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January 4, 2016

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

**VIA ELECTRONIC FILING**

**RE: Joint Petition for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans Phase III of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company; Docket Nos. M-2015-2514767, M-2015-2514768, M-2015-2514769, M-2015-2514772**

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Joint Comments on behalf of the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Penn Power Users Group, and the West Penn Power Industrial Intervenor, in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to these proceedings are being duly served with a copy of this document. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By   
Teresa K. Schmittberger

Counsel to the Met-Ed Industrial Users Group,  
the Penelec Industrial Customer Alliance,  
the Penn Power Users Group, and  
the West Penn Power Industrial Intervenor

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Enclosures

c: Administrative Law Judge Elizabeth H. Barnes (via E-mail and First-Class Mail)  
Administrative Law Judge Steven K. Haas (via E-mail and First-Class Mail)  
Certificate of Service

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## CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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Dated this 4<sup>th</sup> day of January, 2016, at Harrisburg, Pennsylvania



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition for Consolidation of Proceedings	:	
and Approval of Energy Efficiency and	:	
Conservation Plans Phase III of Metropolitan	:	Docket Nos. M-2015-2514767
Edison Company, Pennsylvania Electric	:	M-2015-2514768
Company, Pennsylvania Power Company, and	:	M-2015-2514769
West Penn Power Company	:	M-2015-2514772

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**JOINT COMMENTS  
OF THE MET-ED INDUSTRIAL USERS GROUP,  
THE PENELEC INDUSTRIAL CUSTOMER ALLIANCE,  
THE PENN POWER USERS GROUP, AND  
THE WEST PENN POWER INDUSTRIAL INTERVENORS**

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**I. INTRODUCTION**

Through Act 129 of 2008 ("Act 129"), the Pennsylvania General Assembly tasked the Pennsylvania Public Utility Commission ("Commission") with establishing an Energy Efficiency and Conservation ("EE&C") Program. Pursuant to Act 129, the Commission has ordered each Electric Distribution Company ("EDC") with at least 100,000 customers to develop and implement a tailored EE&C Plan to reduce energy demand and consumption within its service territory. Thus far, the Commission has worked with EDCs across the Commonwealth to carry out two phases of EE&C Program implementation.

On June 19, 2015, the Commission decided that a third Phase of EE&C programming was necessary and issued an Implementation Order directing EDCs to develop a third EE&C Plan.<sup>1</sup> Pursuant to the Commission's Order, the Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power"), and

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<sup>1</sup> *Energy Efficiency and Conservation Program*, Docket No. M-2014-2424864 (Implementation Order Entered June 19, 2015) ("Phase III Implementation Order").

West Penn Power Company ("West Penn") (collectively, "Companies") filed their Phase III EE&C Plans ("Phase III Plans") for the period June 1, 2016, through May 31, 2021. The Companies' Plans propose various EE&C Programs designed to meet their Commission-mandated energy consumption reduction targets and demand reduction target.<sup>2</sup>

The Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), the Penn Power Users Group ("PPUG"), and the West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customer Groups") hereby submit these Comments in response to the Companies' Phase III Plans. The Industrial Customer Groups are *ad hoc* associations of energy-intensive customers receiving electric service in the Companies' service territories. As some of the Companies' largest customers, whose manufacturing processes require significant amounts of electricity, any proposed modifications to the Companies' electric rates could significantly impact the Industrial Customer Groups' production costs. Because the cost of electricity (including government-imposed costs such as EE&C surcharges) is a substantial component of the Industrial Customer Groups' members' operating budgets, the Industrial Customer Groups are concerned about certain elements of the Companies' Phase III Plans.<sup>3</sup>

As the Commission is aware, many businesses independently fund and implement EE&C initiatives in order to reduce their electricity costs. When Large Commercial & Industrial ("C&I") customers in Pennsylvania purchase power from Electric Generation Suppliers ("EGSs"), they receive signals from the retail supply market regarding the value of energy efficiency efforts. Large C&I customers assess those price signals and decide whether it is

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<sup>2</sup> Consistent with the Implementation Order, Penelec does not have a demand reduction requirement for Phase III. See Implementation Order, p. 45.

<sup>3</sup> The positions set forth herein reflect the collective views of the intervention groups and do not necessarily reflect the views of each individual member.



beneficial to their businesses to implement energy efficiency measures. Forward-looking and cost-sensitive consumers make decisions on a daily basis to install energy-efficient lighting, replace motors, install more efficient heating, ventilating, and air conditioning systems, and explore complex industrial process enhancements to remain competitive and efficient. Large C&I enterprises have been studying the benefits of energy efficiency and incorporating energy efficiency projects into their business models for many years prior to the implementation of Act 129 in 2008.

Pursuant to Act 129, the Commission approves cost recovery mechanisms determining the extent to which ratepayers must support an EDC-administered EE&C Program. The Companies' customers, including Large C&I customers, have financially supported the Companies' EE&C Programs since their inception, including grants provided to members of the Large C&I class, administrative expenses, research and development ("R&D"), marketing and advertising, Conservation Service Provider ("CSP") compensation, Statewide Evaluator compensation, and other miscellaneous expenditures. Consequently, the Commission must determine whether the Companies' programs for each customer class are cost-effective and in the public interest, because every dollar paid to support the Companies' EE&C Plans is a dollar taken from a customer's own energy efficiency initiatives or other business needs.

The Industrial Customer Groups respectfully submit their comments on four elements of the Companies' proposed Phase III Plans. First, the Industrial Customer Groups stress that if a ruling by the U.S. Supreme Court were to result in the elimination of all PJM Interconnection, L.L.C. ("PJM"), Demand Response ("DR") Programs, then the Commission must hold an expeditious and comprehensive stakeholder process to ensure that the Commonwealth can effectively and efficiently replace PJM's programs. Second, if Senate Bill 805 ("S.B. 805")

passes in the Pennsylvania General Assembly, then the Companies must be able to adjust their Phase III Plans to permit Large C&I customers to opt out of the Companies' Plans. Third, the Companies must structure their Phase III Plans to recognize and comply with PJM market rules. Specifically, as Phase III of Act 129 now requires all EDCs to rebid all CSP contracts, the Companies must comply with the PJM Open Access Transmission Tariff's ("Tariff") requirement that a customer location have only one PJM Curtailment Service Provider per PJM DR program. The operation of the Companies' Act 129 DR Program must be transparent so the Commission and stakeholders can evaluate the Companies' implementation of the "50% rule for dual participants" and determine the portion of the measure costs that are going to compensate customers for load reductions and the portion that is being devoted to administrative expenses. Finally, the Companies must ensure that their ratemaking process is transparent, just, and reasonable, in order to guarantee that costs are allocated fairly among customers with little uncertainty as to what the customer charges will be.

In addition to the aforementioned structural issues, the Industrial Customer Groups have many questions about the projected costs of Phase III, the evaluation of the purported "benefits" of various measures, and the accuracy of prior calculations of Total Resource Cost ("TRC") values. The Industrial Customer Groups reserve the right to supplement these initial comments through testimony, cross-examination, and/or briefs based on the information provided by the Companies in this proceeding and further analysis of the Phase III Plans.



## II. COMMENTS

### A. **If A Ruling by The U.S. Supreme Court Were To Result in the Elimination of PJM DR Programming and States Assume Primary Responsibility for Managing DR Initiatives, the Commission Must Hold An Expeditious and Comprehensive Stakeholder Process Outside of the EE&C Plan Process To Ensure Reliability and Develop Functional Replacements for the PJM DR Programs.**

As the Commission recognized in its Phase III Implementation Order, there is uncertainty due to the pendency of *EPSA* regarding the PJM DR programs. *See* Phase III Implementation Order, p. 22. Should the U.S. Supreme Court decide to invalidate FERC Order 745 in such a manner that affects all of PJM's DR programs substantially, each state must decide whether to develop replacements for the PJM DR programs, which currently provide dual benefits by enhancing reliability during periods when the PJM grid is under stress and by impacting wholesale prices for energy and capacity (by permitting customer load to participate in the PJM markets through PJM Curtailment Service Providers).<sup>4</sup> In the absence of PJM's programs, the Commission must assume the primary role for creating and managing DR programs. From the perspective of the Industrial Customer Groups, Act 129 DR options are insufficient substitutes for PJM's current DR offerings.

PJM's role as the wholesale market operator enables it, subject to *EPSA*, to offer effective DR programs. Specifically, PJM's DR offerings enable demand resources to participate in a manner directly impacting energy and capacity prices. Act 129 does not provide the

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<sup>4</sup> *EPSA v. FERC*, 753 F.3d 216 (D.C. Cir. 2014), *pet. for cert. filed*, *FERC v. EPSA*, (U.S. Jan. 15, 2015) (No. 14-840), *EnerNOC, Inc., et al., v. EPSA*, (U.S. Jan. 15, 2015) (No. 14-841). FERC Order 745 only pertains to the energy market and not the capacity market. However, the Court's reasoning behind its decision on FERC Order 745 could be equally true with regard to the capacity market. Thus, while invalidation of FERC Order 745 would not cancel all PJM DR Programs, a subsequent FERC action based on the Court's decision on FERC Order 745 could affect PJM's capacity market DR program. If the U.S. Supreme Court invalidates FERC Order 745, there could be a future FERC decision invalidating PJM's capacity market DR program, which would then affect capacity-based DR programs under Act 129. *See First Energy Service Co. v. PJM Interconnection, L.L.C.*, Docket No. EL14-55-000 (filed May 23, 2014).

Commission with the necessary financing, market presence, and cost efficiencies that are critical to forming an expanded DR program capable of operating as efficiently as PJM's and with the same reliability benefits.

If the Commonwealth must replace PJM's DR Program with a state DR program, the program's design and operation must be thoroughly reviewed via an expeditious and comprehensive stakeholder process. The Act 129 DR Program, as currently constituted, will not be able to manage load as capably as PJM's program, endangering reliability and risking price increases. In addition, because large customers often participate in the PJM DR Programs as part of their overall energy cost management strategy, for Pennsylvania businesses to remain financially viable and competitive, any state substitute for the PJM programs should aim to provide equivalent compensation to the customers who endure the impacts of the curtailments or other load management activities. While EDCs and CSPs undoubtedly have views on how substitute programs could be structured, the Industrial Customer Groups urge the Commission to view its members and other end users who are intimately familiar with the PJM DR Programs as key stakeholders in any replacement process.

**B. Should S.B. 805 Pass the General Assembly, The Companies Must Adjust Their Phase III Plans To Permit Large C&I Customers To Opt Out of Participation in Their Phase III Plans.**

S.B. 805 is currently on the legislative calendar at the Pennsylvania General Assembly. Should S.B. 805 be enacted, Section 2806.1(b)(ii) of the Public Utility Code will be amended to permit Large C&I customers to opt out of participation in an EDC's Phase III EE&C Plan. If the Pennsylvania General Assembly enacts S.B. 805, the Commonwealth would join 14 other states (out of 24 states that have EE&C Programs) who have either exempted Large C&I customers from participating in such programs or permitted Large C&I customers to voluntarily opt out.



Large C&I customers in Pennsylvania have already paid millions of dollars for EE&C programs during Phases I and II of Act 129. More importantly, proactive Large C&I customers have responded to competitive pressures in their own industries for decades and designed internal EE&C initiatives to reduce energy costs, maximize free cash flows, minimize debt, and increase industry competitiveness. Requiring Large C&I enterprises to pay into a third Phase of EE&C funding redirects key resources that could be dedicated towards other business objectives or voluntary energy efficiency programs that are better tailored to the customer's individual business model.

Because Act 129 caps reimbursement for EE&C projects and imposes strict criteria on their development, many of the more complex projects currently targeted by Large C&I customers are compatible with the incentive and programming restrictions set forth in the Companies' Phase III Plans. Many Large C&I customers responded to market forces and implemented cost-effective EE&C measures throughout periods when rate caps were expiring. Even without the Act 129 mandates, Large C&I customers will continue to pursue appropriate efficiency and energy management strategies to remain competitive in the national and global markets. The Industrial Customer Groups do not see any reason to continue paying an "EE&C tax" under the Companies' Phase III Plans in order to subsidize EE&C Plan implementation by late-movers in the Large C&I class, particularly where, to a far greater degree than for Residential or Small C&I customers, market forces sufficiently incentivize Large C&I customers to invest in energy efficiency.

In sum, the Companies' Phase III Plans do little to motivate large customers to adopt EE&C measures. Large C&I customers view a third Phase of Act 129 programming as duplicative, and if S.B. 805 passes, many members of the Industrial Customer Groups will opt

out of Act 129 initiatives. Therefore, the Companies must be prepared to adjust their Phase III Plans accordingly.

**C. The Companies Must Recognize PJM's "One Curtailment Service Provider" Rule and Be Transparent in Their Operation of the Phase III DR Programs.**

The Companies', with the exclusion of Penelec, DR Programs will span a four-year period beginning on June 1, 2017, and concluding on May 31, 2021.<sup>5</sup> The Phase III program will allow for dual-participation in Act 129 and PJM's Emergency Load Response Program ("ELRP"), as long as the Companies incorporate appropriate precautions. The Implementation Order also includes a 50% discount on Act 129 DR incentives for dual-enrolled Act 129 and ELRP customer accounts. Furthermore, the Implementation Order directs EDCs to initiate a competitive solicitation process to procure a Curtailment Service Provider that can carry out Large C&I customer curtailment.

The Industrial Customer Groups support selection of CSPs for Phase III DR through a competitive solicitation process; however, the Industrial Customer Groups stress that the Companies must work with customers using other PJM CSPs for the PJM DR programs, including those who are PJM members and operate as their own CSPs. PJM's Tariff allows a customer to use multiple CSPs in emergency DR situations but only allows one CSP to manage economic DR incidents on behalf of the customer.<sup>6</sup> Some PJM CSPs are not Act 129 CSPs. If a CSP succeeds in the EDC's bidding process and secures a contract for managing economic DR on behalf of the EDC, and that CSP is different from the CSP that a "dual-enrolled" customer uses to participate in the PJM DR programs, then PJM market rules may be violated if the Act 129 CSP uses the customer's load reduction for a PJM DR program. In their Plans, the

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<sup>5</sup> Per the Commission's Implementation Order, Penelec is not to include a DR component within its Phase III Plan.

<sup>6</sup> See PJM Open Access Transmission Tariff, Section 1.5A.3.02; see also Manual 11: Energy & Ancillary Services Market Operations, Section 10.2.1.



Companies indicated that they do not intend to bid the Act 129 demand reductions into the PJM DR Programs. *See* Section 3.4 of the Companies' Phase III Plans. To the extent the Companies' position is modified during the course of this proceeding, the Companies must take care to remain compliant with PJM's regulations.

In addition, the Industrial Customer Groups request that the Companies disclose CSP costs for each EE&C measure in their annual reports and ensure that the CSP contract review process is public and transparent. For the Act 129 DR measures, the Company must differentiate CSP costs from any compensation that is provided to the customers of the CSP service. In other words, the Act 129 DR measure costs should be segregated into "CSP administration" and "participant payments." The selected CSP should have an obligation to report on portions of its contract amount used to compensate customers, including segregating that amount to confirm compliance with the "50% rule" for dual-enrolled customers. The operation of the measure should be transparent and accessible by the customers in the classes that are paying for the program. Publicly disclosing financial data promotes transparency and responsible use of ratepayer dollars. Furthermore, CSP-related costs should be included in the Companies' estimates of all EE&C Program administration costs to ensure the Commission's determination of allowable costs is just and reasonable.

**D. The Companies' Rate Setting and Reconciliation Process Must Be Public, Prompt and Uniform To Reduce Uncertainty and Ensure Fair Cost Allocation Among Customers.**

In its Implementation Order, the Commission proposed a standardized rate reconciliation process for all EDCs. The Industrial Customer Groups respectfully request that this process be accompanied by public distribution of additional information and public hearings (with adequate prior notice to stakeholders). Specifically, the Companies should disclose all EE&C Program

data and assumptions including: (i) actual program costs versus budgeted costs, and (ii) the number of conservation measures developed and proposed by customers versus those proposed to customers by the Companies' personnel or CSPs.

Publicly disclosing actual and budgeted EE&C Program development costs motivates EDCs to adhere to their projected expenses and ensures that customers only pay for EE&C initiatives that have been efficiently designed and proven successful. Ratepayers do not want to be surprised by actual EE&C costs exceeding the Companies' EE&C R&D cost projections. Thus, many Large C&I customers do not support EDC-developed EE&C Programs because customers believe that they would have diverted the extra money they paid for EDC EE&C initiatives towards their own independently-funded EE&C initiatives or other corporate priorities to remain competitive. To the extent Large C&I customers remain subject to the Companies' Phase III Plans, the Companies should be required to provide as much transparency as possible, including providing updated disclosures of budgeted and actual costs in their Quarterly Reports.

Many Large C&I customers believe they have more efficient and effective EE&C Program development processes because in-house personnel (or consultants engaged directly by the customer) are more intimately aware of the unique characteristics of their businesses. Accordingly, the Industrial Customer Groups also request that the Companies disclose the number and energy savings of customer-developed measures, and the number and energy savings of projects that are developed based on an Act 129 CSP audit or suggestion. At this stage of EE&C Plan development, it is prudent to determine the value of the "consulting" function of the Act 129-funded CSPs within the program structure. Administrative costs could be reduced by eliminating this function, and limiting the CSPs' role to evaluating the projects that are submitted by customers, rather than spending time advising Large C&I customers



regarding projects that they could be pursuing. Therefore, disclosure of the customer-developed and EDC or CSP-developed custom measures would allow the Commission and all stakeholders to more accurately assess the actual costs of EDC-developed EE&C Programs and expose areas for improvement in the Company's EE&C Program R&D process.

A transparent and standardized ratemaking process will benefit both EDCs and ratepayers by affording all parties equal opportunity to assess and debate cost recovery of program expenses for all EDCs on the same footing. Such a process ensures that customers can better predict their rates and plan projects accordingly. It is critical for an EDC to maintain a public ratemaking and rate reconciliation process on an annual basis to ensure that costs are fairly allocated among ratepayers.

### **III. CONCLUSION**

Act 129 operates primarily to reduce the cost of energy for customers through EE&C measures.<sup>7</sup> Large C&I customers have already invested millions of dollars in EE&C initiatives during Phases I and II of Act 129 *on top of* EE&C investments Large C&I customers voluntarily designed and adopted. While the Industrial Customer Groups understand the importance of EE&C investments, key facets of Phase III warrant further study. Initially, the Commission should remain aware that the U.S. Supreme Court's anticipated decision in *EPSA* will need to be thoroughly and expeditiously evaluated to determine whether Pennsylvania must establish independent DR programs.

In addition, EDCs should remain cognizant of PJM's "One CSP" rule when soliciting bids for CSPs to manage economic load response episodes. While PJM rules state that customers can contract with multiple CSPs to manage emergency load response incidents, economic DR events must be carried out by one CSP per customer location.

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<sup>7</sup> 66 Pa.C.S. § 2806.1(a)-(m).

Further, should the General Assembly adopt S.B. 805, the Commission and EDCs must be prepared to adjust their Phase III plans to account for Large C&I customer withdrawals from Phase III programs. Many Large C&I customers already have their own EE&C Programs in place that are tailored to their business models and promote not only energy efficiency but also industry competitiveness. Given the chance, many members of the Industrial Customer Groups would withdraw from a third Phase of EE&C programming that they view as duplicative.

Finally, the Companies must ensure that their rate setting and reconciliation processes are fully public, just, and reasonable to ensure that costs are fairly allocated among consumers. Such transparency in the ratemaking process ensures that customers can predict rates and plan projects accordingly. An open ratemaking process also holds EDCs accountable and ensures ratepayers are not subsidizing inefficient program research and development at the EDC level.



**WHEREFORE**, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Penn Power Users Group, and the West Penn Power Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Comments.

Respectfully submitted,

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Dated: January 4, 2016