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July 9, 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 Reply 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 Reply 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

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Docket No. M-2012-2289411

REPLY COMMENTS OF THE INDUSTRIAL CUSTOMER GROUPS

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Power Industrial Intervenors

Dated: July 9, 2012

On June 25, 2012, stakeholders submitted Comments to the Pennsylvania Public Utility Commission ("PUC" or "Commission") with respect to the Commission's Tentative Implementation Order ("T.O.") proposing the framework for Phase II Energy Efficiency and Conservation ("EE&C") plans under Act 129. The Industrial Customer Groups, including 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"), filed Comments on a range of issues within the T.O. that affect Large Commercial and Industrial ("C&I") customers throughout the Commonwealth. 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. The remaining Industrial Customer Groups are coalitions of Large C&I customers receiving service from most Pennsylvania electric distribution companies ("EDCs"). The Industrial Customer Groups submit the following Reply Comments to address certain erroneous contentions set forth within other parties' Comments. In addition, to the extent that other parties raise issues not discussed herein that conflict with the Industrial Customer Groups' Comments, the Industrial Customer Groups continue to endorse their original positions.

I. Elimination of the Demand Response Component During Phase II

In the T.O., the Commission correctly found that Phase II EE&C plans, beginning June 1, 2013, cannot include a demand reduction ("DR") component. See T.O., p. 16. This well-reasoned determination is based on explicit language within the Public Utility Code:

The commission shall direct an electric distribution company to modify or terminate any part of a plan approved under this section if, after an adequate period for implementation, the commission determines that an energy efficiency or conservation measure included in the plan will not achieve the required reductions in consumption in a cost-effective manner under subsections (c) and (d).

66 Pa. C.S. § 2806.1(b)(2). The Commission cannot evaluate the cost-effectiveness of DR programs because DR performance cannot be assessed until after this summer. Moreover, if the Commission were to extend DR programs, and the costs of the programs were ultimately found to outweigh the benefits, then the Commission would be in violation of Act 129. It would be unjust and unreasonable to bind customers to a Phase II DR program when they may not be cost-effective. The best method for addressing this statutory obligation is to only include an energy efficiency ("EE") portion in Phase II EE&C plans, and utilize the DR data and Statewide Evaluator Study from Phase I to determine whether DR programs should be implemented in a potential Phase III.

Despite this Act 129 requirement, the Joint DR Commenters recommend that the Commission approve Phase II DR programming. In reaching this misguided conclusion, the Joint DR Commenters refer the Commission to 66 Pa. C.S. § 2806.1(d)(2):

By November 30, 2013, the commission shall compare the total costs of energy efficiency and conservation plans implemented under this section to the total savings in energy and capacity costs to retail customers in this Commonwealth or other costs determined by the commission. If the commission determines that the benefits of the plans exceed the costs, the commission shall set additional incremental requirements for reduction in peak demand for the 100 hours of greatest demand or an alternative reduction approved by the commission. Reductions in demand shall be measured from the electric distribution company's peak demand for the period from June 1, 2011, through May 31, 2012. The reductions in consumption required by the commission shall be accomplished no later than May 31, 2017.

The Joint DR Commenters state that "[t]he presence of 2017 targets in Section (d) indicates a presumption that Demand Reduction programs will continue through 2017." Joint DR Comments, p. 7. When these supposed 2017 targets are viewed in the context of the entire provision, however, the Joint DR Commenters' argument appears meritless. The statute explicitly states that by November 30, 2013, the Commission will determine whether the benefits of the DR programs during the 2012 summer exceeded the costs of the programs See 66 Pa. C.S. § 2806.1(d)(2). Only "[i]f the Commission determines that the benefits of the plans exceed the costs" does Act 129 permit an additional round of DR programs. Id. (emphasis added). Moreover, contrary to the Joint DR Commenters' perspective, this statute never references any 2017 targets. It would be unjust and unreasonable to charge ratepayers for any Phase II DR programs without determining that the charges would have corresponding benefits.

In addition, the Joint DR Commenters erroneously allege that "there is no language in Act 129 that suggests the Pennsylvania legislature contemplated anything other than a continuous demand reduction program." Joint DR Comments, p. 7. To the contrary, the statute specifically establishes that demand reductions must occur by May 31, 2013, followed by a Commission determination of the cost-effectiveness of DR plans that must occur by November 30, 2013. Additional demand reduction goals that would be achieved by May 31, 2017, are to be established only if the DR plans are cost-effective. The plain language of the statute contemplates a break in the DR plans while the Commission fulfills its critical duty of confirming whether additional DR goals are warranted and cost-effective.

Thus, the Commission also must reject the recommendation by the Office of Consumer Advocate ("OCA") that EE&C plans, including DR measures, continue for an additional three

months.¹ OCA Comments, p. 4. In addition to violating Act 129, if the plans are extended for any period of time, there would be a range of new problems facing the Commission. For example, it would be unclear which measures should be extended and how the costs for these measures should be collected and reconciled. For Large C&I measures, customers have been paying a surcharge since January 1, 2010, to compensate participating customers for load reductions during a single summer (2012). Would these participating customers be entitled to the same compensation for the summer of 2013? What would the impact be on the Act 129 surcharges for all customers to provide this compensation for 2013? For Large C&I measures in particular, it would be impossible for a customer to evaluate whether participation in DR programs would be cost-effective without specific curtailment and compensation parameters. More importantly, the Commission would have no way to determine whether the total resource cost ("TRC") test is satisfied.

Furthermore, none of the policy rationales set forth by the Joint DR Commenters supports the continuation of DR programs within Phase II EE&C plans. The Joint DR Commenters' concern regarding stranded infrastructure costs is unpersuasive considering that Act 129 contemplates the termination of the DR measures if the measures are not cost-effective and the establishment of further DR goals only if the Commission determines that the benefits of the plans outweigh the costs. 66 Pa. C.S. § 2806.1(b)(2) and (d)(2); see also Joint DR Comments, p.

¹ The OCA endorses a four-year Phase II EE&C program, including DR measures, in order to ensure that EDCs meet their DR targets by 2017. OCA Comments, fn. 5. Despite the OCA's concern that Phase III DR participation would be too limited to ensure Act 129 compliance, the Industrial Customer Groups believe that the Commission could easily supervise the solicitation of DR participants if a Phase III DR program is ultimately deemed cost-effective.

9. If either contingency occurs, then the infrastructure installed may not be necessary.² Accordingly, any stranded investments by DR providers would likely have a limited impact.

Importantly, DR providers can continue to utilize DR infrastructure to provide DR within the PJM Interconnection, LLC ("PJM") markets. See T.O. at 17. The Joint DR Commenters criticize the PJM emergency load response program option because it is only available during PJM emergencies to contribute to grid reliability. Joint DR Comments, pp. 12-13. By contrast, the Act 129 demand response programs operate to lower EDCs' 100 peak demand hours, whether or not a grid emergency is occurring. See id. at 12. However, the Joint DR Commenters fail to acknowledge that the PJM economic load reduction program is also available and used to provide price signals and compensation regarding the market value of reducing consumption during peak periods. This element of wholesale DR should be regarded as efficient and economical. Although DR providers would not receive an Act 129 subsidy, there is nothing preventing DR providers from offering DR into PJM programs.

Finally, the Joint DR Commenters explain that residential and small commercial customers would struggle to participate in the PJM markets. Joint DR Comments, p. 11. The Industrial Customer Groups question the overall validity of this assertion, because DR aggregators are common at the wholesale level and the Phase I measures have created customer contacts for the DR programs within this market segment. However, if the Commission believes that residential and small commercial customers should be permitted to maintain certain DR programs, then the Industrial Customer Groups submit that only residential and small commercial customers should be affected. Large C&I customers should remain exempt from any Phase II DR programs, because there are few barriers for Large C&I customers related to

² The Joint DR Commenters also claim that customers participating in DR programs were promised compensation that would not come to fruition if the Commission rejects Phase II DR programs. If this claim is true, and customers were promised future payment for programs that are inherently subject to change, then these customers were misled.

PJM market participation. The PJM markets offer market signals that permit Large C&I customers to determine whether the benefits of curtailment outweigh the costs.

For the foregoing reasons, the PUC correctly determined that Phase II EE&C plans should not contain a DR component. If DR programs were continued for any period of time, customers would be remitting costs for programs that may be unjustified if the costs are ultimately found to outweigh the benefits. The Commission should reserve any decision regarding future Act 129 DR programs until the first round of DR data may be analyzed.³

II. Reimbursing Act 129 Revenues to Customers

In the T.O., the PUC recommends that EDCs bid savings from EE resources into the PJM markets and reimburse customers for any revenues received through this PJM participation. See T.O., pp. 64-65. Keystone Energy Efficiency Alliance ("KEEA") disagrees with this recommendation, and instead advises the PUC to use these revenues to fund other EE programs. In fact, KEEA recommends that any leftover funds from Phase I or other programs should be recycled to cover Phase II costs, which is also counter to the Commission's proposal that all Phase I funds be refunded to customers after May 31, 2013. T.O. at 63.

The Industrial Customer Groups disagree with both KEEA proposals because they are inconsistent with the intent of Act 129. As explained in the Industrial Customer Groups' Comments, all revenues and over-performance should accrue to ratepayers because they finance the EE resources. Industrial Customer Groups Comments, p. 7; see also 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."). Moreover, specifically with respect to PJM revenues, the Industrial Customer

³ The analysis of this data can occur in 2013 or 2014 to ensure that the next DR plan can be adequately marketed to result in demand reductions during the summer of 2016, if necessary.

Groups would reiterate that larger customers should retain the right to bid into the PJM markets and receive any ensuing revenues from their individual projects. For smaller customers or those that do not choose to claim the projects themselves, the EDC should bid those resources into the PJM markets. On this point, the Industrial Customer Groups agree with the Comments submitted by a number of stakeholders, including Tri-State Light and Energy, Inc., EMC Development Company, Inc., and National Energy Solutions.

III. Cost Recovery Confined to Specific Customer Classes

As noted in the Industrial Customer Groups' Comments, cost recovery and reimbursement related to EE&C plans must be confined to the correct customer classes. See Industrial Customer Groups' Comments, p. 8. By contrast, the National Housing Trust and Pennsylvania Housing Finance Agency comment that cost recovery should be equally divided among all customer classes. National Housing Trust and Pennsylvania Housing Finance Agency Comments, p. 8. The Industrial Customer Groups submit that such a recommendation is contrary to Commission precedent and inconsistent with the Commission's T.O.: "We believe that the overall limitation on cost recovery and the specific limitation tying costs to a benefited class...will ensure that offerings will not be skewed toward or away from any particular class." T.O. at 49-50; see also Lloyd v. Pa. Pub. Util. Comm'n, 904 A.2d 1010 (Pa. Commw. Ct. 2006). As a result, the PUC should reject this recommendation.

IV. Rebidding of Curtailment Service Provider Contracts

In the T.O., the Commission recommends that all EDCs rebid their Curtailment Service Provider ("CSP") contracts for Phase II EE&C plans. This recommendation is consistent with Act 129, which provides for EDCs to competitively bid their CSP contracts at the beginning of EE&C plans. See 66 Pa. C.S. § 2806.1(a)(7). FirstEnergy Corporation ("FirstEnergy"), PennFuture, Ecova, Inc. ("Ecova"), and others take issue with this recommendation, and instead

endorse EDCs maintaining their current CSP relationships in Phase II. FirstEnergy Comments, p. 18; PennFuture Comments, p. 12; Ecova Comments, p. 3. On this point, the Industrial Customer Groups support the Commission's recommendation as consistent with Act 129. Moreover, the competitive procurement of CSP contracts would ensure that the costs of EE measures are least cost for ratepayers.

V. Aligning EDC Funding and Targets

As stated in the Industrial Customer Groups' Comments, the Industrial Customer Groups submit that EDCs' Phase II budgets should be based on a uniform dollar per MWh assumption. Industrial Customer Groups Comments, p. 7. If the budgets correspond with the reduction targets, and no individual budget exceeds two percent of the EDC's 2006 revenues, then the Commission would facilitate consistency among EDCs throughout the Commonwealth and equality among Pennsylvania ratepayers. In addition, standardized budgets would promote transparency related to EE&C measures and the impact on customers. Unsurprisingly, the EDCs commenting in this proceeding came down on different sides of this issue. This disagreement among the EDCs can be avoided by authorizing uniform budgets rather than budgets that perpetuate pre-competitive market differences. It is consistent with the Customer Choice and Competition Act to eliminate this inequity.

In addition, with respect to EE targets, the American Council for an Energy-Efficient Economy ("ACEEE") opposed the Commission's recommendation to impose cumulative EE targets, i.e., three-year targets. ACEEE Comments, p. 6. Instead, the ACEEE advises the PUC to establish annual targets. *Id.* The Industrial Customer Groups disagree with the ACEEE based on the language of Act 129, which establishes cumulative rather than annual percentage targets.

See generally 66 Pa. C.S. § 2806.1. Considering this plain statutory language, the ACEEE's proposal should not be accepted.

VI. Phase II Implementation Timeline

The Commission proposes that all Phase II EE&C plans be finalized by March 1, 2013. T.O., p. 33. PPL Electric Utilities Corporation ("PPL") disagreed with this proposal, indicating a preference to begin its Phase II EE&C measures "as soon as the programs are approved by the Commission." PPL Comments, p. 23. The Industrial Customer Groups are concerned that the advanced implementation date could pose certain transitional difficulties. If the PUC agrees with PPL, the Industrial Customer Groups recommend that any Phase I monies be reimbursed to customers at the earlier Phase II implementation date. In addition, the Commission should require EDCs to adopt a transition plan for ceasing any Phase I measures that will not continue during Phase II.

VII. Other Considerations Related to Act 129 Measures

EnerNOC, Inc. ("EnerNOC") commented⁴ that the Commission should consider including the transmission and distribution system expansion savings as part of the TRC test for assessing the cost-effectiveness of Act 129 measures. EnerNOC Comments, p. 5. EnerNOC asserted that lower transmission and distribution system infrastructure investment is required when EE and DR measures reduce peak demand, because there will be more capacity to move electricity. Id. While this perspective might be correct if demand reduction was measured based on PJM's coincident peak methodology, Act 129 evaluates the success of EE and DR measures based on the top 100 hours of demand, i.e., non-coincident peak methodology. More importantly, because DR measures are not permanent, the existence of customers on a particular

⁴ Please note that EnerNOC's Comments, which indicate that certain DR measures may not be cost-effective, confirm the importance of the Statewide Evaluator's analysis of all DR data before any further DR measures are adopted.

circuit engaging in DR for a particular year may not result in changes in the system reliability analysis conducted by the EDC, which may look at non-coincident peak demands rather than peak in some instances. As a result, the rate of transmission and distribution system infrastructure upgrades might not decrease if more capacity is deemed necessary on the coincident peak days. Because of this coincident/non-coincident peak distinction, the Industrial Customer Groups question whether these savings should be included as a TRC factor.

FirstEnergy noted that it disagreed with the Commission's Secretarial Letter that stated EDCs should complete a TRC test for all modifications to EE&C measures. FirstEnergy Comments, p. 17. The Industrial Customer Groups agree with the Commission that a TRC test should be used to evaluate all EE measures in order to be consistent with the intent of Act 129. It is ratepayers that are burdened by the costs of these measures, not the EDCs. In fact, this burden on customers is highlighted by FirstEnergy in a different section of its Comments: "In these difficult economic times, the Commission should also weigh the burdens on these customers, who have to pay the EE&C surcharge...." FirstEnergy Comments, p. 3. Any limited burden placed on EDCs to complete these tests would be outweighed by the importance of ensuring that customers only pay for cost-effective measures.

Finally, KVAR submitted Comments regarding the importance of encouraging customers to adopt more efficient consumption practices. KVAR Comments, p. 3. Specifically, KVAR recommends utilizing billing methods, such as converting from KW to KVA charges, to incentivize this behavior change. Id. Although the Industrial Customer Groups believe that the power quality issues highlighted by KVAR are important, these issues are too complex and beyond the scope of this proceeding.

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 Reply Comments.

Respectfully submitted,

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