equipment Programs ("Expedited Petition"), seeking expedited approval of proposed modifications to the Companies' EE&C Plans by May 17, 2011, for implementation by April 1, 2011. The Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), and the Penn Power Users Group ("PPUG") jointly filed an Answer to Met-Ed, Penelec, and Penn Power's Expedited Petition on March 10, 2011. The Commission's March 18, 2011, Order granted the Expedited Petition and directed Met-Ed, Penelec, and Penn Power to implement these proposed EE&C program modifications by April 1, 2011. See also n. 33, infra.

³ While MEIUG, PICA, and PPUG jointly filed an Answer to Met-Ed, Penelec, and Penn Power's Joint Petition, this Main Brief focuses solely on MEIUG's and PICA's concerns with the Companies' proposed EE&C program modifications affecting Large C&I customers. Thus, MEIUG and PICA collectively are referred to herein as "MEIUG/PICA."

proposed modifications to the Companies' EE&C Plans could significantly impact MEIUG/PICA's production costs.

On March 10, 2011, the Office of Consumer Advocate ("OCA") also filed an Answer to the Joint Petition.⁴ The Office of Small Business Advocate ("OSBA") and the Office of Trial Staff ("OTS") assumed an inactive role in this proceeding.

By Order entered March 18, 2011, the Pennsylvania Public Utility Commission ("PUC" or "Commission") assigned the Joint Petition to the Office of Administrative Law Judge. On April 5, 2011, the Commission issued a Secretarial Letter setting the Joint Petition for hearings and settlement discussions. *An Initial Prehearing Conference was held on April 29, 2011, before Administrative Law Judge ("ALJ") Dennis J. Buckley.*

MEIUG/PICA received the Companies' Direct Testimony of George L. Fitzpatrick and Charles V. Fullem as part of the Companies' original filing on February 18, 2011. Pursuant to the procedural schedule, on June 1, 2011, MEIUG/PICA submitted two pieces of Direct Testimony. On June 10, 2011, MEIUG/PICA received Rebuttal Testimony from the Companies. On June 17, 2011, MEIUG/PICA submitted two pieces of Surrebuttal Testimony.

Evidentiary hearings were held in this proceeding on June 28, 2011, for the purposes of presenting testimony and performing cross-examination. During these hearings, the parties confirmed the processes for submitting Briefs. Accordingly, MEIUG/PICA present this Main Brief pursuant to the ALJ's specifications.

As set forth more fully herein, MEIUG/PICA respectfully request the Commission find that the Companies' requested modifications to their Original EE&C Plans fail to comport with the requirements of Act 129. To that end, the PUC should deny the Companies' proposals to

⁴ The OCA's Answer also addressed its concerns with the Expedited Petition.

increase the budgets for their Large C&I programs, which, in turn, would significantly increase the Energy Efficiency and Conservation Charge ("EEC-C") Rider rates for Large C&I customers. In the alternative, if the Commission determines that certain modifications to the Companies' Original Plans affecting Large C&I customers are necessary, MEIUG/PICA respectfully request that the Commission limit the proposed budget increases for Large C&I programs to the amount necessary for the Large C&I class to meet its goals for purposes of the Act 129 requirements. Finally, because the Companies fail to define the parameters of their incentive range proposal, this proposal must be denied by the Commission.

B. Background

1. Act 129

On October 15, 2008, then Governor Rendell signed into law Act 129 of 2008 ("Act 129"). Among other things, Act 129 expanded the Commission's oversight responsibilities and imposed new requirements on Electric Distribution Companies ("EDCs") regarding energy efficiency and conservation, default service procurements, and the expansion of alternative energy sources.⁵

With respect to energy efficiency and conservation, Act 129 required EDCs to adopt a plan, approved by the Commission, to achieve certain levels of load and peak demand reductions during the 2010-2013 period. Specifically, under Act 129, EDCs must realize a 1% load reduction by May 31, 2011, and a 3% load reduction by May 31, 2013.⁶ In addition to these load reduction requirements, Act 129 mandated a reduction of 4.5% of annual system peak demand

⁵ As articulated in Act 129, only EDCs with at least 100,000 customers are required to submit energy efficiency and conservation programs. See 66 Pa. C.S. §§ 2806.1, et seq.

⁶ Id. at §§ 2806.1(c)(1) and (2).

by May 31, 2013.⁷ To realize these statutorily mandated reductions in load and peak demand, each Pennsylvania EDC, including the Companies, was required to develop and submit for Commission approval an EE&C Plan.⁸

According to Act 129, each Pennsylvania EDC's EE&C Plan was required to achieve load and peak demand reductions based on combined efforts from the EDC's customer base. Act 129 directed each EE&C Plan to "include...standards to ensure that each plan includes a variety of energy efficiency and conservation measures and will provide the measures equitably to all classes of customers."⁹ In seeking Commission approval of an EE&C Plan, each EDC was required to demonstrate that it "provide[d] a diverse cross section of alternatives for customers of all rate classes."¹⁰ Thus, Act 129 did not envision an EDC's overreliance on just one customer class to achieve the statutory load and demand reductions, but rather, anticipated that all customer classes would implement efforts that would ensure the EDC's ability to meet its energy efficiency and conservation targets.

2. The Companies' Original EE&C Plans

In accordance with Act 129, on July 1, 2009, the Companies filed with the Commission their initial EE&C Plans (hereinafter, "Original EE&C Plans" or "Original Plans").¹¹ After the PUC's comprehensive review and evaluation, by Opinion and Order entered February 26, 2010,

⁷ Id. at § 2806.1(d)(1).

⁸ Id. at § 2806.1(b).

⁹ See id. at § 2806.1(a)(5) (emphasis added).

¹⁰ Id. at § 2806.1(b)(1)(i)(I) (emphasis added).

¹¹ MEIUG/PICA were active parties in the Commission's proceeding to develop EE&C program guidelines, as well as in the Companies' Original EE&C Plan proceeding. MEIUG/PICA advocated on behalf of its member companies and endeavored to ensure that the Commission and the Companies were aware of the competitive environment in which MEIUG/PICA members operate, as well as the potential adverse impacts that certain proposals of the Companies could have on Large C&I customers.

the Commission ultimately approved the Companies' Original EE&C Plans, as providing a just and reasonable balance of EE&C program responsibility among the Companies' respective customer classes.¹² As evidenced by the February 2010 Order, the Commission, in its evaluation of the Companies' Original EE&C Plans, required that the Companies include sufficient detail to allow the Commission to determine that each customer class received a fair and balanced portfolio of programs.¹³ The Companies' ability to strike this balance of EE&C program availability across their respective customer classes is, in large part, what led the Commission to approve the Companies' original EE&C measures.¹⁴

The Companies' detailed strategy to meet their Act 129's reduction requirements included numerous EE&C programs available to Residential, Small C&I, Large C&I, and Governmental/Institutional customers.¹⁵ In developing this strategy, the Companies were cognizant of the significant financial hardships that Pennsylvania's industrial customers were enduring – and continue to endure – due to the global economic recession.¹⁶

Although the Companies' EE&C implementation strategy required the Companies' ratepayers to shoulder significant costs, totaling approximately \$194.4 million over the life of the

¹² See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans; Docket Nos. M-2009-2092222, et al. (Oct. 28, 2009) ("October 2009 Order") (approving in part and rejecting in part the Companies' initial EE&C Plans and directing the Companies to submit revised plans); Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans; Docket Nos. M-2009-2092222, et al. (Jan. 28, 2010) ("January 2010 Order") (approving in part and rejecting in part the Companies' revised EE&C Plans and directing the Companies to submit further revised plans); Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans; Docket Nos. M-2009-2092222, et al. (Feb. 26, 2010) ("February 2010 Order") (approving the Companies' further revised EE&C Plans).

¹³ See February 2010 Order at 20.

¹⁴ Id.

¹⁵ See October 2009 Order at 29.

¹⁶ See Transcript of June 28, 2011 hearing ("Tr.") at 121, lines 3-13.

Companies' Original EE&C Plans (i.e., \$89.2 million for Met-Ed's programs; \$79.0 million for Penelec; and \$26.2 million for Penn Power),¹⁷ the Commission determined, and MEIUG/PICA agreed, that these costs would be fairly spread among the Companies' respective customer classes.¹⁸

The Companies' EE&C Plan costs represented spending levels within the Companies' respective two-percent (2%) statutory cap, as required by Act 129.¹⁹ Specifically, pursuant to Act 129, Met-Ed and Penelec were permitted to recover from their customers a sum equal to 2% of the Companies' respective 2006 annual revenues to implement and administer their EE&C programs,²⁰ with the intent that customers could potentially recoup such EE&C cost contributions through active participation in the Companies' EE&C programs.

The Commission permitted the Companies to recover the costs of their Original Plans from each customer class via an EEC-C Rider. The Companies' EEC-C Riders became effective on March 1, 2010. The table below illustrates the effective rates applicable to each customer class upon the implementation of the Companies' EEC-C Riders.

¹⁷ See January 2010 Order at 26.

¹⁸ See generally id.; see also February 2010 Order. For costs that clearly benefited only one customer class, those costs were assigned solely to that class. See Energy Efficiency and Conservation Program, Docket No. M-2008-2069887, at 36-37 (Jan. 16, 2009) ("Implementation Order"). For costs that benefited more than one class, or that could be shown to provide system-wide benefits, those costs were allocated using reasonable and generally acceptable cost of service principles. Id.

¹⁹ 66 Pa. C.S. § 2806.1(g).

²⁰ Id.

Met-Ed		Penelec	
Customer Class	EEC-C Rider Rate	Customer Class	EEC-C Rider Rate
Residential	0.383 cents per kWh	Residential	0.366 cents per kWh
Small C&I	0.172 cents per kWh	Small C&I	0.134 cents per kWh
Large C&I	\$0.30 per kW	Large C&I	\$0.34 per kW

As shown above, the Large C&I class' rate design is based on demand (i.e., per kW), while the other customer classes' rate designs are energy-based (i.e., per kWh). The reason for this distinction is because the Commission, in evaluating the Companies' Original Plans, found it inequitable to collect EE&C program costs from larger customers on an energy basis.²¹ As the Commission aptly noted, "the largest industrial customers would pay the most under [the Companies'] proposed [kWh] recovery mechanism simply by reason of their energy-intensive characteristics."²² This is but one instance where the Commission recognized, upon viewing the Companies' EE&C proposals under a lens of fairness, that Large C&I customers operate in a very competitive environment and are extremely sensitive to significant and sudden increases in their operating costs.²³

In addition, as part of the Companies' EE&C program implementation strategy, the Companies built in significant margins, or "cushions," for their 2011 load reduction goals. As the table below illustrates, the Companies designed their Original EE&C Plans to achieve load

²¹ See October 2009 Order at 84-85.

²² Id. at 84.

²³ As noted previously, the Companies also suggested that, in developing their Original EE&C Plans, they "did not put as much dollars and programs into the large C&I because we were concerned about the economy, we were concerned about that customer class." See Tr. at 121, lines 3-13.

reduction targets that exceed, by cushions of 18%-20%,²⁴ the actual 2011 reduction requirements under Act 129.²⁵

	1% Energy Reduction Under Act 129 (MWh)	Companies' 1% Reduction Goal (MWh)	Percent Differential (i.e., "Cushion")	3% Energy Reduction Under Act 129 (MWh)	Companies' 3% Reduction Goal (MWh)	Percent Differential (i.e., "Cushion")
Met-Ed	148,650	177,962	19.5%	445,951	458,243	2.8%
Penelec	143,993	173,331	20.4%	431,979	447,917	3.7%

This tables shows that the Companies front-loaded their Original EE&C Plans to achieve significantly inflated load reduction targets for 2011. Importantly, to the extent Companies reach these inflated targets, and the Companies believe they have,²⁶ the excess reduction amounts will be applied towards meeting the Companies' 2013 load reduction requirements.²⁷

To meet the Companies' Act 129 annual system peak demand reduction requirement of 4.5% by May 31, 2013, the Companies' Original EE&C Plans provided each class with a Demand Response Program. Because the Companies have not yet implemented the Demand Response Programs,²⁸ the Companies have no specific performance data (i.e., customer interest, customer participation levels, program efficiency and effectiveness, etc.) for these programs.²⁹ Rather, the

²⁴ See Tr. at 60, lines 23-25; *id.* at 61, lines 1-2; *id.* at 62, lines 9-12; *id.* at 63, lines 7-11.

²⁵ See generally Energy Consumption and Peak Demand Reduction Targets, Docket No. M-2008-2069887 (Mar. 30, 2009); see also January 2010 Order at 12.

²⁶ See Tr. at 62, lines 13-16; *id.* at 61, lines 8-9. While the Companies believe they have met or exceeded their inflated energy reduction targets for 2011, the Companies will not know the actual reduction figures until November 2011. See *id.* at 91, lines 18-21.

²⁷ See *id.* at 61, lines 12-15; *id.* at 62, lines 17-20.

²⁸ At hearings, the Companies indicated that they plan to further delay the implementation schedule for their respective Demand Response Programs. See *id.* at 94, lines 15-19.

²⁹ See *id.* at 93, lines 13-18.

Companies only have projections, or "forecasts," regarding the potential performance of these programs.³⁰

3. The Companies' First Annual Report

On June 24, 2010, and September 1, 2010, the Commission issued Secretarial Letters addressing the filing procedures for EDCs' Act 129 Annual Reports and proposed revisions to their EE&C Plans. Although the Companies had the opportunity in these reports to request their EE&C Plan modifications, as did other Pennsylvania EDCs, the Companies chose not to do so. Rather, on September 15, 2010, the Companies filed their First Annual Reports indicating that they did not propose any changes to their Original EE&C Plans.³¹

4. The Companies' First Amended EE&C Plans

The first time the Companies set forth any proposal to modify their Original EE&C Plans was on February 18, 2011. On that date, the Companies filed their Joint Petition,³² in which they proposed a number of changes to their Original Plans, including significant increases to Large

³⁰ See *id.* at 95, lines 1-7.

³¹ See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans, Docket Nos. M-2009-2092222, et al., 10 (Jan. 27, 2011).

³² See generally Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Amendment of the Orders Approving Energy Efficiency and Conservation Plans and Petition for Approval of First Amended Energy Efficiency and Conservation Plans (hereinafter, "Met-Ed/Penelec/Penn Power Ex. No. 1"). Accompanying the Joint Petition were the Direct Testimony and Exhibits of George L. Fitzpatrick (hereinafter, "Met-Ed/Penelec/Penn Power St. No. 1"), Direct Testimony and Exhibits of Charles V. Fullem (hereinafter, "Met-Ed/Penelec/Penn Power St. No. 2"), and the Companies' First Amended Plans (hereinafter, "Met-Ed/Penelec/Penn Power Ex. No. 2").

C&I customers' EEC-C rates.³³ The Companies requested that the Commission approve these proposed modifications by May 19, 2011, for implementation by June 1, 2011. The Joint Petition argues that the proposed EE&C program changes – and resultant increases to the Large C&I EE&C budgets and EEC-C rates – are necessary to enable the Companies to meet their load reduction and peak demand reduction targets by May 31, 2013.³⁴

According to the Companies, their proposed changes to the Original Plans are necessary due to three factors. First, the Companies overstated all current savings projections in their Original EE&C Plans by 11%, due to the Companies' inappropriate use of an 11% transmission and distribution gross-up factor.³⁵ Second, the Companies' Small C&I and, in some instances, Residential customers, are not taking full advantage of the EE&C programs available to them under the Companies' PUC-approved Original Plans.³⁶ Finally, the Companies suggest that customer interest in the Large C&I Equipment Programs has exceeded expectations.³⁷

Based in part on the aforementioned, the Companies request PUC permission to significantly increase Large C&I customers' EEC-C rates. Met-Ed proposes to include an additional \$4.5 million for its Large C&I programs. Of this \$4.5 million, Met-Ed suggests that it

³³ As previously noted, the Companies contemporaneously filed the Expedited Petition, which proposed to increase incentives paid for the Residential HVAC and Heat Pump Maintenance/Tune-Ups; add an Energy Conservation Kit offering to Governmental and Institutional ("G/I") customers within the Small C&I Equipment Program; and increase incentives paid to G/I customers for various measures within the C&I Equipment Programs. MEIUG/PICA filed Answers to both Joint Petitions. With respect to the Expedited Petition, MEIUG/PICA's Answer focused on the proposed funding to increase incentives for Large G/I customers, which would be provided from the budget increase for Large C&I Programs described in the Joint Petition. Specifically, MEIUG/PICA, noted that it did not necessarily oppose the Companies' Expedited Petition as long as the requests therein would be reviewed and revised as part of any PUC investigation of the Joint Petition. By PUC Opinion and Order entered March 18, 2011, the Commission denied MEIUG/PICA's requested relief with respect to the Expedited Petition.

³⁴ See Met-Ed/Penelec/Penn Power St. No. 1, p. 11.

³⁵ See Met-Ed/Penelec/Penn Power Ex. No. 1 at ¶ 13.

³⁶ *Id.*

³⁷ *Id.*

is appropriate to allocate \$2.5 million to the Large C&I Demand Response Program, with the remaining \$2 million applied to the Large C&I Equipment Program.³⁸ As initially proposed by Met-Ed, its increase to the Large C&I budget would translate into an EEC-C rate increase for Large C&I customers (*i.e.*, Rate Schedules GS-Large, GP, and TP) of approximately 60%, from \$0.30/kW to \$0.48/kW.³⁹ At hearings in this matter, Met-Ed updated its proposed Large C&I budget calculations to take into consideration the delayed implementation, if approved by the PUC, of Met-Ed's proposed EE&C program changes.⁴⁰ As a result of these updated calculations, the proposed EEC-C rates for Large C&I customers on Met-Ed's system will increase even further above current EEC-C rates, from \$0.30/kW to \$0.52/kW, or by approximately 73%.⁴¹

Similarly, Penelec proposes to include an additional \$4 million for Large C&I Programs. Of this \$4 million, Penelec proposes to allocate \$2.6 million to the Demand Response Program, with the remaining \$1.4 million allocated to the Large C&I Equipment Program.⁴² As initially proposed by Penelec, its increase to the Large C&I budget translated into an EEC-C rate increase for Large C&I customers (*i.e.*, Rate Schedules GS-Large, GP, and LP) of approximately 41%, from \$0.34/kW to \$0.48/kW.⁴³ At hearings, Penelec also updated its proposed Large C&I budget calculations to take into consideration the delayed implementation, if approved by the

³⁸ See Met-Ed/Penelec/Penn Power St. No. 1, p. 10.

³⁹ See Met-Ed/Penelec/Penn Power St. No. 2, Exhibit CVF-1, p. 1, line 16.

⁴⁰ See Supplemental Exhibit CVF-1 of Charles V. Fullem (hereinafter, "Met-Ed/Penelec/Penn Power Ex. Supp. CVF-1"), p. 1, line 16. Met-Ed originally requested that its budget shifting proposal take effect on June 1, 2011. Because the PUC opened an investigation of Met-Ed's proposal, Met-Ed now requests an effective date for its proposed EE&C program modifications of October 1, 2011.

⁴¹ Id.

⁴² See Met-Ed/Penelec/Penn Power St. No. 1, p. 10.

⁴³ See Met-Ed/Penelec/Penn Power Statement No. 2, Exhibit CVF-1, p. 2, line 16.

PUC, of Penelec's proposed EE&C program changes.⁴⁴ As a result these updated calculations, the proposed EEC-C rates for Large C&I customers on Penelec's system also will increase even further above current EEC-C rates, from \$0.34/kW to \$0.53/kW, or by approximately 56%.⁴⁵

The table below illustrates, on a comparative basis, the current and proposed EEC-C rates for Large C&I customers on both Met-Ed's and Penelec's systems.

Met-Ed Large C&I EEC-C Rates		Diff. (%)	Penelec Large C&I EEC-C Rates		Diff. (%)
Current	\$0.30/kW		Current	\$0.34/ kW	
Initial Proposal	\$0.48/kW	60%	Initial Proposal	\$0.48/kW	41%
Update Proposal	\$0.52/kW	73%	Update Proposal	\$0.53/kW	56%

By contrast, the Companies propose relatively minor rate adjustments – both in their initial calculations and updated calculations – for the Companies' other customer classes.⁴⁶ According to the Companies, the proposed changes to Small C&I and Residential programs will be addressed by shifting funds within those customer classes.⁴⁷

In addition to requesting the Commission's approval to impose significant EE&C costs onto Large C&I customers, Met-Ed and Penelec also ask that the Commission give them unfettered discretion to change incentive levels for all EE&C programs without further PUC

⁴⁴ See Met-Ed/Penelec/Penn Power Ex. Supp. CVF-1, p. 2, line 16. Penelec originally requested that its budget shifting proposal take effect on June 1, 2011. Because the PUC opened an investigation of Penelec's proposal, Penelec now requests an effective date for its proposed EE&C program modifications of October 1, 2011.

⁴⁵ See *id.*

⁴⁶ See Met-Ed/Penelec/Penn Power Statement No. 2, Exhibit CVF-1, p. 2, line 16; see also Met-Ed/Penelec/Penn Power Ex. Supp. CVF-1, p. 2, line 16.

⁴⁷ Met-Ed/Penelec/Penn Power Ex. No. 1 at ¶¶ 28-29.

review and approval.⁴⁸ Specifically, the Companies propose to restate all EE&C program incentives as ranges.⁴⁹ By way of example, with respect to the C&I Equipment Program, under which Large C&I customers, including MEIUG/PICA members, are eligible to participate, the Companies suggest that an initial incentive of \$0.05/kWh, with a maximum incentive of \$0.09/kWh, is appropriate.⁵⁰ Under the Companies' proposal, the Companies would then have the ability to unilaterally set EE&C program incentive levels within this range, based on the recommendation of their program implementation contractor, SAIC Energy Environment & Infrastructure LLC ("SAIC").⁵¹

*According to the Companies, their incentive range proposal is intended to provide them with full discretion to "change incentive levels within those ranges as market conditions warrant without further Commission approval."*⁵² The Companies provide little support for why they need such unfettered ability to change incentive levels without Commission oversight and do not provide any concrete information about how the Companies plan to implement such an approach. Without giving the Commission an opportunity to review and analyze the supporting details and parameters of their incentive range proposal, the Companies propose to maintain an excessive amount of discretion to change their EE&C program incentive levels without PUC approval.

⁴⁸ See Met-Ed/Penelec/Penn Power Ex. No. 2 (Met-Ed Amended EE&C Plan at § 1.D; Penelec Amended EE&C Plan at § 1.D).

⁴⁹ Id.

⁵⁰ See Met-Ed/Penelec/Penn Power Ex. No 1 at ¶ 26.

⁵¹ See Met-Ed/Penelec/Penn Power Ex. No. 2 (Met-Ed Amended EE&C Plan at § 1.1.1.B.4; Penelec Amended EE&C Plan at § 1.1.1.B.4).

⁵² Met-Ed/Penelec/Penn Power St. No. 1, p. 20.

II. SUMMARY OF ARGUMENT

In this proceeding, the Companies propose modifications to their Original EE&C Plans, including significant budget increases for their Large C&I programs and corresponding increases in Large C&I customers' EEC-C rates. While the Companies claim that these changes are necessary to ensure that they meet their obligations under Act 129, the Companies have failed to meet their burden, because they have not presented sufficient evidence demonstrating that the proposed changes are even necessary in order for the Companies to meet their Act 129 goals much less that the proposed EEC-C rates are just and reasonable.⁵³

The Companies' proposal also thwarts the spirit of Act 129 because it is inappropriately "skewed" toward the Large C&I customer class. Act 129 clearly envisions that an EDC will meet its obligations based on the combined efforts of all customer classes. The Companies' proposal, however, inappropriately targets the Large C&I customer class to compensate for the lack of participation in Act 129 programs by other customer classes. Moreover, despite this lack of interest, the Companies have not changed their outreach approach in an effort to spur additional interest in available programs from the customers in these classes. Instead, the Companies seem content to impose the responsibility and expense of meeting their Act 129 obligations on their Large C&I customers. The Companies' proposals are inconsistent with spirit of Act 129 and, consequently, must be rejected.⁵⁴

In addition, Met-Ed's and Penelec's proposals will result in rate increases of 73% and 56%, respectively, for Large C&I customers. Such extraordinary rate increases are unjust and

⁵³ See Section III.A., *infra*.

⁵⁴ See Section III.B., *infra*.

unreasonable. In addition to reflecting excessive budget requests,⁵⁵ the proposed rate increases would perpetuate a program that requires some of the Companies' largest and most efficient electricity users to make significant EE&C payments, even though these customers do not have any further ability to take advantage of the EE&C programs, which results in inappropriate subsidization by the largest customers in the class. Further, the level of the proposed EEC-C rates will negatively impact Large C&I customers' Pennsylvania facilities' ability to remain competitive with their out-of-state counterparts and competitors, in contravention of Pennsylvania's economic development policy. Accordingly, the proposed rate increases for Large C&I customers must be rejected.⁵⁶

Assuming arguendo, however, that the PUC determines that some portion of the Companies' request should be granted, the Commission should only permit the minimum increase necessary for the Companies to meet the EE&C goals for their Large C&I customer classes. As demonstrated herein, the Companies have a number of project applications in their "pipelines." If these applications were approved, the Companies' Large C&I customers would easily meet or exceed their load reduction requirements and nearly meet their peak demand reduction requirements. Moreover, the funding levels that would achieve these goals are considerably less than the proposed budget increases currently before the Commission. Thus, if the Commission permits a budget increase for Large C&I programs, the Companies' requested budget increases must be adjusted to ensure just and reasonable rates.⁵⁷

⁵⁵ See Section III.D, infra.

⁵⁶ See Section III.C, infra.

⁵⁷ See Section III.D, infra.

Finally, the Companies propose to restate all EE&C program incentives as ranges, so that they may unilaterally modify the incentive range based on unspecified market conditions. The record lacks a sufficient level of detail regarding the Companies' "incentive range" proposal. In fact, the Companies' testimony during hearings revealed the amorphous nature of this proposal and the lack of specific and objective parameters and criteria that would guide the Companies' implementation of this proposal. Due to the lack of record evidence, there is insufficient basis to determine whether the Companies' incentive rate proposal is just and reasonable. Therefore, this proposal must be rejected.⁵⁸

III. ARGUMENT

A. **The Companies Have Failed To Meet Their Burden of Proving That the Requested Modifications to the EE&C Plans Are Just, Reasonable, and Appropriate.**

The Companies' Joint Petition requests, among other things, that the Commission permit Met-Ed and Penelec to implement significant changes to their PUC-approved EE&C programs. These proposed changes would impose considerable EE&C cost responsibilities onto the Companies' Large C&I customers, including MEIUG/PICA members, and result in significant EEC-C rate increases for these customers. The Companies have not sufficiently established that the requested EE&C program changes are necessary to meet their Act 129 obligations, nor have the Companies proved that the resulting EEC-C rates are just and reasonable.

As the parties seeking PUC authorization to modify their Commission-approved EE&C Plan, the Companies bear the burden of proof in this proceeding. Section 332(a) of the Public Utility Code provides the following with respect to burden of proof: "[e]xcept as may be

⁵⁸ See Section III.E., infra.

otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof."⁵⁹

Section 315 provides, in pertinent part:

In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.⁶⁰

According to the PUC, "where a customer is heard to complain concerning a proposed change in rate, the burden of proof is upon the public utility to show the proposed rate is just and reasonable."⁶¹

In carrying this burden, the proponent of the rate change must establish a case before an administrative tribunal using a preponderance of evidence as the requisite degree of proof.⁶² The standard of preponderance of the evidence is defined as the greater weight of the evidence, in view of all of the facts and circumstances of the case.⁶³

As a threshold matter, the record is devoid of evidence regarding the Companies' year-to-date progress in meeting Act 129 requirements and accurate information regarding the level of the Companies' projected shortfall in meeting such requirements. At hearings, Witness Fitzpatrick testified that he did not have data regarding whether and to what extent the Companies met their May 31, 2011 goals.⁶⁴ In fact, such information will not be known until

⁵⁹ 66 Pa. C.S. § 332(a).

⁶⁰ *Id.* at § 315(a).

⁶¹ See *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067, 1070 (Pa. Commw. Ct. 1981).

⁶² *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Commw. Ct. 1990).

⁶³ See *Se-Lin Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856, n.1 (Pa. 1950).

⁶⁴ Tr. at 91, lines 8-14.

several months from now.⁶⁵ As a result, the evidence in this proceeding has not been fully updated and is subject to change.⁶⁶ Moreover, Met-Ed and Penelec have not yet implemented their respective Demand Response Programs, and thus do not have information necessary to determine how well these programs will perform.⁶⁷

Even assuming, arguendo, that Met-Ed and Penelec have justified the need for certain modifications to their Original EE&C Plans (which they have not), the Companies have failed to sufficiently prove that they must impose such significant EE&C costs upon the Large C&I customer class in order to meet the Companies' Act 129 energy reduction requirements. Specifically, the Companies have not attempted to increase their outreach efforts to spur additional EE&C program participation from inefficient energy users in the Residential and Small C&I classes.⁶⁸ Thus, Met-Ed and Penelec have failed to sufficiently prove that they must impose such significant EE&C dollars to Large C&I customers, rather than seeking increased EE&C participation from their smaller customers classes, to meet the Companies' Act 129 reduction obligations.

The Companies also failed to provide information demonstrating how the proposed modifications will improve their ability to meet their Act 129 obligations. For example, Met-Ed and Penelec propose to increase funding to their Large C&I Demand Response Programs by \$2.5 million and \$2 million, respectively. The record contains no information about current customer performance nor expected improvements in customer performance due to the availability of

⁶⁵ Id. at 91, line 22.

⁶⁶ See generally id. at 90-93.

⁶⁷ See id. at 93, lines 13-18.

⁶⁸ See id. at 55, lines 1-9 (testifying, in part, "I don't think we've made any changes right now").

increased funding.⁶⁹ According to Witness Fitzpatrick, detailed information does not exist because the Demand Response Programs "haven't really [been] implemented...to any great extent."⁷⁰ Without information to support these proposed modifications, the Companies cannot explain how simply increasing the budget for the Large C&I Demand Response Programs will increase the likelihood of meeting the Companies' Act 129 requirements.

Furthermore, the Companies propose to restate all incentives as ranges in order to exercise unilateral discretion in awarding incentives within those ranges based on market conditions and without further Commission oversight or approval.⁷¹ This proposal is based on the premise that unspecified "market conditions" will guide the Companies' decisions on the appropriate incentive levels. During the hearings, however, Witness Fitzpatrick's testimony revealed that the details of the Companies' incentive range proposal were not only missing from the record, but apparently have not even been fully vetted by the Companies themselves.⁷² In short, the Companies failed to present any information describing the market condition or any other objective criteria to be applied in setting incentive levels.

As the proponents of the EE&C Plan changes set forth in the Joint Petition, the Companies bear the burden of proof as to the justness and reasonableness of the proposed modifications and resulting rate increases.⁷³ As discussed herein, the Companies have failed to meet this burden of proof. Therefore, the MEIUG/PICA respectfully request that the Commission reject the Companies' proposed changes.

⁶⁹ Id. at 93, lines 3-18.

⁷⁰ Id. at 93, lines 7-8.

⁷¹ See Section II.E, infra.

⁷² See generally Tr. at 99-100.

⁷³ See 66 Pa. C.S. § 332(a).

B. The Companies' First Amended Plans Must Be Rejected as Inconsistent With the Spirit of Act 129, Because the Proposed Changes Are Inappropriately Skewed Toward the Large C&I Class.

In approving the Companies' Original EE&C Plans, the Commission determined that the Companies offered a reasonably balanced strategy to achieve the Act 129 reduction requirements based on the contributions of each customer class.⁷⁴ The Companies now claim that they are in danger of not meeting their Act 129 obligations unless Large C&I customers assume a much greater share of the responsibility of fulfilling those obligations.⁷⁵ To this end, the Companies propose modifications to their Original EE&C Plans that effectively exploit the Large C&I customer class in order to compensate for the apathy of the Small C&I and, to a lesser degree, the Residential classes.⁷⁶ Because the Companies' proposed changes are inappropriately skewed toward the Large C&I class and inconsistent with the spirit of Act 129, they must be rejected.

Act 129 required Pennsylvania EDCs to implement PUC-approved EE&C Plans that offered customer programs designed to achieve the mandated load and peak demand reductions in a reasonably balanced manner. According to Act 129, each EE&C Plan "shall include...standards to ensure that each plan includes a variety of energy efficiency and conservation measures and will provide the measures equitably to all classes of customers."⁷⁷ Moreover, an EDC must demonstrate that it "provides a diverse cross section of alternatives for

⁷⁴ See Section I.B.2, *supra*.

⁷⁵ See Met-Ed/Penelec/Penn Power St. No. 1, p. 7.

⁷⁶ As discussed in Section III.D, *infra*, the Companies' proposals would result in Large C&I customers significantly exceeding their share of the Companies' overall load reduction requirements, thereby potentially relieving other customer classes from contributing their fair share of meeting the Companies' Act 129 goals. Moreover, in light of the fact that the dollar increases requested by the Companies likely exceed the dollars needed for the Large C&I classes to meet their goals for purposes of Act 129, it is also feasible that Large C&I customers similarly would over compensate for other classes' underwhelming participation in the Companies' peak demand reduction efforts.

⁷⁷ 66 Pa. C.S. § 2806.1(a)(5) (emphasis added).

customers of all rate classes."⁷⁸ Thus, Act 129 clearly contemplated that each customer class would produce peak demand and energy reductions, which – on an combined basis – would enable an EDC to meet its statutory obligations.

During the implementation stage, the Commission recognized that each customer class must contribute load and peak demand savings to meet the requirements of Act 129. While the Commission did not require a "proportionate distribution of measures among customer classes," neither did it sanction an overreliance on a single class or single program.⁷⁹ Rather, the Commission stated:

EDCs must offer a well-reasoned and balanced set of measures that are tailored to usage and to the potential for savings and reductions for each customer class.⁸⁰

Thus, although a strictly proportionate distribution among customer classes is not required, the Commission appropriately recognized that EE&C Program offerings cannot be "skewed toward or away from any particular class."⁸¹

The Companies' Original EE&C Plans were based on the premise that the Companies would meet their Act 129 obligations based on the combined efforts of each customer class.⁸² According to the Companies, the Residential and Small C&I customer classes are falling far short of producing the savings levels set forth in the Met-Ed's and Penelec's Original EE&C

⁷⁸ Id. at § 2806.1(b)(1)(i)(I) (emphasis added).

⁷⁹ See Implementation Order at 22-23.

⁸⁰ Id. (emphasis added).

⁸¹ Id.

⁸² See Section I.B.2, supra.

Plans.⁸³ Due to a continued lack of interest in both Companies' Small C&I programs, and in Met-Ed's case the Residential programs, the Companies project that these sectors will fail to contribute their fair share of Met-Ed's and Penelec's load and peak demand savings by the May 31, 2013 deadline.

Act 129 requires Met-Ed and Penelec to achieve a 3% load reduction and a 4.5% peak demand reduction by May 31, 2013.⁸⁴ For 2013, Met-Ed's statutorily mandated load reduction is 445,951 MWh,⁸⁵ with Met-Ed projecting an overall shortfall of 9%.⁸⁶ Of this shortfall, 7% (i.e., 16,366 MWh) is represented by the Residential class, 17% (i.e., 23,677 MWh) is represented by the Small C&I class, and 2% (i.e., 947 MWh) is represented by the Large C&I class.⁸⁷ Met-Ed's 2013 peak demand reduction obligation is 119 MW.⁸⁸ Met-Ed similarly projects a shortfall in meeting this obligation, with the Small C&I class presenting the most significant shortfall in meeting its share of the Company's overall target at 49% (i.e., 15.6 MW), followed by the Residential class at 34% (i.e., 22.79 MW), and the Large C&I Class at 10% (i.e., 1.91 MW).⁸⁹ Based on the foregoing, the Small C&I customer class is projected to generate the most egregious deficits in terms of their load reduction and peak demand reductions, followed by the Residential customer class.

⁸³ See, e.g., Met-Ed/Penelec/Penn Power St. No. 1, p. 11, lines 20-23 (noting that "certain program results are below those anticipated at the time the Current Plans were developed" and funds must be shifted "from these underperforming programs to more effective programs"); id. at 12, lines 3-32 (describing the shift in funds due to Small C&I program changes); id. at 13, lines 1-32 (discussing shifts in funding for the Residential customer class).

⁸⁴ See 66 Pa. C.S. §§ 2806.1(c)(2) & (d)(1).

⁸⁵ See MEIUG/PICA/PPUG Cross-Examination Exhibit No. 2, Attachment A, p. 1.

⁸⁶ Id. (representing approximately 40,990 MWh).

⁸⁷ Id. at Attachment A, p. 2.

⁸⁸ See MEIUG/PICA/PPUG Cross-Examination Exhibit No. 1 at Slide 37.

⁸⁹ See MEIUG/PICA/PPUG Cross-Examination Exhibit No. 3, Attachment A, p. 1.

Similarly, Penelec's 2013 load obligation is 431,979 MWh; however, Penelec projects an overall shortfall of only 1%.⁹⁰ The key driver of Penelec's projected shortfall is the Small C&I customer class' deficit of 14% (i.e., 21,155 MWh).⁹¹ By producing excess savings of 4% (i.e., 2,302 MWh) and 8% (i.e., 16,500 MWh), however, the Large C&I and Residential customer classes, respectively, will likely mitigate Penelec's projected shortfall for 2013.⁹² Penelec's peak demand reduction is 108 MW.⁹³ Like Met-Ed, Penelec also projects the following shortfalls in certain customer classes' ability to produce their share of the Company's overall peak demand-reduction goal: 26% (i.e., 14.25 MW) by the Residential class, 47% (i.e., 15.27 MW) by the Small C&I class, and 21% (i.e., 4.5 MW) by the large C&I class.⁹⁴ In short, Penelec's Small C&I customer class is expected to be significantly behind the Large C&I class in producing its share of load reduction, while both the Small C&I and Residential classes are expected to lag behind with respect to peak demand savings.

Based on the foregoing, Met-Ed's Residential and both Companies' Small C&I customers, are clearly failing to take full advantage of the EE&C Plan programs for their classes and, therefore, are not projected to achieve the savings levels set forth in the Companies' Original EE&C Plans.⁹⁵ Notwithstanding, the Companies have not made any meaningful changes to their outreach efforts to spur additional interest in these programs from the Residential and Small C&I

⁹⁰ MEIUG/PICA/PPUG Cross-Examination Exhibit No. 2, Attachment A, p. 1.

⁹¹ Id. at Attachment A, p. 2.

⁹² See id. at Attachment A, p. 2.

⁹³ See MEIUG/PICA/PPUG Cross-Examination Exhibit No. 1 at Slide 37.

⁹⁴ See MEIUG/PICA/PPUG Cross-Examination Exhibit No. 3, Attachment A, p. 1.

⁹⁵ Importantly, the data provided by the Companies may not accurately portray the savings produced by a particular program due to the lag time between the payment of the incentive and the evaluation of the savings impact. See Tr. at 112, lines 10-17.

classes.⁹⁶ Rather than focus on requiring other classes to contribute towards the Act 129 requirements,⁹⁷ the Companies inappropriately seek to relieve them of their obligation to contribute toward satisfying the Act 129 requirements. As Witness Fitzpatrick testified:

If the Companies...focused their efforts on Residential/Small C&I programs instead, there is no assurance, as there is in the Large C&I equipment program, of achieving additional savings beyond that forecasted in the Original Plans.⁹⁸

As discussed more fully in Section III.A, the Companies have not provided proof that there is assurance that allocating more money to the Large C&I programs will ensure that the Companies meet their goals; however, the Companies seem to want to merely pick the low-hanging fruit by targeting the Large C&I class to assume the additional responsibility and expense of achieving the Act 129 requirements.⁹⁹ Moreover, the Companies are willing to charge forward with the easier of the two options, notwithstanding ample record evidence that their proposal will have a direct, negative impact on Large C&I customers.¹⁰⁰

Finally, the rationale for the Companies' desire to achieve "additional savings beyond that forecasted in the Original Plans" is unclear.¹⁰¹ In addition to the apparent lack of interest in Residential and Small C&I programs, the Companies contend that a change in the treatment of generation and distribution losses for purposes of calculating EE&C program savings has

⁹⁶ See *id.* at 55, lines 1-9 (testifying, in part, "I don't think we've made any changes right now").

⁹⁷ See Met-Ed/Penelec/Penn Power St. No. 1, pp. 11-13 (noting that no budget increases are proposed for the Residential or Small C&I customer classes).

⁹⁸ See Rebuttal Testimony of George L. Fitzpatrick (hereinafter, "Met-Ed/Penelec/Penn Power St. No. 1-R"), p. 4.

⁹⁹ See n. 76, *supra*.

¹⁰⁰ See Section III.C, *infra*.

¹⁰¹ Met-Ed/Penelec/Penn Power St. No. 1-R, p. 4.

resulted in an 11% overstatement of program savings.¹⁰² The purported 11% shortfall, however, appears to be easily absorbed by the 19%-20% margins included in the Original EE&C Plan targets, which, to Witness Fitzpatrick's knowledge, the Companies have met or perhaps exceeded.¹⁰³ Thus, if the Companies' Original EE&C Plans were designed not only to fulfill their Act 129 requirements but also to exceed them, the Companies have provided no compelling reason to seek savings beyond those set forth in the Original EE&C Plans.

The Companies' aforementioned strategy contravenes Act 129 because it is inappropriately "skewed" toward requiring the Large C&I customer class to shoulder the burden of meeting a significant share of the Companies' EE&C requirements. While not requiring a perfectly proportionate distribution of measures among customers, Act 129 clearly envisions that all customer classes will contribute toward the achievement of an EDC's reduction requirements. The Companies' proposal, however, inappropriately relies upon the Large C&I class to compensate for the lackluster efforts of the Residential and Small C&I classes. As a result, the Companies' proposed modifications make no effort to maintain the reasonably balanced EE&C Plans approved by the Commission, but rather, seek to merely pick the "low hanging fruit" in an effort to avoid what might be considered more taxing measures, such as outreach to the other customer classes. For these reasons, the Companies proposal is inconsistent with spirit of Act 129 and, consequently, must be rejected.

¹⁰² See Met-Ed/Penelec/Penn Power St. No. 1, p. 7.

¹⁰³ See Tr. at 59, lines 14-16; id. at 61, lines 8-15.

C. The Companies' First Amended Plans Would Significantly Harm Industrials By Resulting in Unjust and Unreasonable Rates.

The stated overarching objective of the modifications reflected in the Companies' First Amended Plans is to better position Met-Ed and Penelec to meet their obligations under Act 129.¹⁰⁴ The Companies' twin obligations under Act 129 are to achieve: (1) a 1% load reduction by May 31, 2011; and (2) a 3% load reduction and 4.5% peak demand reduction by May 31, 2013.¹⁰⁵ As discussed herein, the Companies' Original EE&C Plans included savings "targets" that were designed to exceed Met-Ed's and Penelec's Act 129 obligations by 19% and 20%, respectively.¹⁰⁶ The Companies believe that they not only have met their savings "targets," including the 19%-20% cushion, but also may have surpassed them.¹⁰⁷ Even though these excess savings will be used to offset their 2013 obligations,¹⁰⁸ the Companies remarkably claim that they are in danger of not meeting Act 129's May 31, 2013, deadline for the 3% load and 4.5% peak demand reductions, unless the Commission approves their First Amended Plans.¹⁰⁹

A key change in the Companies' First Amended Plans is the proposal to increase Met-Ed's and Penelec's Large C&I Program budgets by \$4.5 million and \$4.0 million, respectively. Of the requested \$4.5 million budget increase, Met-Ed proposes to allocate \$2.5 million to its Demand Response Program, with the remaining \$2 million allocated to its Large C&I Equipment

¹⁰⁴ *Met-Ed/Penelec/Penn Power Ex. No. 1* at ¶ 44.

¹⁰⁵ *See* 66 Pa. C.S. §§ 2806.1(c) & (d).

¹⁰⁶ *See* Tr. at 60, lines 23-25; *id.* at 61, lines 1-2; *id.* at 62, lines 9-12; *id.* at 110, lines 10-25; *id.* at 111, lines 1-4.

¹⁰⁷ *See id.* at 59, lines 12-16.

¹⁰⁸ *Id.* at 61, lines 12-15.

¹⁰⁹ *See* *Met-Ed/Penelec/Penn Power St. No. 1* at 7.

Program.¹¹⁰ Similarly, Penelec proposes to allocate \$2.6 million to its Demand Response Program, with the remaining \$1.4 million allocated to the Large C&I Equipment Program.¹¹¹

To recover the costs associated with the requested budget increases, Met-Ed and Penelec propose extraordinary increases of 73% and 56%, respectively, to their Large C&I customers' EEC-C rates. The proposed EEC-C rates are unjust and unreasonable, because they will have a direct, negative impact on Large C&I customers. The negative impact of these exorbitant rate increases is compounded by the fact that extremely efficient Large C&I customers cannot take advantage of the incentives offered under the Companies' EE&C Plans and is even further exacerbated by the current state of the economy.¹¹² For these reasons, the Commission should reject the Companies' proposals to increase Large C&I customers' EEC-C rates.

1. The Companies' Proposed Increases To Their Respective Large C&I Program Budgets Result in Unjust and Unreasonable Rates for the Large C&I Class.

As proposed, Met-Ed's initially requested budget increase resulted in a 60% rate increase in the EEC-C rate for Large C&I customers taking service under Rate Schedules GS-Large, GP, and TP.¹¹³ During hearings, Met-Ed presented a revised EEC-C rate to reflect an October 1, 2011, implementation date and reconciliation of EE&C costs, in addition to the requested \$4.5 million budget increase.¹¹⁴ Met-Ed's revisions cause the proposed Large C&I EEC-C to soar to 73%.¹¹⁵

¹¹⁰ Id. at 10.

¹¹¹ Id.

¹¹² See Sections III.C.2 & III.C.3, infra.

¹¹³ See Met-Ed/Penelec/Penn Power St. No. 2, Exhibit CVF-1, p. 1, line 16.

¹¹⁴ See generally Tr. at 124-125.

¹¹⁵ See Met-Ed/Penelec/Penn Power Ex. Supp. CVF-1, p. 1, line 16; see also Tr. at 127, line 22-25.

Similarly, for Large C&I customers taking service pursuant to Rate Schedules LP, GP and GS-Large, Penelec initially requested a rate increase of 41%.¹¹⁶ Penelec also subsequently revised its Large C&I EEC-C rate in order to reflect the aforementioned later implementation and reconciliation costs, in addition to its \$4.0 million rate increase.¹¹⁷ As a result of these revisions, Penelec's proposed EEC-C rate for Large C&I customers jumped to 56%.¹¹⁸

The Public Utility Code provides that "[e]very rate made, demanded or received by any public utility...shall be just and reasonable and in conformity with regulations and orders of the Commission."¹¹⁹ As the proponents of the increase in the EEC-C rates, the Companies have the burden to demonstrate that their proposed rates are just and reasonable.¹²⁰ Met-Ed and Penelec, however, have failed to carry their burden. The Companies' proposed EEC-C rates are unjust and unreasonable because they result in rate shock for Large C&I customers.¹²¹

According to MEIUG/PICA Witness Chasse, East Penn Manufacturing Company, Inc. ("East Penn"), takes service from Met-Ed pursuant to Rate Schedule TP.¹²² Under Met-Ed's Original EE&C Plan, East Penn was projected to pay more than \$616,000 in EE&C charges.¹²³ If Met-Ed's First Amended Plan is accepted as filed, East Penn's total EE&C costs would

¹¹⁶ Met-Ed/Penelec/Penn Power St. No. 2, Ex. CVF-1, p. 2, line 16.

¹¹⁷ See generally Tr. at 124-125.

¹¹⁸ See Met-Ed/Penelec/Penn Power Ex. Supp. CVF-1, p. 2, line 16; see also Tr. at 128, lines 12-18.

¹¹⁹ 66 Pa. C.S. § 1301.

¹²⁰ See Section III.A, supra.

¹²¹ The following testimony is based on Met-Ed's and Penelec's initially proposed rate increases of 60% and 41%, respectively. See Tr. 124-125. Because Met-Ed and Penelec have re-calculated the proposed EEC-C rates based on an October 1, 2011, effective date, the customer impact of the proposed rates will be even greater.

¹²² See Direct Testimony and Exhibits of Mark Chasse of East Penn Manufacturing Company, Inc., as a Member of the Met-Ed Industrial Users Group (hereinafter, "MEIUG/PICA/PPUG St. No. 2"), p. 3.

¹²³ Id. at 5.

increase by approximately \$250,000, resulting in EE&C payments by East Penn totaling more than \$750,000.¹²⁴

MEIUG/PICA Witness Hammaker expressed similar concerns on behalf of Appleton Papers Inc. ("Appleton"), a Large C&I customer taking service from Penelec under Rate Schedule LP.¹²⁵ Under Penelec's Original EE&C Plan, Appleton expects to pay more than \$218,000 in EE&C charges.¹²⁶ To the extent Penelec's proposed EEC-C rate increases are approved, however, Appleton's total costs over the three-year life of Penelec's EE&C Plan would increase by approximately \$64,000.¹²⁷

For many Large C&I customers, the manufacturing process is very energy-intensive and, consequently, electricity represents a significant cost of doing business. By way of illustration, in 2010, electricity costs consisted of approximately 57% of Appleton's total energy costs and 8.6% of overall production costs.¹²⁸ In 2011, total energy costs are projected to jump to 18%.¹²⁹ Increased electricity costs due to higher EEC-C rates translate directly into lost profits because intensive national and international competition preclude Large C&I customers, like Appleton, from passing on such increases to their customers.¹³⁰ A production facility that becomes

¹²⁴ MEIUG/PICA/PPUG St. No. 2, p. 6.

¹²⁵ See Direct Testimony and Exhibit of Todd Hammaker of Appleton Papers Inc., as a Member of the Penelec Industrial Customer Alliance (hereinafter, "MEIUG/PICA/PPUG St. No. 1"), p. 3.

¹²⁶ Id. at 9.

¹²⁷ Id. at 10.

¹²⁸ Id. at 5.

¹²⁹ Id.

¹³⁰ Id. at 10; see also MEIUG/PICA/PPUG St. No. 2, p. 6 ("If East Penn were to increase its prices to account for higher electricity costs, East Penn could be placed at a disadvantage with respect to manufacturing sites in other states and countries.").

unprofitable risks losing production opportunities.¹³¹ As MEIUG/PICA Witness Hammaker explained:

We have a sister plant in West Carrollton, Ohio. [T]here's continuing discussions within our company on our cost productions and they compare facilities, and if the West Carrollton facility at times have been below us, they will shift production in that direction, so that we do lose tonnage at times based on our ability to produce in the lowest cost method.¹³²

A shift in production from Appleton's Spring Mill facility to its West Carrollton facility "would eventually create a situation where the Spring Mill facility is not viable and would have to be closed" or relocated to an international site.¹³³

Interestingly, the Companies initially recognized the economic concerns that could arise due to additional surcharges on Large C&I customers' bills. As part of the Companies' Original EE&C Plans, the Companies "did not put as much dollars and programs into the large C&I because [they] were concerned about the economy [and they] were concerned about [the Large C&I] customer class" in light of the recession.¹³⁴ Unfortunately, as indicated by the Companies' Joint Petition, Met-Ed and Penelec fail to recognize that the recession continues, and its consequences still impact Large C&I customers.¹³⁵ In response to the ALJ's question, Witness Hammaker testified as follows with respect to the recession's overall effect upon Appleton:

A. A lot of nervousness. We've seen a direct impact on the number of orders that we receive which in effect causes us

¹³¹ Tr. at 187, lines 10-12 ("Any time we see something that causes a cost increase, it has a compounded effect on our ability to, you know, maintain production.").

¹³² Id. at 187-88.

¹³³ MEIUG/PICA/PPUG St. No. 1, p. 13.

¹³⁴ Tr. at 121, lines 4-6.

¹³⁵ Id. at 159, lines 9-11.

to put more focus on cost savings, and unfortunately we are at a point where a lot of the cost savings come in the form of reduced benefits, reduced personnel, that type of negative impact.

There's continuing concern on our ability to be profitable....¹³⁶

Given the economic uncertainty that Large C&I customers are continuing to face, it is critical that any increase approved by the Commission be narrowly tailored to achieve the Companies' Act 129 goals and consistent with the principle of gradualism.

Thus, if approved, the Companies' proposal would result in dramatic rate increases of 73% and 56% to Met-Ed's and Penelec's Large C&I customers, respectively. Such increases will cause electricity costs and, consequently, production costs for these energy-intensive customers to skyrocket. This outcome, particularly in light of the fact that the recession continues to hinder economic growth, will harm Large C&I customers and may jeopardize their viability in the long-run.

2. The Companies' EE&C Program Offerings Provide Little, If Any, Rate Relief to Large C&I Customers.

Act 129 provides that measures offered pursuant to an EE&C Plan "are financed by the same customer class that will receive the direct energy and conservation benefits."¹³⁷ According to Act 129, "energy efficiency and conservation measures" refer to technologies, practices, or other measures "employed by retail customers that reduce electricity consumption or demand."¹³⁸ Implicit in Act 129 is lawmakers' intent that customers funding the programs offered in an EE&C Plan will receive a financial incentive to employ measures that produce the "energy and

¹³⁶ *Id.* at 186, lines 23-25; *id.* at 87, lines 1-5.

¹³⁷ 66 Pa. C.S. § 2806.1 (a)(11).

¹³⁸ *Id.* at § 2806.1(m).

conservation benefits" that will ultimately contribute toward the fulfillment of an EDC's Act 129 obligations. The incentives offered under the Companies' EE&C Plans, however, provide little, if any, meaningful rate relief to Met-Ed and Penelec's Large C&I customers who already have employed significant energy efficiency and conservation measures.

As previously stated, East Penn and Appleton are expected to pay approximately \$750,000 and \$300,000, respectively, under Met-Ed and Penelec's First Amended EE&C Plans.¹³⁹ To date, East Penn and Appleton have received \$310,000 and \$2,178 in incentives, respectively.¹⁴⁰ As a preliminary matter, their EE&C payments are significantly greater than the financial incentives received; the EE&C related expenditures increase further when customers' capital outlay is taken into account.¹⁴¹ Moreover, such Large C&I customers are not positioned to obtain additional incentives because they implemented such extensive energy efficiency and conservation measures before Met-Ed's and Penelec's EE&C Plans became effective.¹⁴² As MEIUG/PICA Witness Hammaker testified:

We have had other incidents where we have begun to investigate potentials for energy reduction and we go for a preliminary study and the preliminary study comes back where essentially they say, you have an extremely efficient operation. We don't see any benefit in proceeding any further, in other words going into detailed analysis, putting the money into engineering support for that type of research because at a very high level they see that it's not cost effective for us to try and implement those types of projects.¹⁴³

¹³⁹ See Section III.C.1, supra.

¹⁴⁰ See MEIUG/PICA/PPUG St. No. 2, p. 5; see also MEIUG/PICA/PPUG St. No. 1, p. 8.

¹⁴¹ MEIUG/PICA/PPUG St. No. 1, p. 8 (testifying that Appleton made a capital investment of \$5,800 in order to receive \$2,178 in EE&C incentive payments); see also MEIUG/PICA/PPUG St. No. 2, p. 5 (testifying that East Penn made a capital investment of \$1 million and received \$310,000 to complete the EE&C project).

¹⁴² MEIUG/PICA/PPUG St. No. 2, p. 5.

¹⁴³ Tr. at 188, lines 23-25; id. at 189, lines 1-7.

Similarly, MEIUG/PICA Witness Chasse testified:

[W]e have limited ability to benefit from Met-Ed's EE&C programs because we implemented significant energy efficiency measures well before Act 129 was enacted and Met-Ed's EE&C Plan became effective. These measures were taken to remain competitive in our industry. As such, the reality is, even under Met-Ed's current EE&C Rider rate structure, East Penn is subsidizing the efficiency and conservation measure of other Large C&I customers on the Met-Ed system. Thus, because East Penn was proactive in becoming a more efficient electricity user prior to the promulgation of Act 129, East Penn is now being penalized by having to subsidize other Large C&I customers' efficiency and conservation efforts under Met-Ed's EE&C Plan.¹⁴⁴

As a result, Large C&I customers are funding a significant portion of EE&C Plan costs with no meaningful opportunity to take advantage of incentives. This amounts to subsidization of the EE&C program costs by some of Met-Ed's and Penelec's largest, most energy efficient customers.¹⁴⁵

To the extent any energy savings opportunities exist, they must be evaluated in conjunction with other business considerations, such as the amount and cost of capital to complete a project as well as return on investment.¹⁴⁶ According to MEIUG/PICA Witness Chasse:

In determining capital outlay, it is also important to note that East Penn, like other members of Pennsylvania's established industrial base, must account for infrastructure updates necessary to accommodate energy efficiency and conservation measures. At East Penn's Lyon Station facility, which was established in 1946, the lighting update that we completed under Met-Ed's EE&C Plan did not simply involve changing of light bulbs, but rather required some electrical rewiring in the older facilities. It is important to

¹⁴⁴ MEIUG/PICA/PPUG St. No. 2, p. 7.

¹⁴⁵ See generally Tr. at 173-74.

¹⁴⁶ Surrebuttal Testimony and Exhibits of Mark Chasse of East Penn Manufacturing Company, Inc., as a Member of the Met-Ed Industrial Users Group (hereinafter, "MEIUG/PICA/PPUG St. No. 2-S"), p. 5.

recognize that implementing these and similar measures often require additional infrastructure changes, such as updating conduit wiring and load distribution equipment, to be able to take advantage of modern lighting fixtures.¹⁴⁷

Thus, potential energy savings opportunities must pass a cost-benefit test that evaluates the capital investment related to implementation of an energy efficiency or conservation measure against the potential benefits. For extremely efficient Large C&I customers, certain energy efficiency projects simply do not pass the cost-benefit test.¹⁴⁸

In sum, Met-Ed's and Penelec's EE&C programs do little to relieve the extraordinary rate increases proposed by the Companies, because Large C&I customers have implemented extensive energy efficiency and conservation measures. As a result, already highly efficient users of electricity lack a meaningful opportunity to take advantage of EE&C program offerings, but nonetheless are forced to make significant EE&C payments that subsidize the efforts of other members of their class.

3. Approving the Companies' Proposed EE&C Rates Would Violate the Commonwealth's Policy of Promoting Economic Growth Through Just and Reasonable Electricity Pricing.

In promulgating Act 129, Pennsylvania lawmakers intended to balance EDCs' realization of energy and conservation goals with Pennsylvania's policy of promoting economic growth through just and reasonable electricity rates. Act 129 explicitly recognized:

[I]t is in the public interest to adopt energy efficiency and conservation measures and to implement energy procurement requirements designed to ensure that electricity obtained reduces the possibility of electric price instability, promotes economic growth and ensures affordable and available electric service to all residents.¹⁴⁹

¹⁴⁷ Id.

¹⁴⁸ Tr. at 189, lines 1-20.

¹⁴⁹ See Preamble of Act 129 of 2008, Pub. L. 1592, No. 129 (codified at 66 Pa. C.S. §§ 2801, et seq.).

Moreover, Act 129's EE&C program provisions are codified within Pennsylvania's landmark Electricity Generation Customer Choice and Competition Act ("Competition Act" or "Act").¹⁵⁰ The objective of the Competition Act is "to benefit all classes of customers and to protect this Commonwealth's ability to compete in the national and international marketplace for industry and jobs."¹⁵¹ To this end, the Competition Act expressly recognizes that "the cost of electricity is an important factor in decisions made by businesses concerning locating, expanding and retaining facilities in this Commonwealth."¹⁵² The Companies' proposed astronomical increase in Large C&I customers' EEC-C rates, if approved, would upset the balance set forth in the Companies' current EE&C Plans by inappropriately relying upon the Large C&I customer class to shoulder a greater share of the burden and expense of meeting the Act 129 goals.

In addition to the spike in EE&C program costs resulting from the Companies' proposals, Pennsylvania industry is facing other cost pressures. As to electricity, Met-Ed and Penelec customers are subject to additional, significant increases related to collection of non-utility generation ("NUG") stranded costs via the newly implemented NUG Rider.¹⁵³ For example, during 2011, East Penn projects that its electricity costs will increase by an estimated \$2.5 million solely due to Met-Ed's implementation of the NUG Rider.¹⁵⁴ Likewise, Appleton projects a \$1.3 million increase in its electricity costs for the same period due to Penelec's NUG

¹⁵⁰ 66 Pa. C.S. §§ 2801, et seq.

¹⁵¹ Id. at § 2802(7) (emphasis added).

¹⁵² Id. at § 2803(6); see also id. at § 2803(7) (A key goal of Pennsylvania's retail competition initiative is to "protect this Commonwealth's ability to compete in the national and international marketplace of industry and jobs.").

¹⁵³ MEIUG/PICA/PPUG St. No. 1, pp. 11-12. The payment of NUG Riders costs are unique to Met-Ed and Penelec customers and stem from the provisions of the Companies' Restructuring Settlements.

¹⁵⁴ MEIUG/PICA/PPUG St. No. 2, p. 8.

Rider.¹⁵⁵ Environmental compliance costs further increase the cost of doing business in Pennsylvania.¹⁵⁶ Finally, the ongoing economic recession has forced industry to continue focusing on cost cutting measures due to uncertainty about the future.¹⁵⁷ The culmination of such regulatory costs puts Large C&I customers' operations at risk.¹⁵⁸

Consistent with its statutory obligations under Act 129, the Competition Act, and its mandate to ensure "just and reasonable rates," the Commission's evaluation of the Companies' rate increase proposal should include the impact on Large C&I customers' economic growth and ability to compete for industry and jobs. The Companies' proposals represent potentially significant cost increases following several recent cost increases that Large C&I customers have been forced to bear. The Companies' proposals will increase Large C&I customers' cost of doing business in Pennsylvania and negatively impact the profitability of such customer's production facilities. Under such circumstances, Large C&I customers may be forced to re-assess the future of their facilities within the Met-Ed and Penelec service territories. Such an outcome is clearly inconsistent with the legislative intent underlying Act 129, the Competition Act, and the Commonwealth's economic development policy. Accordingly, the proposed rate increases for Large C&I customers must be rejected because, if approved, they would result in unjust and unreasonable rates for Met-Ed's and Penelec's Large C&I customer classes.

¹⁵⁵ MEIUG/PICA/PPUG St. No. 1, p. 12.

¹⁵⁶ Id.

¹⁵⁷ Tr. at 186, lines 16-25; id. at 187, lines 1-12.

¹⁵⁸ Id. at 170, lines 19-25 ("[I]t has become a somewhat accepted practice to burden industry more and more and they just throw these costs on top. This is a cumulative thing that we keep adding up costs of which there's no benefit going into the industry that hits our bottom line, that puts our operations at risk.").

D. Assuming, Arguendo, the Commission Determines Some Increase in Funding to the Large C&I Class Is Warranted, Such Funding Must Be Limited to the Amount Necessary to Meet the Large C&I Class' Contributions Toward the Companies' Act 129 Requirements.

As discussed herein, Met-Ed and Penelec seek to significantly increase funding for their Large C&I Programs by an additional \$4.5 million and \$4.0 million, respectively.¹⁵⁹ The record in this proceeding, however, demonstrates that Met-Ed's and Penelec's requested budget increases exceed what is necessary for the Large C&I customer class to meet its share of the Companies' obligations under Act 129. To the extent that the Commission allows the Companies to increase their Large C&I program budgets, any such increases must be limited to the level necessary to achieve the Large C&I customer class' share of the Companies' Act 129 obligations. To do otherwise would inappropriately subject Large C&I customers to unjust and unreasonable rates in violation of the Public Utility Code.

I. Met-Ed's Proposed Budget Increase for Large C&I Programs Is Clearly Excessive.

Act 129 requires Met-Ed and Penelec to achieve a 3% load reduction and a 4.5% peak demand reduction by May 31, 2013.¹⁶⁰ For Met-Ed, this translates into a statutorily mandated load reduction of 445,951 MWh.¹⁶¹ Of this amount, the Large C&I customer class is expected to achieve a goal of 55,643 MWh.¹⁶² Met-Ed, however, projects a shortfall of 947 MWh by its Large C&I customer class.¹⁶³

¹⁵⁹ See Section III.B, supra.

¹⁶⁰ See 66 Pa. C.S. §§ 2806.1(c)(2) & (d)(1).

¹⁶¹ See MEIUG/PICA/PPUG Cross-Examination Exhibit No. 2, Attachment A, p. 1.

¹⁶² Id.

¹⁶³ See MEIUG/PICA/PPUG Cross-Examination Exhibit No. 2, Attachment A, p. 2.

During the hearings, Witness Fitzpatrick testified that Met-Ed currently has a number of applications in the "pipeline." Specifically, eleven applications were under consideration at the time the Large C&I programs were suspended,¹⁶⁴ representing approximately 3,518 MWh of energy reduction potential.¹⁶⁵ Met-Ed also received 32 applications for Large C&I program incentives after the suspension date,¹⁶⁶ which represent 7,181 MWh of potential reductions.¹⁶⁷ On a combined basis, the applications in Met-Ed's pipeline represent 10,699 MWh¹⁶⁸ of load reduction potential. Importantly, if all of these applications were approved, then Met-Ed would not only satisfy the Large C&I customer class' projected shortfall of 947 MWh but also produce 9,752 MWh of additional load reduction savings from this class.¹⁶⁹

To meet its statutorily required 4.5% peak demand reduction, Met-Ed must achieve a peak demand reduction of 119 MW.¹⁷⁰ With respect to the Large C&I customer class meeting its share of the peak demand reduction goal, Met-Ed also projects a shortfall of 1.91 MW.¹⁷¹ The applications in Met-Ed's pipeline represent a peak demand reduction potential of 1.25 MW, of which 0.30 MW stem from applications under consideration as of the suspension date and 0.95 MW from "post-suspension" applications.¹⁷² Thus, if all the applications that are currently in

¹⁶⁴ Tr. at 78, lines 9-12.

¹⁶⁵ Tr. at 79, lines 2-4; see also MEIUG/PICA/PPUG Cross-Examination Exhibit No. 5, p. 5.

¹⁶⁶ Tr. at 79, lines 5-8.

¹⁶⁷ Id.; see also MEIUG/PICA/PPUG Cross-Examination Exhibit No. 5, p. 5.

¹⁶⁸ This total represents the sum of 3,518 MWh + 7,181 MWh.

¹⁶⁹ The additional savings are calculated as follows: 10,699 MWh - 947 MWh = 9,752 MWh.

¹⁷⁰ See MEIUG/PICA/PPUG Cross-Examination Exhibit No. 1 at Slide 37.

¹⁷¹ Tr. at 71, lines 12-15; see also MEIUG/PICA/PPUG Cross-Examination Exhibit No. 3, Attachment A, p. 1.

¹⁷² Tr. at 78, lines 21-25; id. at 79, lines 1-14; see also MEIUG/PICA/PPUG Cross-Examination Exhibit No. 5, p. 5.

Met-Ed's pipeline were approved, then Met-Ed's Large C&I customer class would meet all but 0.66 MW (i.e., 1.91 MW – 1.25 MW) of its share of Met-Ed's overall 2013 demand reduction obligation.

Met-Ed estimates the additional funding for all of the applications in its queue totals approximately \$1,194,551.¹⁷³ If fully funded, these applications would enable the Company to significantly exceed its energy reduction obligation and fulfill all but 0.66 MW of its peak demand reduction obligation for an estimated budget increase of approximately \$1.2 million. By contrast, Met-Ed requests an increase of \$4.5 million. Accordingly, Met-Ed's requested budget increase of \$4.5 million is clearly excessive and, thus, results in unjust and unreasonable EEC-C rates for Met-Ed's Large C&I customers.

2. Penelec's Proposed Budget Increase for Large C&I Programs Is Clearly Excessive.

In accordance with Act 129, Penelec must achieve a 3% reduction in energy consumption and a 4.5% peak demand reduction by May 31, 2013.¹⁷⁴ Unlike Met-Ed, Penelec expects the Large C&I class to exceed its load reduction goal by 4% (i.e., 2,302 MWh).¹⁷⁵

Similar to Met-Ed, Penelec has a number of applications in its queue, with 25 pending review at the time of the Large C&I program's suspension and 86 "post-suspension" applications.¹⁷⁶ These applications represent a total of 35,306 MWh in potential load reductions.¹⁷⁷ Given that Penelec currently projects a surplus of load reduction savings by the

¹⁷³ Tr. at 78, lines 20-21; id. at 79, lines 9-11 (representing the sum of \$282,446 + \$912,105).

¹⁷⁴ See 66 Pa. C.S. §§ 2806.1(c)(2) & (d)(1).

¹⁷⁵ See MEIUG/PICA/PPUG Cross-Examination Exhibit No. 2, Attachment A, p. 2.

¹⁷⁶ Tr. at 83, lines 11-14; id. at 84, lines 1-15.

¹⁷⁷ See generally id. at 83-85 (totaling the sum of 6,270 MWh in savings offered by pending applications and 29,036 MWh by "post-suspension" date applications").

Large C&I class, approval of these applications would further increase the level of surplus savings.

Penelec must also achieve a load reduction of 108 MW.¹⁷⁸ Penelec, however, projects a shortfall of 4.5 MW with respect to the contribution by its Large C&I customer class.¹⁷⁹ The applications under consideration at the time of suspension represent 0.87 MW of peak demand reduction potential and the "post suspension" date applications represent an additional 3.28 MW of peak demand reduction potential.¹⁸⁰ Thus, the applications represent an aggregate of 4.15 MW (i.e., 0.87 MW + 3.28 MW) of demand reduction potential for 2013.

According to Penelec's estimates, the additional funding for the applications in its pipeline totals \$3,449,622.¹⁸¹ If fully funded, these applications would cause Penelec to significantly exceed its energy reduction obligation and meet all but 0.35 MW of its peak demand reduction obligation for an estimated budget increase of approximately \$3.4 million. Accordingly, Penelec's requested increase is also excessive and, consequently, results in unjust and unreasonable EE&C rates for Penelec's Large C&I customers.

As demonstrated herein, the Companies' proposed rate increases are excessive relative to the purported shortfalls in load and peak demand reductions from their Large C&I customers. To the extent that the Commission allows Met-Ed and Penelec to increase their funding for Large C&I programs, the level of such increase must no more than necessary to permit the Companies to achieve the Large C&I customer class' Act 129 obligations by May 31, 2013. In determining any appropriate rate increase, the Commission's deliberations also should consider

¹⁷⁸ MEIUG/PICA/PPUG Cross-Examination Exhibit No. 1 at Slide 37.

¹⁷⁹ Tr. at 73, lines 9-13.

¹⁸⁰ Id. at 83, lines 18-20; id. at 84, lines 20-23.

¹⁸¹ See id. at 83, lines 15-17; id. at 84, lines 16-19 (representing the sum of \$683,084 + \$2,766,538).

the fact that the Companies are expected to have met (or perhaps surpassed) their 2011 targets, which include cushions of 19%-20% that will be applied toward 2013 targets.¹⁸² This approach is consistent with the Public Utility Code's just and reasonable requirement and the well-established principle of gradualism.

E. The Incentive Range Proposal Must Be Rejected Because It Provides the Companies With Too Much Discretion.

The Companies further propose to restate all EE&C program incentives as ranges in order to exercise unilateral discretion in awarding incentives within those ranges based on market conditions, as recommended by SAIC, and without further PUC approval.¹⁸³ For the C&I Equipment Program, under which Large C&I customers, including MEIUG/PICA members, are eligible to participate, the Companies suggest that an initial incentive of \$0.05/kWh, with a maximum incentive of \$0.09/kWh, is appropriate.¹⁸⁴ The Companies do not, however, provide adequate support for these proposed incentive levels. The Companies' proposal – to change EE&C incentive levels, without PUC oversight or approval, at the Companies' sole and exclusive discretion – vests the Companies with unfettered discretion, without a clear and defined approach, to award incentive payments under the EE&C Plan.

Pursuant to Act 129, an EDC's EE&C Plan must include sufficient information to enable the Commission to "modify or terminate" any part of the EE&C Plan "if, after an adequate period for implementation, the Commission determines that an energy efficiency or conservation measure included in the plan will not achieve the required reductions in consumption in a cost-

¹⁸² See supra n. 26.

¹⁸³ See Met-Ed/Penelec/Penn Power Ex. No. 1 at ¶¶ 26, 32; see also Met-Ed/Penelec/Penn Power St. No. 1, p. 20.

¹⁸⁴ See Met-Ed/Penelec/Penn Power Ex. No. 1 at ¶ 26.

effective manner."¹⁸⁵ The Companies have failed to present sufficient support in this proceeding to allow the Commission, as directed by Act 129, to make a reasoned determination whether the Companies incentive range proposal will achieve Act 129's mandated consumption reductions in a cost-effective manner.

The Companies' Petition and supporting Direct Testimony summarily refer to "an expanded use of incentive ranges" to streamline EE&C program administration, but nowhere do the Companies set forth or otherwise define how they propose to implement this new – and exclusive – incentive range approach.¹⁸⁶ At hearings in this matter, Met-Ed/Penelec Witness Fitzpatrick could not provide a defined plan for how the Companies would administer their exclusive incentive range proposal. For instance, when queried regarding how often the Companies would consider market conditions in order to change an incentive level, Met-Ed/Penelec Witness Fitzpatrick equivocally answered:

- A. That's a very good question and I think the answer to that question is that we would have to look at it on a quarterly basis or longer. I think that we'd have to see how these programs gain traction over time. So to answer your question, I think that it would have to be a sufficient evaluation period where you could say, we want to make a change for this particular measure.¹⁸⁷

In addition, Met-Ed/Penelec Witness Fitzpatrick and counsel for MEIUG/PICA engaged in the following discourse regarding the lack of defined parameters of the Companies' incentive range proposal:

- Q. But what you're describing here [how the incentive ranges will be implemented], is that set forth in any of the

¹⁸⁵ 66 Pa. C.S. 2806.1(b)(2) (emphasis added).

¹⁸⁶ See Met-Ed/Penelec/Penn Power Ex. No. 1 at ¶ 32; see also Met-Ed/Penelec/Penn Power St. No. 1, p. 9.

¹⁸⁷ Tr. at 99, lines 6-12.

companies' amended plans in terms of describing the process that you just explained?

A. No. We talk about ranges, but we want the flexibility to look at rebates within those ranges.¹⁸⁸

* * *

Q. And then, where in your testimony do you provide these I guess program parameters that you're describing?

A. I don't provide the review parameters. I rather provide the incentive ranges.¹⁸⁹

Met-Ed/Penelec Witness Fitzpatrick's responses to MEIUG/PICA's questions suggest that, prior to being asked these questions at hearings, the Companies had not put substantial consideration into integral components of their incentive range proposal.

Given the Companies' lack of definition and transparency of how they intend to administer the EE&C incentive range proposal, any potential benefits that this proposal may offer the Companies is substantially outweighed, not only by the potential for abuse of discretion in awarding incentives, but also by the significant probability of customer confusion resulting from the proposal. The proposal also fails to provide this Commission with adequate information to determine whether the Companies are pursuing their Act 129 goals in a cost-effective and prudent manner. The Companies' EE&C incentive range proposal should therefore be rejected by the Commission.

¹⁸⁸ Id. at 100, lines 8-12.

¹⁸⁹ Id. at 101, lines 2-5 (emphasis added).

IV. CONCLUSION

WHEREFORE, the Met-Ed Industrial Users Group and the Penelec Industrial Customer Alliance respectfully request that Pennsylvania Public Utility Commission:

- i. Find the Companies' First Amended Plans fail to comport with the requirements of Act 129;
- ii. Deny the Companies' proposals to increase the budgets for their Large C&I programs and significantly increase the EEC-C rates for Large C&I customers;
- iii. In the alternative, if the Commission grants the Companies' request for increased funding of their Large C&I programs, limit such funding to the amount necessary for the Large C&I class to meet its goals for purposes of the Act 129 requirements;
- iv. Reject the Companies' proposal to restate all incentives as ranges; and
- v. Take any such action deemed necessary or appropriate to ensure just and reasonable rates for Large C&I customers.

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Dated: July 12, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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Dated this 12th day of July, 2011, in Harrisburg, Pennsylvania.

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