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December 19, 2014

VIA ELECTRONIC FILING

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

RE: Act 129 Energy Efficiency and Conservation Program Phase III; Docket No. M-2014-2424864

Dear Secretary Chiavetta:

Enclosed please find the Comments of the Industrial Energy Consumers of Pennsylvania ("IECPA"), Duquesne Industrial Intervenors ("DII"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customer Groups") regarding the above-referenced proceeding.

Very truly yours,

McNEES WALLACE & NURICK LLC

By
Elizabeth P. Trinkle

Counsel to Industrial Customer Groups

Enclosure
c: Megan G. Good (via e-mail)
Kriss Brown (via e-mail)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Act 129 Energy Efficiency and Conservation Program Phase III	: :	Docket No. M-2014-2424864

COMMENTS OF
INDUSTRIAL CUSTOMER GROUPS

I. INTRODUCTION

On October 23, 2014, the Pennsylvania Public Utility Commission ("PUC" or "Commission") issued a Secretarial Letter requesting stakeholder Comments on certain topics that will be instrumental in the design and implementation of a potential Phase III of the Energy Efficiency and Conservation ("EE&C") Program mandated by Act 129 of 2008 ("Act 129").[1] The Commission also requests Comments on issues relevant to a potential Phase III that were not explicitly enumerated in the Secretarial Letter. The Commission states that these Comments will be used in conjunction with the various analyses and recommendations offered by the Statewide Evaluator ("SWE") to facilitate a coordinated transition from Phase II and to maximize ratepayer benefits by leveraging stakeholders' knowledge and experience from Phases I and II of the EE&C Program.[2]

The Industrial Energy Consumers of Pennsylvania ("IECPA"), Duquesne Industrial Intervenors ("DII"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA"), and West Penn

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[1] *Act 129 Energy Efficiency and Conservation Program Phase III*, Docket No. M-2014-2428464, Secretarial Letter (Oct. 23, 2014) ("Secretarial Letter").
[2] *See id.* at 1.

Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customer Groups") submit these Comments in response to the Secretarial Letter. IECPA is a 20-member association of energy-intensive industrial customers of electricity and natural gas. More than 41,000 Pennsylvanians are employed by IEPCA member companies alone. DII, MEIUG, PICA, PAIEUG, PPLICA, and WPPII are all *ad hoc* groups of commercial, institutional, and industrial customers of electricity that participate in various proceedings before this Commission, including the Energy Efficiency and Conservation ("EE&C) Plan proceedings for the respective electric distribution companies ("EDCs").[3]

II. OBSERVATIONS FROM PHASES I AND II OF THE EE&C PROGRAM

The October 23 Secretarial Letter requests stakeholder comment on the relevant issues pertaining to a potential Phase III in part to "leverag[e] the knowledge and experience gained to-date in order to improve the EE&C Program, thereby maximizing ratepayer benefits." To that end, the Industrial Customer Groups submit the following Comments in order to identify fundamental public policy concerns that have arisen as a result of Phases I and II of the EE&C Program. The Industrial Customer Groups further identify certain observations gleaned from Phases I and II with respect to EE&C Program design that must be critically addressed in developing a successful potential Phase III.

A. Fundamental Public Policy Concerns

The Industrial Customer Groups submit that the structure of EE&C Plans employed by jurisdictional electric distribution companies ("EDCs") in Phases I and II of the EE&C Program raise fundamental public policy concerns with respect to the legislative intent of Act 129 and the statutory goal of achieving a robustly competitive retail electric market in Pennsylvania.

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

Specifically, the Industrial Customer Groups recommend the Commission apply the dual statutory principles of robust economic growth and energy efficiency achieved through affordable energy for all Pennsylvania electric customers to find that Large commercial and industrial ("C&I") customers are better served by relying on wholesale and retail market price signals to dictate EE&C initiatives. The Industrial Customer Groups further recommend that the Commission adopt changes to the structure and design of the EE&C Program to remedy intra-class cost-shifting and to address disparate impacts by adhering to principles of customer fairness.

As set forth in the Declaration of Policy to the Electric Retail Competition Act of 1996 ("Competition Act"), which added Chapter 28 to the Pennsylvania Public Utility Code ("Code"), the primary legislative intent of restructuring the retail electric market in Pennsylvania was not only to achieve lower retail electric rates as compared with other states, but also to achieve greater parity among the rates of Pennsylvania EDCs.[4] The legislature also made the following key findings with respect to electric restructuring:

> (4) Rates for electricity in this Commonwealth are on average higher than the national average, and significant differences exist among the rates of Pennsylvania electric utilities.
>
> (5) Competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.
>
> (6) The cost of electricity is an important factor in decisions made by businesses concerning locating, expanding and retaining facilities in this Commonwealth. . . .
>
> (8) In moving toward greater competition in the electricity generation market, the Commonwealth must resolve certain transitional issues in a manner that is fair to customers, electric utilities, investors, the employees of electric utilities, local

[4] 66 Pa. C.S. § 2802.

> communities, nonutility generators of electricity and other affected parties."[5]

The EE&C Program promulgated in Act 129 added Section 2806.1 to Chapter 28 of the Code and was designed to build off of the policy directives of the Competition Act through the implementation of energy efficiency and demand reduction initiatives that furthered the goals of more economic electricity rates for all customers across Pennsylvania. Specifically, the legislature declared in the Preamble to Act 129 that "[i]t is in the public interest to adopt energy efficiency and conservation measures and to implement energy procurement requirements designed to ensure that electricity obtained reduces the possibility of electric price instability, promotes economic growth and ensures affordable and available electric service to all residents."[6] Accordingly, the EE&C Plans approved by the Commission and implemented by EDCs in Phase III must reflect the dual goals of increasing energy efficiency and furthering economic growth throughout the Commonwealth.

The Industrial Customer Groups respectfully question whether the current design of the Act 129 EE&C Program achieves these dual policy directives, particularly with respect to Large C&I customers. As explained in the next section, the experiences during Phases I and II have revealed a number of conflicts between the policies of the Competition Act and the current design of the EE&C Program. Most significantly, there is a fundamental disconnect between the theory that customers should look to the markets for their electric supply costs, but be required to subsidize a utility-administered energy efficiency program.

Since the expiration of EDC rate caps in 2009 and 2010, nearly 40% of all EDC customers and more than 90% of Large C&I customers are served by a competitive electric

[5] *See id.* §§ 2802(4)-(6), (8).
[6] Act of October 15, 2008, P.L. 1592, No. 129, Preamble.

generation supplier ("EGS").[7] The Commission has consistently found that Large C&I customers' reliance on EGSs for alternative products to hourly default service "reflects the market sophistication and shopping ability of the industrial class."[8] In contrast to other customer classes, the Commission has also found that Large C&I customers possess the requisite expertise to account for market risk in negotiating with EGSs for electric service.[9]

Large C&I customers are sufficiently sophisticated to recognize the wholesale and retail market price signals regarding the value of energy efficiency through their EGSs. As such, they have a tangible economic incentive to maximize energy efficiency with respect to load usage and to engage in efficiency-related projects in the future. For those Large C&I customers who do not possess the internal capability to read these price signals themselves, there are a multitude of consultants ready and available to assist. It is not necessary to subsidize consultants (*i.e.*, Conservation Service Providers) to serve the Large C&I class, or for customers within this class to subsidize the education or projects of others.

In addition, the results of the SWE's Phase I Report indicates that many EDCs achieved the "low hanging" measures for energy efficiency during Phase I, thereby foreclosing any saving from these measures in future EE&C Program Phases.[10] The SWE further found in its Phase II Non-Residential Baseline and Potential Study ("Baseline Study") that even at a 100% purchase discount (meaning that the full cost of the energy efficiency measure is covered by EDC) respondents were less than "extremely likely" to implement the energy efficiency measure for the

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[7] *See* Retail Electric Choice Activity Report 2013, pp. 3-5, *available at* http://www.puc.state.pa.us/electric/pdf/Electric_Choice_Report-2013.pdf.
[8] *See Joint Petition of Metropolitan Edison Co. and Pa. Electric Co. for Approval of their Default Service Programs*, Docket Nos. P-2009-2093053, *et al.*, Opinion and Order (Nov. 6, 2009).
[9] *See Guidelines for Use of Fixed Price Labels for Products with a Pass-Through Clause*, Docket No. M-2013-2362961, Final Order (Nov. 14, 2013) (excluding Large C&I customers from consumer guidance regarding EGS contracts).
[10] *See* Act 129 Statewide Evaluator Final Annual Report, p. 205 (Mar. 4, 2014), *available at* http://www.puc.state.pa.us/pcdocs/1274547.pdf.

majority of available opportunities.[11] As the SWE noted in the Baseline Study, this suggests there are other non-financial barriers that may limit the success of a future energy efficiency incentive program for non-residential customers. The Industrial Customer Groups respectfully submit that two plan phases for the Large C&I class have provided sufficient subsidization of energy efficiency efforts for this class and that market forces should be relied upon to influence each customer regarding any subsequent energy efficiency projects.

The Commission has a duty to implement both the Competition Act and the EE&C provisions of Act 129. The Industrial Customer Groups respectfully submit that, in doing so, the Commission can consider how changes in the retail markets impact its application of the requirement that each Act 129 plan "provide the measures equitably to all customer classes."[12] This could be done through revisiting the original determination that one measure must be available for each class, which was made prior to the expiration of the rate caps and prior to the substantial migration of customers (especially Large C&I customers) to competitive suppliers. There have been substantial factual changes since 2009 that now warrant a determination that the Large C&I class should be excluded from the utility-administered programs. Alternatively, the process used by the Commission to establish the EDC-specific goals could be revised to consider a greater focus on the customer class that are not shopping and not actually exposed as directly to the price signals of how their energy usage characteristics impact costs.

As discussed in Section II.B, *infra*, the current EE&C Program design presents significant bureaucratic challenges to achieving energy efficiency in a cost-effective manner, particularly for Large C&I customers. The Industrial Customer Groups submit that these

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[11] *See* Pennsylvania Statewide Act 129 2014 Non-Residential End Use & Saturation Study, p. 106, *available at* http://www.puc.state.pa.us/Electric/pdf/Act129/SWE-2014_PA_Statewide_Act129_Non-Residential_EndUse_Saturation_Study.pdf.

[12] 66 Pa. C.S. § 2806.1(a)(5).

customers have sufficient incentives to pursue energy efficiency without government mandates. As noted previously, Large C&I customers rely on retail and wholesale markets to provide price signals regarding energy efficiency, and manufacturers continually look for efficiency gains and cost reductions independent of the EE&C Program. Capital investment in energy efficiency projects is "lumpy," thereby resulting in very large projects that are not eligible for full funding through Act 129 initiatives. Moreover, as a result of the significant variance in EDCs' EE&C surcharges, the current administrative procedures for establishing targets and budgets has tilted the competitive situation for manufacturers in Pennsylvania. Within a service territory, Large C&I customers also are subsidizing their less efficient competitors, as well as other entities (including the Government/Educational/Non-Profit ("G/E/NP") sector) within the same rate class. Proactive and forward-looking companies that independently engaged in energy efficiency projects are also subsidizing those customers who are "catching up" through EE&C Program initiatives.

In light of the substantial evidence indicating Large C&I customers' willingness and ability to engage in energy efficiency independent of the Act 129 EE&C Program, the Industrial Customer Groups recommend that the Commission pursue alternatives to the current EE&C Program structure to promote fairness and eliminate the intra-class cost-shifting and subsidization Large C&I customers currently face. The Industrial Customers Groups do not seek to relitigate the Commission's findings in the August 2, 2012, Phase II Implementation Order ("Phase II Order"), with respect to an "opt out" provision for Large C&I customers.[13] Nevertheless, the Industrial Customer Groups urge the Commission to give full consideration to other potential solutions to address the resultant unfairness to Large C&I customers under the

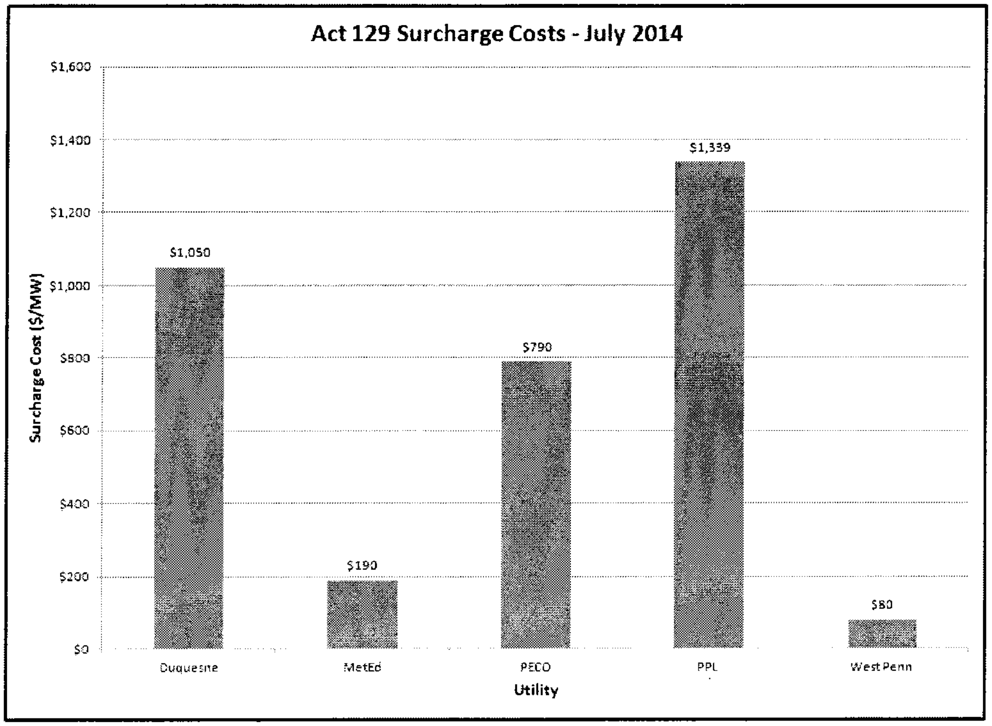
[13] The Industrial Customers Groups recognize the Commission's findings in the Phase II Order with respect to the Commission's jurisdictional authority to grant such an "opt out" for Large C&I customers and reserve the right to pursue such a provision legislatively.

current EE&C Program design. Specifically, the Industrial Customer Groups urge the Commission to consider the following potential solutions: (1) eliminating EE&C Program initiatives for Large C&I customers, as these are sophisticated entities who are fully engaged in shopping for retail electric generation and recognize the value of energy efficiency; (2) adjusting EE&C Program budgets to 2% of distribution revenues rather than 2% of total annual revenue; (3) refocusing the core of EE&C Plans on those customer classes who would benefit from centralized regulatory expertise (*i.e.*, Residential and Small C&I customers); and (4) eliminating the G/E/NP carve-out.

B. E&E Program Phase I and II Design Issues

Assuming, *arguendo*, that the Commission determines to implement Phase III of the EE&C Program for all customer classes, the Industrial Customer Groups have identified a number of plan design issues based on their collective experiences in Phases I and II for the Commission's consideration in the development and implementation process. The Industrial Customer Groups urge the Commission to give careful consideration to each of these issues and to work with stakeholders to ensure that any future phases of the EE&C Program achieve the objective of increased energy efficiency through Plans designed to foster an equitably robust competitive retail electric market throughout Pennsylvania.

First, the Phase I and II EE&C Plans have resulted in significant and anti-competitive cost disparities among EDC surcharges, particularly with respect to the Large C&I customer class. By way of example, the following chart sets forth the Act 129 surcharge costs, in dollars per MW, for several of Pennsylvania's largest EDC during July 2014:



As this comparison makes clear, Act 129 surcharge costs vary significantly in each EDC's service territory. Such variance creates a disparate impact among customers within the same industry and having similar load characteristics; in fact, for Large C&I customers in certain EDC service territories (*i.e.*, PPL Electric Utilities Corp. ("PPL")), the EE&C surcharge represents a greater cost to customers than the EDC's distribution service costs.[14] The design of the current EE&C Program surcharge therefore results in a disparate impact to Large C&I customers, the effects of which depend entirely on the service territory in which the customer are located. In this particular month, a 10 MW customer in PPL's service territory would pay $1,259 more than a similar 10 MW customer in West Penn Power Company's territory. This effect is wholly incongruous with the legislative intent of Chapter 28 to eliminate the geographical cost disparities faced by electric consumers in the Commonwealth.[15]

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[14] PPL's Large C&I customers on Rate LP-5 pay $994 per meter for distribution service. *See* PPL Elec. Utils. Corp., Electric Pa. P.U.C. No. 201, Supplement No. 125, Twenty-Third Revised Page No. 28.
[15] *See* 66 Pa. C.S. § 2802(4).

Second, there is no correlation between customer contributions to the EE&C Program and customer receipts for Plan-related projects. As the Commission is aware, EE&C surcharge payments from Large C&I customers are determined by the customer's Peak Load Contribution ("PLC"). This generally means that larger customers within a class will pay more into the budget; however, there are inadequate safeguards to ensure that the budgets are distributed back to the class in a fair and equitable manner. The Commission is similarly aware, as demonstrated in the SWE's Baseline Study, that Large C&I customers' primary project options under the majority of EE&C Plans are custom energy efficiency projects or lighting. In order to break even on such a project, a customer may need $500,000 to $1 million of funded projects for each Phase of the EE&C Program. These individualized custom projects, when coupled with the funding caps imposed through the EDCs' Phase I and II EE&C Plans, limits Large C&I customers' ability to break even on these projects. Having to pay the surcharge also diverts the money that a customer could use to engage in energy efficiency initiatives or to support other necessary corporate decisions (such as other capital upgrades that may be necessary to remain competitive in the particular industry). If Phase III is authorized, the Commission should consider additional requirements to ensure intra-class equity, such as a size-based scale for the EE&C grants that ensures that a customer receives from the Plan an amount of benefit that is comparable to the funding that they have provided.

Third, as eluded to previously, EE&C Program surcharges that are unpredictable constitute an impediment to economic growth in Pennsylvania. The lack of a cohesive rate setting and reconciliation process has resulted in significant overcollections by certain EDCs and significant modifications to the filed rates on 10-days notice by other EDCs. By way of comparison, PECO's Phase I EE&C surcharge netted a substantial overcollection from Large

C&I customers, which in turn resulted in a credit fully offsetting the Phase II charge for the first six months of Phase II. While customers in other territories were paying the Phase II surcharges and Phase I reconciliations, PECO's customers were getting a credit. In addition, PPL belatedly determined that it had miscalculated its Phase I reconciliation (and its Phase II surcharge), and implemented a 162% increase starting November 1, 2013, on 10-days notice.[16] As discussed above, EE&C Program costs represent a significant portion of Large C&I customers' energy costs. The potential for significant over- or under- collection of these costs and for rate changes on short notice creates budgetary uncertainty for Large C&I customers, which in turn discourages these customers from further investing in Pennsylvania's economic growth. Large C&I customers require rationality and predictability for long-term growth, and future Phases of the EE&C Program that include Large C&I Plans should address this unpredictability and the resultant economic obstacles.[17]

For all of the aforementioned reasons, the Industrial Customer Groups urge the Commission to recognize the unique challenges facing Large C&I customers with respect to the EE&C Program and to ensure that any measures adopted for Phase III reflect Act 129's dual goals of energy efficiency and robust economic growth for all customers throughout Pennsylvania.

III. COMMENTS ON ENUMERATED QUESTIONS INCLUDED IN SECRETARIAL LETTER

In addition to requesting that stakeholders identify issues relevant to a potential Phase III, the Secretarial Letter requests comments on a number of specific Phase III-related questions.

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[16] The PP&L Industrial Customer Alliance filed a Complaint challenging PPL's Phase I rate increase. The Complaint is pending before Administrative Law Judge Colwell for decision at Docket Nos. C-2013-2398440, *et al.*

[17] As explained in Section III.A, *infra*, one way to accomplish this is through modifications to the rate setting process to more closely track annual expenditures and revenues, rather than allowing the EDC to wait until the end of the EE&C Plan.

For convenience, the remainder of these Comments will mirror the order and presentation of these questions in the Secretarial Letter. The Industrial Customer Groups limit their responses to those issues that are relevant to Large C&I customers.

A. Length of Phase III EE&C Program

As discussed in the Secretarial Letter, the Commission is considering whether a five year program (operating June 1, 2016 through May 1, 2021) would be appropriate for a potential Phase III. The Commission further requests comment on the "optimal" length of a possible Phase III.

The Industrial Customer Groups urge the Commission to retain the three year term model for any adopted Phase III of the EE&C Program. The length of Phases I and II presented a critical opportunity to monitor costs and to evaluate each EE&C Plan's efficiency. As discussed in Section II.B, *supra*, certain EDCs experienced significant undercollections of Phase I EE&C Program costs that resulted in significant reconciliation charges to Large C&I customers at the conclusion of Phase I. Such reconciliation charges constitute a particularly significant impediment to Large C&I customers who rely on budget certainty in electricity costs. Expanding the length of Phase III to a five-year term would eliminate this important check on the design and success of these programs and the compound resulting reconciliation charge impact to customers.

The Industrial Customer Groups further urge the Commission to develop an alternative mechanism to end-of-term reconciliation of EE&C customer surcharges. Specifically, the Industrial Customer Groups recommend that the Commission require annual rate setting and reconciliation based on actual incurred costs and actual customer class revenues. Alternatively, the Commission could consider a bandwidth for permissible deviations between projected and actual costs versus projected and actual revenues for each customer class. The EDC would be required to make an interim filing to modify the surcharge level for a class if the deviation exceeded the permitted range. Such a mechanism would avoid dramatic swings in the reconciliation charges such as those seen at the end of Phase I. This proposed modification would become even more critical if the Phase III Plan length is extended to four, five or six years.

B. Inclusion of Peak Demand Reduction Requirements

Although the Secretarial Letter acknowledges that the SWE has not yet provided its final analysis regarding peak demand potential in Pennsylvania, the Commission requests comment on a number of peak demand reduction-related questions, including: (1) whether EDCs should be required to continue peak demand reduction programs past the May 31, 2017, target if the SWE determines that there is "cost-effective peak demand reduction potential available within the Act 129 framework"; (2) the appropriate "split" between peak demand reduction and consumption reduction initiatives; (3) whether peak demand reduction targets should be required if the SWE determines that potential is available but would require the major of EDCs' budgets; (4) whether the Commission can prescribe a peak demand reduction target for only one EDC or if the target can be met through measures offered to certain rate classes instead of all rate classes; and (5) whether EDCs should be permitted to utilize all of their EE&C budgets for consumption reduction programs if there is no cost-effective peak demand reduction potential.

The Industrial Customer Groups are deeply concerned regarding the future of demand response and urge the Commission to exercise caution in adopting any peak demand reduction requirements for Phase III at this time. As the Commission is aware, the issues regarding demand reduction requirements under Act 129 are further complicated by the uncertain status of the PJM Interconnection, L.L.C. ("PJM") demand response programs due to the D.C. Circuit's decision in *EPSA v. FERC.*[18] Moreover, while PJM released its Capacity Performance proposal on December 3, 2014, the proposal has yet to be reviewed and approved by the Federal Energy Regulatory Commission ("FERC"). Accordingly, any alternative demand reduction design developed by the SWE will need to be reviewed in light of developments on both fronts. Moreover, an informed decision on the future of peak demand reduction programs cannot be made prior to review of the SWE's Demand Response Potential Study, which is scheduled to be released during the first quarter of 2015. Accordingly, the Industrial Customer Groups reserve any technical comments for a later date once the SWE analysis is complete and, more importantly, recommend that the Commission delay any findings regarding peak demand reduction for Phase III of the EE&C Program pending further clarity from FERC and PJM regarding the role of customer demand reductions in the energy and capacity markets.

The Industrial Customer Groups are interested in working with the Commission and stakeholders to develop alternatives to the PJM demand response programs, if necessary, and note that those alternatives may need to be accomplished outside of the Act 129 framework. Such an alternative program for Large C&I customers would not prevent the PUC from continuing its Direct Load Control programs aimed at Residential and Small C&I customers, which could continue within the EE&C Program framework as an energy efficiency benefit.

C. Inclusion of a Reduction Carve-Out for the Governmental, Educational and Non-Profit Sector

In advance of the SWE's analysis of the potential for consumption and peak demand reductions in the G/E/NP sector, the Secretarial Letter requests comment on whether a carve-out should be included in a potential Phase III, and if so, the appropriate methodology to be

[18] 753 F.3d 216 (D.C. Cir. 2014).

employed. As noted in the Secretarial Letter, although the carve-out was required for Phase I, the Commission continued this carve-out under Phase II.

The Industrial Customer Groups recommend that the G/E/NP carve-out be excluded from the potential Phase III of the EE&C Program. As set forth in the Phase II Order, this carve-out is not mandated beyond Phase I of the EE&C Program and is instead subject to the Commission's discretion:

> While the carve-out for the government/educational/nonprofit sector is a portion of the consumption reduction requirements under 66 Pa. C.S. §2806.1(c) and (d), the carve-out is specifically prescribed under subsection (b), 66 Pa. C.S. §2806.1(b)(1)(i)(B), which is separate and apart from subsections (c) and (d), 66 Pa. C.S. §2806.1(c) and (d). As such, the Commission believes it has the discretion to make modifications and/or remove the specific sector carve-out for the government/educational/nonprofit sector if no cost-effective savings can be obtained from that sector.[19]

Under the current EE&C Program framework, the G/E/NP carve-out results in the subsidization of certain Large C&I customers by other customers within their own rate class. Specifically, while hospitals and universities are may have accounts that are classified for ratemaking purposes as Large C&I customers and often fall within the G/E/NP carve-out, other Large C&I customers subsidize these customers' EE&C Program costs with no discernible benefit. Any portion of the Large C&I budget that is devoted to the G/E/NP sector is <u>not</u> available to non-G/E/NP accounts. Two phases of the carve-out were sufficient. Going forward, those customer accounts should be treated like all other Large C&I accounts, without specific carve-outs or subsidies. Accordingly, the Industrial Customer Groups recommend that the G/E/NP carve-out be eliminated from future Phases of the EE&C Program to address this intra-class subsidization.

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[19] *Energy Efficiency and Conservation Program*, Docket No. M-2012-2289411, Implementation Order at 45 (Aug. 2, 2012).

D. EDCs' Phase III Budgets

As noted in the Secretarial Letter, the Commission recognized during the Phase II implementation period that many EDCs had surpassed their Phase I consumption reduction requirements of 3% ahead of target while still having budget available for continued provision of measures. The Commission therefore requests comments on whether EDCs should be permitted to continue spending their budgets to provide Phase II measures until the expiration of Phase II and permit those consumption reductions in excess of 3% to be applied to the EDCs' Phase III targets. The Secretarial Letter also requests comments on the appropriate deadline for submission of rebate applications, as well as the appropriate length of time for EDCs to "true-up" their costs/budgets for Phase II.

As the Industrial Customers Groups have previously noted, EDCs' EE&C budgets are statutorily capped at a maximum value only; no minimum budget is statutorily prescribed. This 2% total revenue maximum statutory budget is based on the assumption that EDCs will employ both energy efficiency and demand reduction programs. As discussed in Section III.B, *supra*, the future of demand reduction, and particularly demand response programs, remains uncertain. If the Commission determines that demand reduction targets should be excluded from Phase III, the EDCs' overall EE&C Program budgets should correspondingly be reduced. In addition, the Commission should evaluate whether budgets below the maximum cap are justified.

E. Updating the Technical Reference Manual

The Secretarial Letter requests feedback regarding whether an annual Technical Reference Manual ("TRM") update process is necessary and, if not, the frequency with which the TRM should be updated. The Industrial Customer Groups do not take a position regarding the annual TRM updating process or the frequency with which the TRM should be updated.

However, the Industrial Customer Groups urge the Commission to clarify the valuation procedure upon which EDCs should be able to rely for claimed energy efficiency savings. Specifically, it seems unfair to implement TRM reductions to savings assumptions during the middle of the EE&C Plan phase. By way of example, an EDC designs its plan based on an energy efficiency initiative valued in the TRM at 100 kWh, only to have that efficiency credit reduced to 25 kWh as a result of TRM updates. The EDC should be able to rely on the TRM values in effect when its Plan is approved. Accordingly, the Industrial Customer Groups request that the Commission clarify the process and timing for which an EDC may determine the appropriately claimed energy efficiency credit.

F. Updating the Total Resource Cost Test

The Secretarial Letter requests stakeholder input on the following issues with respect to the Total Resource Cost ("TRC") TRC Test: (1) whether the Commission should establish a periodic review and updating process for the TRC Test methodology in Phase III; (2) the frequency with which the TRC should be reviewed; (3) whether review and update of the TRC Test should be dependent on the length of Phase III; and (4) any "new data, theories, or arguments available" supporting inclusion of societal benefits in the TRC equation.

The Industrial Customer Groups urge the Commission to base any changes to the TRC Test on concrete and verifiable data that is subject to critical review by the SWE. These changes could include measurable variables such as actual value to customers and intra-class subsidization. Inclusion of "societal benefits" in the TRC Test would require significantly speculative analysis and would result in specious results at best. Accordingly, the Industrial Customer Groups urge the Commission to ensure that any revisions to the TRC Test adopted for Phase III of the EE&C Program reflect only those variables that can be definitively evaluated.

IV. CONCLUSION

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

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By____________________________

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Dated: December 19, 2014