Buchanan Ingersoll & Rooney PC
Attorneys & Government Relations Professionals

John F. Povilaitis

717 237 4825
john.povilaitis@bipc.com

409 North Second Street
Suite 500
Harrisburg, PA 17101-1357
T 717 237 4800
F 717 233 0852
www.buchananingersoll.com

January 28, 2013

VIA E-FILING

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

Re: Petition for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plans of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company; Docket Nos. M-2012-2334392, M-2012-2334387, M-2012-2334395 and M-2012-2334398

Dear Secretary Chiavetta:

On behalf of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (the "Companies"), I have enclosed for electronic filing the Companies' Main Brief with regard to the above-captioned consolidated proceeding.

Please contact me if you have any questions regarding the forgoing matters. Copies have been served as indicated in the attached certificate of service.

Very truly yours,

John F. Povilaitis

JFP/kra
Enclosure
cc: The Honorable Elizabeth H. Barnes (via email and first class mail)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Metropolitan Edison Company for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan	:	**M-2012-2334387**
Petition of Pennsylvania Electric Company For Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan	:	**M-2012-2334392**
Petition of Pennsylvania Power Company For Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan	:	**M-2012-2334395**
Petition of West Penn Power Company For Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan	:	**M-2012-2334398**

MAIN BRIEF ON BEHALF OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER COMPANY AND WEST PENN POWER COMPANY

John F. Povilaitis
Buchanan, Ingersoll & Rooney, P.C.
409 Second Street, Suite 500
Harrisburg, PA 17101-1357
Direct Dial: (717) 237-4825
Email: John.Povilaitis@bipc.com

Kathy J. Kolich
FirstEnergy Service Company
76 South Main Street
Akron, OH 44309
Direct Dial: (330) 384-4580
Email: kjkolich@firstenergycorp.com

Lauren M. Lepkoski
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
Direct Dial: (610) 921-6203
Email: llepkoski@firstenergycorp.com

Dated: January 28, 2013

Attorneys for Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

I. **INTRODUCTION**

Pursuant to Act 129 of 2008 ("Act 129"), P.L. 1592, 66 Pa. C.S. §§ 2806.1 and 2806.2, Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec") Pennsylvania Power Company ("Penn Power"), and West Penn Power Company ("West Penn") (collectively, the "Companies") submitted a Joint Petition with the Pennsylvania Public Utility Commission ("Commission") requesting approval of their respective Phase II Energy Efficiency and Conservation ("EE&C") Plans ("Phase II EE&C Plans" or "Plans"). The filing was made pursuant to the Commission's August 3, 2012 Implementation Order issued in Docket Nos. M-2012-2289411 and M-2008-2069887.[1] Each of the Companies' Phase II EE&C Plans: (i) is designed, based upon the Commission's acquisition cost assumptions, to achieve the Phase II EE&C targets, both in the aggregate and for special customer segment carve outs; (ii) achieves at least 25% of annual targets during each year of the Phase II period; (iii) include at least one program for each customer segment; (iv) passes the TRC test on a portfolio basis;[2] and (v) includes a budget no greater than the 2% statutory spending cap. No party has challenged these facts.[3] And, although not technically required, the Companies' Plans have placed special emphasis and consideration on multifamily housing within the Government/Nonprofit and Low Income Sectors.

Except for recommendations to incent specific fuel switching measures made by UGI Utilities, Inc. - Gas Division, UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc. (collectively, "UGI"), all issues raised in comments or testimony have been resolved through a

---

[1] *Energy Efficiency and Conservation Programs*, Docket Nos. M-2012-2289411 and M-2008-2069887 (Implementation Order entered August 3, 2012) ("2012 Implementation Order").

[2] All programs, other than the low income program, also passes the TRC test on a program basis. (*See* Companies' Phase II EE&C Plans, Appdx. E, Tables 7A-7E.)

[3] *See e.g.*, Community Action Association of Pennsylvania Statement No. 1, Office of Consumer Advocate Statement No. 1, CAUSE – PA Statement No. 1, Penn Future Statement No. 1, UGI Statement No. 1, (collectively "Intervenor Statements No. 1); and Tr., pp. 55-56.

settlement agreement that all parties either agreed to or agreed not to oppose ("Joint Settlement").[4] And with regard to Penn Power's Plan, all issues have been resolved as not even UGI raised any issues.[5] Therefore, this brief will focus on issues raised by UGI with regard to the Phase II EE&C Plans of Met-Ed, Penelec and West Penn, after providing a procedural history and a brief overview of all of the Companies' Plans as submitted and supplemented though the Joint Settlement and the rebuttal testimony of the Companies' witness, Maria Frederick.

Inasmuch as all issues other than those pertaining to fuel switching have been amicably resolved, and the only remaining issues raised by UGI (i) are neither mandated by law nor by the Commission; (ii) are nothing more than a blatant attempt by UGI to increase sales and profits; and (iii) are based on assumptions on top of estimates not founded in fact, the Companies respectfully ask that the Commission approve each of the Companies' Phase II EE&C Plans as filed and supplemented through the Joint Settlement and Ms. Frederick's testimony.

II. BACKGROUND

On October 15, 2008, then Governor Rendell signed House Bill 2200 into law as Act 129. Act 129 required the Pennsylvania Public Utility Commission ("Commission") to establish an energy efficiency and conservation program ("EE&C Program").[6] The EE&C Program contemplated multiple phases.

[4] The Joint Petition for Full Settlement of Non-Reserved Issues ("Joint Petition for Settlement") and related Statements in Support, with the exception of PSU's Statement, are being filed concurrent with this brief. Except for UGI, who indicated that if they had any concerns with the Joint Settlement, they would raise them in brief (Tr., p. 48), all other parties to this proceeding either joined in the settlement or agreed not to oppose it.
[5] Tr., p. 54.
[6] 66 Pa. C.S. §§ 2806.1 and 2806.2.

Phase I

Phase I of Act 129 involves the energy efficiency and peak demand reduction targets that are to be achieved by either May 31, 2011 or May 31, 2013,[7] including targets for the government sector and mandates on the number of measures for the residential low income sector.[8] These goals were to be accomplished with a cost limit based on 2% of total annual revenues as of December 31, 2006.[9] On January 15, 2009, the Commission adopted an Implementation Order establishing standards for Phase I of Act 129's EE&C Program ("2009 Implementation Order").[10] The 2009 Implementation Order required that the Companies file Phase I EE&C Plans by July 1, 2009. In addition to requiring that these EE&C plans be in compliance with Act 129 mandates, the Commission, through the 2009 Implementation Order, also required that the plans be cost effective on a portfolio basis, using the Total Resource Cost ("TRC") Test.[11]

On July 1, 2009, the Companies each filed their Phase I EE&C Plans pursuant to Act 129 and the Commission's 2009 Implementation Order, all of which were approved by the

---

[7] 66 Pa. C.S. §§ 2806.1(c)(1) and (2).
[8] 66 Pa. C.S. §§ 2806.1(b)(1)(i)(B) and (G).
[9] 66 Pa. C.S. §§ 2806.1(g) and (h).
[10] *Energy Efficiency and Conservation Programs*, Docket No. M-2008-2069887 (Implementation Order entered January 16, 2009) ("2009 Implementation Order").
[11] Id.

Commission through various orders.[12] During Phase I of Act 129, the Companies submitted and the Commission approved amendments to the Companies' Phase I EE&C plans.[13] These amended plans will expire on May 31, 2013.

Phase II

As part of Act 129, the Commission was also directed to determine if energy efficiency and demand response goals should be established beyond the end of Phase I.[14] Specifically, Act 129 requires that by November 30, 2013, the Commission should assess the cost-effectiveness of the EE&C Program and set additional incremental reductions in electric consumption if the

---

[12] *See e.g., Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans,* Docket Nos. M-2009-2092222, M-2009-2112952, and M-2009-2112956 (Order entered October 28, 2009); *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans,* Docket Nos. M-2009-2092222, M-2009-2112952, and M-2009-2112956 (Order entered January 28, 2010); *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans,* Docket Nos. M-2009-2092222, M-2009-2112952, and M-2009-2112956 (Order entered February 26 2010); *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093218 (Order entered October 23, 2009); *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093218 (Order entered October 23, 2009); *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093218 (Order entered March 1, 2010); *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093218 (Order entered June 23, 2010).

[13] *See e.g., Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans (Joint Petition for Expedited Approval of Amendments to the Residential HVAC Program and Governmental & Institutional Components of the C&I Equipment Programs)*, Docket Nos. M-2009-2092222, M-2009-2112952, and M-2009-2112956 (Order entered March 18, 2012); *Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company Request For Proposal Process For Energy Efficiency And Demand Response Consulting Services*, Docket No. M-2009-2092222, M-2009-2112952, and M-2009-2112956 (Order entered January 12, 2012); *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan,* Docket No. M-2009-2093218 (Order entered January 13, 2011); *Petition of West Penn Power Company for Amendment of the Orders Approving Energy Efficiency and Conservation Plan and Petition for Approval of Amended Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093218 (Order entered May 10, 2012).

[14] 66 Pa. C.S. §§ 2806.1(c)(3) and 2806.1(d)(2).

benefits of the EE&C Program exceed its costs.[15] The Commission made such an assessment last year and determined that it was cost effective to continue the EE&C requirements for a second phase, commonly referred to as "Phase II."[16] Phase II EE&C goals for the period June 1, 2013 through May 31, 2016 ("Phase II Period") were established for each EDC in the docket captioned as *Energy Efficiency and Conservation Programs*, Docket Nos. M-2012-2289411 and M-2008-2069887 (Implementation Order entered August 3, 2012) ("2012 Implementation Order"). The percentage reduction targets, as well as their three-year cumulative MWh figures, as applicable to the Companies and as determined by the Commission are as follows:[17]

EDC	**3 Year % of 2009/10 Forecast Reductions**	**3 Year MWh value of 2009/10 Forecast Reductions[18]**
Met-Ed	2.3	337,753
Penelec	2.2	318,813
Penn Power	2.0	95,502
West Penn	1.6	337,533

In the 2012 Implementation Order, the Commission also directed EDCs to continue to comply with the statutory requirements established for Phase I, thus requiring them to (i) provide that a minimum of 10% of all consumption reduction requirements will come from units of federal, state and local governments, including municipalities, school districts, institutions of

---

[15] Id.

[16] The Commission has not yet established any demand reduction targets for Phase II. (2012 Implementation Order at 33-34.)

[17] Pursuant to the Commission's 2012 Implementation Order, the Companies challenged these targets in *In re Petition of [the Companies] for an Evidentiary Hearing on the Energy Efficiency Benchmarks Established For the Period June 1, 2013 through May 31, 2016*, Docket Nos. P-2012-2320450, P-2012-2320468, P-2012-2320480, and P-2012-2320484 (hereinafter "Phase II Target Case"). These challenges were rejected (Phase II Target Case, Order, p. 18 (Dec. 5, 2012), and the above targets are those that the Companies' Phase II EE&C Plans are designed to achieve. No party challenged this issue. (*See* Intervenor Statements No. 1, Tr., pp. 55-56).

[18] 2012 Implementation Order at 24.

higher education and non-profit entities;[19] (ii) include specific energy efficiency measures for households at or below 150% of the federal poverty income guidelines, in proportion to that sector's share of the total energy usage in the EDC's service territory;[20] and (iii) include one comprehensive measure for the residential and small commercial classes.[21] In addition, the Commission adopted a new requirement — that a minimum of 4.5% of the EDCs total consumption reduction requirements come from the low-income sector.[22]

III. PROCEDURAL HISTORY

This proceeding was initiated on November 13, 2012, when the Companies filed a Joint Petition with the Commission requesting approval of their Phase II EE&C Plans to reduce energy consumption in accordance with the requirements of Act 129 and the 2012 Implementation Order. Specifically, the Companies requested that the Commission: (i) approve their Phase II EE&C Plans; (ii) authorize Met-Ed, Penelec and Penn Power to extend their Phase I EEC-C Riders until a final reconciliation of all Phase I revenues and approved Phase I costs is performed; and (iii) authorize the Companies to implement their Phase II Energy Efficiency and Conservation Charge Rider ("Phase II EE&C-C Rider") that would be utilized to recover the costs associated with the Companies' Phase II EE&C Plans.

In support of these Plans, the Companies submitted the direct testimony and accompanying exhibits of three witnesses:

> **John C. Dargie,** Vice President of Energy Efficiency, who reviewed the Companies' obligations under Act 129 and the Commission's 2012 Implementation Order and provided an overview of the Companies' Phase II EE&C Plans. (Met-Ed/Penelec/Penn Power/West Penn Statement No. 1)

[19] 66 Pa. C.S. § 2806.1(b)(1)(i)(B) and 2012 Implementation Order at 45.
[20] 2012 Implementation Order at 54.
[21] Id. at 88.
[22] Id. at 54.

> **Edward C. Miller,** Manager of Development and Compliance in the Energy Efficiency Department, who summarized the additional EE&C reduction targets set for the Companies by the Commission's 2012 Implementation Order and the spending limitations for each of the Companies under Act 129; described the development of the Phase II EE&C Plans; and analyzed whether these Plans comply with all statutory and regulatory requirements, including without limitation the Commission's 2012 Implementation Order and its TRC test Order. (Met-Ed/Penelec/Penn Power/West Penn Statement No. 2)

> **Kevin Siedt,** State Regulatory Analyst in the Rates and Regulatory Affairs Department – Pennsylvania, who addressed cost recovery issues and sponsored the tariff revisions designed to implement the Companies' proposed Phase II EE&C-C Rider as well as the continuance of the existing Phase I Energy Efficiency and Conservation Charge Rider ("Phase I EE&C-C Rider") for Met-Ed, Penelec and Penn Power. (Met-Ed/Penelec/Penn Power/West Penn Statement No. 3)

Notice of the Companies' Phase II EE&C Plans was published in the December 1, 2012 Pennsylvania Bulletin which established a deadline of December 21, 2012 for the filing of responsive pleadings along with comments and recommendations.[23]

On December 7, 2012, the Office of Consumer Advocate ("OCA") filed a Notice of Intervention and Public Statement.[24] On December 18, 2012, the Office of Small Business Advocate ("OSBA") filed a Notice of Intervention and Public Statement. In addition, the following parties were granted intervention in this proceeding: Wal-Mart Stores East, LP and Sam's East Inc. (collectively, "Walmart"); Citizens for Pennsylvania's Future ("PennFuture"); The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"); Comverge, Inc. ("Comverge"); UGI; The Community Action Association of Pennsylvania ("CAAP"); The Pennsylvania State University ("Penn State"), and Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group and West Penn Industrial Intervenors, (collectively, "Industrial Customer Groups").[25]

---

[23] 42 Pa.B. 7372.
[24] The OCA submitted Comments.
[25] Of these intervenors, only the Industrial Customer Groups and Comverge submitted Comments.

A prehearing conference was held on December 19, 2012 before presiding Administrative Law Judge ("ALJ") Elizabeth H. Barnes. On December 28, 2012, ALJ Barnes issued a Scheduling Order and granted the Companies' Protective Order.

On January 8, 2013, in accordance with the ALJ's Scheduling Order, OCA, CAUSE-PA, PennFuture, CAAP and UGI submitted direct testimony. On January 14, 2013, Comverge submitted a Petition seeking Admission Nunc Pro Tunc of its Direct Testimony. On January 15, 2013, the Companies Answered Comverge's Petition requesting that the Petition be denied. As a result of the Joint Settlement discussed below, Comverge withdrew its petition during the evidentiary hearing.[26]

On January 17, 2013 an evidentiary hearing was held before the ALJ. At the hearing, the pre-filed testimony and exhibits of all parties were admitted into evidence. In addition, the Companies entered into stipulations with Comverge and the Industrial Customer Groups. Both stipulations were entered into the record. Furthermore, the Companies reached a Settlement with OCA, CAUSE-PA, CAAP; and Comverge.[27] The terms of the Joint Settlement are as follows:

1. The Companies offer to increase the number of stakeholder meetings held annually from 2 to 4, and offer to hold additional ad hoc meetings, via telephone conference, upon stakeholder request. Further, the Companies will continue to meet with community based organizations on a quarterly basis as is currently done and will provide written materials distributed for such meetings to parties entering into this settlement (Signatory Parties) who request such information.

2. Within 90 days of approval of the Companies' EE&C plans, the Companies will agree to contact major natural gas distributors in their service territories for the purpose of trying to find ways to better coordinate the Companies' whole home retrofit program with like programs provided by the natural gas distributors, and will report the results of such meeting(s) at a subsequent stakeholder meeting.

3. The Companies will allow customers to submit a single application for multiple measures installed under Phase II as a result of a comprehensive audit, provided

[26] Tr., p. 30.
[27] Each of these parties have submitted Statements in Support of the Joint Settlement, which are attached to the Joint Petition for Settlement that is being filed concurrent with this Main Brief.

that the multiple measures are all proposed and completed at the same time. The Companies will also discuss with their implementation vendor(s) the possibility of offering a tiered incentive structure for customers who meet certain audit retrofit performance specifications and will report their findings at their then next stakeholder meeting. Assuming that such an offering does not significantly decrease the cost-effectiveness and tracking and verifying results, and there is no significant opposition from stakeholders, the Companies will seek to modify their EE&C plans through the Commission's standard processes, if necessary, with express support for such modifications being provided by the Signatory Parties.

4. The Companies will target evaluation funds for annual evaluation of the energy savings associated with the Home Energy Reports (aka Energy Usage Reports) and will share the results of such evaluations and any recommendations being proposed based on such results with interested parties during the Companies' next applicable stakeholder meeting.

5. In the event the Companies' Residential New Construction Program becomes fully subscribed during the term of the plans, the Companies will discuss the issue with its stakeholder group. Assuming that there is no significant opposition from such group, the Companies will seek approval to transfer additional funding from anticipated available funds allocated to other residential programs to the extent such transfer does not hinder the Companies' goal attainment and adheres to the Companies' budget caps and the Commission's cost-effectiveness requirements. Assuming such change meets these requirements, the Companies will seek expedited approval through the Commission's plan modification procedures, with such proposed change being affirmatively supported by the Signatory Parties.

6. Within 60 days of the approval of the Companies' EE&C Plans, the Companies will meet in a collaborative with interested stakeholders to discuss recommendations for the reallocation of residential customer dollars from the Energy Efficiency Kits and the Home Energy Reports (HER) Programs to: (1) the Residential Energy Efficient Products Program to include HVAC, water heating, and ENERGY STAR appliances measures and (2) the Residential Home Performance Program for building shell measures and weatherization measures recommended through the Audit program to obtain more of the potential savings for these measures identified in the Statewide Evaluator's (SWE) Electric Energy Efficiency Potential for Pennsylvania Study. While the Companies will entertain suggestions for the reallocation of such funding, it is within the discretion of the Companies to accept or reject any such recommendations made by any party, with such acceptance not being unreasonably withheld. It is expressly acknowledged and agreed that rejection of any recommendation that causes the Companies to exceed their 2% spending cap or places at risk the Companies' ability to achieve their statutory Phase II energy efficiency targets shall be deemed a reasonable rejection. The Companies will share their rationale for any such rejections. The parties agree that any agreed-upon changes to the programs will be requested through the Commission's "Minor Changes" process, if necessary. Nothing contained herein restricts any party's rights in the "Minor Changes" process.

7. The Companies will revise its Low Income Programs to target increased energy savings by at least 10% over the plan targets as currently proposed for low income programs. To the extent that additional funding is required to support the targeted increase in energy savings, the Companies will shift up to $1 million in funds currently included in the general residential programs to specific low income programs, with the understanding that within 60 days of the Companies' EE&C plans being approved, the Companies will meet with Signatory Parties who are interested in low income programs to discuss the results of its evaluation to increase the energy savings achieved through the dedicated low income programs and any requirement that additional funds should be allocated to its low income programs. While the Companies will entertain suggestions for the use of such funding, it is within the discretion of the Companies to accept or reject any such recommendations made by any party, with such acceptance not being unreasonably withheld. It is expressly acknowledged and agreed that rejection of any recommendation that causes the Companies to exceed their 2% spending cap or places at risk the Companies' ability to achieve their statutory Phase II energy efficiency targets shall be deemed a reasonable rejection. Further, within 9 months of the Companies' EE&C plans being approved, the Companies will meet with these same parties and will review the results of the implemented recommendations. It is further acknowledged and agreed that the Companies may reallocate funds agreed to be dedicated to the specific low income programs through this paragraph to general residential programs, should it be determined that the actual results are not meeting expectations as established during the initial meeting, or the Companies, in their discretion, cannot achieve their statutory Phase II energy efficiency targets if such funding continues. The Companies agree to share with the affected parties their rationale should any such conclusions be drawn. The Companies will file such changes through the Commission's "Minor Changes" process, if necessary. Nothing contained herein restricts any party's rights in the "Minor Changes" process.

8. The Companies will work to develop a dedicated marketing plan for low income customers to target their participation in all residential programs. Within 90 days of approval of the Companies' EE&C plans, the Companies will meet with Signatory Parties interested in low income programs and review all marketing materials for all low income and general residential programs. The Companies will consider all suggested improvements made by the low income advocates, but adoption of any such changes is within the discretion of the Companies, with such adoption not being unreasonable rejected by the Companies. The Companies will share their rationale for any such rejection.

9. During 2013, the Companies will investigate the market for heat pump water heaters within their respective service territories. The Companies will share the results of the pilot developed under the LIURP program in Penn Power's service territory and will study and share the results no later than their first stakeholder meeting in 2014. Maria Frederick will provide details surrounding this program in her rebuttal testimony during the evidentiary hearing. Should the results of the pilot demonstrate the feasibility of installing more heat pump water heaters within

the available low income budget, the Companies will discuss during its stakeholder meeting the possibility of expanding the budget for such installations. Further, the Companies will use reasonable efforts to target and install up to an additional 20 heat pump water heaters for low income customers annually across the Companies' combined service territories. Further the Companies will investigate the feasibility of adding an add-on heat pump to existing water heaters and will report their findings during an upcoming stakeholder meeting.

10. The Companies will continue to cross market all low income programs offered by the Companies to confirmed low income customers. They will also continue to direct confirmed low income customers to other federal and state agency sponsored low income programs for which the customer qualifies. Ms. Frederick will provide details on how this is accomplished in her rebuttal testimony during the evidentiary hearing.

11. The Companies will continue to meet with Community Based Organizations (CBOs) on a quarterly basis to discuss, among other things, issues involving the Companies' low income EE&C program offerings. The Companies will provide meeting notes/results to Signatory Parties upon request. Ms. Frederick will provide details during her rebuttal testimony explaining how the Companies work with CBOs.

12. The Companies will work with the Statewide Evaluator (SWE) to develop a survey methodology that is acceptable to the SWE that assesses low income customer participation in non-low income programs. Prior to conducting the survey, the Companies will discuss the survey methodology agreed-upon by the SWE. The Companies will share the results of any such survey during an upcoming stakeholder meeting.

13. The Companies will continue to require its vendors and contractors who implement low income programs and install low income energy efficiency measures to use commercially reasonable efforts to coordinate any such installations and implementations with natural gas providers located within the applicable Company's service territory. Ms. Frederick will explain during her rebuttal testimony how such coordination is done.

14. The educational materials included within the energy efficiency kits will include the following information for customers: (i) information on kit contents; (ii) installation instructions; (iii) household energy savings tips; (iv) CFL disposal instructions; and (v) marketing materials for other residential programs. The Companies further agree to include low income education as an agenda item in the meeting contemplated in Paragraph 8 for the purpose of seeking suggested improvements in said materials; however, the adoption of any such suggested improvements shall be within the discretion of the Companies, with such adoption not being unreasonably rejected. The Companies will explain their rationale for any such rejection.

15. The Companies will withdraw their request for an extension of their reconciliation period for Phase I costs in this proceeding and will, instead, make such a request in a separate proceeding as suggested by OCA.

16. The Companies will add the following stipulated facts into the evidentiary record in this proceeding:

    Combined Heat and Power ("CHP") projects may be approved as eligible custom measure projects, if found to be cost effective as indicated by a Total Resource Cost ("TRC") score above 1.0, as calculated in accordance with the Technical Reference Manual ("TRM") standards or other Commission guidelines or directives. In addition, each eligible project must not be above 10 MW in size, are intended solely for customer on-site use (not wholesale merchant projects), produce retail energy savings to a FirstEnergy operating company ("Company") (i.e., the reduction of electricity consumption), are installed and operational during Phase II and comply with all Company interconnection and standby service rules and requirements.

17. The Companies will add the following stipulated into the evidentiary record in this proceeding:

    Large Commercial and Industrial Phase I applications with respect to projects that have not been completed prior to the conclusion of Phase I will be processed as part of the same Phase II Programs without re-application, consistent with the Companies' EE&C Plan review and eligibility requirements.

In exchange for the above concessions by the Companies, the Signatory Parties agree to support the Companies' EE&C Plans as modified above, and as described by Maria Frederick during her rebuttal testimony, and will not pursue any other issues not addressed herein that are included in any Signatory Party's testimony.

These terms were entered into the record during the evidentiary hearing as "FirstEnergy Term Sheet." The following parties did not oppose the Joint Settlement: (i) OSBA; (ii) Walmart; (iii) PennFuture; (iv) Penn State; and (v) the Industrial Customer Groups. UGI indicated that they were still evaluating the terms and if they chose to challenge the settlement, they would do so in their brief.[28] The Companies submitted oral rebuttal testimony of Maria Frederick in support of the Joint Settlement. UGI sponsored the testimony of Paul H. Raab on the issue of

[28] Tr., p. 48.

fuel switching – the only issue litigated during the evidentiary hearing – and the Companies presented the oral testimony of Charles V. Fullem in rebuttal of certain statements made by Mr. Raab during cross examination.

Pursuant to the ALJ's January 17, 2013 Post Hearing Order, the Companies submit this Main Brief, first, to support the approval of their Phase II EE&C Plans without modification,[29] and, second, to oppose the proposed changes suggested by UGI.

IV. DESCRIPTION OF THE PHASE II EE&C PLANS

Each of the Companies has developed a Phase II EE&C Plan that includes a portfolio of EE&C programs that are designed to achieve the specific reduction targets set by the Commission in its 2012 Implementation Order for the Phase II Period. The Companies' Plans are generally an extension of the successful programs and measures included in the Companies' Commission-approved Phase I EE&C Plans, with the addition of new measures and a reorganization of some existing programs and measures. Collectively, the proposed programs provide significant opportunities for energy and cost savings for virtually all of the Companies' customers and meet the EE&C reduction requirements within the spending limitations.[30]

The Phase II EE&C Plans include a portfolio of EE&C programs targeted to each of the customer segments, including: (i) residential (which includes low income); (ii) small commercial and industrial ("C&I"); (iii) large C&I; and (iv) the Government/Non-profit sector. Each of the Plans includes most of the components reflected in the Phase I Plans. However, the Companies have modified many of these components in an effort to provide customers with more opportunities for energy and related cost savings and to provide the Companies with more

[29] The Companies have also included as an exhibit to the Joint Petition for Settlement, which is being filed concurrent with this Main Brief, a Statement in Support of the Joint Settlement.
[30] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2 (Miller Direct), pp. 18-19.

implementation flexibility in order to enhance their ability to meet the Phase II EE&C targets.[31] The Companies' Phase II EE&C Plans include nine energy efficiency programs and 31 subprograms. Three of the energy efficiency programs are tailored to the residential class; one to low-income customers; two to small C&I customers; two to large C&I customers; and one to the Government/Non-profit sector.[32] Below is a summary of all nine programs, which are described in detail in Sections 3.2 through 3.5 of each of the Companies' Phase II EE&C Plans (Met-Ed Exhibit No. 1, Penelec Exhibit No. 1, Penn Power Exhibit No. 1 and West Penn Exhibit No. 1).

1. **Appliance Turn-In Program** - provides a service and incentive to customers for turning in inefficient operating appliances. Large and other qualifying appliances will be picked up at the customer's residence. In addition, periodic events may be offered at centralized drop-off locations where customers can drop off smaller inefficient operating appliances such as compact refrigerators and room air conditioners.

2. **Residential Energy Efficient Products Program** - provides rebates to consumers and/or "upstream" financial incentives and support to manufacturers, distributors, and retailers that sell energy efficient products, such as ENERGY STAR® qualified appliances, high efficiency lighting, and other electricity conservation products. The program includes promotional support, point-of-sale materials, training, promotional events and rebates for select appliances. This is a consolidation of the existing Residential Energy Efficient Products Program and Residential Energy Efficient HVAC Program with the addition of new measures. In addition, this program is now broken into the following sub-programs: (i) HVAC & Water Heating; (ii) Appliances; (iii) Consumer Electronics; and (iv) Lighting.

3. **Residential Home Performance Program-** provides energy efficiency education and awareness for customers to conserve energy in their homes. This is a consolidation of the existing Behavioral Modification & Education Program, Residential Home Energy Audits & Outreach Program, Whole Building Program, Residential Multifamily Building Program, and Residential New Construction Program with the addition of new measures. In addition, this program and is now broken into the following subprograms: (i) Audits; (ii) Kits; (iii) New Homes; and (iv) Behavioral.

4. **Low Income Program-** provides basic to comprehensive whole building measures, through direct installation or direct mail to low-income households.

[31] Id.
[32] Id. at 23-25.

This program also educates these customers about their home's energy use and ways to save energy. This is a consolidation of the Low-Income Residential (WARM) Program and Multi-Family-Tenants Program with the addition of new measures. In addition, this program is now broken into the following sub-programs:

(i) *Human Services* leverages the Low Income programs provided outside of Act 129 including the Low Income Usage Reduction Program (LIURP), also known as WARM, to achieve additional participation and energy savings from the Company's Low Income customers. This sub-program includes the following components.

- WARM Plus (Comprehensive)
- Low Income Low Use kits (Energy Efficiency Measures – Low Income)
- WARM Extra Measures (Extra Measures)

(ii) *Home Performance* provides additional energy efficiency measures primarily in multi-family buildings to the Company's Low Income customers that will be coordinated with the Human Services sub-program. This sub-program includes the following components:

- Appliance Replacement
- Audit – Multi Family

5. **C&I Energy Efficient Equipment Program – Small-** provides financial incentives (prescriptive & performance) and support to customers directly, or through trade allies, for purchasing and installing energy efficient equipment and products. In addition, the consolidated program is broken into the following sub-programs: (i) HVAC & Water Heating; (ii) Appliances; (iii) Food Service; (iv) Lighting; and (v) Custom Equipment.

6. **C&I Energy Efficient Buildings Program – Small**- provides financial incentives and support to customers for implementing building shell or system improvements. Other delivery mechanisms include incentives towards audits and kits and audits with direct installation of measures targeted at small business. In addition, the consolidated program is broken into the following sub-programs:

7. **C&I Energy Efficient Equipment Program – Large-** provides financial incentives (prescriptive & performance) and support to customers directly, or through trade allies, for purchasing and installing energy efficient equipment and products. In addition, the consolidated program is broken into the following sub-programs: (i) HVAC; (ii) Lighting; and (iii) Custom Equipment.

8. **C&I Energy Efficient Buildings Program – Large-** provides financial incentives and support to customers for implementing building shell or system improvements. Other delivery mechanisms include incentives towards audits. In

addition, the consolidated program is broken into the following sub-programs: (i) C&I Audits; and (ii) Custom Buildings.

9. **Governmental & Institutional Program-** provides financial incentives and support to Governmental & Institutional customers for the installation of energy efficient equipment and products. In addition, the consolidated program is broken into the following sub-programs: (i) Outdoor Lighting; (ii) HVAC & Water Heating; (iii) Appliances; (iv) Lighting; (v) Audits; and (iv) Multi Family.

The Joint Settlement reached with OCA, CAAP, CAUSE-PA, and Comverge does not change the programs described above. However, the Companies have agreed to certain program considerations as presented in the Joint Settlement and have also agreed to meet with parties to the Joint Settlement who are interested in low income and residential programs in an effort to find ways to expand or enhance the programs being offered through the Phase II EE&C Plans.[33] Any such improvements that are adopted will be submitted through the Commission's "Minor Changes" process, if necessary to do so.[34]

Pursuant to 66 Pa. C.S. § 1307(e), the Companies proposed to recover from customers on a full and current basis all reasonable and prudent costs incurred in the development, implementation and administration of their Phase II EE&C Plans through a reconcilable adjustment clause which is set forth in their respective Phase II EE&C Riders (Rider EEC-C).[35] Phase II EE&C Rider rates are expressed as a price per kilowatt-hour ("kWh") and/or a price per kilowatt ("kW") basis, and will be billed on the same basis.[36] The Phase II EE&C Rider rates will be calculated separately for each rate schedule/tariff that has allocated EE&C program costs, with reconciliation to actual EE&C program costs.[37] The Companies are proposing that the Phase II EE&C Rider rates reflecting the programs and budgets of their Phase II EE&C Plans

[33] *See e.g.*, FirstEnergy Term Sheet, paras. 3, 5, 6 and 7.
[34] This process was established through *In re Energy Efficiency and Conservation Program*, Docket No. M-2008-2069887, Final Order (June 9, 2011).
[35] Met-Ed/Penelec/Penn Power/West Penn Statement No. 3 (Siedt Direct), pp. 5, 20.
[36] Id at 7.
[37] Id at 6.

become effective on June 1, 2013.[38] The Phase II EE&C Rider rates are capped at the 2% limit based on each Company's 2006 revenues. The Companies will submit to the Commission by March 31 of each year a reconciliation of the Phase II EE&C Riders to mitigate the magnitude of the reconciliation balance.[39] No party opposed this proposed mechanism for recovery of the Phase II EE&C Plan costs.[40]

Met-Ed, Penelec, and Penn Power also proposed in this proceeding to extend their Phase I EEC-C Riders until a final reconciliation of all Phase I revenues and costs is performed.[41] However, pursuant to the Joint Settlement, these companies have agreed to pursue this issue through a separate proceeding. [42]

In sum, each of the Companies' Phase II EE&C Plans complies with all Act 129 and Commission requirements. They: (i) are designed, based upon the Commission's acquisition cost assumptions, to achieve the Phase II EE&C targets, both in the aggregate and for special customer segment carve outs; (ii) achieve at least 25% of annual targets during each year of the Phase II Period; (iii) include at least one program for each customer segment; (iv) pass the TRC test on a portfolio basis; and (v) include a budget no greater than the 2% statutory spending cap. No party has challenged these facts. And, although not technically required, the Companies' Plans have placed special emphasis and consideration on multifamily housing within the Government/Nonprofit and Low Income Sectors. Accordingly, the Companies' Phase II EE&C Plans should be approved without modification and as supplemented by the Joint Settlement and the testimony of Ms. Frederick.

---

[38] Id at 5.
[39] Id at 17.
[40] *See e.g.*, Intervenors Statements No. 1.
[41] Met-Ed/Penelec/Penn Power/West Penn Statement No. 3 at p. 39.
[42] FirstEnergy Term Sheet, para. 15.

V. SUMMARY OF ARGUMENT

As already explained, while certain parties to the Joint Settlement included several suggested changes to the programs being offered through the Companies' Phase II EE&C Plans, these parties have agreed to allow the Plans to be approved as filed with the understanding that the Companies will pursue certain program considerations and meet with them thereafter to evaluate potential enhancements to those programs.[43] To the extent that such enhancements are adopted, the Companies will submit them, if necessary, consistent with the Commission's processes and procedures for amendments or plan changes already in place. As a result of this settlement, the only suggested changes to the Companies' Phase II EE&C Plans before the Commission for consideration are those presented by UGI. These companies are recommending that the Companies include within their Phase II EE&C Plans incentives for natural gas water and space heating and are further recommending that the incentives for ground source heat pumps be eliminated unless the Companies can demonstrate the cost effectiveness of this specific measure in such a manner that it does not promote free ridership. As more fully explained below, (i) these suggestions are neither required by law nor by the Commission; (ii) these suggestions are a blatant attempt by UGI to increase their sales and profits; and (iii) the purported benefits underlying these suggestions are based on assumptions on top of estimates that are not supported by facts.

In light of this, and because the Companies' Phase II EE&C Plans meet all requirements of Act 129 and the Commission's 2012 Implementation Order without the adoption of UGI's recommendations, the Companies' Plans should be approved as submitted and supplemented by the Joint Settlement and the testimony of the Companies' witness, Maria Frederick.

[43] While not part of the Companies Phase II EE&C Plans, the Companies have also agreed to withdraw its request for an extension of its Phase I EEC-C Rider and pursue this issue through a separate proceeding.

VI. ARGUMENT

1. Fuel Switching is Not Required by Law or Commission Order.

Section 2806.1(A) of Act 129 provides in pertinent part:

> The Commission shall, by January 15, 2009, adopt an energy efficiency and conservation program to require electric distribution companies to adopt and implement cost-effective energy efficiency and conservation plans to reduce energy demand and consumption within the service territory of each electric distribution company in this Commonwealth.

Nowhere in this provision (or anywhere else in Act 129) does it indicate that an electric distribution company must incent the use of natural gas over electricity.[44] Indeed, the terms "fuel switching" or "fuel substitution" are not specifically listed as an "energy efficiency and conservation measure" under Act 129. Section 2806.1(k)(2) of Act 129 states:

> Energy efficiency and conservation measures shall include solar or solar photovoltaic panels, energy efficient windows and doors, energy efficient lighting, including exit sign retrofit, high bay fluorescent retrofit and pedestrian and traffic signal conversion, geothermal heating, insulation, air sealing, reflective roof coatings, energy efficient heating and cooling equipment or systems and energy efficient appliances and other technologies, practices or measures approved by the Commission.

Nowhere in this list of energy efficiency and conservation measures is "natural gas or propane fuel-switching" included. This may be due to the fact that any mandate to require the Companies to incent the use of natural gas may expose the Companies to potential anti-trust liability.

As UGI's witness acknowledged, the Companies currently compete with fuel oil providers and natural gas distribution companies for customers within their service territories. In essence, UGI's fuel switching proposals would mandate that electric customers subsidize the use of natural gas by providing incentives for customers to switch from electric service appliances to appliances that use exclusively natural gas. These types of fuel switching incentives could

[44] *See also* Tr., p. 74.

expose the Companies to antitrust and anti-competition challenges by electric appliance manufacturers and dealers. *See*, *Yeager v. PP&L*, 22 F.3d 1260 (3d Cir. 1994).

In *Yeager*, Pennsylvania Power & Light Co. ("PP&L") was sued by a group of fuel oil providers because PP&L was offering incentives to developers to install exclusively electric appliances. Such offers by a monopolistic utility were claimed as anti-competitive. While in *Yeager*, the court decided that PP&L was immune from antitrust liability because its plan was approved and supervised by the Commission, it is not certain that the same result would occur in this proceeding.

The limits to such immunity are well established:

> "A state law or regulatory scheme cannot be the basis for antitrust immunity unless, first the State has articulated a clear and affirmative policy to allow the anticompetitive conduct, and second, the State provides active supervision of anticompetitive conduct undertaken by private actors." *Ticor Title Insurance Co. v. FTC*, 112 S.Ct. at 2169, 2175.

In this instance, there is no clear and affirmative policy to allow for fuel switching, given that the Commission affirmatively stated that fuel switching should not be mandated.[45] Regardless, if challenged, the Companies will be required to pay to defend themselves in response to such claims and may not be able to claim immunity under the state action immunity doctrine.

In this Act 129 proceeding, where the Companies have proposed sufficient programs and measures to meet their target obligations without fuel switching, and where these open issues of potential liability have neither been addressed nor resolved, this Commission should refrain from mandating the fuel switching proposals offered by UGI and, instead, follow its own directive which makes such programs optional.

[45] UGI Statement No. 1, p. 34.

2. The Fuel Switching Recommendations are a Blatant Attempt by UGI to Increase Their Sales and Profits.

UGI recommends that the Companies incent the installation of natural gas water heaters, natural gas furnaces and natural gas boilers.[46] This recommendation is simply a blatant attempt by UGI to increase its sales and profits. As their witness admitted, the UGI companies, which are located within the service territories of Met-Ed, Penelec or West Penn, compete for any natural gas end use that can be provided by either electric or natural gas.[47] And if these measures are incorporated into the Companies' Plans, natural gas sales go up.[48] Indeed, UGI's motives become more apparent when reviewing their actions. For example, UGI Utilities, Inc. – Gas Division ("UGI Inc.") – the only company within the group of UGI that provides electric service[49] – includes within its energy efficiency plan an incentive to switch from electric to natural gas.[50] However, unlike the Companies, UGI Inc. has both natural gas and electric customers. Therefore, unlike the Companies, the switch by UGI Inc. customers from one fuel source to another has virtually no impact on overall revenues of UGI Inc. And while UGI Inc. purports to endorse the use of solar water heaters, it offers only a 2.9% of customer cost incentive for solar water heaters, while offering a 30% of customer cost incentive if a customer switches from an electric to natural gas water heater.[51]

UGI also suggests that the incentives for ground source heat pump installations be eliminated, unless the Companies can demonstrate the cost effectiveness of this measure and

[46] Id. at 6-7.
[47] Tr., pp. 53-54.
[48] Id. at 62. While Mr. Raab tried to discount this fact by referencing the full fuel cycle approach, he also admitted that this approach is nothing more than a policy expressed by the Department of Energy, which has not been adopted by the Commission or incorporated into Act 129. (Tr., pp. 58-60.)
[49] Tr., p. 54.
[50] Tr., p. 66; *see also In re Petition of UGI Utilities, Inc. – Electric Division for Approval of its Energy Efficiency and Conservation Plan*, Docket No. M-2010-2210316, Pa. PUC Lexis 483 (Opinion and Order entered Mar. 16, 2012) at 18-19 ("UGI EEC Case").
[51] Id. at 66-67; *see also* UGI EEC Case at 18-19.

eliminate free-ridership.[52] While UGI may prefer the elimination of this incentive, they are not in a position to dictate the pre-requisites for retaining it; and neither the Commission nor Act 129 requires the pre-requisites demanded by UGI for retaining this measure. Although this alone should be dispositive of the matter, as UGI's witness acknowledged, even if the ground source heat pump *measure* has a negative TRC value, all but the low income *programs* offered through the Plans are cost effective; and the Commission does not require every measure to pass the TRC test.[53] Therefore, the inclusion of the ground source heat pump as a measure in each of the Companies' Plans does not violate Act 129 or any Commission directive. And, as UGI's witness also acknowledged, the inclusion of this measure is fairly typical of the kinds of programs that other utilities offer throughout the country.[54] Moreover, as the Companies' included net-to-gross estimates in their cost-effectiveness analysis in designing their plans and programs, they have already factored free ridership into their plan and program designs.[55] Indeed, the only evidence to support UGI's claims of free ridership is the their criticism of the 6% incentive level offered for a ground source heat pump as compared to the amount of the customer's cost.[56] However, this incentive level is more than twice the 2.9% of the cost to the customer that is being offered by UGI Inc. in its EE&C program to incent the switch from a natural gas water heater to a solar water heater.

Finally, while neither Act 129 nor the Commission mandates the Companies to include fuel switching measures in their Phase II EE&C Plans, the Companies' Plans have incorporated natural gas into their overall compliance strategy. For example, the Companies have included as a provision that makes combined heat and power ("CHP") projects up to a size of ten megawatts

[52] UGI Statement No. 1, pp. 4-5.
[53] Tr., p. 56.
[54] UGI Statement No. 1, p. 9; Tr., p. 65.
[55] S*ee* Appdx. D-2 of each Companies Phase II EE&C Plans
[56] UGI Statement No. 1, p. 18.

eligible for rebates.[57] These projects will far surpass any contribution to energy savings contemplated through the incenting of natural gas water and space heating as suggested by UGI.[58] Further, as the Joint Settlement indicates, the Companies intend to work with natural gas distribution companies in their respective service territories in an effort to increase coordination of whole home retrofit programs with similar programs offered by natural gas companies, and, when practical, the Companies will require their program implementation contractors and vendors to coordinate the installation of low income measures with installations of natural gas measures.[59]

In sum, UGI, Inc. has its EE&C plan, while the Companies have theirs. Each should be evaluated on its own merits. And in this instance, the Companies' Plans comply with all requirements of Act 129 and the Commission's 2012 Implementation Order without the inclusion of UGI's recommendations. No party has disputed this fact. Accordingly, the Companies' Phase II EE&C Plans should be approved without the modifications suggested by UGI, especially when as discussed below, the purported benefits of natural gas measures are overstated.

3. The Purported Benefits Underlying UGI' Recommendations are Based on Assumptions and Estimates that are Not Supported by Facts.

UGI's witness touted the benefits underlying their fuel switching recommendations through numerous calculations, including those based on the TRC test and UGI Inc.'s customer survey results. However, a closer look at these calculations reveals their flaws. For example, all of the benefit cost calculations are based on a TRC formula that used the NYMEX price of gas in

[57] FirstEnergy Term Sheet, para. 16.
[58] *See e.g.*, Tr., pp. 67-68.
[59] Id. at paras. 2 and 13.

Louisiana.[60] As the Companies' witness, Charles V. Fullem, explained, the use of these values for the price of natural gas understates the cost of natural gas and does not provide an "apples-to-apples" comparison with the electric benefit cost calculations. This is because the electric benefit cost calculation is based on the cost of electricity at the customer's meter and includes retail transmission and distribution charges, while the NYMEX price of natural gas includes none of these equivalent charges. Therefore, the TRC results presented by UGI's witness are skewed and grossly overstate the net benefits of natural gas measures.[61] As Mr. Fullem explained, the use of the NYMEX price is appropriate for evaluating the benefits of natural gas appliances being installed in the middle of the Gulf of Mexico.[62] But the use of only the NYMEX price of natural gas will not generate accurate results when comparing the *true* costs and benefits of various natural gas measures in Pennsylvania.

UGI's witness also attempts to support his claim that the current rebates included in the Companies' Plans may actually increase load.[63] As a preliminary matter, this witness admitted during cross examination that he had no idea whether these incentives have this effect.[64] While this should be sufficient to reject this portion of his testimony, the calculation presented by the witness is further flawed by additional assumptions and estimates; none of which are based in fact. For example, the calculation set forth on page 39 of UGI Statement No. 1 relies on UGI Inc.'s market research in its territory. Yet, the witness did not know how many of those customers surveyed were FirstEnergy customers.[65] Instead, UGI's witness used *averages*, even though there is no evidence to demonstrate that the use of such averages presents an accurate correlation to the Companies' service territory. Similarly, UGI's calculations relied upon its

[60] Tr., pp. 70, 85.
[61] Id. at 85-86.
[62] Id. at 87.
[63] UGI Statement No. 1, p. 37.
[64] Tr., p. 80.
[65] Id.

same internal market research and *assumed* that the 6% of customers who switched from another heating fuel source to electricity, all switched from natural gas.[66] However, as UGI's witness conceded, these customers could have originally used propane, wood or oil as the heating source from which they switched.[67] And finally, the calculation relies on information provided by the Companies in their annual status report, which stated that 151 of 1,273 customers surveyed who received rebates for electric heat pumps have natural gas service available in their homes. Based on this statement, UGI's witness again *assumed* that **all** 151 of these customers switched from natural gas heating to the heat pump technology. And again, there is nothing in the record that would support such an assumption. An opposite but equally valid assumption could be that **none** of these customers switched from natural gas heating, and that **all** of these customers simply replaced an existing heat pump.

UGI's witness probably explained his testimony best when he said during cross examination that he made some assumptions that may or may not prove to be valid and that he can't say with any certainty whether the Companies' programs are increasing the use of electricity.[68] In light of this, as well as the fact that all of the calculations in support of UGI's recommendations are based on a mechanical TRC calculation that does not provide an accurate comparison between the true costs and benefits of natural gas appliances vis-à-vis their electric appliance counterparts, the conclusions drawn from these calculations are unreliable and should, therefore, be rejected.

4. Summary

In sum, it is neither the legislature's nor the Commission's role to endorse the use of one fuel source over another, or to require shareholders and customers of an electric utility to

[66] Id. at 76.
[67] Id.
[68] Id. at 79-80.

subsidize the use of a natural gas company's products. Indeed, such a mandate may expose the Companies to claims of anti-competition and potential liability. Nothing in Act 129 or the Commission's directives requires fuel switching to be incorporated into the Companies' Phase II EE&C Plans as outlined by UGI. The Companies have designed their EE&C Plans to comply with all requirements of Act 129 and the Commission's 2012 Implementation Order without the inclusion of UGI's recommendations. These Plans incorporate natural gas into the Companies' overall compliance strategy in a practical, well measured approach by including CHP projects as an eligible measure and seeking to increase the coordination with natural gas companies of the Companies' whole home performance program and the installation of low income electric and natural gas measures. In light of the foregoing, UGI's suggested changes to the Companies' Phase II EE&C Plans should be rejected and the Plans should be approved as filed, factoring in the Joint Settlement and Ms. Frederick's testimony.

VII. CONCLUSION

As demonstrated above, UGI's recommended changes to the Companies' Phase II EE&C Plans should be rejected. In light of this, when factoring in the Joint Settlement, there are no other challenges to the Companies' Plans or the programs included therein. Moreover, no party challenged the Companies' Phase II Riders EEC-C as proposed. Accordingly, the Companies respectfully ask the Commission to issue an Order in this proceeding that:

- Approves each of the Companies' Phase II EE&C Plans as filed
- Grants the Petition for Joint Settlement, approving the Joint Settlement as filed; and
- Approves the Companies' proposed Phase II Riders EEC-C as filed, becoming effective for service rendered on or after June 1, 2013.

Respectfully submitted,

Kathy J. Kolich

Kathy J. Kolich
FirstEnergy Service Company
76 South Main Street
Akron, OH 44309
Direct Dial: (330) 384-4580
Facsimile: (330) 384-3875
Email: kjkolich@firstenergycorp.com

Lauren M. Lepkoski
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
Direct Dial: (610) 921-6203
Facsimile: (610) 939-8655
Email: llepkoski@firstenergycorp.com

John F. Povilaitis
Buchanan, Ingersoll & Rooney, P.C.
409 Second Street, Suite 500
Harrisburg, PA 17101-1357
Direct Dial: (717) 237-4825
Facsimile: (717) 233-0852
Email: John.Povilaitis@bipc.com

Dated: January 28, 2013

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

APPENDIX A

ORDERING PARGRAPHS

1. That the requests of UGI to modify the Companies' Phase II Proposed EE&C Plans are denied.

2. That the Companies' Proposed EE&C Phase II Plans, consistent with the Joint Petition for Settlement, are approved.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition for Approval of its Act 129	:	
Phase II Energy Efficiency and	:	**Docket Nos. M-2012-2334392**
Conservation Plans of Metropolitan Edison	:	**M-2012-2334387**
Company, Pennsylvania Electric Company,	:	**M-2012-2334395**
Pennsylvania Power Company Plan and	:	**M-2012-2334398**
West Penn Power Company	:	

CERTIFICATE OF SERVICE

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

Via Email and First Class Mail

Daniel Asmus
Office of Small Business Advocate
Commerce Building
300 North Second Street, Suite 1102
Harrisburg, PA 17101
dasmus@pa.gov

Candis Tunilo
Christy Appleby
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
ctunilo@paoca.org
cappleby@paoca.org

Henry S. Geller
Patrick M. Cicero
Pa Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net

Heather M. Langeland, Staff Attorney
PennFuture
200 First Avenue, Suite 200
Pittsburgh, PA 15222
langeland@pennfuture.com

Susan E. Bruce
Charis Mincavage
Vasiliki Karandrikas
Teresa K. Schmittberger
McNees Wallace & Nurick LLC
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
sbruce@mwn.com
cmincavage@mwn.com
tschmittberger@mwn.com

Derrick Price Williamson
Barry A. Naum
Spilman, Thomas & Battle, PLLC
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
dwilliamson@spilmanlaw.com
bnaum@spilmanlaw.com

Julia A. Conover
Hawke McKeon & Sniscak LLP
P. O. Box 1778
100 North Tenth Street
Harrisburg, PA 17101
Jaconover@hmslegal.com

Mark C. Morrow
Chief Regulatory Counsel
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
morrowm@ugicorp.com

Thomas Sniscak
Hawke McKeon & Sniscak LLP
P. O. Box 1778
100 North Tenth Street
Harrisburg, PA 17101
tjsniscak@hmslegal.com

Joseph L. Vullo
Burke Vullo Reilly Roberts
1460 Wyoming Avenue
Forty Fort, PA 18704
jlvullo@aol.com

Jeffrey J. Norton
Eckert Seamans Cherin & Mellott LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
jnorton@eckertseamans.com

Robert Knecht
Industrial Economics
2067 Massachusetts Avenue
Cambridge, MA 02140
rdk@indecon.com

Date: January 28, 2013

John F. Povilaitis, Esq.