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August 30, 2016

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

**VIA ELECTRONIC FILING**

**RE: Proceeding to Evaluate Transition to  
Corrected Non-Solar Tier 1 Calculation Methodology  
Docket No. M-2009-2093383**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission are the Joint Comments of the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), the PP&L Industrial Customer Alliance ("PPLICA"), and the West Penn Power Industrial Intervenors ("WPPII") (collectively, the "Industrial Customer Groups") regarding the above-reference proceeding.

Please let me know if you have any questions. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 

Kenneth R. Stark

Counsel to Industrial Customer Groups

Enclosure

A5316883:1

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proceeding to Evaluate Transition to : Docket No. M-2009-2093383  
Corrected Non-Solar Tier I Calculation :  
Methodology :

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**JOINT COMMENTS  
OF THE MET-ED INDUSTRIAL USERS GROUP,  
THE PENELEC INDUSTRIAL CUSTOMER ALLIANCE,  
THE PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP,  
THE PP&L INDUSTRIAL CUSTOMER ALLIANCE, AND  
THE WEST PENN POWER INDUSTRIAL INTERVENORS**

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Dated: August 30, 2016

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## I. INTRODUCTION

On August 15, 2016, the Pennsylvania Public Utility Commission ("PUC" or "Commission") entered a Tentative Order ("August 15 Tentative Order")<sup>1</sup> seeking comments from the public on how to address an unanticipated seven percent increase in the non-solar Tier I Alternative Energy Credit ("AEC") for the 2016 compliance year.<sup>2</sup> The Commission is charged with using its general powers to carry out, execute, and enforce AEC obligations under the Alternative Energy Portfolio Standards Act of 2004 ("AEPS Act"). *See* 73 P.S. §§ 1648.1 *et seq.* Recently, the Commission became aware of a recurring error over the past six years regarding the calculation of the non-solar Tier I AEC obligation quarterly adjustment. In order to mitigate the impact of that error, the Commission seeks public comment on two possible solutions: (1) requiring each electric distribution company ("EDC") to procure the additional AECs for the entire service territory and allowing EDC recovery of those costs on a non-bypassable basis or (2) delaying the true-up period for the non-solar Tier I adjustment credits for an appropriate time period.

Herein, the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), the PP&L Industrial Customer Alliance ("PPLICA"), and the West Penn Power Industrial Intervenors ("WPPII") (collectively, the "Industrials") hereby respectfully submit the following Comments. The Industrials appreciate the Commission's efforts to minimize the effect on stakeholders while upholding its duties under the AEPS Act. As raised in the comments that follow, the Industrials recommend that the Commission undertake the second remedial solution: delay the non-solar Tier I adjustment for one year so the adjustment applies to 2017 compliance year.

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<sup>1</sup> *See Proceeding to Evaluate Transition to Corrected Non-Solar Tier I Calculation Methodology*, Docket No. M-2009-2093383, at p. 5 (Tentative Order entered Aug. 15, 2016).

<sup>2</sup> The 2016 AEPS compliance year ran from June 1, 2016 through May 31, 2016.

## II. BACKGROUND ON THE PROCEEDING

On July 8, 2016, the Commission issued a Secretarial Letter ("July 8 Secretarial Letter") to provide notice to all EDCs and electric generation suppliers ("EGSs") with AEPS compliance obligations of the approximate seven percent increase in the non-solar Tier I AEC. The Commission explained that the need for the increase resulted from a recurring miscalculation of the quarterly adjustments associated with Tier I resources. In the July 8 Secretarial Letter, the Commission explained that a 2008 amendment to the AEPS Act expanded the types of qualifying Tier I resources, including low-impact hydropower and biomass, and also required the Commission to increase, at least quarterly, the percentage share of Tier I resources to be sold by EDCs and EGSs to reflect any new Tier I resources in the marketplace. The Commission explained that the mathematical error was corrected for the 2016 compliance year, resulting in the approximate seven percent increase in the otherwise anticipated Tier I AEC obligations.

In the August 15 Tentative Order, the Commission explained that its legal and technical staff convened a conference call among stakeholders from the retail electric market and EDC default service programs to discuss the July 8 Secretarial Letter. The Commission explained that some stakeholders expressed concerns regarding the adverse impact of the unanticipated seven percent increase in non-solar Tier I AECs on their business models. Therefore, the Commission issued a Secretarial Letter on August 9, 2016 to extend the true-up period from September 1, 2016 to November 1, 2016 for the non-solar Tier I adjustment obligations.<sup>3</sup>

As one potential remedial action, the Commission suggests that the EDCs, due to their leveraged purchasing power and billing functionality, may be well-equipped to ameliorate the market effects of the miscalculation. The Commission proposes requiring the EDCs to procure the additional needed AECs through the spot market or a competitive bid process and to then

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<sup>3</sup> The extension of the true-up period only applies to non-solar Tier I obligations; it does not apply to solar Tier I or Tier II AEPS requirements.

transfer the procured credits to all load serving entities accordingly. EDCs would have the opportunity to recover "the costs of this procurement through a preexisting non-bypassable charge, such as a competitive enhancement rider, solar photovoltaic alternative energy credit rider, or other tariff mechanism as deemed optimal by individual EDCs, so long as the charge is applicable to all rate classes."<sup>4</sup> The Commission would then require each EDC to submit a compliance filing regarding the procurement and cost recovery.

As another option, the Commission suggests delaying the obligation to settle the adjustment amount associated with the non-solar Tier I credit obligation for an appropriate time period, as discussed in the comments at this proceeding. The Commission reasoned that delaying the adjustment may give entities more time to procure the additional AECs necessary to meet the unanticipated increase in the annual non-solar Tier I AEC obligations.

Aiming to minimize the effect on stakeholders while upholding its duties under the AEPS Act, the Commission seeks comments from all interested parties on the necessity and efficacy of those two proposals, as well as any other proposals to effectively remedy the miscalculation and to mitigate the impact of the seven percent increase in the non-solar Tier I AEC.

### **III. COMMENTS**

As competitive businesses and large industrial and commercial (C&I) customers, the vast majority of Industrials shop for electricity and obtain generation supply from EGSs through competitive and negotiated contracts. In all territories, the obligation to purchase AECs for a shopping customer is placed on the EGS for that customer. The contract between the customer and the EGS, in turn, explains how the pricing could change or not change based on the Commission's decision regarding this issue.

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<sup>4</sup> See *Proceeding to Evaluate Transition to Corrected Non-Solar Tier I Calculation Methodology*, Docket No. M-2009-2093383, at p. 5 (Tentative Order entered Aug. 15, 2016).

As a result of the unanticipated seven percent increase in the non-solar Tier I AEC for the 2016 compliance year, the Industrials estimate that there will be a projected cost to suppliers of approximately \$0.05/MWh or \$0.000005/kWh. This cost estimate assumes a Tier I weighted average price of \$12.51/MWh and the 2016-2017 Tier I requirement increasing from 6% to 6.42% (the resulting percentage from the seven percent increase to the 6% requirement). The additional compensation to Tier 1 non-solar credit holders will be *de minimus*. The Industrials support the Commission's second remedial action: delay the obligation to settle the adjustment amount associated with the non-solar Tier I credit obligation for an appropriate time period. The Industrials recommend delaying settlement of the adjustment for one year or until the end of the 2017 compliance year, which ends May 31, 2017 (with a true-up period for adjustments ending September 1, 2017).

The new percentage will apply prospectively only, starting with the 2017 compliance year. The Commission announced, after the 2016 compliance year had ended, that it discovered this issue. To minimize the potential adverse impact on the majority of the market participants (EDCs, EGSs, and customers), the revised obligation should apply only prospectively in the 2017 compliance year. This provides all entities with sufficient notice to plan AEC procurement. More importantly, it avoids the adverse precedent explained below by the alternate suggestion for a non-bypassable EDC charge. EDC procurement of AECs with cost recovery through non-bypassable charges is wholly inappropriate and inconsistent with the retail market structure in Pennsylvania. Most importantly, this solution may result in customers paying for costs that could not otherwise be passed through under their current contracts with EGSs. Electric supply contracts are competitive agreements and the resulting contract between a supplier and a large C&I customer is often the product of back-and-forth negotiations. Contract terms and conditions not only differ by supplier, but specific agreements between suppliers and customers will contain different terms, conditions, and durations. Some contractual agreements may include language

accounting for this situation involving the unanticipated seven percent increase and place the onus of the cost increase on the EGS. In contrast, other agreements may place the onus of the cost increase on the customer. Other agreements may be silent or unclear. Simply put, some EGSs may or may not be able to pass this cost increase through to their customers. The non-bypassable charge solution threatens to take away the benefit of the bargain that was struck by the EGS and the customer in negotiating an electric generation supply agreement.

Furthermore, the non-bypassable charge<sup>5</sup> solution may be contrary to law and policy. The AEPS Act requires an EGS to procure and pay for the AECs necessary based on the EGS's electric supply portfolio. *See* 73 P.S. § 1648.3. EGSs must manage their AEPS obligations as well as their other pricing and contracts obligations. In managing their electric supply needs, Large C&I customers enter into these competitive and negotiated contracts and expect that the rates, terms, and conditions will be in place throughout the duration of the contract. After restructuring in the electric industry, the rates of EGSs are not regulated by the Commission. *See* 66 Pa. C.S. § 2802(14). Retroactively charging customers could result in the interference of competitive contracts and is contrary to the spirit, if not the letter of the law, of the Electricity Generation Customer Choice and Competition Act. *See* 66 Pa. C.S. Ch. 28. Therefore, it is very possible (and perhaps even likely) that adjustments will need to be made again in the future. While the dollar amount at issue in this instant adjustment is small, addressing the miscalculation via the non-bypassable charge solution could set a troublesome precedent.

#### **IV. CONCLUSION**

**WHEREFORE**, the Duquesne Industrial Intervenors (“DII”), the Met-Ed Industrial Users Group (“MEIUG”), the Penelec Industrial Customer Alliance (“PICA”), the Penn Power Users Group (“PPUG”), the Philadelphia Area Industrial Energy Users Group (“PAIEUG”), the

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<sup>5</sup> Non-bypassable charges are assessed on all customers accessing the electric utility's distribution network, even those customers who shop for electric supply and are taking electric generation supply service from a supplier other than the default supplier (*i.e.*, the electric utility).

PP&L Industrial Customer Alliance (“PPLICA”), and the West Penn Power Industrial Intervenors (“WPPII”) respectfully request that the Pennsylvania Public Utility Commission consider these Comments in determining its final determination in the Commission's Proceeding to Evaluate Transition to Corrected Non-Solar Tier I Calculation Methodology, Docket No. M-2009-2093383.

Respectfully Submitted,

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