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December 30, 2013

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

VIA ELECTRONIC FILING

RE: Energy Efficiency and Conservation Program;
Docket Nos. M-2012-2289411 and M-2008-2069887

Dear Secretary Chiavetta:

Enclosed please find the 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") regarding Tentative Order issued the above-referenced proceeding on November 14, 2013.

Very truly yours,

McNEES WALLACE & NURICK LLC

By Pamela C. Polacek

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Counsel to Industrial Customer Groups

PCP/sar
Enclosure

c: Megan G. Good (via e-mail)
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Energy Efficiency and Conservation Program	:	Docket No. M-2012-2289411
	:	M-2008-2069887

COMMENTS OF
INDUSTRIAL CUSTOMER GROUPS

I. INTRODUCTION

On November 14, 2013, the Pennsylvania Public Utility Commission ("PUC" or "Commission") issued its Tentative Order presenting the Amended Act 129 Demand Response ("DR") Study Final Report ("Amended Final Report") as prepared by the Statewide Evaluator ("SWE").[1] The Tentative Order seeks comment on an alternative peak demand reduction program ("Proposed DR Model") providing an alternative approach to the top 100 hours methodology. The Tentative Order also summarizes the findings of the SWE's Preliminary Wholesale Price Suppression and Prospective Total Resource Cost ("TRC") Analysis.

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") submit these Comments in response to the Tentative Order and Amended Final Report. IECPA is a 20-member *ad hoc* group of energy-intensive industrial customers of electricity and natural gas.

[1] *Energy Efficiency and Conservation Program*, Docket Nos. M-2012-2289411, et al., Tentative Order (Nov. 14, 2013) ("Tentative Order").

More than 41,000 Pennsylvanians are employed by IEPCA member companies alone. DII, MEIUG, PICA, PAIEUG, PPLICA, and WPPII are all *ad hoc* groups of commercial, institutional, and industrial customers of electricity that participate in various proceedings before this Commission, including the Energy Efficiency and Conservation ("EE&C) Plan proceedings for the respective electric distribution companies ("EDCs").[2]

Although the Industrial Customer Groups support the Commission's proposal to move away from the top 100 hours methodology, the Industrial Customer Groups question whether DR programs for Large Commercial and Industrial ("C&I") customers should be adopted for future phases of the Commission's Act 129 EE&C Program. The Industrial Customer Groups further submit that despite the SWE's assertions, the Proposed DR Model will likely compete with PJM Interconnection, L.L.C. ("PJM") Emergency Load Response Program ("ELRP") and may provide additional compensation for load curtailment activities that would be undertaken based on incentives and market signals that are already in place. The Industrial Customer Groups therefore urge the Commission to reevaluate the Proposed DR Model and ensure that the DR program adopted for future phases of the EE&C program (if any is adopted) appropriately considers the price signals offered by the PJM market. The Industrial Customer Groups further urge the Commission to exclude the SWE's wholesale price suppression analysis and transmission and distribution ("T&D") "savings" analysis from consideration for future phases given the highly speculative nature of the SWE's results.

[2] The positions set forth herein reflect the collective views of the intervention groups and do not necessarily reflect the views of each individual member.

II. COMMENTS

Although the Industrial Customer Groups support the Commission's proposal to abandon the top 100 hours methodology, the Industrial Customer Groups urge the Commission to reconsider whether DR programs for Large C&I customers should be included in future phases of the EE&C program. As the Amended Final Report makes clear, DR programs for Large C&I customers were not cost-effective in Phase I, nor would they be likely to be effective in Phase III without significant overhaul and speculative assumptions regarding wholesale price suppression and "avoided" T&D expenses. Given that DR incentives and other price signals are widely available to these customers in the PJM market, the Industrial Customer groups submit that DR programs for Large C&I customers be excluded from future phases of the EE&C Program.

If the Commission determines that the Proposed DR Model and other DR proposals are not cost-effective, the Commission must adjust the overall budget for the EE&C program. Maintaining the budget at current levels is not required by Act 129. Additionally, maintaining the current budget is inconsistent with the public interest given that ratepayers are responsible for costs attributable to a defunct program. The Industrial Customer Groups therefore urge the Commission to evaluate the EE&C Program budget if DR programs are eliminated from future program phases and reduce the budget accordingly.

A. The Industrial Customer Groups Support the SWE's Observation that Fashioning Additional DR Goals for the Large C&I Class Providing Incremental Value Over PJM Market Signals is Very Difficult.

In addition to reporting the SWE's findings regarding wholesale price suppression and prospective TRC analysis, the Amended Final Report offers the SWE's conclusions with respect to the inclusion of DR goals in Phase III of the EE&C Program. The SWE ultimately concludes that any determination regarding whether to include DR goals in Phase III should be "based on a prospective TRC analysis of a revised demand program design that provides incremental value over the PJM competitive markets."[3] With respect to load curtailment programs for Large C&I customers, the Amended Final Report concludes that Act 129 DR programs face "significant challenges" in light of the thriving available PJM markets and recommends that the Commission not establish additional goals that interfere with the competitive markets already in place.[4]

The Industrial Customer Groups support the SWE's conclusion that establishing additional DR goals for the Large C&I rate class that provide incremental value over PJM market signals is challenging. It is not just the PJM DR market signals that must be considered, but also the PJM energy and capacity market signals, which Large C&I customers see directly or indirectly through their default service hourly supply or competitive offers. Customers rely on these PJM price signals when determining the value of energy efficiency projects and modifying electricity usage (both during peak times and on an overall basis).

As the Commission is aware, the PJM energy market price varies hourly, while the energy, capacity and transmission costs incurred by the customer are based on performance during peak hours. The hourly default service price available to Large C&I customers flows all three products directly through to the customer. When customers shop, some take all or a portion of capacity and transmission costs as a direct pass through charge. Even for customers that have fixed price agreements, the electric generation supplier ("EGS") price is based on the projected load shape and usage of the customer, which is influenced by historic usage patterns or contractual commitments such as bandwidths. Thus, even those customers that do not directly participate in the PJM DR programs may be engaging in DR-like strategies (such as peak shaving) to respond to the PJM market signals. Layering an additional DR offering on top of the

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[3] *See* Act 129 Demand Response Study, Final Report at 66 (amended Nov. 1, 2103), *available at* http://www.puc.pa.gov/pcdocs/1256728.docx ("Amended Final Report").
[4] *See id.* at 56.

PJM programs is very difficult in this type of market, and is not equivalent to the types of programs that can be offered in an integrated resource planning regulatory system where the PJM market structures do not exist (for either consumption or DR).

In light of the challenges identified by the SWE in the Amended Final Report, and the additional strategic value gleaned from the price signals available via the PJM energy and capacity markets, the Industrial Customer Groups urge the Commission to carefully consider whether DR programs for Large C&I customers can provide incremental value over the established PJM markets in future phases of the EE&C program. Absent clear and compelling evidence (which has not to date been provided by the SWE or any other stakeholder), any future Act 129 DR programs should not apply to the Large C&I class due to the likely "competition" that will occur with the existing PJM DR programs and market price signals.

B. The Proposed Demand Response Model Will Directly Compete with the PJM Programs

At the Commission's direction, the SWE provided recommendations to increase the cost-effectiveness of the DR programs deployed in Phase I, including, in relevant part, amendments to the Large C&I load curtailment programs. Based on the SWE's recommendations, the Tentative Order proposes to exclude those Large C&I customers enrolled in PJM's Emergency Load Response Program ("ELRP") from participating in Act 129 DR programs.[5] Those Large C&I customers that do participate would receive approximately the same incentive per MWh curtailed as in Phase I, and would also receive an upfront payment for the capacity commitment. The Commission states its belief that such a payment structure "would not be incentive enough for customers to leave the PJM ELRP, thus avoiding a scenario in which Act 129 programs and the PJM ELRP are in direct competition."

[5] Tentative Order at 31.

The Industrial Customer Groups question whether the Proposed DR Model understates the potential value of the Act 129 DR programs in comparison to the PJM ELRP, and by extension, the level of competition between the two options. As the SWE notes in the Amended Final Report, the approach set forth in the Proposed DR Model would "likely appeal to customers who are interested in reducing their Peak Load Contribution ("PLC")."[6] While the SWE's recommendations draw a distinction between peak shaving and emergency load response, the Industrial Customer Groups submit that these programs are actually in direct competition despite the SWE's assertion to the contrary.

Peak shaving and participating in the PJM ELRP program can be considered "two sides of the same coin." Although not identical, both are strategies used by larger customers to manage a facility's overall electric expense. Customers participating in the PJM ELRP reduce overall costs by receiving a payment from PJM in exchange for the obligation to curtail. Peak shaving customers curtail during expected peaks to reduce the facility's capacity obligations and transmission obligations for the following year in a recurring strategy to reduce electricity costs. The attractiveness of one strategy over another can vary from customer to customer; however, the two strategies are both aimed at the same goal.

The Proposed DR Model set forth in the Tentative Order interferes with the competition between these two strategies in three ways. First, it increases the payment to the customer engaging in the peak shaving strategy. This compensation comes from the customers that participate in the PJM ELRP program and all others in the Large C&I class. The customer that participates in the PJM ELRP, on the other hand, cannot access the Act 129 DR funds.

Second, the Proposed DR Model fails to account for the value added by avoided transmission and capacity costs available through the proposed Large C&I Act 129 DR program

[6] Amended Final Report at 67.

that may increase its attractiveness in comparison to the PJM ELRP. A customer participating in the PJM ELRP sees its MW reductions during the emergency and test curtailments added back in calculating its transmission and capacity obligations for the following year. By contrast, an Act 129 DR program participant or peak shaver who reduces load during the actual PJM and zonal peaks receives added benefits in transmission and capacity obligations for the following year. Accordingly, while the Proposed DR Model appears to be targeted only at those customers interested in peak shaving, the added benefit of reduced transmission and capacity obligations place the Act 129 Programs in direct competition with the well-established PJM ELRP program.

Third, responsibility for payments into the EE&C program are tied to each customer's PLC. As a result, peak shaving customers engaging in a comparable load reduction during the PJM peaks as a customer that participates in the ELRP bear a smaller cost responsibility for the EE&C program than those who participate in the PJM ELRP. The "hidden benefit" of a more limited contribution to the EE&C program will be taken into account by customers in determining whether to participate in the PJM ELRP or peak shave under the EDC's Act 129 offering.

In light of the added value to transmission and capacity obligations, the TRC will need to be discounted if the Proposed DR Model is adopted. Specifically, the SWE would need to accurately determine what level of peak shaving would have occurred based on the existing market signals, and the value of the incremental benefit (if any) due to the additional EE&C Plan incentives. Utilizing the methodology recommended by the SWE in the Amended Final Report would result in an inflated TRC that is not demonstrative of the actual cost-effectiveness of the Act 129 DR programs. Given that the use of DR programs in future phases of the EE&C Program is dependent on the TRC, the Commission should take great care to ensure its TRC methodology excludes the added value of Act 129 DR participation in order to meet its Act 129 obligations to approve only cost-effective goals and measures.

When viewed in totality, the assumptions of the Proposed DR Model do not justify ignoring price signals available through the established PJM markets. Accordingly, the Industrial Customer Groups urge the Commission to more carefully evaluate the Proposed DR Model to determine whether the Proposed DR Model truly achieves the objective of ensuring that Act 129 DR programs provide incremental value to PJM's already operational competitive DR markets. Based on the foregoing discussion, the Industrial Customer Groups respectfully submit that the proposed revised methodology should be rejected.

C. The Wholesale Prices Suppression Analysis is Extremely Speculative

In addition to setting forth the Proposed DR Model, the Tentative Order summarizes the SWE's preliminary estimate of potential wholesale price suppression impacts from Act 129 DR programs using known data.[7] The Amended Final Report concludes that including wholesale price suppression in the TRC analysis increased the cost-effectiveness of Act 129 DR programs for Phase I.[8] With respect to Large C&I programs, the statewide TRC would increase from 0.64 to 0.88 with price suppression.[9] The Amended Final Report cautions that the SWE's findings are a "rudimentary estimate" only of wholesale price suppression benefits, and suggest that a more in-depth analysis is required.[10]

The Industrial Customer Groups urge the Commission to exclude the SWE's wholesale price suppression analysis from consideration of DR programs for future phases of the EE&C Program. As the Tentative Order acknowledges, the SWE's findings would likely be at least

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[7] Tentative Order at 21.
[8] *See* Amended Final Report at 58.
[9] *See id.* at 65.
[10] *See id.*

partially offset by benefits to Pennsylvania ratepayers from the DR programs paid for by residents in neighboring states. Moreover, supply-side resources may be aware of the effects of DR programs on wholesale market prices and may increase their dollar MW bids accordingly. Given the speculative nature of these preliminary findings, utilizing the data to form the basis of decisions for future phases of the EE&C program would likely prove imprudent. Most importantly, this type of tentative analysis is not substantial record evidence to support a conclusion that the proposed revised DR structure will be cost-effective.[11] If customers are going to be required to pay millions of additional dollars toward future DR phases, then due process requires more than a "rudimentary" estimate of an assumption that appears to be necessary to manufacture a TRC of greater than 1.0 for the Act 129 DR programs. Accordingly, the Industrial Customer Groups recommend that the Commission exclude the SWE's wholesale price suppression analysis from consideration of future DR programs.

D. The SWE's Conclusions Regarding the "Benefit" of Avoided T&D Costs Are Also Speculative.

The Amended Final Report includes an analysis of the benefits to DR impacts associated with avoided T&D costs. The SWE notes that T&D costs are "a major source of uncertainty in the cost/benefit analysis of [DR]," and noted that additional research by Pennsylvania's electric distribution companies ("EDCs") is necessary to give any meaning to the SWE's analysis. Importantly, however, the SWE notes that [w]ithout the inclusion of avoided T&D costs, none of the Act 129 customer load curtailment programs are cost effective."

[11] All Commission action must be supported by "substantial record evidence." "Substantial" record evidence is defined as "evidence that is sufficient to convince a reasonable mind to a fair degree of certainty." *See Pa. P.U.C. v. Wilbar Realty Co.*, 88 Pa. P.U.C. 1(1998). *See also Pa. P.U.C. v. Peoples Natural Gas Co.*, 69 Pa. P.U.C. (1989); *Pa. P.U.C. v. Pa. Gas and Water Co.*, 79 Pa.P.U.C. 349 (1993); *Pa. P.U.C. v. Metropolitan Edison Co.*, 60 Pa.P.U.C. 349 (1985).

The Industrial Customer Groups urge the Commission to exclude the SWE's findings with respect to avoided T&D costs from consideration of DR programs for future phases of the EE&C Program. By the SWE's own admission, estimation of avoided T&D costs is typically more difficult than estimating avoided generation costs, particularly given that T&D costs are specific to each utility's service territory and distribution system. Moreover, the SWE's analysis was based on assumed T&D avoided costs rather than actual EDC-specific data. Given that avoided T&D costs is a critical component of the TRC, relying on the SWE's assumptive analysis rather than actual data disregards the critical nature of these costs to the overall cost-effectiveness of the DR program.

In addition, it is unclear that EDCs modify system planning projections at all with respect to DR, which is a one year commitment. Some EDCs may plan system needs based on non-coincident peak requirements, which are not impacting by having customers curtail usage during the specific peak hours. As such, avoiding demand peaks does not change what the EDC projects to need for its system reliability, particularly when DR commitments are not permanent. Furthermore, there would be no "distribution" cost avoidance for demand reductions obtained from customers served at transmission voltage; cost avoidance would result only for transmission service (if any at all). Give the insufficient record of evidence regarding avoided T&D costs, as acknowledged by the SWE in the Amended Final Report, the Industrial Customer Groups urge the Commission to excluded avoided T&D costs from its analysis in order to refrain from artificially generating more favorable TRC results.

E. Prospective TRC Analysis

The Tentative Order also summarizes the SWE's findings regarding its prospective TRC analysis, with and without inclusion of potential wholesale price suppression benefits, of a revised DR program design that "provides incremental value over the PJM competitive markets." The SWE's findings demonstrate an increase in the TRC across all DR programs, and all Large C&I programs were found to be cost-effective. As with wholesale price suppression, the Tentative Order provides a caveat that all assumptions and estimates are preliminary and require further study.

The Industrial Customer Groups view the SWE's finding with respect to the prospective TRC analysis with the same critical eye as with the SWE's wholesale price suppression analysis, and the "avoided T&D" cost analysis. It is vital that the Commission act on the need for future DR programs based on concrete and fully analyzed data, and the Amended Final Report acknowledges that the SWE's analysis falls short of anything more than preliminary findings. In addition, because some customers will engage in peak shaving activities under the existing PJM price signals, the SWE must conduct a further analysis to determine the true "incremental" impact of the Act 129 payments. Given the speculative nature of the prospective TRC analysis, the Industrial Customer Groups recommend that the Commission exclude this data from consideration of DR programs in future EE&C program phases.

F. If DR is Eliminated for Large C&I Customers, the EE&C Budget For These Customers Should Be Reduced by 50% in Each Service Territory

If the Commission determines that the Proposed DR Model and other DR proposals are not cost-effective for Large C&I customers, the Commission should reduce the budget for the EE&C Program budget for these customers in each service territory by 50%. Pursuant to Act 129, the EE&C budget is currently capped at 2% of EDCs' 2006 revenues and has remained at this level throughout Phase II despite the elimination of DR goals. The Industrial Customer Groups submit that if the Commission determines that DR programs for Large C&I customers will not prove cost-effective in future phases of the EE&C Program, the Commission should accordingly reduce the budget for these customers by 50% to appropriately account for energy and efficiency goals while ensuring these customers are not subsidizing the DR goals of other customer classes.

Maintaining the current EE&C budget at current levels for Large C&I customers is not required by Act 129, given that ratepayers are responsible for costs attributable to a defunct program. The Commission has flexibility to reduce the budget to levels appropriate to achieve the energy and efficiency objectives of Act 129. In addition, reducing the budget would be more consistent with the intent of the statute, which requires the Commission to examine of energy efficiency and conservation as separate regulatory objectives. The Industrial Customer Groups therefore urge the Commission to evaluate the EE&C Program budget if DR programs are eliminated from future program phases and reduce the budget appropriately.

III. CONCLUSION

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

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By______________________________

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Dated: December 30, 2013