McNees
Wallace & Nurick LLC

100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Kenneth R. Stark
Direct Dial: 717.237.5378
kstark@mcneeslaw.com

September 9, 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 Reply 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
Kenneth R. Stark

Counsel to Industrial Customer Groups

enclosure

A5334792:1

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

JOINT REPLY 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

Pamela C. Polacek
Kenneth R. Stark
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
Phone: 717-232-8000
Fax: 717-260-1688
ppolacek@mcneeslaw.com
kstark@mcneeslaw.com

Counsel to the Duquesne Industrial Intervenors, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Penn Power Users Group, the Philadelphia Area Industrial Energy Users Group, the PP&L Industrial Customer Alliance, and the West Penn Power Industrial Intervenors

Dated: September 9, 2016

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I. BACKGROUND

On August 15, 2016, the Pennsylvania Public Utility Commission ("PUC" or "Commission") entered a Tentative Order ("August 15 Tentative Order")[1] 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.[2] 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 in order to give EDCs and electric generation suppliers ("EGSs") more time to procure the additional AECs necessary to meet the unanticipated increase in the annual non-solar Tier I obligation. The Commission also seeks public comment on other alternative solutions.

In the August 15 Tentative Order, the Commission provided for two rounds of public comments. Initial comments were due on August 30, 2016. On August 30, 2016, 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") filed initial comments. Therein, the Industrials recommended that the

[1] *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).
[2] The 2016 AEPS compliance year ran from June 1, 2016 through May 31, 2016.

Commission undertake the second remedial solution: delay the non-solar Tier I adjustment for one year so the adjustment does not apply until the 2017 compliance year. 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 entity that obtains supply for the customer (*i.e.*, the EGS for customers that shop and the default service provider for customers that do not shop). For shopping customers, 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. Accordingly, the Industrials commented that the Commission's first solution regarding EDC use of non-bypassable surcharge may result in the interference of competitive contracts and may also be contrary to law and policy.

Herein, the Industrials respectfully submit the following Reply Comments in response to the Comments filed by stakeholders.

II. REPLY COMMENTS

A. Option 1 Should Not Be Pursued Because It Raises Serious Legal Concerns Regarding the Commission's Authority Pursuant to the AEPS Act and the Public Utility Code, Potentially Results in the Interference of Customer-EGS Contracts, Sets Bad Precedent, and Creates Administrative Burdens

Many stakeholders filed comments expressing similar concerns to the Industrials that the Commission's first proposed solution ("Option 1") – EDC use of a non-bypassable surcharge – may be contrary to the AEPS Act and/or the Electricity Generation Customer Choice and Competition Act ("Competition Act").[3] *See* 73 P.S. § 1648.3; *see* 66 Pa. C.S. Ch. 28. Many

[3] *See* Comments of PPL Electric Utilities Corp. ("PPL") at 5-9; *see* Industrials' Comments at 5; *see* Comments of Duquesne Light Co. ("Duquesne") at 3-4; Comments of the Office of Consumer Advocate ("OCA") at 3; *see* Comments of the Energy Association of Pennsylvania ("EAP") at 4-6.

stakeholders explained that Option 1 could result in the interference of contracts between consumers and EGSs.[4] Many stakeholders also explained that Option 1 would be administratively burdensome.[5] Some stakeholders, including the Industrials, contended that addressing the miscalculation through an EDC non-bypassable surcharge would set bad precedent.[6] EDCs also explained that undertaking Option 1 may be difficult in light of current tariff and default service obligations.[7]

In light of the array of legal, contractual, precedent-setting, and administrative concerns and issues raised by stakeholders, the Industrials respectfully ask the Commission not to pursue Option 1.

B. Option 2 Is More in Accord with the AEPS Act and the Competition Act, Is Less Interruptive, and Provides More Flexibility to Stakeholders

Many stakeholders recommend, or at the least do not entirely oppose, the PUC's second proposal ("Option 2") to extend and delay the true-up period for the non-solar Tier I adjustment credits for an appropriate time period.[8] The Industrials agree that delaying the true-up period will provide entities with the necessary additional time to comply with their non-Solar Tier 1 obligations in a manner that respects the AEPS Act, the Competition Act, and existing and future EGS-customer contracts.[9] Extending the true-up period is a reasonable solution to correct the unanticipated miscalculation of the non-solar Tier 1 quarterly adjustments.[10]

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[4] *See* OCA Comments at 3; *see* Comments of the Office of Small Business Advocate ("OSBA") at 2-3; *see* Industrials' Comments at 5; *see* Duquesne Comments at 4.
[5] *See* PPL Comments at 9; *see* Comments of PECO Energy Company ("PECO") at 1, 4-5; *see* Duquesne Comments at 4.
[6] *See* PPL Comments at 7; *see* Industrials Comments at 5.
[7] *See, e.g.,* Comments of Metropolitan Edison Co., Pennsylvania Power Co., Pennsylvania Electric Co., and West Penn Power Co. ("FirstEnergy") at 6.
[8] *See* OCA Comments at 3; OSBA Comments at 3; *see* Industrials Comments at 4; *see* FirstEnergy Comments at 5; *see* Duquesne Comments at 6; EAP Comments at 6-7.
[9] *See* OCA Comments at 3.
[10] *See* EAP Comments at 6-7.

In order to avoid legal questions raised by stakeholders as to whether the Commission has the authority to apply the corrected adjustment retroactively, the Commission should only apply the corrected adjustment prospectively.[11] While the EGS community generally prefers Option 1, the Retail Energy Supply Association ("RESA") alternatively recommends delaying the true-up period beyond November 2016 to at least the 2018 AEPS compliance year in order to provide the EGS community meaningful relief because existing contracts extend into 2017, 2018, and beyond.[12] Accordingly, the EGS community recognizes that delaying the true-up period, albeit for a longer time, is a viable solution. In order to minimize the potentially adverse impact on market participants (EGSs, EDCs, and customers), the Industrials recommend delaying the non-solar Tier I adjustment for at least one year so the adjustment does not apply until the 2017 AEPS compliance year. If the Commission finds it reasonable and necessary, then the Commission could delay the true-up period until the 2018 AEPS compliance year.

In conclusion, the Industrials support Option 2 and specifically recommend delaying the non-solar Tier I adjustment for at least one year so the adjustment does not apply until at least the 2017 AEPS compliance year.

[11] *See* PPL Comments at 12-13 (questioning the Commission's authority under Section 2814(c) of the Public Utility Code); *see* Industrials Comments at 4.
[12] *See* RESA Comments at 10.

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

Respectfully Submitted,

MCNEES WALLACE & NURICK LLC

By: Kenneth R. Stark

Pamela C. Polack
Kenneth R. Stark
PO Box 1166
Harrisburg, PA 17108-1166
Phone: 717-232-8000
Fax: 717-260-1688
ppolacek@mcneeslaw.com
kstark@mcneeslaw.com

Counsel to the Duquesne Industrial Intervenors, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Penn Power Users Group, the Philadelphia Area Industrial Energy Users Group, the PP&L Industrial Customer Alliance, and the West Penn Power Industrial Intervenors

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