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June 25, 2012

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

VIA ELECTRONIC FILING AND HAND DELIVERY

RE: Energy Efficiency and Conservation Program; Docket No. M-2012-2289411

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the original Comments of the Industrial Energy Consumers of Pennsylvania ("IECPA"), Duquesne Industrial Intervenors ("DII"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customer Groups") in the above-referenced proceeding.

Please date stamp the extra copy of this transmittal letter and Comments, and kindly return them to our messenger for our filing purposes.

Very truly yours,

McNEES WALLACE & NURICK LLC

By Teresa K. Schmittberger

Counsel to the Industrial Customer Groups

TKS/sar
Enclosures
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Energy Efficiency and Conservation Program	:	Docket No. M-2012-2289411

COMMENTS OF THE INDUSTRIAL CUSTOMER GROUPS

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Dated: June 25, 2012

On May 10, 2012, the Pennsylvania Public Utility Commission ("PUC" or "Commission") adopted a Tentative Implementation Order ("T.O.") proposing procedures for Phase II Energy Efficiency and Conservation ("EE&C") plans under Act 129, which would begin June 1, 2013. The T.O. provides extensive guidelines for Phase II, including budgets, timelines, reconciliation, and program consistency. The Industrial Energy Consumers of Pennsylvania ("IECPA") is an association of energy-intensive industrial companies operating facilities across the Commonwealth of Pennsylvania. IECPA's members consume in excess of 25% of the industrial electricity in Pennsylvania and employ approximately 41,000 workers. Also sponsoring these Comments are coalitions of Large Commercial and Industrial ("C&I") customers receiving service from most of the Commonwealth's electric distribution companies ("EDCs"): Duquesne Industrial Intervenors ("DII"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customer Groups").

The T.O. was based on the Statewide Evaluator's ("SWE") Electric Energy Efficiency Potential for Pennsylvania Final Report ("Potential Report"), which summarized baseline studies and a comprehensive potential study evaluating the cost-effectiveness of EE&C plans. In the T.O., the Commission recommends that Phase II EE&C plans only contain an energy efficiency component, because the SWE will not be able to evaluate the cost-effectiveness of the demand reduction component until after the summer of 2012. See id. at 15. By November 30, 2013, the Commission will evaluate whether the benefits of peak demand reduction programs exceed the costs, and will measure the success of the programs based on reductions during the top 100 hours of the summer of 2012. Id. at 14. If the benefits exceed the costs, then a demand reduction component could be included in a potential Phase III. Id. at 14-15. To coordinate the timing of energy efficiency and demand reduction programs, the PUC proposes that Phase II plans extend from June 1, 2013 until May 31, 2016. Id. at 10.

With respect to Phase II plans, the T.O. recommends that EDCs have an EE&C program budget that is capped at two percent of EDCs' 2006 revenue. Id. at 14. In addition, consumption targets should be based on 2009/2010 energy year forecasts for each EDC. Id. at 12. The Commission recognizes that these consumption targets may be met through measures for each customer class, but that the amount of class-specific measures may be unevenly-distributed among classes. Id. at 50. EDCs should provide a careful accounting of the costs for implementing these measures. Id. at 59. Any revenues that are produced from these measures, e.g., PJM capacity market revenues, should be reimbursed to the applicable customer class. Id. at 65.

Furthermore, during the transition from Phase I to Phase II, the Commission proposes to allow EDCs to continue to spend funds collected during Phase I after they meet their Phase I consumption targets. Id. at 29. Once Phase II begins, however, all remaining Phase I funds should be reimbursed to customers. Id. at 63. EDCs are expected to file proposed Phase II plans in November of 2012, which would be evaluated and approved by the Commission by March of 2013. Id. at 33. To facilitate future standardization among EE&C filings, all EDCs must file an annual EE&C rate adjustment ten days prior to the June 1 effective date for the rate. Id. at 70.

The Industrial Customer Groups appreciate the Commission's efforts to assess whether cost-effective energy efficiency goals can be established beyond 2013. This type of analysis is required by Section 2806.1(a) of Act 129. Section 2806.1(a) is an essential consumer protection in Act 129 to ensure that any energy efficiency and demand reduction goals remain cost-effective. However, the Industrial Customer Groups are concerned that the baseline studies and potential study were stated based on three broad classes – Residential, Commercial, and Industrial. The Commercial and Industrial segments were analyzed based on SIC codes. Thus, the "Commercial" analysis would include customers as diverse as a small pizza shop and a large hospital or university. Similarly, the "Industrial" analysis could include a small machine shop that has a peak demand of 300 kW and a steel mill with a peak demand of 100 MW. The energy efficiency potential and measures could vary widely within these classes. Future analysis by the SWE, including analysis during the individual EE&C plan litigation, should attempt to refine the potential between and among large and small customers in the Commercial and Industrial segments.

In response to the Commission's request for Comments with respect to the T.O., the Industrial Customer Groups provide as follows:

I. Energy Efficiency Component

The Industrial Customer Groups support the Commission's decision to only include an energy efficiency component within Phase II EE&C plans. Noting that demand reduction targets cannot be evaluated until after the summer of 2012, the PUC correctly identifies that it would be impossible to analyze the cost-effectiveness of the demand response portion of plans in the Final Implementation Order. See T.O., p. 16. As a result, Phase II EE&C plans cannot include a demand response component. This limitation on plans is advantageous for customers, who should not be bound to a second EE&C plan without evidence that the plan is providing long-term benefits. Further, the Commission's decision to only include an energy efficiency component in Phase II EE&C plans would not prohibit demand response participation, which is still available through PJM Interconnection, LLC ("PJM"). See id. at 17.

II. Three-Year Timeframe

The Industrial Customer Groups similarly support the Commission's determination that a three-year timeframe for EE&C plans is optimal. Specifically, Phase II plans would begin June 1, 2013, and end May 31, 2016. Id. at 10. Under Act 129, the Commission is required to periodically review plans to evaluate the success of EE&C programs. See 66 Pa. C.S. § 2806.1(a). The Commission tasked the SWE with preparing annual reports analyzing these programs for each EDC. See T.O., p. 36. At this time, the annual reports are being published approximately seven to nine months after the plan year concludes. Therefore, at the time that the parties are litigating the Phase II Plans, the report for Plan Year 2011 through 2012 will not be available. A three-year plan length enables utilities to modify their plans in a timely manner if the annual reports indicate that improvements or changes to plans should be adopted. In addition, because the Commission would have information about the cost-effectiveness of the demand reduction component of plans by November 2013, a three-year timeframe permits the adoption of a demand reduction component during a potential Phase III EE&C program, if the SWE concludes that one is cost-effective. Id. at 14-15. Demand reduction targets, if adopted as part of a Phase III program, could be measured during the summer of 2016. See id.

The Industrial Customer Groups believe that a three-year plan for Phase II is especially appropriate given the increasing acquisition costs for energy efficiency reductions in Phase II. As the SWE's Potential Report notes, the Program Acquisition Costs for Phase II are higher than Phase I. If a five-year program length is used, the costs are projected to be 62% higher than current acquisition costs. Potential Report, p. 7. The information presented by the SWE during the June 5, 2012 Technical Conference shows a wide range of acquisition costs by EDCs. See SWE June 5, 2012 Presentation, Slides 11 and 12. The Industrial Customer Groups have requested for the SWE to provide a breakdown of program acquisition costs for each EDC and each customer class or rate schedule. A three-year program will allow continued monitoring of the potential for cost-effective energy efficiency goals for each EDC and rate schedule.

III. Planning Timeline and Plan Transparency

In the T.O., the Commission proposes to permit EDCs to file their Phase II EE&C plans on November 1, 2012. See T.O., p. 33. The Industrial Customer Groups remain concerned with the resources that will be necessary to review and litigate all of the EDCs filings at the same time. The Industrial Customer Groups request that the Commission consider a staggered schedule for EE&C plan filings. In addition, the Industrial Customer Groups urge the Commission to require transparency in these initial filings. Because energy costs are a substantial aspect of the budgets of Large C&I customers, projected EE&C costs and surcharge levels should be identified as early as possible to assist Large C&I customers in their planning for 2013 operational budgets. The Industrial Customer Groups recommend that the Commission require EDCs to include their proposed budgets for each rate schedule, as well as whether the EDCs would modify the allocation methodology of EE&C costs for customers. This should also be included in the EDCs' annual reports and any petitions to modify the EE&C Phase II plans (once they are approved). This budget and cost allocation information is essential for Large C&I customers' internal forecasting and budgeting purposes.

IV. Aligning EDC Targets and Funding Using Dollars per MWh of Expected Reductions

For Phase II, the Commission recommends continuing EE&C budgets that are based on a two percent cap of EDCs' 2006 revenue. Id. at 14. Continuing current budgets would mean that EE&C budgets would differ significantly depending on the EDC:

EDC	3 Year Spending Ceiling (total portfolio)	3 Year Program Potential Savings (MWh)	3 Year Program Acquisition Cost ($/MWh)	3 Year % of 2009/10 Forecast	Probable Range of 2009/10 Forecast
Duquesne	$58,637,855	276,722	$211.90	2.0%	1.7% - 2.5%
Met-Ed	$74,600,676	337,753	$220.87	2.3%	2.0% - 2.7%
Penelec	$68,924,232	318,813	$216.19	2.2%	1.9% - 2.7%
Penn Power	$19,979,352	95,502	$209.20	2.0%	1.7% - 2.5%
PPL	$184,504,128	821,072	$224.71	2.1%	1.9% - 2.7%
PECO	$256,185,476	1,125,851	$227.55	2.9%	2.6% - 3.1%
West Penn	$70,687,404	337,533	$209.42	1.6%	1.4% - 2.1%
Statewide	$733,519,122	3,313,247	$221.39	2.3%	2.0% - 2.7%

Potential Report, p. 103, Table 8-7.

As the T.O. acknowledges, the calculation of the two percent cap that was used during Phase I includes generation revenue under capped rates. Id. at 7. It also includes the Competitive Transition Charge and/or Intangible Transition Charge revenues received by the EDC for standard cost recovery. Under capped rates, the rates paid by customers for similar services from the EDCs varied significantly throughout the Commonwealth. See 66 Pa. C.S. § 2802(4). Act 129 capped the budget at two percent of the 2006 revenues, but it does not require this budget. See 66 Pa. C.S. § 2806.1(g) ("The total cost of any plan required under this section shall not exceed 2% of the electric distribution company's total annual revenue as of December 31, 2006."). Although permitting the EDCs to use the full budget may have been appropriate in Phase I under the legislatively-determined goals, the Commission has discretion in

Phase II regarding the new goals and the budget. Continuing the use of the full two percent budget for all EDCs perpetuates the difference in costs among similarly-situated customers that the Customer Choice and Competition Act was designed, in part, to eliminate. To promote fairness for all EDC customers, the Industrial Customer Groups believe that budgets should instead correspond with reduction targets, i.e., Phase II EE&C plans should be based on a uniform dollar per MWh assumption, with no individual budget exceeding 2% of the EDC's 2006 revenues. This uniform approach would create consistency among EDCs throughout the Commonwealth. Moreover, it would encourage EDCs to spend EE&C funds in the most cost-effective manner.

V. Phase I Over-Performance

With respect to the transition from Phase I to Phase II, the Commission proposes that EDCs use the funds collected during Phase I EE&C plans in preparation for Phase II. T.O., p. 29. Once Phase II begins, EDCs must reimburse all remaining funds from Phase I to customers. Id. at 63. Phase II budgets would not be reduced based on the excess Phase I funds. Id.

The Industrial Customer Groups appreciate the Commission's determination that EDCs should return funds to customers at the end of Phase I; however, at the end of Phase I, over-performance should be credited against Phase II goals, preferably as a reduction to the Phase II goals and budget. Because ratepayers provide the funding for EE&C plans, all over-performance should accrue to the ratepayer and not the EDC. See, e.g., T.O., p. 65 ("Because Act 129 energy efficiency resources are funded by the ratepayers, the Commission proposes that revenues received ... should be returned to ratepayers and not be spent as part of an EDC's Act 129 budget.").

In addition, although the Commission proposes allowing EDCs to use the excess Phase I funds to continue their programs until the start of Phase II plans, this proposal is inconsistent with the manner EE&C costs were originally derived. When Phase I plans were adopted, the Commission found that EE&C charges were based on projections of costs that would be subject to future reconciliation. If the actual costs of the plans were lower than anticipated, costs would be returned to the appropriate customer classes. Accordingly, once reduction targets are met, there should be a full reconciliation of EE&C costs on a class-specific basis. Ratepayers should only be expected to fund EE&C plans to the extent that the plans satisfy Act 129 criteria. There is no Act 129 mandate that provides for an over-collection of funds between separate EE&C plans.

VI. Large C&I Alternatives

The T.O. requires at least one energy efficiency measure to be available for each customer class. See id. at 50. For the Large C&I class, in many territories, the measure will be a custom plan where the customer presents a proposed project to the EDC for evaluation, with the amount of the potential compensation to the customer capped based on a portion of the project price. In some plans, the amount that any account can receive is subject to a per customer cap. For larger customers within the Large C&I class, however, there may be energy efficiency projects and upgrades that could be pursued but could never be funded by the EDC's overall budget and those per customer caps. Moreover, the largest customers in the Large C&I class generally pay more into the EE&C plan than the smaller customers, even with the appropriate allocation and rate design of the EE&C surcharges that the Commission approved in Phase I.

To address this intra-class inequity in the Final Implementation Order, the Commission should authorize Large C&I customers to undertake their own energy efficiency projects as an alternative to EE&C plan participation. This project opt-out alternative to EE&C participation has been successfully adopted in Ohio and Virginia. Both Ohio and Virginia permit Large C&I customers to apply for an exemption from EE&C programs. In Ohio, a Large C&I customer must first file an application individually or jointly with its utility, providing (a) the proposed coordination between the utility and customer with respect to the customer's project; (b) the measured and verified energy savings or peak demand reductions of the customer's project; (c) the consequences for diverging from the project; (d) the terms of the agreement between the customer and utility regarding the project; and (e) the methodologies used to measure and verify project results. Ohio Admin. Code 4901:1-39-05(G). In addition, the customer must file an annual report that provides a range of information regarding the project, but most importantly, that the project is cost-effective. Ohio Admin. Code 4901:1-39-08. If the Large C&I customer complies with these requirements, the customer is exempt from EE&C program cost recovery. See id.

Similarly, in Virginia, a Large C&I customer can provide notice to the Commission that it qualifies for nonparticipation in the EE&C program. 20 Va. Admin. Code § 5-316-30. This notice must include: (a) the expected energy efficiency savings of the customer's project; (b) any anticipated change in operation of the project; (c) the measurable and verifiable energy savings; and (d) the methodology for assessing these savings. Id. Here again, Large C&I customers will supplement this notice with annual reports describing the project success. Id.

Both Ohio and Virginia provide detailed examples for a Pennsylvania project self-financing alternative. If the Commission believes that such an option is feasible based on these other state examples, the Industrial Customer Groups are willing to work with the Commission to establish procedures for the Commonwealth. This option would encourage private parties to invest in energy efficiency technologies and promote long-term energy efficiency progress. In essence, the customer will be redirecting what it would pay into the EE&C plan to self-finance a large energy efficiency project over an appropriate time period (e.g., five to twenty years). This self-financing option should also include recognition of prior energy efficiency efforts that the customer may have taken, such as energy efficiency projects implemented to mitigate the substantial rate increases that occurred when the rate caps expired. The significant energy efficiency benefits provided by individual Large C&I customers' energy efficiency projects would advance the fundamental purpose of Act 129 to achieve long-term energy savings throughout the Commonwealth.

VII. Class-Specific Evaluation of EE&C Data

In the T.O., the Commission references the SWE reports as indicators of the cost-effectiveness of the energy efficiency components of current EE&C plans. See T.O., p. 8. In particular, the Potential Report found that the costs of energy efficiency programs were outweighed by the benefits. Id. The Potential Report evaluated the costs and benefits of EE&C plans by reviewing the impact of programs on the Residential, Commercial, and Industrial classes. See, e.g., Potential Report, p. 23.

Although many EE&C programs are targeted for certain rate schedules, rather than entire customer classes, the Potential Report did not include an analysis of program results based on rate schedule. The Industrial Customer Groups requested for the SWE to provide rate schedule specific data for some of the tables in the SWE, and to provide a breakdown of the program acquisition costs by EDC and rate schedule (or class). Although the SWE is working on this request, it is not available at this time. As a result, the Industrial Customer Groups reserve the opportunity to supplement these Comments when this data is available.

Accordingly, the Industrial Customer Groups recommend that the Potential Report and future SWE reports include an analysis of cost-effectiveness based on rate schedule. Measuring the success of EE&C programs as applied to broad customer classes may fail to recognize the results of programs for those customers on a particular rate schedule. In order to assess whether all customers are benefiting from EE&C plans, the Commission should evaluate the cost-effectiveness of EE&C plans on a rate schedule instead of a customer class basis. In addition, these reports should provide further breakdown of costs, indicating what portion of EE&C funds goes toward customer incentives, equipment, and administrative costs. By evaluating the effect of plans on specific customers and the allocation of resources within plans, the Commission may more accurately determine economically-efficient EE&C practices and goals that benefit customers.

VIII. Bidding Energy Efficiency Resources into PJM Market

In the T.O., the Commission authorizes EDCs to bid savings from energy efficiency resources into the PJM capacity market if the resources qualify under PJM rules. See T.O., p. 64. In addition, EDCs should reimburse the revenues received from PJM to those customer classes that created the savings through EE&C programs. Id. at 65. EDCs are not required to bid these savings into the PJM market, but should do so when prudent. Id.

The T.O. is silent with respect to whether Large C&I customers may similarly bid savings from their energy efficiency resources into the PJM capacity market. On this issue, the Industrial Customer Groups recommend that individual Large C&I customers retain the ability to bid savings from their energy efficiency projects into the PJM market, rather than returning the compensation to the entire class. When many Large C&I customers analyze whether to implement a custom project for EE&C purposes, participation in the PJM demand response markets may be an important deciding factor. In the Final Implementation Order, the Commission should clarify that Large C&I customers may retain the ability to bid the savings from their projects into the PJM demand response markets.

WHEREFORE, the Industrial Energy Consumers of Pennsylvania, Duquesne Industrial Intervenors, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Comments.

Respectfully submitted,

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Dated: June 25, 2012