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July 20, 2011

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA OVERNIGHT FEDERAL EXPRESS

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

Re: ***Joint Petition for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company - Reply Brief on Behalf of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company Resources***
Docket Nos. M-2009-2092222, M-2009-2112952 and M-2009-2112956

Dear Secretary Chiavetta:

Enclosed for filing are an original and eleven (11) copies of Reply Brief on Behalf of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company in the above-captioned docket.

Please date stamp the additional copies and return it to me in the enclosed, postage-prepaid envelope. Please contact me if you have any questions regarding this matter.

Very truly yours,

Kathy J. Kolich

Kathy J. Kolich

/dka

Enclosures

c: As Per Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Petition for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company	:	Docket Nos. M-2009-2092222 M-2009-2112952 M-2009-2112956

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JUL 20 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

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Dated: July 20, 2011

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I. INTRODUCTION

On July 12, 2011, in accordance with the procedural schedule established in this proceeding, Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec") and Pennsylvania Power Company ("Penn Power") (collectively, "Companies"), the Office of Consumer Advocate ("OCA"), and Met-Ed Industrial Users Group ("MEIUG") and Penelec Industrial Customer Alliance ("PICA") (collectively "MEIUG et al," who filed jointly only as MEIUG and PICA[1]) each submitted their Main Briefs. Pursuant to the procedural schedule, the Companies submit their Reply Brief.

II. SUMMARY OF PARTIES' POSITIONS

In a February 18, 2011 filing made in this docket, the Companies proposed certain changes to the energy efficiency and conservation ("EE&C") plans that have been approved by the Commission and are currently in effect.[2] MEIUG et al erroneously characterizes the Companies proposed changes to their Current EE&C Plans as over-relying on one customer class – the Large Commercial and Industrial ("C&I)" class -- to achieve the Act 129 mandated reductions.[3] Actually, the proposed changes affect to varying degrees all customer classes.[4] However, the only changes at issue in this proceeding are those included in the Amended EE&C Plans of Met-Ed and Penelec that increase the budget for the Large C&I programs[5] and certain issues involving the Companies' proposal to use incentive ranges.[6] Both OCA and MEIUG et al

[1] MEIUG et al Br., p. 1, fn. 3. MEIUG et al does not challenge Penn Power's amended plan. However, unless expressly stated otherwise, the reference to the "Amended EE&C Plans" applies equally to all three Companies' plans.
[2] As in the Companies' Main Brief, the EE&C Plans as approved and currently in effect will be referred to as the "Current EE&C Plans" while the amended plans that are the subject of this proceeding will be referred to as the "Amended EE&C Plans." All proposed changes to the Current EE&C Plans are highlighted in Company Exh. 2.
[3] MEIUG et al Br., p. 4.
[4] These changes were described in the Companies' Main Petition (Company Exh. 1) at pages 7-10 and are discussed in the Companies' Main Brief at pages 5-7. Rather than reiterating the description and rationale for each such change, the Companies, instead, incorporate this information by reference.
[5] MEIUG et al Br., p. 1, fn.1; Tr., pp. 148-149, 194; MEIUG/PICA/PPUG Statement No. 2-S, p. 2.
[6] OCA Br., p. 4; MEIUG et al Br., pp. 12-13.

confirm this in their Main Briefs. As OCA explained, it supports the Companies' proposed changes for the Residential Class, taking no position on the Companies' proposed funding changes for any other customer class."[7] However, OCA opposed MEIUG et al's recommendation "to increase the [EE&C] measures and budget of the Residential customers" and agrees with the Companies that the "Residential programs and measures are currently receiving adequate funding, and simply increasing the Residential budget will not provide the energy and demand reductions in a cost-effective manner that are necessary to meet the Companies' [post-2011 EE&C] goals."[8]

OCA also addressed the Companies' proposal to utilize incentive ranges, concluding that such use is reasonable provided that certain prerequisites are met.[9] MEIUG et al, however, ignores the totality of the record and opposes the use of incentive ranges arguing (incorrectly) that approving the use of ranges gives the Companies an "excessive amount of discretion to change their EE&C program incentive levels without [Commission] approval."[10] And their opposition to the proposed changes that increase the Large C&I program budgets included in Met-Ed's and Penelec's Amended EE&C Plans, are based on the erroneous claims that these plans (i) are unsupported by the evidentiary record;[11] (ii) are in violation of the requirements of Act 129 of 2008, 66 Pa. C.S. § 2806.01 et seq. ("Act 129"), because they allegedly "inappropriately skew" the Companies' EE&C compliance towards the Large C&I class;[12] and (iii) allegedly include unjust and unreasonable rates.[13] Alternatively, MEIUG et al proposes a smaller increase in the Large C&I budget because, in its opinion, the Companies' Amended

[7] OCA Br., p. 3.
[8] Id., pp. 3-4.
[9] Id., p. 4.
[10] MEIUG et al Br., p. 13.
[11] MEIUG Br., p. 16.
[12] Id. at 20.
[13] Id., p. 26.

EE&C Plans are designed to over-comply with post-2011 EE&C requirements.[14] As is discussed in detail below, MEIUG et al's arguments are without merit, mischaracterizing the evidentiary record and failing to adequately demonstrate why the Companies' Amended EE&C Plans are unlawful, unnecessary or unreasonable.

III. COMPANIES' RESPONSE

A. The Companies Have Met Their Burden to Show that the Amended EE&C Plans are Lawful and that the Proposed Changes to the Current EE&C Plans and Related EEC-C Riders are Both Necessary and Reasonable.

1. The Companies Have Met Their Burden to Demonstrate that the Amended EE&C Plans are Lawful.

Act 129 requires the Companies to reduce energy consumption by 1 percent by May 31, 2011 and 3 percent by May 31, 2013. Similarly the Companies must reduce their peak demand by 4.5%, based on the top 100 hours during the summer of 2012.[15] These mandates must be achieved without costs exceeding 2 percent of the Companies' total annual revenue as of December 31, 2006.[16] The Pennsylvania legislature set forth the criteria that must be incorporated into any EE&C plan filed by the Commonwealth's electric distribution companies ("EDCs"), including the following:

- The plan must be designed to achieve or exceed the required EE&C reductions described above;[17]
- The plan must demonstrate its cost effectiveness through the total resource cost ("TRC") test;[18] and
- The plan must provide a diverse cross section of alternatives for customers of all rate classes.[19]

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[14] Id. at 37.
[15] Act 129, 66 Pa C.S. §§ 2806.1(C)(1) and (2), (D)(1); *Energy Conservation and Peak Demand Reduction Targets*, Docket No. M-2008-2069887 (Order entered Mar. 30, 2009).
[16] Id. § 2806.1(G).
[17] Id. at § 2806.1(B)(1)(i)(A).
[18] Id. at § 2806.1(B)(1)(i)(I)
[19] Id. Act 129 requires other criteria to be met, but none of these criteria are relevant for purposes of resolving the issues raised by the intervening parties.

The Companies demonstrated through the testimony of their expert witnesses, Mr. George L. Fitzpatrick and Mr. Charles V. Fullem, that the Amended EE&C Plans are within the 2 percent spending cap[20] and pass the TRC test.[21] No party disputes these facts. Further, the Commission approved the Current EE&C Plans, expressly stating:

> We conclude that the Companies' [Current EE&C] Plans meet the requirements of [Act 129] to provide a variety of measures to all customer classes in an equitable manner. The record evidence shows that the [Current EE&C] Plans contain nineteen different programs distributed across all customer classes. The Companies have provided at least one energy efficiency program and one demand response program for each class in accordance with the Commission's Implementation Order.[22]

The Amended EE&C Plans include virtually all of the same measures and programs as those found in the Current EE&C Plans,[23] although some of the programs have been combined in order to streamline the process and improve administrative efficiency.[24] Given the similarities between the Current EE&C Plans which were found to have provided a diverse cross section of alternatives, and the programs and measures included in the Amended EE&C Plans, it stands to reason that the Amended EE&C Plans also provide such diversity, thus also meeting the above requirement.

During the evidentiary hearing, MEIUG et al did not present any expert testimony challenging the Companies' analyses or remodeling of the programs and measures included in the Amended EE&C Plans. Instead, they presented testimony describing how the increase in the EEC-C charge will affect one customer in Penelec's territory,[25] and another in Met-Ed's

[20] Met-Ed/Penelec/PennPower Statement No. 2, p. 9.
[21] Met-Ed/Penelec/PennPower Statement No. 1, p. 18; Company Exh. 2, Apdx. G, Table 7B.
[22] Order entered on October 28, 2009 in this docket at pp. 29-30.
[23] *See generally*, Company Exh, 2 with highlighted changes from the Current EE&C Plans; *see also* Company Exhibit 2, Apdx. G, Table 4.
[24] Met-Ed/Penelec/PennPower Statement No. 2, p. 19; Company Exh. 2, Section 1.1.1(D).
[25] *See generally*, MEIUG/PICA/PPUG Statement No. 1 (Hammaker); Tr., p. 185.

territory.[26] Nevertheless, solely based on preliminary program results included in responses to several interrogatories that indicate that the Companies will exceed 2011 EE&C requirements, MEIUG et al complains that the Companies "built in significant margins, or 'cushions' for their load reduction goals"[27] which, according to the "expert testimony" of MEIUG et al's counsel[28] will "easily absorb" any shortfalls that have been projected through the Companies' remodeling analyses.[29] As a preliminary matter, as explained above, Act 129 requires a plan to be designed to achieve *or exceed* the statutory EE&C requirements. Therefore, these "cushions" are not unlawful; but they are irrelevant, simply because these "cushions," while perhaps in excess of 2011 EE&C requirements, are necessary in order for the Companies to achieve the May 31, 2013 requirements.[30] This proceeding is not about the Companies' compliance with 2011 EE&C targets; the issue in this proceeding is whether the Companies' amended plans will achieve the 2013 requirements, which increase three fold from those in 2011. When designing the Amended EE&C Plans, the evaluation team factored in this robust 2011 compliance level as part of their strategy for 2013 compliance.[31] Indeed, the extra energy savings was necessary in order to meet their 2013 EE&C requirements.[32] As Mr. Fitzpatrick explained, when the Current EEC Plans were designed, those designing the plans realized that they had to capture more energy savings in

[26] *See generally*, MEIUG/PICA/PPUG Statement No. 2 (Chasse).
[27] MEIUG et al Br., p. 7.
[28] The issue of whether projections of reductions are accurate and reliable is a crucial one in these EE&C Plan cases. It is an on-going process in which the Companies utilize the expertise of both Black & Veatch Corporation, the outside consulting firm that designed the Current EE&C Plans, and ADM Associates, Inc. ("ADM"), the Companies' outside consultant and program evaluator. MEIUG et al has argued the sufficiency of the Companies' Current EE&C Plans without expert testimony or independent analysis that supports their conclusions; nor did it provide the Companies with an opportunity to cross examine and investigate the underlying assumptions and calculations supporting such conclusions. Instead, based on several discovery responses, counsel for MEIUG et al puts forth what is tantamount to improper "expert testimony." This is not a policy argument but a matter of expert opinion which is significantly lacking in support of MEIUG et al's conclusions. Indeed, the Companies are the only party that has presented expert analysis on how best to position the Companies to achieve their post-2011 EE&C requirements.
[29] MEIUG et al Br., p. 25.
[30] Tr., pp. 110-111.
[31] Id.
[32] Id.

the early part of the plan so as to put the Companies in a better position to meet their 2013 energy efficiency and demand reduction requirements.[33] However, no similar "cushions" are included in the projections for 2013 compliance.[34] Furthermore, without these so-called "cushions" achieved through 2011 compliance, the Companies would simply have had to seek more funds in this proceeding in order to implement more measures and programs so as to make up the shortfall that would have been created but for these "cushions." Thus the Companies' compliance strategy that included over-compliance in 2011 helped to alleviate MEIUG et al's concerns about "rate shock" and the principle of gradualism.[35]

MEIUG et al also argues that that the Companies' Amended EE&C Plans are unlawful because they allegedly violate the "spirit of Act 129" by inappropriately "skewing" the changes towards the Large C&I class.[36] In support of this assertion, MEIUG et al claims that "*each EE&C Plan* 'shall include … standards to ensure that each plan includes a variety of [EE&C] measures and will provide the measures equitably to <u>all classes of customers.</u>"[37] MEIUG et al misstates the law by ignoring the Commission's role in this issue. Section 2806.1(a)(5), the section of Act 129 upon which MEIUG et al relies, actually states: "*The Commission shall … adopt an [EE&C] program* to require [EDCs] to adopt and implement cost effective [EE&C] plans ….*The Program* shall include standards to ensure that each plan includes a variety of [EE&C] measures and will provide the measures equitably to all classes of customers." The

[33] Id. at 110.
[34] Tr., pp. 64-65.
[35] *See* MEIUG et al Br., pp. 28, 41.
[36] MEIUG et al Br., p. 20. They also argue that approval of the EEC-C Rider charges would violate the Commonwealth's policy of promoting economic growth. (MEIUG et al Br., p. 34.) This issue is addressed *infra* in Section III (B)(4).
[37] MEIUG et al Br., p. 20, citing 66 Pa C.S. § 2806.1(A)(5)(italics added, underlines in original). As explained *infra* in Section III (A)(2), the Large C&I class is not incurring a greater burden than the other classes. In fact, it is generally quite the opposite.

Commission adopted a program through its January 15, 2009 Implementation Order.[38] On page 1 of that Order, the Commission noted that it had "been charged by the Pennsylvania General Assembly ... with establishing an energy efficiency and conservation program. ... In order to fulfill this obligation, the Commission commenced a stakeholder process with interested parties." The Commission indicated that the Implementation Order "will establish the standards each [EE&C] plan must meet."[39] In that Order, the Commission clarified the "Standards to Ensure that a Variety of Measures are Applied Equitably to all Customer Classes," stating:

> [W]e believe that EDCs should develop plans to achieve the most energy savings per expenditure. The driving principle should be the most cost effective use of resources so that benefits can accrue to all customers, even if only by virtue of more reasonable energy market prices.
>
> * * *
>
> We agree that "equitable" does not mean "pro rata", especially when cost-effectiveness is factored into the process.
>
> * * *
>
> There is no single set of measures that will fit all EDCs and the myriad mix of customer sectors. It is entirely possible that the most cost effective energy efficiency and demand response programs may not come proportionally from each customer sector.
>
> * * *
>
> We will not require a proportionate distribution of measures among customer classes. However, we direct that each customer class be offered at least one energy efficiency and one demand response program.[40]

Clearly the Companies' Amended EE&C Plans meet these requirements. The Amended EE&C Plans provide at least one energy efficiency and one demand response ("DR") program to each customer class, as part of the 13-program, 126-measure portfolio being offered to the various customer classes.[41] These programs and measures are virtually identical to those

[38] *Energy Efficiency and Conservation Program*, Docket No. M-2008-2069887 Implementation Order, p. 1 (January 16, 2009) ("Implementation Order")
[39] Id.
[40] Implementation Order at 22-23.
[41] Company Exh. 2, Apdx. G, Table 4; *see also*, Company Exh. 2, Apdx. F, pp. 1-4 for a list of the 126 measures being offered through these programs.

included in the Current EE&C Plans that were found by the Commission to comply with the standards set forth above. Further, while the Implementation Order placed the burden on the Companies "to explain and justify its distribution of measures among its customer classes if such distribution is challenged,"[42] as discussed below, the Companies have done so, even though MEIUG et al does not really challenge this aspect of the Companies' Amended EE&C Plans, instead focusing on the budget increases to the Large C&I programs.

2. The Companies Have Met Their Burden to Demonstrate that the Distribution of Measures Among Their Customer Classes is Reasonable.

As already explained, no party disputes the fact that the Amended EE&C Plans offer at least one energy efficiency and one DR program to each customer class. Moreover, the Companies have demonstrated that the Amended EE&C Plans offer a diverse cross section of alternatives to the various customer classes. MEIUG et al does not dispute the above, but instead argues that the Companies "inappropriately targeted the Large C&I customer class to compensate for the lack of participation in Act 129 programs by other customer classes."[43] As evidenced by MEIUG et al's litany of participation statistics described in its Main Brief, MEIUG et al apparently interprets the above requirement to offer EE&C programs to all customer classes as a requirement to offer them through some sort of pre-arranged participation schedule that should be followed regardless of actual participation results.[44] But this is not what is required. As the Commission recognized in its Implementation Order, the focus should be on a cost effective compliance strategy, even if that means that one customer class might contribute more towards compliance than other customer classes.

[42] Implementation Order, at 23.
[43] MEIUG et al Br., p. 14.
[44] Id., pp. 21-24.

Notwithstanding MEIUG et al's complaints to the contrary, the Large C&I class is not paying a disproportionate share of the costs of the EE&C programs. As OCA explained, the Residential customer class was responsible for 70% and 67% of the budgets included in the Current EE&C Plans of Met-Ed and Penelec, respectively.[45] And as Mr. Fitzpatrick explained, the Large C&I class has the smallest percentage of total EE&C plan costs vis-à-vis customer class revenues.[46] Met-Ed's Large C&I customer class' financial responsibility for program costs was 6.76% of this class' total revenues, while for Met-Ed's Small C&I class it was 11.4%. Program costs for Penelec's Large C&I class totaled 8% of their total revenues, while the Small C&I class paid 14.1%.[47]

MEIUG et al presented metrics involving the percentage increase in the Large C&I rider[48] and, as previously mentioned, the amount by which certain customer classes have either met or failed to meet their projected results.[49] MEIUG et al notes the large percentage increases in the EE&C riders. However, this statistic is somewhat misleading. The rider charge currently in effect for this class ranges from $0.30/kW for Met-Ed to $0.34/kW for Penelec. It is a mathematical certainty that an increase of a small number will generate a larger percentage increase than the same increase does for a larger number. Indeed, even with the increase in the EE&C rate for the Large C&I class, the proposed EEC-C rate for Met-Ed industrial customers is $0.00112 per kWh,[50] which is only 1.2% of the average cost per kWh of $0.09045[51] charged by

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[45] OCA Br., p. 6.
[46] Tr., p. 44.
[47] Tr., pp. 44-45. Although not at issue in this proceeding, the program costs were 13.7% of total class revenues, while the Small C&I class was 13.01% (Tr., p. 45).
[48] MEIUG et al Br., pp. 11-12.
[49] Id. at 22-23.
[50] Supplemental CVF-1.
[51] The average cost per kWh was calculated based on total 2006 revenues for each company as set forth in Table 3 of the Current EE&C Plans, divided by the total customer class 2006 kWh delivered as set forth in Exhibit RIP-4(line 5), an Exhibit attached to Mr. Ray Parish' testimony submitted in this docket during the evidentiary hearing in which the Current EE&C Plans were evaluated. The percentage of the average cost per kWh represented by the EEC-C charge as proposed to be effective October 1, 2011was calculated by dividing the proposed EEC-C rate by

Met-Ed in 2006. For Penelec, a similar analysis reveals a proposed EE&C Rate of $0.00103/kWh,[52] which also represents 1.2% of the average cost per kWh of $0.08290 charged by Penelec in 2006. Moreover, the increase is not caused solely by an increase in the Large C&I program budgets. As Mr. Fullem explained, the EEC-C Rider increased partly because of revised sales and collection data and the compressed time frame over which the costs can be collected.[53] These changes are consistent with the methodology approved by the Commission for use when calculating the EEC-C rider charges.[54] And, finally, as Mr. Fitzpatrick noted, the rider charge as a percentage of the total rate charged to the Large C&I class is less than that for the other customer classes.[55]

MEIUG et al also cites a number of participation statistics in which they indicate the percentage variances between the projected and actual participation by customer sectors. However, MEIUG et al fails to recognize the fact that these projections are just that – projections, or estimates, of what the Companies expected to achieve based on the best information available at the time the estimates were made. Of course there will be variances between projected and actual participation results because of the nature of the data. Furthermore, as MEIUG et al acknowledged, final verified results are not yet available, so the results quoted by MEIUG et al will in all likelihood change.[56] Because MEIUG et al presented no expert testimony on this issue, instead again choosing to rely on the "testimony" of their counsel as set forth in their Main Brief, the Companies did not have an opportunity to cross examine the person

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the average cost per kWh. The year 2006 was selected as the base year because this was the only data available in the record in this docket. Had MEIUG et al presented their arguments during the evidentiary phase of this proceeding, the Companies would have had an opportunity to update these statistics. Nevertheless, as these calculations demonstrate, increases to large numbers result in significantly lower percentage increases than similar increases to small numbers.

[52] Id.

[53] Tr., pp 124-125, 128-129.

[54] Tr., p. 138.

[55] Tr., p. 44.

[56] MEIUG et al Br., p.18.

making such an analysis so as to determine their assumptions, or what other factors they may have (or should have) considered. For example, did MEIUG et al factor in the conditions at the time the EE&C plans were designed? It should be kept in mind that EE&C was new to the Commonwealth at that time, with minimal history on EE&C program participation levels in general, and virtually no history for these programs in and around the Commonwealth, in particular. Therefore, participation levels were estimates based on the information then currently available. And like all estimates, it is virtually impossible to project activity so that it exactly matches actual results, especially when there was no empirical data available on how participation results would be affected by the severe recession that occurred during the design of many of these programs. Indeed, the Companies factored this into their design of the Current EE&C Plans, expressly indicating to the Commission that they may have to increase budgets for the Large C&I programs if their assumptions surrounding participation during the recession proved to be inaccurate.[57] And, while the Companies can design programs, they cannot force customers to participate in them.[58] The Companies changes to the Residential, Small C&I and Government programs are intended to spur additional activity and participation from these customer classes. These changes, along with other changes made to various programs, were communicated to customers through various means, including emails, direct mailings, customer meetings, media/advertising, bill inserts, community outreach events, and area manager and service representative contacts and meetings with those affected by the changes.[59] And finally, what MEIUG et al fails to grasp, or at least chooses to ignore, is the fact that the Companies must achieve EE&C compliance within the 2% spending cap, or as the Commission directed,

[57] Met-Ed/Penelec/Penn Power Statement No. 1-R, p. 5; Tr., p. 121.
[58] Tr., p. 46.
[59] Tr., pp. 77, 100, 113. MEIUG et al claims that the Companies have not changed their outreach approach in an effort to spur additional interest in available programs. (MEIUG et al Br., p. 14.). Noticeably absent from MEIUG et al's brief are any recommendations to improve such outreach.

through the "most cost effective use of resources so that benefits can accrue to all customers, even if only by virtue of more reasonable energy market prices." While the Companies expect the proposed changes to the Residential, Small C&I and Government programs to spur additional activity within these programs, there are no guarantees. The Large C&I Equipment Programs, on the other hand, currently have more than 150 customers who are simply waiting for more funding in order to participate in this program – a program that is extremely cost effective, costing on average $115 per MWh saved at Met-Ed[60] for the Equipment Program as compared to similar savings based on an average cost of $241 for all Met-Ed programs, $172 for Small C&I programs, and $288 for Residential programs.[61] As the Companies' expert, Mr. Fitzpatrick, explained, "The success of an EE&C program is not solely a function of how many dollars are allocated to it. Rather one must look at the popularity of the program and how much energy and/or peak demand reduction can realistically be achieved."[62] In this instance, the Companies *know* that more than 150 customers are waiting to take advantage of the benefits of the Large C&I Equipment Program, which will result in approximately 46,000 MWhs of energy savings[63] and that this program achieves these results in a least cost manner. In light of the demand for this program, the advocate for the the Large C&I customers should not be asking *whether* the Companies should increase funding for the Large C&I Equipment Programs, but rather, why wouldn't they?

Based on MEIUG et al's description of events, they would have this Commission believe that the Companies ignored all other customer classes and simply targeted the Large C&I Class when modifying their EE&C plans for purposes of complying with their post-2011 EE&C

[60] Tr., p. 56.
[61] Tr., p. 48.
[62] Met-Ed/Penelec/Penn Power Statement No. 1-R, p. 4.
[63] Id., p. 18; Tr., pp. 78-79, 83-84, 86.

requirements. The evidence, however, does not support such a finding. As Mr. Fitzpatrick explained, the EE&C team, which is comprised of personnel from the Companies, Black & Veatch Corporation ("B&V"), who assisted in the design of the Current EE&C Programs, and ADM Associates, Inc., the Companies' program evaluator ("EE&C Team"), evaluated all of the currently approved EE&C programs and concluded that changes to the model inputs were necessary in order to: (i) reflect insights gained through program implementation; (ii) reflect material revisions to plan assumptions and/or savings algorithms arising from changes in the Technical Reference Manual ("TRM"); and, based on this information, (iii) rebalance participation levels, incentive levels and budgets as appropriate to optimize the program portfolio.[64] As a result of this analysis, not only were changes made to the Large C&I programs, which will be discussed below, but the Companies made the following changes to the Small C&I programs in an effort to enhance program participation:

(a) The peak load reduction program has been expanded to include the Small C/I class.

(b) The incentive structure and incentive level for the C/I lighting measure within the Small C/I Equipment Program has been changed.

(c) A new direct install component has been added to the Small C/I Equipment Program that will target strip malls, small grocery stores and certain restaurants so as to capture potential energy savings from these high energy use customers.

(d) A new energy conservation kit is being added to the Small C/I Equipment Program through opt-in distribution. The kit will initially offer only CFL bulbs, partly to test market acceptance while also increasing market penetration for this popular measure, with the intent to include additional measures as market conditions warrant.[65]

Similarly, the following program changes were made to Residential and Government Programs to try to improve customer participation:

[64] Met-ED/Penelec/Penn Power Statement No. 1, p. 4.
[65] Id., p. 12.

(a) The Residential Whole Building Comprehensive Program has been consolidated with the Home Energy Audit and Outreach Program.

(b) A new Behavioral Modification Program has been added to the residential sector in which participating customers receive benchmark usage data and tips for reducing energy consumption.

(c) Incentives for residential air conditioner and heat pump tune-ups have increased from $25 to a maximum not to exceed $60, a change that is necessary in order to increase participation in this program.

(d) Upstream incentives for CFLs have been set at a range from $0.75 to $1.50/bulb, and at a level not to exceed $2.50/bulb for specialty bulbs. This change has been made to increase market penetration in the CFL market that has been relatively successful to date.

(e) Energy Conservation Kits for Multi-family residential and master-metered facilities have been added, partly to increase CFL market penetration and to also generate interest in other potential energy efficiency measures for Multi-family tenants.

(f) A variable speed pool pump replaces the "Pump and Motor Single Speed" incentive and increases the incentive level to $200 per pump in order to maximize savings for this particular measure.

(g) Government incentives have been increased to levels consistent with those being offered Large and Small C/I customers.[66]

Because the budgets for the Residential, Government and Small C&I programs have not yet been exhausted, all of the above changes were made simply by shifting costs within the customer class in an effort to direct funds to better performing measures and programs, with a goal of maximizing program results at the least cost.[67] As more fully discussed below, the program budgets for Met-Ed's and Penelec's Large C&I Equipment Programs, on the other hand, have been fully subscribed, with a number of customers awaiting additional funding so as

[66] Id., pp. 12-13.
[67] Tr., p. 141.

to participate in these programs.[68] Additional funds are also needed in order to increase participation in the Companies' peak demand reduction programs.[69]

3. The Companies Have Met Their Burden to Demonstrate that the Proposed Changes Included in the Amended EE&C Plans are Necessary.

MEIUG et al claims that "the Companies have failed to meet their burden [of proof], 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 ...."[70] Again MEIUG et al mischaracterizes the evidence. There is ample evidence demonstrating that the proposed changes included in the Amended EE&C Plans are necessary.

First, Section 1.1.1 of the Companies' Amended EE&C Plans (Company Exhibit 2) summarizes each proposed change, along with the rationale for such change.

Second, Mr. Fitzpatrick testified that several events transpired since the Current EE&C Plans were approved that places post-2011 EE&C compliance in jeopardy and that without the implementation of the changes included in the Amended EE&C Plans, it was his expert opinion that the Companies would not be able to meet their 2013 targets.[71] This was based on an assessment of each program that was conducted by the EE&C Team and included a remodeling of many of the programs based on updated information obtained through actual program history, the revised TRM, advice of the Companies' conservation service providers who work throughout the country, market research, field data and customer input.[72]

MEIUG et al criticizes the Companies for not presenting evidence that does not currently exist, noting that the Companies "did not have data regarding whether and to what extent the

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[68] Met-Ed/Penelec/Penn Power Statement No. 1, p. 11; Tr., pp 78-79, 83-84, 86.
[69] Met-Ed/Penelec/Penn Power Statement No. 1, pp. 9-10.
[70] MEIUG et al Br., p. 14.
[71] Met-Ed/Penelec/Penn Power Statement No. 1, pp. 5-6.
[72] Met Ed/Penelec/Penn Power Statement No. 1, p. 4; Tr., pp. 97-99.

Companies met their May 31, 2011 goals."[73] Again, MEIUG et al focuses on the wrong issue. This case involves what is necessary in order to meet May 31, 2013 EE&C requirements, not whether the Companies met their 2011 targets. MEIUG et al's counsel, again acting as an expert witness, apparently believes that the Companies evaluate programs by taking a snapshot in time. As Mr. Fitzpatrick explained, "the market is fluid and requires constant monitoring and 'fine tuning', especially given the relative newness of most of the EE&C programs being offered in the Companies' service territories.[74] Program results are constantly monitored and evaluated.[75] It was through this constant monitoring and evaluation that the Companies determined that many of the programs had to be remodeled and that the changes included in the Amended EE&C Plans were necessary. Moreover, in addition to having preliminary program results on a periodic basis, as evidenced by the quarterly reports that the Companies file with the Commission, they also know of at least three events that result in the savings projections included in the Current EE&C Plans to be understated. As Mr. Fitzpatrick explained, the current plans are understated by at least 11 percent as a result of having to recalculate projected savings at the retail level without grossing up savings to factor in line losses. Similarly, the Companies know, based on the updated TRM, that certain savings levels are deemed to be lower than were assumed at the time the Current EE&C savings projections were calculated, again, requiring additional savings from other sources. And based on the monitoring of programs, participation levels are not as robust for certain programs as was assumed when the Current EE&C Plans were designed.[76] Each of these factors support the need for the changes that are designed to increase participation and savings results and are included in the Amended EE&C Plans.

[73] MEIUG et al Br., p. 17. Although final 2011 results are not available, the Companies have preliminary results on the various programs as indicated in their preliminary status reports that they submitted on July 15, 2011.
[74] Met-Ed/Penelec/Penn Power Statement No. 1, p. 22.
[75] Tr., pp. 98,101.
[76] Met-Ed/Penelec/Penn Power Statement No. 1, p. 8.

Third, Exhibits GLF 1-4 summarize the revised projections, both in budgets and projected savings results, based on the above efforts. [77]

Fourth, Mr. Fitzpatrick explained why the Companies need additional funding for both the Large C&I Equipment Programs and the Peak Demand Reduction Programs. As already discussed, the Large C&I Equipment Program (i) has generated significant results in a cost effective manner; (ii) has proven to be quite popular, being fully subscribed based on current budgets; and (iii) has guaranteed increases in participation based on the more than 150 customers who have already submitted applications and are ready to proceed once additional funding is provided. The budgets for the Peak Demand Reduction Programs must also be increased because of the projected shortfalls that were created by the factors discussed above. In order to make up the projected savings deficits, additional participation is necessary. Because participation is incented through payments of $ 9.50 per kW per quarter,[78] the increase in the number of participants requires additional funding for the corresponding increase in incentive payments. Further, because the Companies must achieve the peak demand reduction during the 100 highest hours during the summer of 2012, they must subscribe a sufficient number of customers to hedge against calling for an event which, in hindsight may not be within the 100 highest demand hours.

MEIUG et al argues that the Companies proposed budget increase is excessive because, based on their counsel's "expert" testimony included in the brief, the applications for the Large C&I Equipment program included in the queue, will result in over compliance with 2013 EE&C

[77] MEIUG et al also claims that the Companies presented no evidence that demonstrates "current customer performance [or] expected improvements in customer performance due to the availability of increased funding." (MEIUG et al Br., pp. 18-19.) These exhibits present such information. Company Exh. 2, Apdx. G, Tables 1-7.
[78] *See e.g.*, Met-Ed Amended EE&C Plan, p. 100.

requirements.[79] It is unfortunate that MEIUG et al chose not to present their analysis through an expert witness, instead relying on the back of the envelope calculations described in MEIUG et al's Main Brief.[80] In so doing, the Companies were deprived of an opportunity to inquire as to the assumptions that were made, the analyses that were performed and the other factors that lead to MEIUG et al's conclusion. Nevertheless, as previously discussed, *supra*, exceeding the minimum statutory EE&C requirements is not unlawful and is actually contemplated in Act 129. Given that no "cushions" are factored into 2013 projections, clearly it is not the intent of the Companies to over-comply with post 2011 EE&C requirements. Nevertheless, because of the uncertainty and fluid nature of the entire EE&C process, the Companies must factor in some contingencies in the event that the projected savings do not materialize as assumed in the modeling. Similarly, because programs are continuously monitored, if the Companies observe significant participation in various programs such that they may be approaching compliance levels earlier than anticipated, the Companies will have the opportunity, if deemed appropriate, to back down programs through reductions in incentives or suspension of programs. And because the EEC-C Riders include a reconciliation mechanism, the Companies will not over-collect and will only recover the program costs actually incurred. Therefore, MEIUG et al's unsupported analysis and related conclusions are misplaced.

4. The Companies Have Met Their Burden to Demonstrate that the Proposed EEC-C Rider Charges are Just and Reasonable.

MEIUG et al also claims that the Companies failed to demonstrate that the proposed rates included in the EEC-C Riders are just and reasonable.[81] However, MEIUG et al does not challenge the calculations included in Mr. Fullem's testimony as Supplemental CVF-1 based on

[79] MEIUG et al Br., pp. 39-41.
[80] Id.
[81] MEIUG et al Br., p. 14.

a claim that the calculations are inconsistent with the methodology approved by the Commission when approving Rider EEC-C as part of the Current EE&C Plans, or that the rider charge will recover amounts in excess of the 2% spending caps. Neither does MEIUG et al claim that the Rider EEC-C charges are mathematically incorrect. Instead, MEIUG et al argues that the increase in the EEC-C Rider charges is unreasonable because it is unreasonable to increase the Large C&I program budgets. This is bootstrapping based on an invalid assumption that the Companies cannot legally increase the budgets to the Large C&I programs. Clearly, such increases to these budgets are permitted and, in this instance, necessary. The evidence demonstrates that the EEC-C Riders were calculated consistent with the design approved by the Commission and do not recover costs from classes other than those who receive the benefit from the costs incurred.[82] The incremental increase in the EEC-C Rider charges is a result of the increase in the Large C&I budgets and updated sales and revenue forecasts, with recovery of costs compressed over a shorter time period.[83] If the Commission finds that the increase in the Large C&I program budgets are lawful, necessary and reasonable, then it must follow that the EEC-C rider charges are also lawful, necessary and reasonable.

5. Summary

In sum, the Companies have presented ample evidence that the Amended EE&C Plans, like the Current EE&C Plans, are lawful and that the proposed changes included in the Amended Plans, along with the related modifications to the EEC-C Rider charges, are necessary, just and reasonable. The Amended EE&C Plans meet the legal requirements set forth in Act 129 and the Commission's Implementation Order, by offering a diverse cross section of options to all customer classes in a cost effective manner, as evidenced by the fact that the Amended EE&C

[82] Tr., p. 138.
[83] Tr., pp. 124-125, 128-129, 133-134.

Plans continue to pass the TRC test, both on a program and portfolio basis, and continue to comply with the two percent spending cap. The Amended EE&C Plans are also reasonable and necessary. The Companies have submitted substantial evidence showing that the amendments to the Current EE&C Plan are needed to achieve Act 129 objectives. Among those needed amendments, the increase in the budget for Large C&I customer programs is the most cost effective method of eliminating a projected shortfall in reaching the mandatory EE&C reduction amounts by May 31, 2013. No party submitted an independent analysis of the Companies' findings, nor did any party present an alternative plan, let alone a plan that meets the requirements of Act 129 and the Commission's Implementation Order. Accordingly, the Companies' Amended EE&C Plans should be approved without modification.

B. MEIUG et al Has Failed to Demonstrate that the Companies' Amended EE&C Plans Will Significantly Harm Industrial Customers.

MEIUG et al claims that the Amended EE&C Plans, if approved, would significantly harm industrial customers because these plans allegedly (i) "result in unjust and unreasonable rates for the Large C&I Class;"[84] (ii) "provide little, if any rate relief to the Large C&I Class;"[85] and (iii) "violate the Commonwealth's policy of promoting economic growth through just and reasonable electricity pricing."[86] As a preliminary matter, throughout this proceeding, it has been difficult to determine exactly who MEIUG et al is representing. They presented two witnesses who testified as to how Met-Ed's and Penelec's Amended EE&C Plans may affect their respective employers.[87] Based on this testimony, MEIUG et al extrapolates these witnesses' claims -- many of which are unsupported by credible evidence -- making broad assertions that are supposed to

[84] MEIUG et al BR., p. 27.
[85] Id. at 31.
[86] Id. at 34.
[87] MEIUG/PICA/PPUG Statement Nos. 1 and 2.

apply to the Large C&I customer class as a whole.[88] This is improper for numerous reasons, first and foremost, because both witnesses who testified indicated that they were not authorized to represent the interests of any Large C&I customer other than those by whom they were employed.[89] Indeed MEIUG et al's counsel noted that it was unlikely that her witness would know how certain events would affect other Large C&I customers.[90] In light of this, each of the above assertions are misleading and should be rejected on this basis alone. Nevertheless, even if the Commission were to entertain MEIUG et al's claims, as explained below, the evidentiary record does not support them and, accordingly they should be summarily dismissed.

1. The Evidence does not Support a Finding that the Amended EE&C Plans Result in Unjust and Unreasonable Rates.

MEIUG et al argues that "[t]he proposed EEC-C Rates are unjust and unreasonable, because they will have a direct, negative impact on Large C&I Customers." They base this conclusion on the testimony of Mr. Todd Hammaker, an employee of Appleton Papers, Inc. ("Appleton"), who testified as a member of PICA,[91] and Mr. Mark Chasse, an employee of East Penn Manufacturing Company, Inc. ("East Penn"), who testified as a member of MEIUG.[92] While MEIUG et al highlights the amount of the increase in electric costs for Appleton and East Penn that will result should the proposed EEC-C rider charges be approved, nowhere in their brief does MEIUG et al claim that these charges were not calculated in accordance with either the parameters established in Act 129 or the methodology approved by the Commission as part of its approval of the Current EE&C Plans. Instead, MEIUG et al argues that the increased

[88] By way of example, MEIUG et al cites the energy intensity of Appleton Papers Inc, the employer of one of MEIUG et al Witness Hammaker, to support the assertion that the manufacturing process is very energy intensive for many Large C&I Customers. (MEIUG et al Br., p. 29.) See also MEIUG et al Br., p. 31(based on the perceived effects on Appleton Papers, Inc. and East Penn Manufacturing, MEIUG claims that the Amended EE&C Plans will "provide little, if any, rate relief to Large C&I Customers.")
[89] Tr., pp. 148-149, 194.
[90] Tr., p. 172.
[91] MEIUG/PICA/PPUG Statement No. 1, pp. 2-3.
[92] MEIUG/PICA/PPUG Statement No. 2, pp. 2-3.

electricity costs resulting from the higher EEC-C rates "translate directly into lost profits because intensive national and international competition preclude [sic] Large C&I customers, like Appleton, from passing on such increases to their customers."[93] However, upon cross examination, both Witness Hammaker and Witness Chasse admitted that lost profits did not necessarily translate into negative profit margins, thus perhaps allowing either or both companies to absorb such increases.[94] As Mr. Hammaker explained, there are too many variable to know exactly how profit margins are affected based on the limited information that was available to him.[95] And when asked the identity of their competitors both nationally and internationally, both witnesses had difficulty identifying most of them and neither knew from whom these competitors received their electric service, the costs of such service, or whether any of them incurred similar EE&C related charges or charges to which the witness' employers may not be subject. [96] Without such knowledge, it is virtually impossible for either witness to know for certain how their respective employers would be affected competitively by the change in the EEC-C Riders. Witness Hammaker also expressed concern over losing business to a sister plant in Ohio because of the EEC-C Rider charges that his plant would incur in Penelec's service territory.[97] This would only be a concern if the sister plant was not also subject to similar charges. And in this case, the sister plant would be, given that Ohio also has EE&C statutory requirements.[98]

[93] MEIUG et al Br., p. 29
[94] Tr., pp. 169, 171, 202.
[95] Tr., p, 169.
[96] Tr., pp. 155-158, 197-199.
[97] MEIUG/PICA/PPUG Statement. No. 1, p. 13.
[98] Tr., p. 158; *See generally* Ohio Revised Code Section 4928.66. This statute requires all Ohio EDCs to implement energy efficiency and demand response programs by certain annual percentages, with the costs of these programs also recovered through a rider charge collected from customers.

When making any proposed rate increase the Companies consider the economy and how their customers may be affected.[99] Nevertheless, the Companies are obligated to comply with the Act 129 EE&C requirements or face potential penalties. In order to comply, they must incur the costs necessary to achieve the statutory EE&C mandates in a cost effective manner.[100] In this instance, it has been demonstrated that the Companies must increase the Large C&I program budgets in order to be put in a position to meet their post-2011 EE&C Requirements. Pursuant to Act 129, they are legally within their rights to recover these costs through the EEC-C Rider.

The Companies are sympathetic to the concerns expressed by Witnesses Hammaker and Chasse; but the concerns they raise and the impacts that they describe do not transform otherwise lawful rates into rates that are unjust and unreasonable.

2. The Evidence does not Support a Finding that Incentives in the Amended EE&C Plans Provide Little, if any Rate Relief.

MEIUG et al argues that "[t]he incentives offered under the Companies' [Amended] EE&C Plans ... 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."[101] Again, this conclusion is based on the experience of two Large C&I customers with no knowledge of the operations of other customers. Other Large C&I customers may have employed significant EE&C measures and may still have available to them meaningful rate relief. There is no way for MEIUG et al's witnesses to know for sure. Further, MEIUG et al's claim fails to factor in the needs of the more than 150 Large C&I customers who are awaiting approval of additional funding so that they can benefit from the incentives offered through the Large C&I Equipment Programs. And, finally, while East Penn and Appleton may not believe

[99] Tr., pp. 140-141.
[100] Id.
[101] MEIUG et al Br., p. 32.

that they can benefit from programs offered by the Companies in the future, neither company performed a comprehensive energy audit.[102] Also, both of these companies have participated in the Companies' program offerings in the past and both have the potential to participate in future EE&C programs being offered by the Companies. As Mr. Hammaker acknowledged, Appleton participated in Penelec's lighting program, receiving $2,178 in incentives.[103] Mr. Hammaker also admitted that Appleton has and will continue to participate in PJM's demand response program[104] and admitted that participation in the Company's peak demand reduction program was not beyond the realm of possibilities in the future.[105] When asked why Appleton was not participating in Penelec's DR program, Mr. Hammaker indicated that Appleton operates 24 hours a day, seven days a week and therefore a risk of interruption through the Penelec's DR program was too great.[106] Based on this operating schedule, the economy may not have adversely affected Appleton to the degree that MEIUG et al would have the Commission believe.

Similarly, East Penn participated in Met-Ed's lighting program, receiving incentives that translate into a financial benefit in excess of $1.1 million during the three year EE&C plan and approximately $4.3 million during the expected 15 year life of the project.[107] And, like Appleton, East Penn also qualifies for Met-Ed's DR program worth approximately $380,000 based on past commitments of 10,000 kW. East Penn also recently received a grant for a grid scale energy storage demonstration project that is already under construction. The information submitted in support of the project noted that it will provide demand management services to Met-Ed. The project will allow East Penn to contribute toward Met-Ed meeting the requirements

[102] Tr., pp. 163, 201-202.
[103] MEIUG/PICA/PPUG Statement No. 2, p. 5.
[104] Tr., pp163-164.
[105] Tr., pp. 164-165. Based on load reductions of 10,000 kW committed through the PJM program, and the $9.50/kW/Qtr offered through the Companies' DR program, a similar commitment to the Companies would equate to approximately $380,000.
[106] Tr., p. 164.
[107] Met-Ed/Penelec/Penn Power St. No. 1-R, pp. 6-7.

of Act 129, again providing additional MWs for the demand response program.[108] And to the extent that Met-Ed's Act 129 demand response program aided East Penn in receiving its multi-million dollar demonstration project grant, its EE&C plan provided a further financial benefit to this customer. In light of the above, future participation in EE&C programs offered by the Companies is not out of the question for either Appleton or East Penn. And even if it is, based on the wait list for both Met-Ed's and Penelec's Large C&I Equipment Programs, these two companies would appear to be atypical of many other Large C&I customers in Penelec's and Met-Ed's service territories.[109]

3. MEIUG et al's Proposals to Reduce the Proposed Budget Increases to Large C&I Customers and Not Necessary or Supported by the Record.

In its Main Brief, MEIUG et al proposes for the first time in this proceeding calculations of lower, alternative increases to the Large C&I customer program budgets that it asserts are sufficient to meet the Companies' expected shortfall in reaching Act 129 reductions.[110] MEIUG et al did not present a qualified expert during the evidentiary phase of this proceeding to support these calculations, thus, again, precluding the Companies from testing the theories or assumptions used when reaching their conclusion. Instead, they have been provided by counsel and they include the assumption that spending can be scaled back on a dollar to energy/demand ratio, without consideration of administrative, marketing or evaluation expense components, the number of program participants or the nature of the projects the program applicants may present. On this basis alone, the unsupported, non-record MEIUG et al alternative should be rejected.

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[108] Tr., pp. 204-206.
[109] MEIUG implies that Large C&I customers may not proceed with energy savings opportunites because other projects compete for the capital. (MEIUG et al Br., p. 33.) Yet, in the case of both Appleton and East Penn, as well as the numerous customers that have already benefitted from the Large C&I Equipment Program and the more than 150 other Large C&I customers that have already submitted applications and are simply awaiting approval of the Companies' additional funding request, these energy efficiency projects beat out the competing projects for the capital.
[110] MEIUG et al Br., pp. 37-41.

Notwithstanding, the concern this alternative attempts to address, -- excessive budgeting -- is a non-issue. As explained above, the Companies are continually monitoring their rate of progress toward their Act 129 EE&C requirements. Should that progress justify tapering off or ending the operation of a program before the end of the plan, the Companies will certainly control spending in that manner. Further, only amounts actually expended will be recovered through the EE&C riders. Therefore should something less than the budgeted amounts the Companies are requesting in this case be sufficient to reach the Act 129 goals, the budget will be effectively reduced. MEIUG et al's unsupported alternative budget increases are not necessary and should be rejected.

4. The Evidence does not Support a Finding that Approving the EEC-C Rider Charge Increase Would Violate the Commonwealth's Policy of Promoting Economic Growth.

MEIUG et al notes that Act 129 is based on a policy that promotes economic growth with an objective "to protect [the] Commonwealth's ability to compete in the national and international marketplace for industry and jobs."[111] As previously discussed, MEIUG et al presented no credible evidence that the increase in the EEC-C Rider charges would adversely affect either Appleton's or East Penn's ability to compete in either the national or international marketplace. Indeed, because of Met-Ed's EE&C lighting program, East Penn has reaped financial rewards that equate to more than $4 million dollars. And the Large C&I Equipment Programs of Met-Ed and Penelec have already paid incentives totaling in the aggregate more than $1.6 million, with a request to increase these programs by an additional $3.4 million – all of which was or will be paid to companies within Pennsylvania. All other things being equal, by implementing the various projects under this program, participating companies' electricity consumption is reduced, thus lowering their operating costs and making them more competitive

[111] MEIUG et al Br., pp. 34-35.

in both the national and international marketplace; and an overall reduction in energy consumption and peak demand theoretically reduces the overall price of electricity for all Pennsylvania customers. Further, Met-Ed's EE&C plan was included in the project description for East Penn's grid scale energy storage demonstration project that is already under construction, thus generating, or at least retaining, jobs. Apparently East Penn felt that the mention of Met-Ed's EE&C plan would increase East Penn's chances of winning the grant.

In light of the above, the Companies' EE&C plans, both current and amended, promote the goals of the Pennsylvania General Assembly as expressed in Act 129.

C. The Use of Incentive Ranges is Appropriate.

As the Companies explained in their Main Brief, the Amended EE&C Plans include changes to rebate levels, modifying all of them as ranges, rather than fixed dollar incentives.[112] This was done for several reasons. First, it provides the Companies with the much needed flexibility to adjust quickly as market conditions dictate. As Mr. Fitzpatrick explained, the need for additional review is setting the Companies up for failure by (i) compressing an already small compliance window; (ii) unnecessarily increasing compliance costs by requiring the Companies to spend valuable time and resources preparing petitions for amendments for relatively minor plan adjustments; and (iii) hamstringing their ability to quickly adjust as market conditions warrant.[113] Mr. Fitzpatrick believes (and the Companies agree) that the window for compliance with post-2011 Act 129 requirements is relatively narrow, and the resources available to accomplish it are limited. Therefore these resources should not be overburdened by requiring applications to make amendments for changes that have already been addressed by the Commission. Furthermore, the preparation of these petitions and supporting materials requires

[112] Met-Ed/Penelec/Penn Power Statement No. 1, p. 17.
[113] Met-Ed/Penelec/Penn Power Statement No. 1, p. 22.

outside resources, which increases compliance costs that may threaten the Companies' ability to remain within the statutory 2% spending caps. And finally, the market is fluid and requires constant monitoring and "fine tuning," especially given the relative newness of most of the EE&C programs being offered in the Companies' service territories. If the Companies must wait for approval prior to making these minor changes, they could miss opportunities or pay more for an opportunity than the market requires.[114]

The Companies recognize that the Commission must review changes to approved EE&C plans. However, the Companies' submit that their proposed change to create incentive ranges does not violate this principle. As Mr. Fitzpatrick noted, all parties have an opportunity in this proceeding to fully vet the incentive ranges included in the Amended EE&C Plans.[115] These ranges were not established in a vacuum. Rather they are based on input from the EE&C Team,[116] program administrators with experience with similar programs throughout the country,[117] customer input,[118] ongoing evaluation of program results[119] and field data.[120] Therefore, these ranges, when coupled with the two percent spending cap, the Commission's approval of overall program budgets and its prohibition against the shifting of funds among customer classes, provides sufficient safeguards without the need for redundant reviews of incentive levels that have already been addressed in a prior proceeding. While the Companies acknowledge that the Commission has recently presented a process through which EDCs can seek expedited review of changes such as modifications to incentive rebate levels, this process

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[114] Id. at 19.
[115] As Mr. Fitzpatrick explained, the rebate levels will be applied uniformly and will be changed immediately if the Companies increase the rebate, and any decreases will be changed only after providing thirty days notice to customers, contractors and others affected by the rebates. (Tr., p. 114.)
[116] Tr., p. 96.
[117] Id.
[118] Id., p. 97.
[119] Id. at 97-98.
[120] Id. at 99.

could take up to 75 days or more.[121] Therefore, such a process still will not afford the Companies the opportunity to move quickly to address market conditions, thus still potentially creating conditions in which the Companies could miss opportunities or pay more than is necessary in the market.

OCA does not oppose the Companies' use of incentive ranges, provided that "the Companies apply those ranges in an even-handed manner and through a defined process so that no discrimination results."[122] As explained below, these prerequisites have been met. OCA also suggests that changes to program incentive levels should be vetted through the stakeholder process.[123] As already explained, the Companies' process to establish the ranges is based on considerable input, the same input that would be factored into any decision to modify an incentive level within a range. Given the intent to move quickly in response to market changes, and since stakeholder meetings are relatively infrequent, OCA's suggestion may not prove to be practical.

MEIUG et al opposes the Companies' use of incentive ranges because it allegedly will vest the Companies with "unfettered discretion, without a clear and defined approach."[124] By selectively citing the record, MEIUG et al makes it appear that the Companies have not thought out the basis for moving incentive levels within ranges. Interestingly, OCA reviewed the same evidentiary record and concluded that the Companies adequately supported their proposal.

Examination of the complete discussion between the Companies' witness, Mr. Fitzpatrick, and counsel for MEIUG et al reveals the evidence that provides full support for the Companies' proposal to use incentive ranges. Incentive range flexibility will be utilized as

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[121] *Energy Efficiency and Conservation Program*, Docket No. M-2008-2069887 (Order entered June 9, 2011).
[122] OCA Br., p. 9.
[123] Id.
[124] MEIUG et al Br., p. 41-43.

follows. If expected levels of customer participation are not achieved, the Companies may increase the incentive levels within a range after consulting with the EE&C Team, the program administrator responsible for the subject program, and after receiving feed back through customer evaluations and the field.[125] If participation levels exceed projections, the Companies will consider scaling incentives back.[126] And changes within ranges would not be discriminatory, but applied equally to all customers requesting incentives at the same point in time.[127] Reviews of appropriate incentive levels would be conducted at least quarterly.[128] Increases in rebates would be applied immediately and if there is a reduction in incentive, there will be a thirty (30) day notification to customers through the various media the Companies employ - emails, targeted meetings with customers, media communications, bill inserts and community outreach.[129]

Contrary to MEIUG et al's argument, the Companies' proposed use of incentive ranges is clear, defined and should be approved.

Energy Efficiency and Conservation Program, Docket No. M-2008-2069887 (Order entered June 9, 2011).

III. CONCLUSION

In sum, the Companies have demonstrated that each and every change proposed in the Amended EE&C Plans, including those made to the EEC-C Rider, is lawful, reasonable and necessary in order for the Companies to be placed in a position to achieve their post 2011 Act 129 EE&C requirements. And of the several changes that were challenged by MEIUG et al, none are based on sufficient evidence that would support the rejection of the changes. Further, the Companies have demonstrated that the changes being proposed to improve administrative

[125] Tr., pp. 97-98.
[126] Tr., pp. 97-98.
[127] Tr. 98-99; Tr. 114.
[128] Tr., p. 99.
[129] Tr. 113-114.

efficiency, including the use of incentive ranges without the need for further Commission approval of changes within those ranges, will provide the Companies with the flexibility that is necessary to achieve their post-2011 EE&C requirements, without violating the Commission's obligation to review all proposed changes to then-approved EE&C plans.

Based on the foregoing, the Companies again ask the Administrative Law Judge to deny MEJUG et al's requested relief and approve the Companies' Amended EE&C Plans consistent with the Findings of Fact and Conclusions of Law that were included in the appendix to the Companies' Main Brief.

Respectfully submitted,

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Petition for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company	:	**Docket Nos. M-2009-2092222 M-2009-2112952 M-2009-2112956**

CERTIFICATE OF SERVICE

I hereby certify that I have on this 20th day of July, 2011, served a true copy of the Reply Brief of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company upon the parties set forth below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), both by electronic mail and U. S. First Class Mail, postage prepaid.

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SHIP TO: (717) 772-7777 BILL SENDER
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commiss
Commonwealth Keystone Bldg.
400 North Street, 2nd Floor
Harrisburg, PA 17120

Ref # 503001 503001 560600
Invoice #
PO #
Dept #

THU - 21 JUL A1
PRIORITY OVERNIGHT

TRK# 7973 2516 5840
0201

ASR
17120
PA-US

NJ MDTA

MDT

50FG2/F556/F5F4

After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

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