FirstEnergy

76 South Main Street
Akron, Ohio 44308

Kathy J. Kolich
Senior Corporate Counsel

330-384-4580
Fax: 330-384-3875

VIA FEDERAL EXPRESS

June 25, 2012

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

Re: Comments of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to the May 10, 2012 Tentative Order on Act 129 Energy Efficiency and Conversation Program Phase Two - Docket No. M-2012-2289411

Dear Secretary Chiavetta:

Enclosed for filing are an original and three (3) copies of Comments of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to the May 10, 2012, Tentative Order on Act 129 Energy Efficiency and Conversation Program Phase Two.

Please date stamp the copy and return to me in the enclosed, postage-prepaid envelope. Should you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,

Kathy J Kolich

Enclosures

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Act 129 Energy Efficiency and Conservation Program Phase Two	:	Docket No: M-2012-2289411

**COMMENTS OF METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY,
PENNSYLVANIA POWER COMPANY AND WEST PENN POWER COMPANY
TO THE MAY 10, 2012 TENTATIVE ORDER ON ACT 129 ENERGY
EFFICIENCY AND CONSERVATION PROGRAM PHASE TWO**

I. INTRODUCTION

On October 15, 2008, House Bill 2200, Act 129 of 2008, P.L. 1592, 66 Pa. C.S. §§ 2806.1 and 2806.2 ("Act 129") was signed into law and requires the Commonwealth's largest electric distribution companies ("EDCs") to develop Energy Efficiency & Conservation ("EE&C") programs for a period of time after May 31, 2012 ("Phase II"). Act 129 requires the Pennsylvania Public Utility Commission ("Commission") to evaluate the costs and benefits of the EE&C programs by November 30, 2012 and directs the Commission to set new incremental consumption and peak demand reduction targets for Phase II, *if the benefits of the programs and plans exceed the costs.* In accordance with Act 129's directives, the Commission implemented several activities to determine whether additional Phase II incremental consumption and peak demand reduction targets should be adopted and, if so, at what levels.

On March 1, 2012, the Commission issued a Secretarial Letter seeking comments on a number of topics regarding the future phase of EE&C Programs through continuation of Act 129. The Commission also held a stakeholder workshop on March

16, 2012 to provide interested parties an opportunity to identify additional issues and concerns regarding the blueprint for future EE&C Programs and to address any questions regarding the topics and issues presented in the Secretarial Letter. As indicated in the March 1, 2012 Secretarial Letter, the Commission hired GDS Associates, the Statewide Evaluator ("SWE"), to conduct a market potential study ("Potential Study") which was completed and released on May 8, 2012.

Based on the SWE's Potential Study, the Commission concluded that the benefits of a Phase II Act 129 program will exceed the costs and, therefore, proposed to adopt additional required incremental reductions in consumption for another program term. The Commission has not completed evaluation of the cost and benefits of programs that reduce peak demand.

On May 10, 2012, the Commission issued a Tentative Implementation Order outlining its proposed standards for Phase II EE&C Programs beginning June 1, 2013 and requested that Stakeholders comment on those standards.

Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power") and West Penn Power Company ("West Penn") (collectively, the "Companies") appreciate the opportunity to address the specific issues and topics raised in the Tentative Order. As a preliminary matter, however, the Companies agree with Chairman Robert F. Powelson's March 1, 2012 Statement in which he noted that "[i]t is essential, ... that any future Act 129 programs are effective uses of consumers' money" and the Commission "must have all of the facts at [its] disposal to ensure the costs and benefits of these programs truly weigh in on the side of the consumers." Section 2806.1(C)(3) provides the Commission with significant latitude in how it performs its cost-benefit analysis, requiring only that the Commission utilize an analysis "consistent with a total resource cost ['TRC'] test or a cost benefit analysis determined by the Commission." In light of this latitude, the Companies encourage the Commission to look beyond the mechanics of the TRC test, which analyzes the benefits over the life of a measure. Most customers, both individually and as a business, budget for the near term and not for an extended period or over the life of a measure. In these difficult economic times, the Commission should also weigh the burdens on these customers, who have to pay the EE&C surcharge, but may not get any benefit simply because their budgets or financial payback criteria may not allow them to make the necessary investments. Such customers may be unable to afford energy efficiency measures themselves even with program subsidies due to economic conditions, yet would be faced with the double burden of paying for those programs while providing subsidies for others.

Similarly, some businesses who have already implemented EE&C projects could find themselves subsidizing competitors who have not already done so, while other businesses may find themselves in competition with non-Pennsylvania companies with no similar EE&C costs. In sum, while the Companies are committed to continuing to work with their customers to reduce their energy consumption in the most cost-effective manner, the Companies believe that the Commission should weigh other factors beyond those included in the TRC test such as the short-term economic impacts and non-participant subsidies to participants. The Companies also urge the Commission to make public their analysis of the same.

Although the Companies are not convinced that all relevant factors have been considered in determining whether the continuation of EE&C programs through Phase II is justified, the Companies recognize that the Commission has given significant consideration to the structure of Phase II. Therefore, the Companies offer the following comments on that structure, which the Companies believe should be considered before the issuance of a Final Order.

II. EVALUATION OF THE EE&C PROGRAMS AND ADDITIONAL TARGETS

A. Reduction Targets and Aligning Targets and Funding

The Commission proposes to adopt a three-year consumption reduction requirement for Phase II that is based on: (i) the 2009/2010 energy forecasts; (ii) the full 2% of 2006 annual revenue being spent for the energy efficiency program in each year of Phase II; and (iii) information contained in the SWE's Potential Study.[1] As articulated in the Tentative Order, "These consumption reduction requirements vary by EDC based on the specific mix of program potential, acquisition costs and available funding." For the Companies, the targets and program acquisition cost ($/MWh) proposed for comment are:

Met-Ed	2.3%	337,753 MWh	$220.87/MWh
Penelec	2.2%	318,813 MWh	$216.19/MWh
Penn Power	2.0%	95,502 MWh	$209.20/MWh
West Penn	1.6%	337,533 MWh	$209.20/MWh

The Companies commend the Commission for recognizing the potential inequities arising under the current structure and support the Commission's efforts to

[1] Although not cited in the Tentative Order, the Commission appears to be basing its conclusion on Table 1-3 of the Potential Study, which is more fully discussed in Section Eight of that Study.

remedy the situation by attempting to align an EDC's target with its funding limitations. However, the Companies suggest that the Commission should consider more than just the results in the Potential Study, namely, the qualifications and caveats contained therein, as well as the realities of the environment in which the Companies operate.

For example, the Commission should consider the inverse relationship between acquisition costs and the EDC-specific customer rates. EDC-specific acquisition costs should be higher for an EDC with lower rates and/or a more rural service territory than for one with higher rates and/or a higher population density. Customers with lower rates have less economic motivation to invest in energy efficiency technologies, or to adopt conservation behaviors. To overcome that barrier, EDCs with lower rates may need to provide higher incentives, involving higher acquisition costs than those EDCs with higher rates. This conclusion is not reflected in the acquisition costs presented in the Potential Study.

Moreover, based on the Companies' review of the Potential Study, it does not appear that the process used by the SWE that served as the basis for the Commission's adoption of new reduction goals is precise enough to form the basis for mandatory goals which may have mandatory penalties. Acquisition costs should more fully reflect the caveats that the SWE presented in the Potential Study. For example, Section 8 of the Potential Study discusses uncertainties that the Commission must consider in setting a target, including those affecting costs, customer participation and the impact on costs associated with specific carve-outs. Qualifiers from Section 8 of the Potential Study include:

- Due to the uncertainty in forecasting, marketplace technologies and costs, and expected program adoption, program potential may be best considered as a range of probable outcomes. Based largely on analysis within this study, SWE's experience and research of other utilities the most likely statewide program potential annual savings for years 2013-2018 ranges between 0.7% to 0.9% of 2009/2010 forecasted sales. Consequently, the expected probable acquisition cost may range from $170 to $250 per first year MWh savings. Figure 8-2 illustrates this range from 2013-2018 along with the most probable outcomes summarized in Table 8-8. (Potential Study, p. 103)

- ... this analysis does not consider the impacts of program "carve-outs" or "set-asides" for specific sectors or target markets. Current Phase 1 of Act 129 has two such set-asides for residential low-income and governmental/non-profit sectors. Addition of set-asides could change this analysis, likely with the effect of reducing program potential. For instance, residential low-income programs often utilize 100% incremental measure cost incentives. Higher budgets for set-aside programs would have the consequence of reducing the overall budget for the broader portfolio, leading to reduced program potential savings. (Potential Study, p. 104)
- ... actual energy and demand savings will depend upon the level and degree of Pennsylvania residences and business participation in the EE programs offered by the EDCs. (Potential Study p. 107)

The Potential Study also does not appear to consider other factors, such as those listed below, that support the use of acquisition costs that are *higher* than those included in the Tentative Order:

- The Potential Study generally references 2012 TRM protocols (with some adjustments for anticipated changes in code for major technologies). The TRM is the yardstick used for assessment of savings, and experience has proven that the TRM will change over time, thus adding uncertainty as to the level of savings a program can deliver for a given level of investment. The Commission should include a material "reserve margin" in use of acquisition costs to mitigate the impact of establishing targets using one set of assumptions, and holding the Companies accountable for results using another;
- Codes are changing and will continue to change in the future, potentially making **reportable** savings more expensive (and difficult to achieve). Therefore, savings currently expected to be reportable, may not be if codes and standards change, perhaps making replacement savings more expensive that currently contemplated or known. The proposed acquisitions costs leave no margin for such a situation;
- The Companies have experienced numerous instances where customers that do not support participation in the programs out of principle even

though they could be implementing measures supported by the programs. It does not appear that the SWE's Potential Study factors this into its assessment; and

- Table 1-3 of the Potential Study shows West Penn Power and Penn Power to have the lowest acquisition costs in the State. This is in direct conflict with the fact that these EDCs have the lowest *rates* in the state. Because customers with lower rates have less economic motivation to invest in energy efficiency measures, it stands to reason that **higher** acquisition costs would be required to overcome market barriers. Accordingly, West Penn Power and Penn Power should have acquisition costs among the highest in the state, not the lowest. Examination of the results in the Potential Study for other scenarios (i.e., Program Potential Scenario 2) reverses the ranking of acquisition costs, such that EDCs with highest rates have the lowest acquisition costs, as one would expect.

While inputs to the SWE's modeling process include an incremental 25% to incentive funding estimates and a similar increment to non-incentive costs, the C Commission should use a more conservative approach to acquisition costs used for setting mandatory targets. Program designs and budgets for Phase I were based on the budgets and targets established for Phase I. As the Commission observed, this resulted in inequities among the EDCs, which for West Penn Power has posed significant challenges to achieving its EE&C goals. As such, basing Phase II acquisition cost on Phase I, albeit with the incremental increase, continues the budget inequity which the SWE used as the basis of the proposed targets. Given the statutory consequences if targets are not met, the targets that are established should use conservatively high acquisition costs.

In light of the foregoing, the Companies believe that the acquisition costs used to support the results presented in Table 1-3 of the Potential Study are too low and that the Commission should use adjusted values considering the above observations. The Companies would recommend adoption of acquisition costs of $250/annually saved MWh as noted on page 103 of the Potential Study and perhaps $300/annually saved MWh depending on treatment of sector carve-outs. While Act 129 provides the

Commission with the authority to implement additional EE&C requirements, any such process must do so without violating due process. Thus, the Final Order should adjust the savings targets to recognize the arguments contained herein or, alternatively, initiate a separate proceeding where EDCs could present evidence on projected acquisition costs from which the Commission could then set final Phase II targets.

III. PEAK DEMAND REDUCTION

A. Exclusion of Peak Demand Reduction Obligations for Phase II

The Commission suggests that it not establish Phase II peak demand reduction targets at this time because the Commission does not have the information required to make such a determination, instead proposing to wait for the SWE's demand response study. (Tentative Order at p. 16.) The Companies agree that the Commission should not establish no peak demand reduction targets in Phase II. Waiting for the SWE report is not practical because the Companies will have already developed their Phase II EE&C Plans, allocating their funds under the 2% spending cap. The Companies further believe that demand reduction targets are unnecessary because of the robust participation in the competitive and evolving PJM capacity market. In FirstEnergy's Pennsylvania footprint alone, participation in PJM's capacity market has grown from 424 MW in 2008/2009 to 1,152 MW in 2011/2012 -- 272% of 2008 levels; and customer sites, from 248 sites to 1,677 sites -- 676% of 2008 levels. These statistics are significant in that the participation in PJM programs has grown to approximately 10% of the Companies' peak load. Any additional peak demand reduction requirements for the EDCs would cause them, as regulated entities, to compete with this evolving market through the EDC's subsidized EE&C programs. If left to competitive markets, it is likely that such participation will continue to grow, thus realizing the objectives of achieving peak demand management without the additional cost to Pennsylvania electric customers through EE&C charges.

If, however, the Commission is contemplating the inclusion a future demand reduction requirement during Phase II, then it must provide sufficient notice of the amount of funds EDCs should withhold from their respective 2% spending caps. Based upon this withholding, the Commission must then adjust its energy efficiency targets consistent with the acquisition formula discussed above.

B. Amending the Top 100 Hours Methodology for Future Phases

While the Companies do not believe that any peak demand reduction targets are necessary through Act 129, should the Commission decide that a Phase II demand response program is appropriate, the Companies believe the Top 100 hour requirement, along with the need to actually curtail, should be modified, and additional peak demand results should be included for compliance purposes. Each of these changes supports demand response capacity and reduces costs.

Given that there is uncertainty as to when the highest 100 hours of annual peak demand on the system will occur, an EDC must guess – a guess that is subject to the whims of Mother Nature and the economy, among other things. And because it is a guess, the EDC must include a margin for error. This margin of error requires EDCs to over-comply, thus increasing the costs of the programs to customers. Therefore, if there is a peak demand reduction requirement, it should not be benchmarked against a system peak that can only be known after the fact.

Moreover, if EDCs are required to achieve peak demand reductions beyond those already addressed by PJM, the EDC should only have to demonstrate the *ability* to reduce peak load, rather than actually reduce peak load during the top 100 hours. This ensures that the demand reductions are not called on unless they are needed. In other words, under today's top 100 hour methodology, demand reductions are be effectuated solely to meet an interpretation of the requirements of Act 129 to meet compliance targets, and have no foundation in benefits to customers. By avoiding the dispatch of demand resources to meet that interpretation, customers will not be inconvenienced if, in any given year, sufficient capacity exists either due to a downturn in the economy, an unusually cool summer, or more cost effective generation. Finally, since the goal of peak demand mandates is to actually reduce peak demand, the focus should be on achieving the goal and not so much on who is accountable for achieving the goal. Because individual customers and CSPs can make arrangements to independently participate in PJM's demand response program which constrains EDCs' program opportunities, EDCs should be able to include the results from these sources in any peak demand reduction mandate.

In sum, each of these suggestions contributes to achieving the overall objective of delivering value associated with demand management, but does so at a lower cost than can be achieved under the current structure.

IV. CARVE-OUT FOR GOVERNMENT, EDUCATIONAL AND NONPROFIT ENTITIES

A. Prescription of a Government/Educational/Nonprofit Carve-Out

For Phase I, Act 129 required that the EE&C Plans obtain a minimum of 10% of all consumption and peak demand reduction requirements from units of the federal, state and local governments, including municipalities, school districts, institutions of higher education and nonprofit entities. As the Commission recognized, a carve-out for this sector is not required under Phase II of Act 129. Nevertheless, the Commission recommends continuing this carve-out. (Tentative Order at p. 18.) The Commission also found that EDCs should not be subject to penalties for failing to achieve reductions in consumption required under Act 129. (Id. at p. 19.) Rather, the Commission states that a failure by an EDC to meet the government/educational/nonprofit sector requirement subjects that EDC to the penalties contained in 66 Pa. C.S. §3301(a). (Id.)

1. Sector Carve-outs are Inappropriate.

As discussed in their comments to the Secretarial Letter, the Companies oppose a Phase II sector "carve-out," believing such a requirement to be redundant with the programs and measures offered to commercial and industrial customers, and causing unnecessary cost increases by requiring additional plan design, marketing, administration and implementation to specifically target these sectors. The Companies programs for Commercial and Industrial customers are directly applicable and essentially the same as programs for their government, municipalities, school districts, institutions of higher education and nonprofit entities. As such, there is no reason to require a "carve-out" when doing so does not provide any different program services. Further, many of the participants in government, educational and non-profit are constrained by budget cuts that preclude them from participating in many programs, absent extremely large incentives up to and including the total cost of the project, thus making these programs more costly than other potential programs for the general sectors. Lastly, although the Companies anticipate meeting this goal for Phase I, the task has been anything but easy. Indeed, the

Companies' met this goal in part through streetlight programs, which will be less available in Phase II, making this target even more daunting.

2. Penalties for Sector Targets are Inappropriate.

Furthermore, while the Companies question the Commission's ability to subject EDCs to penalties under 66 Pa. C.S. §3301(a) for failing to meet this government target, it is inequitable to do so. First, the Companies have no control over whether government/educational/nonprofit entities can or will participate in their programs. They have no control over the amount of potential that remains in this sector in their service territory. If there is potential, they have no control over whether these entities can afford to participate in their programs. While the Companies can significantly incentivize these entities to participate, the 2% spending cap limits the extent to which the Companies can do so. Further, as discussed above, the SWE's Potential Report did not factor in this carve-out when establishing Phase II targets.

Because of this lack of control over the government sector potential and participation, it is inequitable for the Commission to impose penalties, should the targets not be attained – especially when Act 129 neither requires a government carve-out nor any associated penalties. Accordingly, the Companies ask the Commission to modify its Tentative Order to exclude this carve-out, eliminate any related penalties, and, instead, create an aspirational goal that requires EDCs to use commercially reasonable efforts to achieve them.

B. Inclusion of On-Bill Financing

The Commission stated that it does not have enough information at this time to prescribe the implementation of on-bill financing of EE&C measures. As such, the

Commission suggests a working group. As discussed in their comments to the Secretarial Letter, the Companies do not agree that on-bill financing provided by utilities is an appropriate program. Neither utilities nor ratepayers are appropriate sources of funding, and neither should serve as banks or financial institutions. Trying to use them as such in these circumstances is fraught with legal and practical complications.

While the Companies do not believe on-bill financing is practical, the Companies believe that any program that offers financing to customers for undertaking EE&C projects should be provided on a uniform basis throughout the Commonwealth and financed through other entities. The Companies look forward to discussing this and other related issues in any working group that is convened.

V. LOW-INCOME MEASURES

A. Prescription of a Low-Income Carve-Out

Like the government/educational/nonprofit carve-out, the Commission proposes to continue the prescription that each EDC's EE&C Plan include specific energy efficiency measures for households at or below 150% of the Federal Poverty Income Guidelines, and "proposes that each EDC's Phase II EE&C Plan obtain a minimum of four-and-a-half percent (4.5%) of the consumption reduction requirements proposed above in Section A of this order from this sector," even though the Commission recognizes that Phase II does not require such a carve-out. Like the government carve-out, the Commission believes that failing to achieve targets established for the low income carve-out should subject EDCs to penalties under 66 Pa.C.S. §3301(a). (Tentative Order at p. 25.) For all of the reasons related to the government carve-out discussed above, the Companies similarly believe that no carve-out for low income customers is necessary.

Alternatively, costs to serve these customers are expected to rise. For example, the WARM Plus and LIEEP programs are targeting the highest electric use low income customers. Going forward, the potential for low income savings decreases as these programs are utilized. Additionally, the opportunity for low-cost savings is expected to decrease over time as standards and baselines change, least-cost EE&C programs are implemented and results are obtained, and TRM values decrease. For all of these reasons, the Companies believe that penalties associated with any such requirement are inappropriate.

Absent removal of the proposed penalties, the Companies must oppose the proposed 4.5% target as neither supported in the Act, nor by an evidentiary process relative to its validity for each EDC. Therefore, rather than designate a wholesale 4.5% reduction target, the Companies propose that during the evidentiary hearing in which the Companies' Phase II EE&C Plan is addressed, they be permitted to present evidence to support the estimated target and actual acquisition cost for the low income carve-out sector and modify the low income targets accordingly. As an alternative, the Companies suggest that if the Commission determines that a carve-out be required for Phase II, that the Commission continues its requirement for the EDCs to make available the number of measures to low income customers as required under Phase I. Moreover, because the SWE Potential Study did not factor in any such carve-out, should one be required, the Commission should adjust overall compliance targets accordingly.

B. 250% of the Federal Poverty Income Level Guidelines

The Commission proposes that the EDCs have the flexibility to voluntarily expend the low-income programs to include households up to 250% Federal Poverty Income Guidelines. Commissioner Witmer specifically requested that commentators explain whether these modifications are consistent with the policy goals of Act 129 and in the public interest. The Companies agree with increasing the low-income programs to include households up to 250% Federal Poverty Income Guidelines, given enhanced coordination with other programs in the Commonwealth, needs in that sector, and the potential savings contributions from that group to meet any low-income sector targets. Programs with limits to 250% of Federal Poverty Guidelines expand the pool of eligible customers and enable additional coordination with other State and federal programs. Increasing the poverty level requirement allows Act 129 to serve a group of customers who are not currently eligible for other EDC low-income programs and who, nevertheless, may not have the means to participate in other residential programs. Thus, customers who have difficulty paying their electric bills would be eligible for programs that reduce the overall cost of those bills. Expansion to 250% would also provide more opportunities to coordinate with State weatherization and gas utility programs with comparable poverty guidelines, thus providing additional leverage for a more comprehensive energy savings solution. Pennsylvania law mandates coordination with such programs[2], and raising the income level eligibility to 250% would facilitate that coordination.

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[2] 66 Pa.C.S.A. § 2806.1.b.1.i.G

VI. ACCUMULATED SAVINGS IN EXCESS OF REDUCTION REQUIREMENTS

The Commission proposes to allow the EDCs to accrue savings beyond their 3% target during Phase I and to use those savings towards any Phase II consumption reduction targets. (Tentative Order at p. 29.) The Companies support this proposal because it allows existing EE&C programs to continue, thus maintaining the momentum gained since implementation – momentum that may be lost should there be a suspension of the program between phases. Moreover, without such a credit, there would be no incentive for an EDC to continue a program, given the prohibition against recovery of lost distribution revenues. 66 Pa. C.S. §2806.1(K)(2). Finally, as has already been discussed, for various reasons, EE&C savings are becoming more difficult to achieve with such achievement coming at a higher cost. By allowing the EDCs to build a credit for use during Phase II, compliance costs would be kept to a minimum.

VII. PLAN APPROVAL PROCESS

A. Additional Phase Two Orders

The Companies agree with the timeline outlined on page 33 of the Tentative Order, with the exception of the Final Template release date which is currently scheduled for September 24, 2013. While the Companies believe this to be a typographical error and that it should have been September 24, *2012,* the Companies request that this be changed to September 4, 2012 to afford the EDCs sufficient time to complete their filings by November 1, 2012. The EDCs need this time to complete the template and perform final plan design, checks and reviews in order to complete the filing by November 1, 2012.

VIII. PROCESS TO ANALYZE HOW THE PROGRAM AND EACH PLAN WILL ENABLE EDCs TO MEET REDUCTION REQUIREMENTS

The Commission raises no new issues in this section, instead simply reiterating the SWE's annual consumption recommendations and the Commission's demand response recommendation. Therefore, the Companies incorporate their comments on these topics which have already been addressed above.

IX. PROCESS TO MAKE RECOMMENDATIONS FOR ADDITIONAL MEASURES

The Commission proposes to follow Phase I methods to make recommendations for additional measures giving EDCs three options: (i) EDCs can utilize the annual report filing process; (ii) EDCs can petition the Commission to rescind and amend its prior orders approving the plan; or (iii) EDCs can take advantage of the expedited review process set forth in the June 9, 2011 Secretarial Letter in Docket No. M-2008-2069887. The Companies generally agree with these points with one exception. Having taken advantage of the expedited review process, the Companies believe it to be more efficient than the other two alternatives. However, in a recent Secretarial Letter to the Companies, Staff included a new provision that requires future requests for approval of minor EE&C plan changes through the expedited review process [to] include a total resource cost test analysis for each measure being revised and for [an EDC's] entire EE&C plan portfolio to ensure that the Act 129 mandates are being fulfilled in a cost effective manner." (*See e.g.* June 14, 2012 Secretarial Letter, Docket No. M-2009-2093218.) Given the nature of the changes contemplated through the expedited review process, the Companies find this to be unduly burdensome, based on comments under development for the TRC Order. The changes submitted through this process involve minor changes with no impact on customer class budgets. In order to comply with this directive, an EDC would have to re-model their entire plan, which is an expensive and time consuming undertaking. This requirement, in essence, undermines the intent of the expedited review process that was put in place for minor plan changes and requires fundamental plan development activities comparable to those required for submitting a revised plan. Given the shorter time frame contemplated in the Commission's Tentative Order, it is imperative that the EDCs are able to perform minor plan changes in a timely manner. In light of this, the Companies urge the Commission to clarify in the Final Order that no such TRC requirement is necessary for minor plan changes.

X. PROCEDURES TO REQUIRE COMPETITIVE BIDDING AND APPROVAL OF CONTRACTS WITH CSPS

The Commission will not require the EDCs to file CSP RFP procedures or the CSP contract criteria, unless changes are proposed to the RFP procedures or the standard form contracts. (Tentative Order at p. 53.) The Commission, however, will require the EDCs to again competitively bid all CSP contracts for Phase II programs, regardless of whether the EDCs have an existing contract with a CSP to provide services associated with existing measures that will continue in Phase II. (Id.)

The Companies believe that requiring the proposed competitive bid process for all contracts is an unwarranted requirement that will waste money and resources which unnecessarily increases costs. As a preliminary matter, implementing a competitive bid process is time consuming and takes Company resources away from other matters more pertinent to energy efficiency programs. Moreover, incumbent CSPs already have relationships with customers. They have the processes and procedures in place with the Companies. Their employees are already trained. They have the communication and reporting systems already in place with most, if not all, of the capital costs of such systems already recovered during the Act 129 Phase I compliance period. Therefore, if the Companies were required to competitively bid for these services again, it stands to reason that the incumbent CSP would be the least cost provider, given that it could avoid these capital, start up and customer acquisition costs. Because of this, as well as the existing relationship with the Companies, the incumbent CSP would more than likely be awarded the contract, thus making the competitive bid process an unnecessary and costly exercise.

Further, any competitive bid process would have to commence no later than January 2013 in order to complete the RFP solicitation, evaluation, selection and ultimate contract negotiation in time to implement by June 1, 2013. Because the Companies Phase II EE&C Plans will not be approved in this time frame, any bids would have to include risk premiums that would not be necessary without such a bid requirement.

Instead of requiring EDCs to re-bid work currently being satisfactorily performed by incumbent CSPs, the Companies recommend that such a bid process only be required if the Companies desire to change CSPs, or the incumbent CSP cannot meet the following criteria:

- The CSP is currently providing program services under Phase I that are substantially the same as approved under Phase II;
- The CSP achieved or exceeded the goals or services stated in the negotiated contract and subsequent amendments;
- The CSP performed the services at or under the contract budget and subsequent amendments;

- The EDC attests it has reviewed and adjusted the pricing structure for Phase II programs and assures the structure is appropriate and at least as competitive as Phase I contracts;
- No legitimate customer complaints are on record with the Commission or the EDC; and,
- All quality of service issues have been promptly addressed by sustainable remedies in the spirit of continuous improvement.

The Companies believe that these prerequisites, when coupled with the 2% spending cap, will provide customers adequate protection from overspending for goods and services related to the implementation of the Companies' Phase II EE&C Plan.

XI. EDC COST RECOVERY – BIDDING ENERGY EFFICIENCY RESOURCES INTO THE PJM CAPACITY MARKET.

The Commission proposes that, when prudent, the EDCs bid those energy efficiency resources meeting PJM criteria and requirements into the appropriate PJM capacity market auctions, provided they have the right to bid those resources under PJM rules. (Tentative Order at p. 65.) Revenue received from the bidding of those resources and measurements should be returned to ratepayer. (Id.) To avoid ambiguity with Commission expectations and minimize risks of penalties for failing to bid energy efficiency resources into PJM, the Companies respectfully ask the Commission to provide specific guidelines or parameters to be followed when bidding these resources into the PJM capacity auctions. One such example could be for EDCs to be encouraged to bid those energy resources that are actually installed at the time of the auction, with the intent to bid additional resources as they become available into subsequent interim auctions.

Alternatively, the Companies could be directed to bid future resources. However, because participation in PJM's Base Residual Auction requires commitments three to four years into the future, which will likely extend beyond the period approved in an EE&C Plan, there is risk of not having the resources when required to deliver them, thus subjecting the Companies to penalties. Because of the pass through to customers of revenues received from the auctions, there is no financial upside for the Companies to assume such risks. Therefore, if the Commission develops guidelines that require EDCs to speculate on the availability of future energy credits being available for PJM auctions, the Commission also must make it clear that the EDCs will be permitted to recover the cost of any penalties if incurred while following such a directive.

XII. CONCLUSION

The Companies again thank the Commission for the opportunity to provide comments on the Commission's recommendations related to the future of Act 129 in the Commonwealth.

Respectfully submitted,

Dated: June 25, 2012

Kathy J. Kolich
Attorney No. 92203
FirstEnergy Service Company
76 S. Main Street
Akron, OH 44308
Phone: (330) 384-4580
Fax: (330) 384-3875
Email: kjkolich@firstenergycorp.com

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

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Act 129 Energy Efficiency and Conservation Program Phase Two	:	Docket No: M-2012-2289411

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by overnight Federal Express, as follows:

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

RECEIVED
JUN 25 2012
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Service by electronic mail, as follows:

Megan Good
Bureau of Technical Utility Services
megagood@state.pa.us

Dated: June 25, 2012

Kathy J. Kolich

Kathy J. Kolich
Attorney No. 92203
FirstEnergy Service Company
76 S. Main Street
Akron, OH 44308
Phone: (330) 384-4580
Fax: (330) 384-3875
Email: kjkolich@firstenergycorp.com

From: (330) 384-5801
KATHY GRANT
FIRSTENERGY CORP
LEGAL DEPARTMENT - 15TH FLOOR
76 SOUTH MAIN STREET
AKRON, OH 44308

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commiss
Commonwealth Keystone Bldg.
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Harrisburg, PA 17120

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