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| **PENNSYLVANIA****PUBLIC UTILITY COMMISSION****Harrisburg, PA 17105-3265** |
| Public Meeting held March 10, 2016 |
| Commissioners Present:Gladys M. Brown, ChairmanAndrew G. Place, Vice ChairmanPamela A. WitmerJohn F. Coleman, Jr.Robert F. Powelson |
| Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Consolidation of Proceedings and Approval of Act 129 Phase III Energy Efficiency and Conservation Plans |  M-2015-2514767,  M-2015-2514768, M-2015-2514769 and M-2015-2514772 |

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**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Joint Petition (Joint Petition) of Metropolitan Edison Company (Met Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power) and West Penn Power Company (West Penn) (collectively, FirstEnergy or the Companies) for consolidation of proceedings and approval of Act 129 Phase III Energy Efficiency and Conservation Plans (Plans) filed on November 23, 2015. Also before the Commission is the Joint Petition for Full Settlement of All Issues (Joint Settlement) filed by the Companies, the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE‑PA), the Industrials[[1]](#footnote-1) and EnerNOC, Inc. (EnerNOC) (collectively, Joint Petitioners) on February 10, 2016. Administrative Law Judge (ALJ) Elizabeth H. Barnes certified the record in this proceeding on February 12, 2016. For the reasons stated herein, we will approve, in part, the Joint Settlement and the Joint Petition, subject to the condition that no Party to the Joint Settlement exercises its right to withdraw therefrom.

# I. Background

## A. Act 129

On October 15, 2008, House Bill 2200 was signed into law as Act 129 with an effective date of November 14, 2008. Among other requirements, Act 129 directed the Commission to adopt an Energy Efficiency and Conservation (EE&C) Program, under which each of the Commonwealth’s largest electric distribution companies (EDCs) was required to implement a cost-effective EE&C plan to reduce energy consumption and demand. Specifically, Act 129 required each EDC with at least 100,000 customers to adopt an EE&C plan to reduce energy demand and consumption within its service territory. Initially, Act 129 required each affected EDC to adopt an EE&C plan to reduce electric consumption by at least one percent of its expected consumption for June 1, 2009 through May 31, 2010, by May 31, 2011. By May 31, 2013, the total annual weather‑normalized consumption was to be reduced by a minimum of three percent. Also, by May 31, 2013, peak demand was to be reduced by a minimum of four-and-a-half percent of each EDC’s annual system peak demand in the 100 hours of highest demand, measured against the EDC’s peak demand during the period of June 1, 2007 through May 31, 2008.

On January 15, 2009, the Commission adopted an Implementation Order at Docket No. M-2008-2069887 (*Phase I Implementation Order*), which established the standards each plan, must meet, and which provided guidance on the procedures to be followed for submittal, review and approval of all aspects of the EE&C plans. The Commission subsequently approved an EE&C plan (and, in some cases, modifications to the plan) for each affected EDC.

Another requirement of Act 129 directed the Commission to evaluate the costs and benefits of the Commission’s EE&C Program and of the EDCs’ approved EE&C plans by November 30, 2013, and every five years thereafter. The Act provided that the Commission must adopt additional incremental reductions in consumption and peak demand if it determines that the benefits of the EE&C Program exceed its costs.

The Commission subsequently issued an Implementation Order at Docket Nos. M-2012-2289411 and M-2008-2069887 (*Phase II Implementation Order)*, which established required standards for Phase II EDC EE&C plans (including the additional incremental reductions in consumption that each EDC must meet), and provided guidance on the procedures to be followed for submittal, review and approval of all aspects of the EDCs’ Phase II EE&C plans. Within the *Phase II Implementation Order*, the Commission tentatively adopted EDC-specific consumption reduction targets. The Commission subsequently approved a Phase II EE&C Plan (and, in some cases, modifications to the plan) for each affected EDC.

On March 11, 2015, the Commission issued a Tentative Implementation Order (*Phase III Tentative Implementation Order*) at Docket No. M-2014-2424864 for Phase III of the EE&C Program. Following the submittal and review of comments, on June 19, 2015, the Commission issued an Implementation Order at that same docket number (*Phase III Implementation Order*). Among other things, that Order established standards each plan must meet and provided guidance on the procedures to be followed for submittal, review and approval of all aspects of EDC EE&C plans for the period from June 1, 2016 through May 31, 2021.

On July 6, 2015, the Energy Association of Pennsylvania (EAP) filed a Petition for Clarification of Final Act 129 Phase III Implementation Order (EAP Petition) seeking clarification of certain aspects of the peak demand reduction program. Also on July 6, 2015, FirstEnergy filed a Petition for Clarification of the Commission’s Act 129, Phase III, EE&C Implementation Order, or, in the alternative, Petition for Waiver of a Bidding Requirement as set forth in the Act 129, Phase III, EE&C Implementation Order. By Order entered on August 20, 20l5, the Commission granted both Petitions for clarification and denied FirstEnergy’s Petition for Waiver (*Phase III Clarification Order*).

## B. The Companies

Met Ed, Penelec, and West Penn are each wholly owned subsidiaries of FirstEnergy, a diversified energy company headquartered in Akron, Ohio. Met Ed provides service to approximately 558,000 electric utility customers in eastern Pennsylvania. Penelec provides service to approximately 588,000 electric utility customers in central and western Pennsylvania. West Penn provides service to approximately 721,000 electric utility customers in western Pennsylvania. Penn Power is a wholly owned subsidiary of Ohio Edison Company, which, in turn, is a wholly owned subsidiary of FirstEnergy. Penn Power provides service to approximately 163,000 electric utility customers in western Pennsylvania.

# II. Procedural History

In the *Phase III Implementation Order*, we adopted an EE&C plan approval process that included the publishing of a notice of each proposed plan in the *Pennsylvania Bulletin* within twenty days of the filing of the plan, as well as posting of each proposed plan on the Commission’s website. Answers, along with comments and recommendations, were to be filed within twenty days of the publication of the notice in the *Pennsylvania Bulletin*. Each plan filed in November, 2015 was to be assigned to an ALJ for an evidentiary hearing within sixty‑five days after the plan was filed, after which, the parties had ten days to file briefs. The EDC then had ten days to submit a revised plan or reply comments or both. The ALJ was directed to then certify the record to the Commission. The Commission will then approve or reject all or part of a plan at public meeting within 120 days of the plan filing. *Phase III Implementation Order* at 89‑91.

In the *Phase III Implementation Order*, we directed each EDC to file its proposed Phase III EE&C plan on November 30, 2015. *Id*. at 92. FirstEnergy timely filed a Joint Petition for approval of their Act 129 Phase III EE&C Plans on November 23, 2015. The Notice of the Joint Petition was published in the Pennsylvania Bulletin on December 12, 2015, with a comment period ending January 4, 2016. 45 *Pa. B*. 7078. Additionally, the Joint Petition and Plans were posted on the Commission’s website at <http://www.puc.pa.gov>.[[2]](#footnote-2) Also on November 23, 2015, the Companies filed a *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*. The petitions were assigned to ALJ Barnes.

The following Parties filed Notices of Intervention or Petitions to Intervene, which were not contested: the OCA; the OSBA; the CAUSE‑PA; The Pennsylvania State University (PSU); Wal‑Mart Stores East, LP and Sam’s East, Inc. (Walmart); the Industrials; and the Retail Energy Supply Association (RESA). On January 8, 2016, EnerNOC filed a Petition to Intervene, which was granted by ALJ Barnes in an Order Issued on January 12, 2016. Comments were submitted by Energy Efficiency for All (EEFA); EnergyHub; the Industrials; the Citizens for Pennsylvania’s Future (PennFuture), the Sierra Club, the Environmental Defense Fund, and the Clean Air Council (collectively, Joint Commentators); the OCA; and RESA.

On January 7, 2016, a Scheduling Order was issued setting forth a procedural schedule, granting petitions to intervene, consolidating the dockets for hearing, modifying discovery rules, and setting forth other miscellaneous directives. Also on January 7, 2016, a Protective Order was entered. On January 19, 2016, a Hearing Notice was issued setting January 27, 2016, as the date for the evidentiary hearing in this case.

The Order entered on January 22, 2016, amended the procedural schedule in light of the Companies’ representation that a settlement agreement resolving all issues had been made with all Parties. The Companies indicated that all parties except one will either sign on to the agreement, or not oppose, with the one remaining party taking no position on the matter. The evidentiary hearing scheduled for January 27, 2016, will be held for the purpose of admitting evidence into the record. The Parties were given until February 10, 2016, to file a Joint Stipulation for Admission of Evidence and Copies of Statements and Exhibits as well as a joint settlement petition with statements in support. The Companies were directed to file revised EE&C plans on or before February 10, 2016.

On January 27, 2016, a hearing was held in Harrisburg, Pennsylvania. The hearing was attended by the Companies, the OCA, the Industrials, CAUSE‑PA, EnerNOC, PSU and WalMart. A forty‑nine page transcript was filed by the court reporter on February 1, 2016.

On February 8, 2016, RESA filed a letter indicating that it has taken no position regarding the Joint Settlement.

On February 10, 2016, the Joint Settlement was filed. On February 10, 2016, PSU and Walmart each filed letters indicating they had no opposition to the Joint Settlement. Also on February 10, 2016, FirstEnergy, the OCA, the OSBA, CAUSE‑PA, and the Industrials each filed a Statement in Support of Settlement and a signed settlement page.

On February 11, 2016, EnerNOC filed a statement in Support of Settlement and a signed settlement page.

On February 12, 2016, ALJ Barnes certified the record to the Commission for consideration and disposition.

# III. Description of the Plans and the Joint Settlement

As noted above, the Joint Settlement was filed on February 10, 2016, resolving all issues. The Plan, as modified by the Joint Settlement, is summarized below.

## A. Joint Settlement[[3]](#footnote-3)

The specific settlement terms relating to the Companies’ EE&C Plan are as follows:[[4]](#footnote-4)

1. The Companies agree to target an increase in energy savings from the residential direct installation low-income subprograms in the aggregate by 10% over the proposed plan targets, based on having available program budget. The Companies agree to decrease the energy savings proposed from [Energy Efficiency (EE)] Kits, Behavioral and School Education low-income subprograms in the aggregate by an equivalent amount of MWhs.

2. No later than September 1, 2016, the Companies will host an initial meeting for parties interested in providing messaging recommendations for the residential behavioral programs to consider for inclusion in the home energy reports provided to participants in this program. At least once per year, prior to the commencement of the program year, the Companies will include a review of the content of the Home Energy Reports as an agenda item for a stakeholder meeting. The Companies agree that they will listen to and consider comments from the stakeholders regarding the content of these reports.

3. The Companies stipulate, and the other parties accept, that the Residential Home Energy Reports program will be evaluated by the Companies' Phase III independent Evaluation, Measurement and Verification ("EM&V") Conservation Service Provider ("CSP") and will further stipulate and accept that said CSP was not involved in the substantive design of any of the programs included in the proposed EE&C Plans, or that the EM&V CSP's compensation is related to program performance.

4. The Companies agree that the multifamily subprogram included as part of their Low Income Energy Efficiency Program will be applicable to all individually-metered multifamily buildings. Under this program, income qualified tenants up to 150% of the Federal Poverty Income Guidelines (FPIG) residing in dwelling units within the multifamily building will receive the direct installation measures and qualified appliance replacement at no additional cost to the tenant.

5. The Companies agree that their multifamily subprogram included as part of their [Commercial/Industrial (C/I)] Energy Solutions for Business Program – Small, will be applicable to all master-metered multifamily buildings and for common areas of individually-metered properties. The Companies will require a 20% customer contribution by the building owner for all properties where at least 66% of the units are occupied by income qualified tenants up to 150% of the FPIG for the direct installation measures, qualified appliance replacement and for other eligible building measures. If the properties do not meet this 66% threshold then the building owner is eligible for all regular small commercial rebates as prescribed in the Companies' EE&C plans for the applicable measures. If the Companies are unable to move projects forward at this incentive level for program years 2016 and 2017 because of financial barriers, the Companies may adjust the incentive to a lesser percentage between zero and 20% for the remainder of Phase III, provided that the Companies provide notice to their stakeholder group and afford their stakeholder group an opportunity to make recommendations about the appropriate percentage adjustment prior to making any such change.

6. The Companies will require their Conservation Service Providers for their multifamily programs to coordinate with each other to support efficient program delivery and collectively promote multifamily building energy efficiency measures.

7. To the extent practical, the Companies agree to coordinate with [the Pennsylvania Housing Finance Agency (PHFA)] to align incentives with their Qualified Allocation Plan to target incentives for energy efficiency measures to incent projects to move forward and to work with affordable multi-family developers in completion of the Energy Rebate Analysis. The Companies will work with interested stakeholders in an effort to ensure that the funds provided through the Companies' EE&C Plans are not substituted for funds otherwise provided through other assistance programs.

8. No later than December 1, 2016, the Companies agree to conduct a stakeholder meeting with interested multifamily housing owners, developers, and other interested stakeholders. The Companies will work with the Housing Alliance of Pennsylvania and other interested trade groups, as well as the Companies' CSPs, to identify these owners and developers. The purpose of this stakeholder meeting is to solicit feedback about the Companies' multifamily offering and to coordinate and tailor the measures targeted to affordable housing developments.

9. The Companies agree to initially substitute one LED lamp for one CFL lamp in all EE Kits (both residential and small C&I) and to further substitute additional LED lamps for CFL lamps, provided that such substitution does not jeopardize the Companies' ability to meet their respective EE targets within their respective subprogram budgets.

10. The Companies will accelerate the elimination of CFL lamps incented under the EE&C Plans (all market sectors) to the end of Plan Year 3, provided that, at the end of Plan Year 3, such elimination does not jeopardize the Companies' ability to meet their respective EE targets within their respective subprogram budgets.

11. The Companies will implement the Residential Behavioral Demand Response subprogram as a pilot program for Plan Years 2 & 3. The Companies will review with their stakeholders the findings and results from the pilot no later than 100 days after each summer period. If the program is not substantially meeting its demand reduction targets across the Companies, the Companies will propose for Commission approval, either a peak time rebate program or an alternative residential demand response program type that is acceptable to the parties to this settlement, to be run as a pilot program at one or more of the Companies in Plan Years 4 and 5, subject to Commission approval. In the development of any Phase IV EE&C plans, the Companies commit to consider additional residential demand response programs, to the extent adequate funding is available, in an effort to reduce the Large C&I demand response budget.

12. Within 90 days of the Commission issuing its order approving this settlement, the Companies will meet with the Industrial Customer Group representatives to develop a process to provide quarterly rate impact projections for the industrial class.

13. The Commission's approval of the Settlement shall not be construed as approval of any Settling Parties' position on any issue, except to the extent required to effectuate the terms and agreements of the Settlement. Accordingly, this Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement.

14. It is understood and agreed among the Settling Parties that the Settlement is the result of compromise and does not necessarily represent the position(s) that would be advanced by any of the Settling Parties in this or any other proceeding, if it were fully litigated.

15. This Settlement is being presented only in the context of this proceeding in an effort to resolve the issues presented in this proceeding in a manner that is fair and reasonable. The Settlement is the product of compromise. This Settlement is presented without prejudice to any position which any of the Settling Parties may have advanced and without prejudice to the position any of the Settling Parties may advance on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement.

16. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission should disapprove the Settlement or modify any terms and conditions herein, this Settlement may be withdrawn upon written notice to the Commission and all active parties within five business days following entry of the Commission's Order by any of the Settling Parties and, in such event, shall be of no force and effect. In the event that the Commission disapproves the Settlement or the Companies or any other Settling Party elects to withdraw the Settlement as provided above, the Settling Parties reserve their respective rights to fully litigate this case, including, but not limited to, submission of additional testimony, presentation of witnesses, cross examination and legal argument through submission of Briefs, Exceptions and Replies to Exceptions.

17. All Settling Parties stipulate to the admission of a bound version of each of the Companies’ Plans, which was marked for identification during the evidentiary hearing on January 27, 2016 as Met Ed/Penelec/Penn Power/West Penn Exhibit No. 3.

18. This Settlement Agreement and any related documents may be executed in one or more counterparts, each of which is an original and all of which together constitute one and the same instrument.

19. The Settling Parties acknowledge that as a result of this Settlement, none of the parties have had the opportunity to submit rebuttal testimony. Therefore, statements made by opposing parties that contradict another party's testimony should not be construed as acceptance by said party of such contradicting testimony.

*See* Settlement at 6-11.

## B. The Plans

FirstEnergy states that each of its Companies’ Plans are essentially identical to one another in that they include a portfolio of energy efficiency programs and demand reduction programs, which are intended to achieve the specific reduction targets during the Phase III period that were adopted by the Commission in our *Phase III Implementation Order.* FirstEnergy claims that it has selected measures to be included in its Plans, estimated participation levels and corresponding program and measure savings and costs, and developed program budgets within the mandated spending limitations established under Act 129. Specifically, FirstEnergy submits that each of its Plans is designed to do the following:

1. Assist each company in achieving the required reductions in consumption and peak demand set forth in our *Phase III Implementation Order* within the statutory two percent budget cap;

2. Assist each company in achieving at least fifteen percent of the prescribed consumption reduction targets each year of Phase III;

3. Assist each company in obtaining a minimum of three-and-one-half percent consumption reductions from the Governmental/Educational/Non-profit (G/E/NP) sector;

4. Offer both residential and non-residential customers comprehensive programs and measures and equitably provide a variety of measures to all customer classes;

5. Assist each company in obtaining a minimum of five-and-one-half percent of their consumption reduction requirements from the low-income sector through low income programs targeted directly to low income customers; and

6. Include specific energy efficiency measures for households at or below 150 percent of the federal poverty income guidelines;

*See*, Joint Petition at 10-12.

FirstEnergy asserts that its Companies have designed and included in their Plans a suite of programs, and associated subprograms, for all major customer segments. FirstEnergy explains that these programs are generally an expansion of elements currently included in the Companies’ Commission-approved Phase II plans, with slight modifications to the programs, the elimination of several measures, and the addition of new programs, subprograms and measures, including new Peak Demand Reduction (PDR) programs. Programs for residential customers include an appliance turn-in program, an energy efficient products program, an energy efficient homes program and an energy efficiency program targeted to low-income customers. Programs for small and large commercial and industrial (C&I) customers include a C&I energy solutions for business program and a C&I demand reduction program.[[5]](#footnote-5) Both of these programs are targeted to both classes of C&I customers. Additionally, FirstEnergy will offer a governmental and institutional tariff program to its G/E/NP customers. FirstEnergy states that its Plans will use incentive level ranges which will enable its companies to adjust rebate levels within the range as market conditions warrant, as long as such adjustments do not increase program costs beyond approved budgets, and further provided that FirstEnergy discuss potential changes with interested stakeholders prior to making any such changes. Joint Petition at 10-11, 13-14. However, FirstEnergy clarifies that its Companies will not begin offering incentives and rebates to its customers until Commission approval of its Plans. Further, FirstEnergy avers that it will ensure that such rebates apply only to those measures that are installed and are commercially operable after May 31, 2016 and before May 31, 2021. *Id.* at 18.

FirstEnergy states that the Plans include cost estimates for the development and implementation of all measures. FirstEnergy avers that it has proposed a cost‑recovery tariff mechanism in accordance with Section 1307 of the Public Utility Code (Code) that is designed to ensure full and current recovery of all reasonable and prudent costs, including administrative costs, as well as incremental costs incurred in developing, provisioning, managing, and obtaining Commission approval of the Plans. FirstEnergy asserts that the total costs of the Companies’ Plans to be recovered will not exceed the spending limitations outlined on page 11 of our *Phase III Implementation Order.*  Joint Petition at 12, 14-15.

FirstEnergy proposes to recover these costs through a Phase III Energy Efficiency and Conservation Charge (Phase III EE&C-C) Rider, which will ensure that approved measures are financed by the customer class that receives the direct energy and conservation benefit of the measures. The rates included in the Phase III EE&C-C Riders will be calculated separately for residential, commercial, and industrial customers for each company according to the provisions of the rider. The rates will be billed throughout the Phase III period and will be expressed and billed as a price per kilowatt-hour charge, except for the industrial customer class. The rates for this class will be expressed on the basis of an individual customer’s peak load contribution in kilowatts. The Riders are to become effective on June 1, 2016 and will be applicable to services rendered on or after June 1, 2016 through the end of the Phase III Period on May 31, 2021. The Phase III EE&C-C rates will remain in effect for the duration of each program year unless revised on an interim basis and approved by the Commission. The rates will change annually for the purpose of reconciliation. Such rates will be computed using an annual projected program cost estimate. The Companies will file an annual report outlining actual revenues and costs incurred under the Rider within thirty days following the conclusion of each Phase III EE&C-C reconciliation year, with the rates being subject to annual review and audit by the Commission. For Program Years 2016 and 2017, the Companies will include a reconciliation factor which is intended to account for any final Phase II related costs. Finally, FirstEnergy notes that with respect to Met Ed only, there will be a one-time Integrated Distributed Energy Resources (IDER) cost reconciliation when determining rates to be effective during Program Year 2017. Joint Petition at 14‑17.

# IV. Discussion

We note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. [Consolidated Rail Corporation v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) see also, generally, [University of Pennsyl­vania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

## A. Legal Standards

Because the Joint Petitioners have reached a settlement, the Joint Petitioners have the burden to prove that the Joint Settlement is in the public interest. Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. Settlement terms often are preferable to those achieved at the conclusion of a fully litigated proceeding. In addition, a full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. Act 129 cases often are expensive to litigate, and the reasonable cost of such litigation is an operating expense recoverable in the rates approved by the Commission. Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony, cross-examining witnesses in lengthy hearings, and preparing and serving briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission’s decision, yielding significant expense savings for the company’s customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pa. PUC v. C.S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985). In order to accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C.S. Water and Sewer Assoc.*, *supra*. Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

## B. Phase III Conservation and Demand Reduction Requirements

### 1. Overall Conservation Requirements

The *Phase III Implementation Order* established the Phase III energy consumption reduction targets that each of the FirstEnergy Companies must meet by May 31, 2021, as follows:

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| **EDC** | **Five‑Year % of 2009/10 Forecast Reductions** | **Five‑Year MWh Value of 2009/10 Forecast Reductions** |
| Met Ed | 4.0% | 599,352 |
| Penelec | 3.9% | 566,168 |
| Penn Power | 3.3% | 157,371 |
| West Penn | 2.6% | 540,986 |

*Phase III Implementation Order* at 57. Consumption reductions are measured using a savings approach. *Id.* at 108. Each EDC was directed to develop a plan that was designed to achieve at least fifteen percent of the target amount in each program year. *Id.* at 59.

In the *Phase III Implementation Order*, the Commission expressed concern that the carryover of all excess savings from phase to phase of the EE&C Program will lead to a scenario in whichEDCs meet most, if not all, of their reduction targets simply with carryover savings. As a result, the Commission concluded that EDCs are allowed to carry-over only excess savings obtained in Phase II for application toward Phase III targets. *Phase III Implementation Order* at 84-85.

The Plans of Met Ed, Penelec, Penn Power and West Penn propose total energy savings of 622,126 MWh, 587,742 MWh, 161,122 MWh, and 569,684 MWh, respectively, by the end of Program Year 2020 (May 31, 2021). Companies’ Plans at Appendix E, Table 2. Met Ed proposes to obtain 20%, 21%, 23%, 23%, and 17%[[6]](#footnote-6) of its Phase III total consumption reduction target in Program Years 2016, 2017, 2018, 2019, 2020, respectively. Penelec proposes to obtain 20%, 21%, 24%, 23%, and 16% of its Phase III total consumption reduction target in Program Years 2016, 2017, 2018, 2019, 2020, respectively. Penn Power proposes to obtain 22%, 22%, 22%, 21%, and 16% of its Phase III total consumption reduction target in Program Years 2016, 2017, 2018, 2019, 2020, respectively. Finally, West Penn proposes to obtain 20%, 22%, 23%, 23%, and 17% of its Phase III total consumption reduction target in Program Years 2016, 2017, 2018, 2019, 2020, respectively. *Id*.

In review of FirstEnergy’s Plans, we find that each plan projects total energy savings that will meet or exceed the prescribed Phase III energy consumption reduction targets set forth in our *Phase III Implementation Order.* Additionally, we find that the Plans comply with our directive that any carryover savings be limited only to savings actually obtained in Phase II. Moreover, we find that the Plans are designed to achieve at least fifteen percent of the total energy savings amount in each Phase III program year.

### 2. Overall Demand Reduction Requirements

Phase I of the EE&C Program included demand reduction (DR) requirements. 66 Pa. C.S. § 2806.1(d). The Commission did not believe it had the information necessary at the time to definitively determine that a demand reduction program would be cost-effective as part of Phase II. Consequently, Phase II did not include DR requirements. *Phase II Implementation Order* at 32-33. For Phase III, the Commission concluded that it had sufficient information to determine that DR requirements would be cost-effective in the service territories of six of the seven EDCs (all EDCs except Penelec). *Phase III Tentative Implementation Order* at 36; *Phase III Implementation Order* at 34-35.

The peak demand reduction targets for each of the FirstEnergy Companies are as follows:

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| **EDC** | **Average Annual Peak Reductions (MW)** | **% Reductions (Relative to 2007/08 Peak Demand)** |
| Met Ed | 49 | 1.8% |
| Penelec | 0 | 0.0% |
| Penn Power | 17 | 1.7% |
| West Penn | 64 | 1.8% |

*Phase III Implementation Order* at 35. Peak demand reductions are measured using the demonstrated savings approach. *Id*. at 111-112. Because EDCs are not required to obtain peak demand reductions during the first year of Phase III, the required reductions apply to the remaining four program years of Phase III. *Id.* at 35. The Commission will determine compliance with the peak demand reduction requirements outlined above based on an average of the MW reductions obtained from each event called over the last four years of the Phase. However, EDCs are to obtain no less than eighty-five percent of the megawatt target in any one event. *Id.* at 36. Finally, each EDC plan must demonstrate that the cost to acquire MWs from customers that participate in the PJM Interconnection, LLC (PJM) Emergency Load Response Program (ELRP) is no more than half the cost to acquire MWs from customers in the same rate class that are not participating in PJM’s ELRP. *Id.* at 44.

The Plans of Met Ed, Penelec, Penn Power, and West Penn project average annual peak demand reductions of 59.9 MW, 2.5 MW, 20.7 MW, and 76.1 MW, respectively for Program Years 2017 through 2020. Companies’ Plans at Appendix E, Table 2.[[7]](#footnote-7) Our review of the Plans indicates that each plan projects average annual PDR that will meet or exceed the prescribed Phase III PDR targets set forth in our *Phase III Implementation Order*. Additionally, Met Ed, Penn Power, and West Penn each demonstrate that the MW acquisition costs for customers who participate in PJM’s ELRP are less than fifty percent of the acquisition costs for those that do not participate in PJM’s ELRP. Met Ed’s Plan, Penn Power’s Plan, and West Penn’s Plan at Appendices C-1 and C-2.

The Companies state that, during the implementation phase of their Plans, they will acquire selected program managers (or CSPs) to present processes that accurately document and verify data used to support energy savings and peak load reductions.  The Companies also will perform their own quality assurance processes, either directly or through contract auditors, to ensure the accuracy and reliability of the reported data and savings.  All of this is subject to review by the Companies’ EM&V contractor and the Commission’s Statewide Evaluator (SWE). Companies’ Plans at Section 6.1.1.

In review of FirstEnergy’s Plans, we find that the plans are designed to adequately achieve compliance with the overall peak demand reduction requirements.

### 3. Requirements for a Variety of Programs Equitably Distributed

The *Phase III Implementation Order* did not require a proportionate distribution of measures among customer classes. However, it did require that each customer class be offered at least one program. *Phase III Implementation Order* at 113. In addition, the Commission required that EE&C Plans include at least one comprehensive program for residential customers and at least one comprehensive program for non-residential customers. *Id.* at 61.

The Plans for Met Ed, Penn Power, and West Penn contain nine different programs distributed across all customer classes. Penelec’s Plan contains seven different programs distributed across all customer classes. Met‑Ed proposes four programs and seventy measures for residential and low‑income customers. Met Ed’s Plan at 33-35. Met Ed also proposes two programs and eighty-nine measures for small commercial and industrial customers. *Id*. at 56-58. Met Ed further proposes two programs and thirty-eight measures for large commercial and industrial customers.  *Id.* at 72-73. Finally, Met Ed proposes one program and forty-seven measures for G/E/NP customers. *Id.* at 86-87. Met Ed proposes to spend forty-five percent of the total Plan budget on residential (exclusive of low-income) programs, fifteen percent on residential low-income programs, eighteen percent on small commercial and industrial programs, twenty‑one percent on large commercial and industrial programs and one percent on G/E/NP programs. *Id.* at Appendix E, Table 5.

Penelec proposes four programs and seventy measures for residential and low‑income customers. Penelec’s Plan at 29-31. Penelec also proposes one program and eighty-seven measures for small commercial and industrial customers. *Id.* at 52-54. Penelec further proposes one program and thirty-six measures for large commercial and industrial customers. *Id.* at 70-71. Finally, Penelec proposes one program and forty-seven measures for G/E/NP customers. *Id*. at 73-74. Penelec proposes to spend forty-six percent of the total Plan budget on residential (exclusive of low-income) programs, seventeen percent on residential low-income programs, twenty percent on small commercial and industrial programs, fifteen percent on large commercial and industrial programs and two percent on G/E/NP programs. *Id.* at Appendix E, Table 5.

Penn Power proposes four programs and seventy measures for residential and low‑income customers. Penn Power’s Plan at 31-33. Penn Power also proposes two programs and eighty-nine measures for small commercial and industrial customers. *Id.* at 54-56. Penn Power further proposes two programs and thirty-eight measures for large commercial and industrial customers. *Id.* at 70-71. Finally, Penn Power proposes one program and forty-seven measures for G/E/NP customers. *Id.* at 84-85. Penn Power proposes to spend forty-three percent of the total Plan budget on residential (exclusive of low-income) programs, eighteen percent on residential low-income programs, eighteen percent on small commercial and industrial programs, nineteen percent on large commercial and industrial programs and two percent on G/E/NP programs. *Id.* at Appendix E, Table 5.

West Penn proposes four programs and seventy measures for residential and low‑income customers. West Penn’s Plan at 31-33. West Penn also proposes two programs and eighty-nine measures for small commercial and industrial customers. *Id.* at 54-56. West Penn further proposes two programs and thirty-eight measures for large commercial and industrial customers. *Id.* at 70-71. Finally, West Penn proposes one program and forty-seven measures for G/E/NP customers. *Id.* at 84-85. West Penn proposes to spend forty-one percent of the total Plan budget on residential (exclusive of low-income) programs, sixteen percent on residential low-income programs, twenty percent on small commercial and industrial programs, twenty-one percent on large commercial and industrial programs, and two percent on G/E/NP programs. *Id.* at Appendix E, Table 5.

In consideration of the above, we are of the opinion that the Companies’ Plans meet the requirement that each customer class be offered at least one program. We further conclude that the Plans satisfy the requirement that at least one comprehensive program is offered to residential customers and at least one comprehensive program be offered to non-residential customers. The record indicates that the Plans for Met Ed, Penn Power, and West Penn contain nine different programs distributed across all customer classes and that Penelec’s Plan contains seven different programs distributed across all customer classes. The Plans further specify that the Companies will offer both residential and small commercial customers comprehensive programs or measures.[[8]](#footnote-8) Therefore, we conclude that the Companies’ Plans comply with the provisions of 66 Pa. C.S. § 2806.1(a)(5) and the *Phase III Implementation Order,* which require that EE&C Plans include a variety of EE&C measures and that these measures be provided equitably to all classes of customers*.*

### 4. Government/Educational/Non-Profit Requirement

Act 129 required that Phase I EE&C Plans obtain a minimum of ten percent of all consumption and peak demand reduction requirements from units of the Federal, State and local governments, including municipalities, school districts, institutions of higher education and non-profit entities (G/E/NP Sector). 66 Pa. C.S. § 2806.1(b)(1)(i)(B). The Commission believes that it has the discretion to modify and/or remove the specific sector carve-out for the G/E/NP Sector if no cost-effective savings can be obtained from that sector. *Phase III Implementation Order* at 71 and 74‑75. We directed all EDCs to obtain at least three-and-one-half percent of their consumption reduction targets from the G/E/NP Sector. *Id.* at 76. EDCs are permitted to carryover excess savings for the G/E/NP Sector from Phase II for application to their Phase III G/E/NP Sector target.

The Plans each contain a Governmental and Institutional Tariff Program for the G/E/NP Sector that is anticipated to meet or exceed the three-and-one-half percent consumption reduction requirement. Companies’ Plans at Appendix E, Table 2. Accordingly, we find them to be in compliance with the required consumption reduction requirements from the G/E/NP Sector that is set forth in our *Phase III Implementation Order.*

### 5. Low-income Program Requirements

Act 129 prescribed in Phase I that each EDC EE&C Plan must include specific energy efficiency measures for households at or below 150% of the FPIG, in proportion to that sector’s share of the total energy usage in the EDC’s service territory. *See* 66 Pa. C.S. § 2806.1(b)(1)(i)(G). For Phase III, the Commission proposed to continue this measure prescription. In addition, the Commission required that each EDC obtain a minimum of five-and-one-half percent of its total consumption target from the low-income sector. *Phase III Implementation Order* at 62-63 and 69. Savings counted toward this target could only come from specific low-income programs or low-income verified participants in multifamily housing programs. Savings from non-low income programs cannot be counted for compliance. *Id.* EDCs are only allowed to carryover excess low-income savings into Phase III, based on an allocation factor determined by the ratio of low income specific program savings to savings from non-low income specific programs at the end of Phase II. *Id*. at 85.

The Companies’ Plans have 59 of 158 measures (or 37% of total measures) that specifically target low-income customers.[[9]](#footnote-9) Met Ed’s Plan at 128, Penelec’s Plan at 112, Penn Power’s Plan at 124 and West Penn’s Plan at 124. Notably, this amount is greater than the Companies’ estimates of total energy usage attributable to low-income customers in the FirstEnergy Companies’ service territories, which ranges from 8.79% to 10.64%. See Table 15, Met Ed’s Plan at 128, Penelec’s Plan at 112, Penn Power’s Plan at 124 and West Penn’s Plan at 124. We find that the Companies’ Plans comply with the requirement that an EE&C plan include a number of low‑income measures in proportion to the low‑income households’ usage of total energy usage in each of the Companies’ service territories.

In their Plans, Met Ed, Penelec, Penn Power and West Penn propose total energy savings from low-income customers of 35,484 MWh, 33,819 MWh, 9,478 MWh and 32,097 MWh, respectively, by the end of Program Year 2020 (May 31, 2021). Companies’ Plans at Appendix E, Table 2. Additionally, in the Joint Settlement, the Companies have agreed to target an increase in energy savings from residential direct installation low-income subprograms in the aggregate by ten percent over the originally proposed plan targets, based on having available program budget. The Companies have agreed to decrease the originally proposed energy savings from Energy Efficiency Kits, Behavioral and School Education low-income subprograms by an equivalent amount. Joint Settlement at 6. Moreover, the Joint Settlement indicates that the Plans place a greater emphasis on multi-family housing, for both individual and master‑metered accounts, and indicates programs have been developed to reach customers in the Residential and Small Commercial sectors. *Id.* at 7-8. We find that the Plans include programs that are anticipated to obtain at least 5.5% of the total consumption reduction requirement from low‑income customers.

### 6. Proposals for Improvement of Plan

The Commission’s EE&C Program must include “procedures to make recommendations as to additional measures that will enable an electric distribution company to improve its plan and exceed the required reductions in consumption.” 66 Pa. C.S. § 2806.1(a)(6). We note that through the Joint Settlement, FirstEnergy agrees to adopt or investigate and study several improvements proposed by the Parties to the Joint Settlement. All Parties to this proceeding either agreed to the Joint Settlement, did not oppose the Joint Settlement, or indicated that they did not take a position regarding the Joint Settlement. As these proposed improvements are addressed in the Companies’ Plans as clarified by the Joint Settlement and as there are no remaining contested issues related to these proposed improvements, we will not discuss them in this Opinion and Order.

## C. Cost Issues

In the *Phase III Implementation Order*, we stated:

The Act directs the Commission to establish a cost recovery mechanism that ensures that approved measures are financed by the customer class that receives the direct energy and conservation benefit of the measure. 66 Pa. C.S.
§ 2806.1(a)(11). All EDC plans must include cost estimates for implementation of all measures. 66 Pa. C.S. § 2806.1(b)(1)(i)(F). Each plan must also include a proposed cost‑recovery tariff mechanism, in accordance with Section 1307 (relating to sliding scale [of] rates; adjustments), to fund all measures and to ensure full and current recovery of prudent and reasonable costs, including administrative costs, as approved by the Commission. 66 Pa. C.S.
§ 2806.1(b)(1)(i)(H). In addition, each plan must include an analysis of administrative costs. 66 Pa. C.S.
§ 2806.1(b)(1)(i)(K). The Act dictates that the total cost of any plan must not exceed two percent of the EDC’s total annual revenue as of December 31, 2006, excluding LIURP, established under 52 Pa. Code § 58 (relating to residential Low Income Usage Reduction Programs). 66 Pa. C.S. § 2806.1(g). Finally, all EDCs, including those subject to generation or other rate caps, must recover on a full and current basis from customers, through a reconcilable adjustment clause under Section 1307, all reasonable and prudent costs incurred in the provision or management of its plan. 66 Pa. C.S. § 2806.1(k).

*Phase III Implementation Order* at 130-131.

### 1. Plan Cost Issues

 **a. Determination of Allowable Costs**

 **i. Phase III Allowable Costs**

The Act allows an EDC to recover all prudent and reasonable costs relating to the provision or management of its EE&C Plan, but limits such costs to an amount not to exceed two percent of the EDC’s total annual revenue as of December 31, 2006, excluding Low‑Income Usage Reduction Programs established under 52 Pa. Code Ch. 58. 66 Pa. C.S. § 2806.1(g). The level of costs that an EDC will be permitted to recover in implementing its EE&C program was established in the Phase I proceedings. For the FirstEnergy companies the cap for each Company is as follows: Met Ed $24,866,894; Penelec $22,974,742; Penn Power $6,659,789; and West Penn $23,562,602. *Phase III Implementation Order* at 11 n.23. These are annual budgetary limitations, rather than a budget for all of Phase III. *Id.* at 135.

The two percent cost caps for all of Phase III for Met Ed, Penelec, Penn Power and West Penn total $124,334,470, $114,873,710, $33,298,945 and $117,813,010 respectively. Met Ed’s Plan at 19; Penelec’s Plan at 17; Penn Power’s Plan at 17; and West Penn’s Plan at 17. The total projected costs for the Phase III Plans of Met Ed, Penelec, Penn Power and West Penn are $124,332,435, $114,871,786, $33,297,029 and $117,811,100 respectively. Companies’ Plans at Appendix E, Table 6C. As the total projected costs for the Companies’ Phase III Plans are less than their associated two percent cost caps, we find that they comply with the two percent cost cap requirement. Therefore, we shall approve these amounts.

 **ii. Application of Excess Phase II Budget**

EDCs cannot use excess Phase II funds to implement Phase III programs. After June 1, 2016, EDCs can only use Phase II budgets to finalize measures installed and commercially operable on or before May 31, 2016, and to finalize any contracts and other Phase II administrative obligations. *Phase III Implementation Order* at 140*.* Similarly, EDCs may continue to spend their Phase III budgets even if their consumption and/or peak demand reduction goals are met before the end of Phase III. EDCs can spend their Phase III budgets past May 31, 2021 only to account for those program measures installed and commercially operable on or before May 31, 2021, and to finalize the conservation service provider (CSP) and administrative fees related to Phase III. The Commission’s Bureau of Audits will subsequently reconcile Phase III funds collected compared to expenditures, and direct the EDCs to refund any over-collections to the appropriate rate classes. *Id.* at 140.

Our review of the record indicates that the Companies comply with the directive in our *Phase III Implementation Order* which prohibits the use of excess Phase II funds to implement Phase III programs. Companies’ Plans at Appendix C-1. Similarly, the Plans each contain language indicating that the Companies will not begin offering incentives and rebates to customers until after Commission approval of the Plans and will initiate controls to ensure that the rebates apply only to those measures installed and commercially operable after May 31, 2016 and before June 1, 2021. Met Ed’s Plan at 21; Penelec’s Plan at 19; Penn Power’s Plan at 19; and West Penn’s Plan at 19.

 **iii. Rebate Application Deadlines**

The *Phase III Implementation Order* required EDCs to include rebate deadlines in their Phase III EE&C Plans. Although the Commission believes that EDCs and their stakeholders are in the best position to determine the appropriate deadlines, the Commission suggested that 180 days be the maximum deadline. *Phase III Implementation Order* at 142. The Plans each contain language specifying that, in general the maximum deadline for rebates is 180 days after purchase. Joint Petition at 18; Met Ed’s Plan at 41, 46, 53-54, 65, 78, 92; Penelec’s Plan at 37, 42, 49-50, 61, 70, 79; Penn Power’s Plan at 35, 39, 44, 51, 63, 76, 90; and West Penn’s Plan at 35, 39, 44, 51, 63, 76, 90.

In view of the above, we find the Companies’ Plans to be consistent with the directives in our *Phase III Implementation Order* with respect to the determination of allowable costs.

### 2. Cost Effectiveness/Cost-Benefit Issues

The Act requires an EDC to demonstrate that its plan is cost-effective, using the Total Resource Cost (TRC) Test approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(I). The TRC Test to be used for evaluating Phase III EE&C Plans was approved by Order entered June 22, 2015 at Docket No. M-2015-2468992 (*2016 TRC Order*).

The Commission will maintain the practice, used in Phases I and II, of using a Net-to-Gross (NTG) ratio for making modifications to programs during the phase, and for planning purposes for future phases. The Commission, however, will determine compliance with targets using gross verified savings. *Phase III Implementation Order* at 105 and 107. We required EDCs to include net TRC ratios, as well as gross TRC ratios, and encouraged EDCs to incorporate language in their EE&C Plans to clarify the speculative nature of these estimates, in order to provide clarity to stakeholders regarding these values. *Id*. at 107.

The Plans of Met Ed, Penelec, Penn Power, and West Penn show cost-benefit ratios of 1.3, 1.2, 1.2, and 1.2, respectively, for the Plans’ Energy Efficiency measures. Companies’ Plans at Appendix E, Table 1A. Additionally, the Plans of Met Ed, Penelec, Penn Power, and West Penn show cost-benefit ratios of 1.3, 1.1, 1.3, and 1.3, respectively, for the Plans’ Demand Response measures. Appendix E, Table 1B. As such, we find the Plans to be cost‑effective from both an Energy Efficiency and a Demand Response standpoint.

The Plans also include both a net TRC ratio and a gross TRC ratio for each program. Companies’ Plans at Appendix E, Tables 7A through 7E. Additionally, the Companies note in their Plans that they included estimated net-to-gross (NTG) ratios based on previous program evaluations or other experience in planning and in performing cost-effectiveness calculations on a net basis as prescribed in the *2016 TRC Order*. The Companies state that such ratios depend on assumptions regarding the effects from free ridership, spillover, and rebound effects. The Companies caution that estimates for these factors are difficult to quantify, are subjective, and can change over time. As such, the Companies point out that in evaluating any TRC results that incorporate NTG ratios, it is imperative that stakeholders recognize the speculative nature of such ratios. Met Ed Plan at 124-125; Penelec Plan at 108-109; Penn Power Plan at 120‑121; and West Penn Plan at 120-121. On review of the record evidence, we find that the Companies have satisfied the requirement outlined in our *Phase III Implementation Order* which instructed EDCs to include net TRC ratios and gross TRC ratios. As such, we find that the Companies’ Plans, as a whole, are cost-effective.

### 3. Cost Allocation Issues

66 Pa. C.S. § 2806.1(a)(11) requires that EE&C measures be financed by the same customer class that receives the energy and conservation benefits of those measures. In the *Phase III Implementation Order*, we stated:

In order to ensure that all approved EE&C measures are financed by the customer classes that receive the benefit of such measures, it will be necessary to first assign the costs relating to each measure to those classes to whom it benefits. Therefore, once the EDC has developed an estimate of its total EE&C costs as directed above, the EDC is required to allocate those costs to each of its customer classes that will benefit from the measures to which the costs relate. Those costs that can be clearly demonstrated to relate exclusively to measures that have been dedicated to a specific customer class should be assigned solely to that class. Those costs that relate to measures that are applicable to more than one class, or that can be shown to provide system-wide benefits, should be allocated using reasonable and generally acceptable cost of service principles as are commonly utilized in base rate proceedings. Administrative costs should also be allocated using reasonable and generally acceptable cost-of-service principles.

*Phase III Implementation Order* at 144 (note omitted).

Upon review of the Companies’ Plans and proposed Phase III EE&C-C tariffs, we find that neither the Plans nor the proposed tariffs adequately address how the Companies will allocate those costs that relate to measures that are applicable to more than one class, or that can be shown to provide system-wide benefits. We find that the proposed tariffs have several cost components that will be allocated to the various customer classes, but the proposed tariffs do not provide a description of the basis to be used for the allocation of the costs. The proposed tariffs provide that the costs incurred and projected to be incurred associated with the customer class specific Phase III EE&C Programs will be recovered from that customer class. The proposed tariffs also provide for an allocated portion of certain costs to each of the customer classes for recovery from that customer class. These costs include: any indirect costs; incremental administrative start-up costs incurred by the Companies through May 31, 2016 in connection with the development of the Companies’ Phase III EE&C Programs; and the costs the Companies incur and project to incur to fund the Commission’s statewide evaluator contract. We find it appropriate for the Companies to recover these costs from all customer classes. We, however, find that the proposed tariffs do not provide a description of the methodology the Companies will use in allocating these costs. To ensure that the allocation methodology is appropriately designed on an equitable basis, and applied in a consistent manner, we direct the Companies to modify their proposed tariffs when they submit their compliance filings to include a detailed description of the allocation methodology that will be used to assign these costs to the various customer classes.

To the extent that the Joint Settlement adopts the Phase III EE&C-C Riders, we reject that portion of the Joint Settlement. We note that Paragraph 16 of the Joint Settlement permits the Parties thereto to withdraw from the Joint Settlement in the event that the Commission does not approve the Joint Settlement as filed. We will therefore require all Parties to the Joint Settlement to notify the Commission, within five business days of the entry date of this Opinion and Order, whether they are exercising their right to withdraw from the Settlement. If any Party exercises the right to withdraw, the Joint Settlement and the Petition shall be rejected. If no Party exercises the right to withdraw, the Joint Settlement, and the Petition, shall be granted in part and denied in part, consistent with this Order.

### 4. Cost Recovery Issues

The Act allows an EDC to recover from customers, on a full and current basis, through a reconcilable adjustment clause under 66 Pa. C.S. § 1307, all reasonable and prudent costs incurred in the provision or management of its plan. 66 Pa. C.S.
§ 2806.1(k)(1). Each EDC’s plan must include a proposed cost-recovery tariff mechanism, to fund all measures and to ensure a full and current recovery of prudent and reasonable costs, including administrative costs, as approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(H).

In the *Phase III Implementation Order*, the Commission adopted a standardized cost recovery and reconciliation process, and directed EDCs to transition from the cost recovery methodology used during Phase II to a new cost recovery methodology to be used during Phase III. *Phase III Implementation Order* at 145-147 and 149. Among other things, the Commission directed each EDC to include in its Phase III EE&C Plan an annual cost recovery methodology based on the projected program costs that the EDC anticipates will be incurred over the surcharge application year. Each EDC was directed to file a supplement to its tariff to become effective June 1, 2016, accompanied by an explanation of its application to each customer class. The Commission also directed each EDC to annually reconcile actual expenses incurred with actual revenues received for the reconciliation period. *Id.* at 147 and 149.

The Companies have proposed a Phase III Energy Efficiency and Conservation Charge Rider (Phase III EE&C-C) to recover their costs related to their Phase III Plans. The Phase III EE&C-C rider for Met Ed and Penelec is to be applied to each billing unit during a billing month to customers served under their Tariff, except those served under the Borderline Service rates. The Phase III EE&C-C rider for Penn Power and West Penn is to be applied to each billing unit during a billing month to customers served under their Tariff. Under all the Companies’ Phase III EE&C-C riders, the residential, non-profit, commercial, and street lighting customer classes are charged on a per kWh basis, with the industrial customer class being charged on a per kW PLC basis. For West Penn, its Phase III EE&C-C rider for Tariff No. 37 covering the Pennsylvania State University, will be charged on a per kW PLC basis. Companies’ Plans at Appendix F; FirstEnergy St. 3.0 Exh. KMS1 through KMS 5.[[10]](#footnote-10)

Based on our review of the Companies’ cost recovery mechanism as contained in its proposed Phase III EE&C-C tariffs, we are concerned that this mechanism may not fully comply with our directives set forth in the *Phase III Implementation Order,* specifically the recovery of Phase II costs*.* Therefore, we will reject the Companies proposed tariffs and proposed cost recovery mechanism, and will direct the Companies to consult with the Commission’s Bureau of Audits within thirty days of the entry of this Opinion and Order in order to develop a revised cost recovery mechanism that complies with the provisions set forth in the *Phase III Implementation Order.* We will further direct that the Companies file tariff supplements within sixty days of the entry of this Opinion and Order containing the revised cost recovery mechanism based on its consultation with the Commission’s Bureau of Audits.

## D. Conservation Service Provider Issues

In the *Phase III Implementation Order*, the Commission required that all Phase III CSP contracts be competitively bid. As a result, the Commission required EDCs to file their Phase III request for proposal (RFP) procedures for Commission review and approval. *Phase III Implementation Order* at 121 and 124. EDCs were encouraged to file their proposed RFP process by August 30, 2015. If Commission staff did not comment on the proposed process within fifteen days of its filing, the EDC was permitted to use that process. *Id.* at 121-122. The FirstEnergy companies filed their RFP process on July 28, 2015 and Commission staff approved this process by Secretarial Letter dated August 14, 2015.

In Section 4.3 of the respective plans, the Companies state that they will contract with one or more CSP(s) to implement the portfolio of programs in their Plans. The CSP(s) will be responsible for the start-up and ongoing management of new programs including staffing, development of website(s),[[11]](#footnote-11) promotional strategies, and processes ensuring quality and other controls supporting successful program transition and implementation. The CSP(s) will support consumer education initiatives and be the interface with the customer on many of the programs being offered. The CSP(s) will also be responsible for program set-up. Met Ed’s Plan at 106-107; Penelec’s Plan at 92-93; Penn Power’s Plan at 104‑105; and West Penn’s Plan at 104-105.

The Companies have issued RFPs for Demand Response Programs,[[12]](#footnote-12) EM&V activities, and a tracking and reporting system. Additionally, before year end, the Companies anticipate issuing RFPs for residential sector programs and subprograms implementation vendors and C&I sector program implementation vendors, including the G/E/NP sector. Met Ed’s Plan at 108; Penelec’s Plan at 94; Penn Power’s Plan at 106; and West Penn’s Plan at 106. The Companies plan to award contracts with all program implementation CSPs during the first quarter of 2016, pending Commission approval of both the programs and the proposed CSP contracts. *Id.*

The Companies’ Plans outlined in Section 4.3 for the selection and the utilization of CSPs are consistent with the requirements of Act 129 and the *Phase III Implementation Order*.

## E. Implementation and Evaluation Issues

### 1. Implementation Issues

The Act requires the Commission to establish procedures to ensure compliance with the consumption and peak demand reduction requirements of the Act. 66 Pa. C.S. § 2806.1(a)(9). The Companies’ Program Management and Implementation Strategies are contained in Section 4 of their respective plans. This section states that generally, the Companies will have overall administration and oversight of their plans. Specific activities that the Companies will oversee include plan development, execution of marketing campaigns, quality assurance and quality control, and tracking and reporting activities. The Companies will also utilize third‑party vendors, CSPs, consultants, program allies, and other entities engaged in energy-efficiency to perform various program implementation and support duties. These duties include assistance with plan design and implementation, EM&V, and the installation of the tracking and reporting tool. Met Ed’s Plan at 95; Penelec’s Plan at 81; Penn Power’s Plan at 93; and West Penn’s Plan at 93.

On the basis of our review of the Companies’ Plans, we shall approve the implementation and management strategies contained in Section 4 of the respective Plans, having found them to be reasonable and consistent with Act 129 and the *Phase III Implementation Order*.

### 2. Monitoring, Reporting and Evaluation Issues

The Commission’s EE&C Program is to include an evaluation process including a process to monitor and verify data collection, quality assurance and the results of each plan and the program. 66 Pa. C.S. § 2806.1(a)(2). Consistent with this requirement, each EDC’s Plan is to “explain how quality assurance and performance will be measured, verified and evaluated.” 66 Pa. C.S. § 2806.1(b)(1)(i)(C). Each EDC is required to submit an annual report to the Commission relating to the results of its EE&C Plan. 66 Pa. C.S. § 2806.1(i)(1).

For Phase III, the Commission directed EDCs to file semiannual reports on January 15 of each year, which are to provide information regarding the first two quarters of the program year. Additionally, on July 15 of each year, EDCs are to file a preliminary annual report for the program year that outlines the second half of the program year, as well as reported savings for that program year. Lastly, EDCs are to submit a final annual report by November 15 of each year, with reported savings for the program year, a cost‑effectiveness evaluation (TRC Test), a process evaluation, as well as other items required by Act 129 and Commission Orders. The reports are to be submitted to the Commission’s Secretary’s Bureau at each EDC’s respective Phase III Docket Number. The EDCs are also required to post these reports on their respective websites. *Phase III Implementation Order* at 101 and 102.

The Companies’ monitoring and reporting strategies are contained in Sections 5 and 6 of their respective Plans. In Section 5, the Companies indicate that they have issued an RFP for the creation of a tracking and reporting system to provide the necessary reports, including semiannual and annual reports, across all FirstEnergy operating companies. The comprehensive system will have the ability to monitor the progress of the various programs being offered and generate the reports required by the Commission. The tracking and reporting system also will have the ability to track a customer through program-specific statuses and to provide customized reports using a report writing tool. The Companies will utilize summaries, dashboards, or other reporting formats to monitor program performance on an on-going basis. Met Ed’s Plan at 105-106; Penelec’s Plan at 95-96; Penn Power’s Plan at 107‑108; and West Penn’s Plan at 107-108.

In Section 6, the Companies describe how quality assurance will be measured, verified and evaluated. Additionally, the Companies present examples of specific steps they took toward quality assurance and quality control during the design phase of the plans. These steps included:

* Using qualified and experienced personnel, including the Companies’ expert consultant, to assist with the design of EE&C programs
* Selecting EE&C measures that are compliant with the requirements of the 2016 Technical Reference Manual
* Using proven approaches that are designed to reach both the energy savings and demand reduction targets set for each Company
* Communicating frequently and effectively with interested parties and other stakeholders on EE&C program design and objectives
* Verifying that established EE&C program design procedures and approaches are being followed
* Validating EE&C program assumptions with the Companies’ expert consultant.

*See*, Met Ed’s Plan at 111; Penelec’s Plan at 97; Penn Power’s Plan at 109; and West Penn’s Plan at 109.

The Companies also state that, during the implementation phase of their Plans, they will acquire selected program managers (or CSPs) to present processes that accurately document and verify data used to support energy savings and peak load reductions. The Companies also will perform their own quality assurance processes, either directly or through contract auditors, to ensure the accuracy and reliability of the reported data and savings. Moreover, the Companies will use an EM&V Consultant to develop and implement EM&V processes and procedures. Met Ed’s Plan at 111-112; Penelec’s Plan at 97-98; Penn Power’s Plan at 109‑110; and West Penn’s Plan at 109‑110.

On the basis of our review of the Companies’ Plans, we shall approve the monitoring and reporting strategies contained in Sections 5 and 6 of the respective Plans, having found them to be reasonable and consistent with Act 129 and the *Phase III Implementation Order*.

# V. Conclusion

Based on our review of the record and the applicable law, we find that the Joint Petition for Settlement is in the public interest to the extent it is consistent with Act 129 and in compliance with the *Phase III Implementation Order*. Consequently, consistent with this Opinion and Order, we will grant, in part, and deny, in part, the Joint Petition for Consolidation of Proceedings and Approval of Act 129 Phase III Energy Efficiency and Conservation Plans; we shall, grant, in part, and deny, in part, the Joint Petition for Settlement; and we shall deny FirstEnergy’s request to approve the proposed tariff provisions to implement a Section 1307 surcharge to recover Phase III Plan costs; subject to the condition that no Party to the Joint Petition exercises the right to withdraw therefrom; **THEREFORE;**

**IT IS ORDERED:**

1. That each of the Parties to the Joint Petition for Full Settlement shall file with the Commission, and serve on all Parties to this proceeding, within five business days of the date this Opinion and Order is entered, a notice of whether it wishes to withdraw from the Joint Petition for Full Settlement.
2. That, if any Party elects to withdraw from the Joint Petition for Full Settlement, the Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Consolidation of Proceedings and Approval of Act 129 Phase III Energy Efficiency and Conservation Plans, together with the Joint Petition for Full Settlement shall be denied, without further action by this Commission, and :
	1. That Metropolitan Edison Company shall file with this Commission, and serve on all Parties of record in this proceeding, a revised Energy Efficiency and Conservation Plan consistent with this Opinion and Order, within sixty days of the entry of this Opinion and Order. Interested parties will have ten days to file comments on the revised Phase III Energy Efficiency and Conservation Plan, with reply comments due ten days thereafter. The Commission will approve or reject the revised Phase III Energy Efficiency and Conservation Plan at a public meeting within sixty days of the date of the filing of the revised plan.
	2. That Metropolitan Edison Company shall submit with its revised Phase III Energy Efficiency and Conservation Plan a revised cost recovery mechanism and appropriate tariffs, consistent with this Opinion and Order.
	3. That Pennsylvania Electric Company shall file with this Commission, and serve on all Parties of record in this proceeding, a revised Energy Efficiency and Conservation Plan consistent with this Opinion and Order, within sixty days of the entry of this Opinion and Order. Interested parties will have ten days to file comments on the revised Phase III Energy Efficiency and Conservation Plan, with reply comments due ten days thereafter. The Commission will approve or reject the revised Phase III Energy Efficiency and Conservation Plan at a public meeting within sixty days of the date of the filing of the revised plan.
	4. That Pennsylvania Electric Company shall submit with its revised Phase III Energy Efficiency and Conservation Plan a revised cost recovery mechanism and appropriate tariffs, consistent with this Opinion and Order.
	5. That Pennsylvania Power Company shall file with this Commission, and serve on all Parties of record in this proceeding, a revised Energy Efficiency and Conservation Plan consistent with this Opinion and Order, within sixty days of the entry of this Opinion and Order. Interested parties will have ten days to file comments on the revised Phase III Energy Efficiency and Conservation Plan, with reply comments due ten days thereafter. The Commission will approve or reject the revised Phase III Energy Efficiency and Conservation Plan at a public meeting within sixty days of the date of the filing of the revised plan.
	6. That Pennsylvania Power Company shall submit with its revised Phase III Energy Efficiency and Conservation Plan a revised cost recovery mechanism and appropriate tariffs, consistent with this Opinion and Order.
	7. That West Penn Power Company shall file with this Commission, and serve on all Parties of record in this proceeding, a revised Energy Efficiency and Conservation Plan consistent with this Opinion and Order, within sixty days of the entry of this Opinion and Order. Interested parties will have ten days to file comments on the revised Phase III Energy Efficiency and Conservation Plan, with reply comments due ten days thereafter. The Commission will approve or reject the revised Phase III Energy Efficiency and Conservation Plan at a public meeting within sixty days of the date of the filing of the revised plan.
	8. That West Penn Power Company shall submit with its revised Phase III Energy Efficiency and Conservation Plan a revised cost recovery mechanism and appropriate tariffs, consistent with this Opinion and Order.
3. That, if no Party elects to withdraw from the Joint Petition for Full Settlement, the Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Consolidation of Proceedings and Approval of Act 129 Phase III Energy Efficiency and Conservation Plans, is granted, in part, and denied, in part, consistent with this Opinion and Order.
4. That, if no Party elects to withdraw from the Joint Petition for Full Settlement, Metropolitan Edison Company’s Phase III Energy Efficiency and Conservation Plan, as modified by the Joint Settlement, is approved, in part, and rejected, in part, consistent with this Opinion and Order.
	1. That the proposed pro forma tariff pages and cost recovery mechanism set forth in the Phase III EE&C‑C tariff as contained in the Metropolitan Edison Company’s Phase III Energy Efficiency and Conservation Plan is hereby rejected, and that the Metropolitan Edison Company is directed to consult with the Commission’s Bureau of Audits within thirty (30) days of the entry date of this Opinion and Order, in order to develop a revised cost recovery mechanism that complies with the provisions set forth in the Commission’s *Phase III Implementation Order*. Metropolitan Edison Company shall submit a tariff supplement containing the revised cost recovery mechanism within sixty (60) days of the entry date of this Opinion and Order. The Metropolitan Edison Company is further directed to include a detailed description of the allocation methodology that will be used to assign costs to the various customer classes in this tariff supplement.
	2. That Metropolitan Edison Company is permitted to implement any portion of its Phase III Energy Efficiency and Conservation Plan that was approved without modification by this Opinion and Order.
5. That, if no Party elects to withdraw from the Joint Petition for Full Settlement, Pennsylvania Electric Company’s Phase III Energy Efficiency and Conservation Plan, as modified by the Joint Settlement, is approved, in part, and rejected, in part, consistent with this Opinion and Order.
6. That the proposed pro forma tariff pages and cost recovery mechanism set forth in the Phase III EE&C‑C tariff as contained in the Pennsylvania Electric Company’s Phase III Energy Efficiency and Conservation Plan is hereby rejected, and that the Pennsylvania Electric Company is directed to consult with the Commission’s Bureau of Audits within thirty (30) days of the entry date of this Opinion and Order, in order to develop a revised cost recovery mechanism that complies with the provisions set forth in the Commission’s *Phase III Implementation Order*. Pennsylvania Electric Company shall submit a tariff supplement containing the revised cost recovery mechanism within sixty (60) days of the entry date of this Opinion and Order. The Pennsylvania Electric Company is further directed to include a detailed description of the allocation methodology that will be used to assign costs to the various customer classes in this tariff supplement.
7. That Pennsylvania Electric Company is permitted to implement any portion of its Phase III Energy Efficiency and Conservation Plan that was approved without modification by this Opinion and Order.
8. That, if no Party elects to withdraw from the Joint Petition for Full Settlement, Pennsylvania Power Company’s Phase III Energy Efficiency and Conservation Plan, as modified by the Joint Settlement, is approved, in part, and rejected, in part, consistent with this Opinion and Order.
9. That the proposed pro forma tariff pages and cost recovery mechanism set forth in the Phase III EE&C‑C tariff as contained in the Pennsylvania Power Company’s Phase III Energy Efficiency and Conservation Plan is hereby rejected, and that the Pennsylvania Power Company is directed to consult with the Commission’s Bureau of Audits within thirty (30) days of the entry date of this Opinion and Order, in order to develop a revised cost recovery mechanism that complies with the provisions set forth in the Commission’s *Phase III Implementation Order*. Pennsylvania Power Company shall submit a tariff supplement containing the revised cost recovery mechanism within sixty (60) days of the entry date of this Opinion and Order. The Pennsylvania Power Company is further directed to include a detailed description of the allocation methodology that will be used to assign costs to the various customer classes in this tariff supplement.
10. That Pennsylvania Power Company is permitted to implement any portion of its Phase III Energy Efficiency and Conservation Plan that was approved without modification by this Opinion and Order.
11. That, if no Party elects to withdraw from the Joint Petition for Full Settlement, West Penn Power Company’s Phase III Energy Efficiency and Conservation Plan, as modified by the Joint Settlement, is approved, in part, and rejected, in part, consistent with this Opinion and Order.
12. That the proposed pro forma tariff pages and cost recovery mechanism set forth in the Phase III EE&C‑C tariff as contained in the West Penn Power Company’s Phase III Energy Efficiency and Conservation Plan is hereby rejected, and that the West Penn Power Company is directed to consult with the Commission’s Bureau of Audits within thirty (30) days of the entry date of this Opinion and Order, in order to develop a revised cost recovery mechanism that complies with the provisions set forth in the Commission’s *Phase III Implementation Order*. West Penn Power Company shall submit a tariff supplement containing the revised cost recovery mechanism within sixty (60) days of the entry date of this Opinion and Order. The West Penn Power Company is further directed to include a detailed description of the allocation methodology that will be used to assign costs to the various customer classes in this tariff supplement.
13. That West Penn Power Company is permitted to implement any portion of its Phase III Energy Efficiency and Conservation Plan that was approved without modification by this Opinion and Order.
14. That any directive, requirement, disposition or the like contained in the body of this Opinion and Order, which is not the subject of an individual Ordering Paragraph, shall have the full force and effect as if fully contained in this part.

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 **BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: March 10, 2016

ORDER ENTERED: March 10, 2016

1. The Industrials include the Met‑Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Penn Power Users Group, and the West Penn Power Industrial Intervenors. [↑](#footnote-ref-1)
2. Each of the four Companies’ Petitions have a separate docket number because of anticipated separate compliance filings in the future among the four companies. These docket numbers were assigned regarding the respective companies as follows: (1) Met Ed, M-2015-2514767; (2) Penelec, M‑2015‑2514768; (3) Penn Power, M‑2015‑2514769; and (4) West Penn, M‑2015‑2514772. [↑](#footnote-ref-2)
3. The Joint Petitioners are FirstEnergy, the OCA, the OSBA, CAUSE‑PA, the Industrials, and EnerNOC. As previously noted*,* PSU and Walmart each filed a letter indicating they do not oppose the Joint Settlement. Additionally, RESA indicated that it takes no position regarding the Joint Settlement. [↑](#footnote-ref-3)
4. FirstEnergy submits that the settlement terms simply clarify, rather than change, already existing provisions in its Plans. Therefore, FirstEnergy states that it does not intend to amend the Plans as originally filed, unless ordered to do so by the Commission. FirstEnergy Statement in Support of Settlement at 12 n.32. [↑](#footnote-ref-4)
5. As is discussed elsewhere in this Opinion and Order, Penelec has no PDR requirement because it was determined that no cost-effective potential exists for demand reduction in its service territory. Therefore, while Penelec is voluntarily proposing a residential demand reduction program consistent with that being offered by the other Companies, Penelec’s Plan does not include any demand reduction programs for its C&I customers. [↑](#footnote-ref-5)
6. As the Plans project obtaining consumption savings in excess of the target and these annual percentages are projected to meet the Plans’ projected consumption savings, they exceed the consumption target by an equivalent percentage. [↑](#footnote-ref-6)
7. As previously noted, it was determined that no cost-effective potential for mandated demand reduction exists in Penelec’s service territory. However, the Commission indicated that Penelec could propose a voluntary demand reduction program if it fits within Penelec’s program budget. Penelec is voluntarily proposing a residential behavioral demand response program that is consistent with that being proposed by the other FirstEnergy Companies. FirstEnergy St. 1.0 at 6; FirstEnergy Statement in Support of Settlement at 6 n.14. [↑](#footnote-ref-7)
8. Section 3.1.4 of the Companies’ Plans notes that the Companies offer comprehensive measures to residential customers, including whole house treatments through the Residential Energy Efficiency program and the Low-Income Energy Efficiency program. This includes home audits with additional incentives for comprehensive home retrofits as well as incentives for efficient new home construction. Additionally, the Companies offer comprehensive measures to commercial, industrial, and G/E/NP customers through energy audits, custom building, and custom measures. [↑](#footnote-ref-8)
9. Of these 158 measures, the 99 non-low‑income measures do not double count measures offered in multiple sectors, multiple tiers, or demand response measures. [↑](#footnote-ref-9)
10. Copies of the Phase III EE&C-C Riders for the Companies were attached to FirstEnergy’s Statement 3.0 as Exhibits KMS-1 through KMS-5 and filed on November 29, 2015. These exhibits were amended through a filing made on January 6, 2016. The correct versions of the exhibits were included with FirstEnergy’s Statement 3.0 admitted into the record at the evidentiary hearing. [↑](#footnote-ref-10)
11. The Companies note that while FirstEnergy personnel will manage the overall content on the Companies’ public internet domain, [www.firstenergycorp.com](http://www.firstenergycorp.com), the CSP(s) will be responsible for generally managing their section of the site and updating it as necessary. [↑](#footnote-ref-11)
12. As previously noted, the Companies indicate that while Penelec has no demand response reduction requirement, it has voluntarily included a residential behavioral demand response program that is consistent with what is being offered by the other Companies. [↑](#footnote-ref-12)