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May 15, 2015

VIA EFILING

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

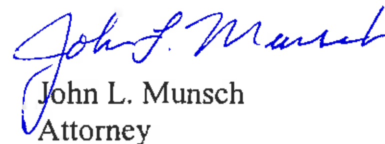
Re: Act 129 Energy Efficiency and Conservation Program Phase III Tentative Implementation Order; M-2014-2424864

Dear Secretary Chiavetta:

Pursuant to the Pennsylvania Public Utility Commission's Tentative Implementation Order entered March 11, 2015, in the above-captioned matter, enclosed for filing are the Reply Comments of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company.

Please contact me if you have any questions regarding this matter.

Very truly yours,



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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Energy Efficiency and Conservation Program : M-2014-2424864

REPLY COMMENTS OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER COMPANY AND WEST PENN POWER COMPANY TO ACT 129, PHASE III, ENERGY EFFICIENCY AND CONSERVATION TENTATIVE ORDER

Dated: May 15, 2015

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TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. REPLY COMMENTS 2

A. Legal Issues Associated with the Proposed DR Program 2

1. Summary of Companies' Legal Concerns 2

2. OSBA's Concern Regarding the Cost Effectiveness Legal Requirement 3

B. Parties Have Raised Numerous Valid Concerns Regarding Establishment of Any Mandatory DR Targets 4

C. The Commission Should Uphold its Decision to not Propose a Peak Demand Reduction Requirement for Penelec 6

D. Notwithstanding the Above Arguments, if the Commission Finds that DR Targets are Still Necessary, then the Companies Recommend Changes to the Tentative Order DR Proposal 7

1. Should the Commission establish DR targets for Phase III, the Companies Targets Should be Reduced 7

2. Event Criteria Should be as Proposed by the Commission in the Tentative Order, with the Clarification that the PJM Forecast for the Regional Transmission Organization (RTO) be Used as Proposed by the Companies in their Comments 8

E. Proposed Additional Incremental Reductions in Consumption 9

1. The Proposed Additional Incremental Reductions in Consumption are Inappropriate and Should be Reduced 9

2. The Low Income 2% Target for Comprehensive Direct Install Measures is Unrealistic and Should be Removed 11

3. The Low Income 5.5% Target Should Include Low Income Participation in General residential programs with no further requirement 13

4. Carve-Outs for Government Educational/Nonprofit Entities and Multifamily Housing 14

i. The sector carve-out for Government Educational and Nonprofit Entities is disproportional in the Tentative Order and should be revised 14

ii. The Commission should not establish a carve out for Multifamily Housing 15

F. Accumulating Savings in Excess of Reduction Requirements 16

G. Process to Make Recommendations for Additional Measures 16

H. Procedures to Require Competitive Bidding and Approval of Contracts with CSPs 17

I. Shared Savings Incentives Should be Adopted 17

J. On-Bill financing Should be Rejected 18

III. CONCLUSION 20

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TO ACT 129, PHASE III, ENERGY EFFICIENCY AND
CONSERVATION TENTATIVE ORDER

I. INTRODUCTION

On March 11, 2015, the Pennsylvania Public Utility Commission ("Commission") entered a Tentative Implementation Order outlining its proposed standards for the Phase III Energy Efficiency and Conservation ("EE&C") Program beginning June 1, 2016, through May 31, 2021. The Commission requested comments by April 27, 2015, and reply comments by May 12, 2015. Upon a request for an extension of time filed by the Energy Association of Pennsylvania ("EAP") the deadline for filing reply comments was extended to May 15, 2015. Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, "the Companies") filed Comments on April 27, 2015. In their Comments, the Companies identified multiple issues in the proposed Phase III consumption and peak reduction program that must be addressed and rectified by the Commission before the program can be considered lawful, supported by record evidence and reasonable.

Regarding the proposed Phase III energy reduction program, the Companies have addressed why adjustments should be made to proposed program energy consumption targets, including the low income and government/educational/nonprofit programs. The Companies also identified deficiencies in the cost-benefit analysis approval process. Of an even greater dimension,

however, are the Companies' concerns in the area of the proposed Phase III demand reduction ("DR") targets. The proposed mandatory DR program has threshold legality issues that warrant allocating the entire Phase III program budget to energy reduction rather than peak demand reduction. The Companies recommend, therefore, that the Commission not direct a Phase III DR program, but allow for voluntary demand response programs developed by EDCs on a discretionary basis as part of their Plan portfolios. The Companies submit the following Reply Comments for the Commission's consideration.

II. REPLY COMMENTS

A. Legal Issues Associated with the Proposed DR Program.

1. Summary of the Companies' Legal Concerns.

In addition to the evidentiary and technical problems identified by the Companies with respect to the proposed demand reduction targets, there are numerous legal infirmities inherent in the proposed Phase III program. The proposed Phase III continuation of a DR program is in conflict with the negative results of the Phase I benefit cost analysis required by Act 129. Companies Comments pp. 4-5. DR programs authorized pursuant to Section 2806.1(d)(2) cannot be based on the "every five years" renewal language applicable to energy reductions through Section 2806.1(c)(3) of Act 129. And regardless of the result of the benefit cost analysis of Phase I, the peak demand reduction provision of Act 129 was not authorized to extend beyond May 31, 2017. 66 Pa.C.S. §2806.1(d)(2). Moreover, because the penalties of Section 2806.1(f) are properly construed as applying only to the Phase I reductions explicitly required by statute and not to subsequent reductions developed and ordered by the Commission, neither the proposed energy reduction targets nor the DR targets should be subject to the mandatory penalty provision.

In addition to the Companies' critique in its initial comments, other electric distribution companies ("EDCs") raise valid concerns with elements of proposed Phase III. Several parties reinforce the Companies' comments that mandated DR targets for Phase III are contrary to Act 129. Parties also question the reasonableness of such targets.

In view of the legal risks and business risks of achieving targets, especially the problematic DR targets, the prudent course is for the Commission to reassess its proposal, correct the errors in assumptions, and make revised DR targets discretionary for EDCs and not subject to mandatory strict-liability penalties. In the Phase III DR proposal, the Commission departs from the guidance Act 129 provides on benefits versus costs, the time frame and the penalty issue. If it embarks on Phase III as proposed, the Commission would be the equivalent of a traveler who is completely off the statutory map of Act 129 with respect to DR. In addition to reaffirming the foregoing views expressed in its initial comments, the Companies also reply to specific comments by other interested parties.

2. OSBA's Concern Regarding the Cost Effectiveness Legal Requirement.

OSBA commented that the State Wide Evaluator's ("SWE") Demand Response Potential Study ("DRPS") may have found that DR programs were more cost effective than not having DR programs, but that a 10% allocation of budget to DR was not the most cost-effective scenario for a Phase III Program. OSBA makes the point, illustrated by the SWE DRPS, that a 100% allocation of funds to energy reduction produces the largest present value net benefit compared to a 20%, 15% or even 10% allocation of funds to DR. In this context, OSBA argues, the proposed Phase III DR program is not cost effective. OSBA p. 3, para. 4.

The Companies have argued that continuing any DR program in the face of a Phase I program that was not cost effective is a violation of Act 129 because it rewrites the Act to say the General Assembly intended a Phase III program, even if Phase I was not cost effective. It is

indisputable that Phase I DR was not cost effective. To the extent the Commission directs DR targets in Phase III based on the possibility that programs might be cost effective, and not a supported finding that programs will be cost effective, the Commission would be ignoring the benefits-exceeding-costs legal underpinning of any post-Phase I DR program. Thus OSBA has raised yet another good rationale for the Commission not ordering a Phase III DR program. This issue demonstrates the extraordinary legal risk the Commission is undertaking by ordering a program under a statute that requires proof of cost effectiveness for a DR initiative to continue when the facts show: 1) Phase I was not cost effective; and 2) the cost effectiveness for a proposed Phase III program is an estimate not based on any actual experience with this type of program.

B. Parties Have Raised Numerous Valid Concerns Regarding Establishment of Any Mandatory DR Targets.

Other parties also argue that Phase III should contain no DR targets. OSBA, PPL, and IECPA argue that the Commission should not adopt DR goals for Phase III for multiple reasons. OSBA points out that, in mandating demand reductions, the Commission is requiring EDCs to forego investments in other programs that are more cost effective. OSBA pp. 3-4. PPL similarly suggests that the Commission eliminate peak demand reduction targets and reallocate the proposed DR funding to energy efficiency programs that are more cost-effective. PPL p.4. The Companies agree with the OSBA and PPL and assert, further, that DR programs have not been proven to be cost effective at any level, as discussed below.

IECPA points out that it is unfair for PJM-participating large C&I customers to have to pay for Act 129 programs for which they are ineligible. IECPA p.10. IECPA's point is that certain customers may be contractually committed to three-year participation in PJM's ELRP, or even longer term commitments with PJM Conservation Service Providers and, therefore, would not be able to participate in Act 129 DR programs yet they will be required to pay for these programs.

IECPA p.10. This could be harmful to some customers by providing a competitive advantage to their competitors who may elect to use their eligibility to participate in Act 129 programs. The Companies agree with IECPA's argument. The Companies point out, however, that while the Commission could consider allowing dual participation in both the Act 129 and PJM programs to alleviate the concerns raised by IECPA, dual participation would result in customers receiving double payment for DR events, thus further undermining the cost-effectiveness determination that the Commission is relying on in setting additional DR targets.

IECPA and PPL also argue, consistent with the Companies' comments, that the cost effectiveness of DR programs is not adequately demonstrated and the Commission should not establish DR targets for Phase III. IECPA comments that "fashioning additional Act 129 DR goals that provide incremental value over the PJM market signals will prove very difficult." IECPA p. 11. PPL also questions the cost effectiveness determination commenting that the DRPS significantly overestimates DR benefits and significantly underestimates DR costs. As the Companies have pointed out, Act 129 programs will not have a one-for-one impact on the five (5) Critical Peaks ("CP") used by PJM for reliability planning, and will have no effect on forecasts used for the determination of long-term T&D infrastructure investment. Therefore, the benefits estimated in the DRPS are overstated, and the acquisition costs are too low. Accordingly, the Companies agree with the similar arguments by IECPA and PPL that the cost-effectiveness of the proposed DR program has not been adequately demonstrated.

For these reasons, the Companies continue to recommend that the Commission not mandate DR targets for Phase III.

C. The Commission should uphold its decision to not propose a peak demand reduction requirement for Penelec.

The Commission set no targets for Penelec based on the results of the SWE DRPS which found no cost-effective DR potential at Penelec. However, two parties filed comments suggesting establishing Phase III DR Programs for Penelec. OCA recommends that the Commission ignore the SWE study and instead direct Penelec to work with its stakeholder group and use a 5% budget allocation for DR programs. OCA offers no information or rationale for why the Commission should ignore the results of the DRPS, other than to suggest that a DR requirement may provide a "reliability benefit." OCA p. 8.

The Keystone Energy Efficiency Alliance ("KEEA") also requests that the Commission reconsider DR for Penelec, also for alleged reliability reasons citing "recent concerns over power outages in the Erie area." KEEA p. 9. However, the primary intent of Act 129 programs is to "adopt and implement cost-effective energy efficiency and conservation plans to reduce energy demand and consumption."[1] PJM is responsible for reliability planning, and the SWE DRPS has concluded that existing Penelec customer participation in PJM DR is robust and that incremental cost-effective DR potential does not exist in Penelec territory. Furthermore, as the Companies state in their Comments, DR events that cause load shifting rather than peak shaving may actually impair reliability by inadvertently causing loads to be higher outside of the DR event. Companies comments p. 10. IECPA agrees: "Without careful analysis and program design, reliability may suffer." IECPA p. 12. Thus, the Companies disagree with the OCA and KEEA, since the sole factual predicate they offer is invalid. The Commission should maintain its Tentative Order and not assign DR targets for Penelec.

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[1] 66 Pa.C.S. § 2806.1(a)

D. Notwithstanding the above arguments, if the Commission finds that DR targets are still necessary, then the Companies recommend changes to the Tentative Order DR Proposal.

1. Should the Commission establish DR targets for Phase III, the Companies' targets should be reduced.

As discussed in the Companies' Comments, should the Commission nonetheless establish DR targets for Phase III, the Companies' targets should be reduced because the demand response market potential is grossly overstated in the DRPS, because the EDCs' budgets are not adequate, and because many of the factors that may result in the inability to achieve targets are beyond the control of EDCs. All of the Pennsylvania utilities provided consistent comments in this regard. PECO recommends that its DR target be revised downward or, alternatively, that the budget allocation be increased to 15.5%. PECO p. 21. Duquesne Light is "greatly concerned that it might not be able to achieve the aggressive demand reduction targets set forth in the Phase III Implementation Order." Duquesne p. 4. PPL asserts that even if DR were to be cost-effective, it believes it is not possible to achieve the proposed DR target with the proposed funding and the proposed customer eligibility restriction that prevents PJM DR customers from participating in Act 129 DR. PPL p. 4. PPL also states that it must enroll more customers than its DR compliance target to allow for the various uncertainties such as customers opting out of some events, customers failing to achieve their expected reductions, customers who drop out of the program, and customers deciding to participate in PJM DR instead.

The Companies agree with the EDCs' arguments and urge the Commission -- if it rejects the argument that no DR targets should be included as part of Phase III – to rule that that DR targets should be reduced based on the Companies' experience in Phase I and the other points made herein and in the Companies' comments.

Commenters also addressed the question of how to determine compliance with peak reduction targets. PPL recommends that "the peak reduction compliance shall be determined

based on the average of the annual MW reductions across the last four program years … doing so provides a single cumulative DR compliance target at the end of Phase III for peak reduction targets, not separate DR compliance targets in each program year." PPL p. 29. PennFuture, on the other hand, recommends that "the targets be depicted as annual targets and not annual average targets" and that "peak demand reductions are intended to address issues with reliability and high peak power costs that tend to occur as exceptional events." PennFuture p. 8. PennFuture is confusing the issue of actual achieved demand reduction with compliance determination. For example, if Pennsylvania experiences another summer such as 2014, where load was relatively flat as compared to typical summers, there would be no events called and actual achieved DR from Act 129 programs would be zero. To hold an EDC accountable for any compliance target in this scenario, which can easily repeat during the five years of Phase III, is wholly unreasonable. DR compliance should be determined based on the average of the annual MW reductions across the last four program years.

2. Event criteria should be as proposed by the Commission in the Tentative Order, with the clarification that the PJM forecast for the Regional Transmission Organization ("RTO") be used as proposed by the Companies in their comments.

Several parties provided comments on the Commission's proposed protocol for DR events. The Northeast Energy Efficiency Partnerships ("NEEP") requests clarification about the proposed parameters for calling an event and asserts that "the demand response program is limited to the 26 hours of greatest load each year, likely leaving cost-effective demand response opportunities on the table." NEEP p. 3. Others supporting demand response recommend that the Commission order separate dispatch strategies for residential and C&I customers. The OCA recommends that the Commission should reconsider "the mandatory nature of the [event protocol] provisions … and allow EDCs the flexibility to design their programs." OCA p. 6. Citizens Power wants the

Commission to allow EDCs to use dynamic dispatch criteria as opposed to the fixed 4-hour, 6-event protocol for the 96% threshold, and that "[the] trigger should be reduced from 96% in order to increase the probability that additional events are called." Citizens Power p. 2.

The recommended criteria proposed by the Commission and used by the SWE in the DR Study resolved the ambiguity associated with the "top 100 hours." Criteria for operations must be clear and defined. Removing the specific number of hours, events, and threshold level, as suggested by demand response supporters, would drastically diverge from the DRPS making both the cost effectiveness determination and potential receptivity of customers and market potential even more speculative and uncertain. These recommendations would also verge on returning to the 100 hour requirement that was found to be cost-ineffective and would ignore lessons learned from Phase I. The SWE potential study is focused on reducing the 5 CPs which are a primary input to the PJM forecast process. Reducing the threshold solely for the purpose of increasing the number of events, when clearly no events are needed, does not impact the 5CPs and is a waste of the available Act 129 budget and ratepayer monies.

The Companies disagree and support the event criteria proposed by the Commission in the Tentative Order, with clarification that the PJM forecast for the RTO be used, as the Companies recommended in their Comments. Companies pp. 15-17.

E. Proposed Additional Incremental Reductions in Consumption

1. The Proposed Additional Incremental Reductions in Consumption are Inappropriate and Should be Reduced.

The issue of consumption reduction was popular among commenters. In general, Honeywell International, Johnson Controls, United Technologies Corporation, Ingersoll Rand, Schneider Electric and Whirlpool Corporation (collectively "Honeywell") would prefer higher energy savings targets. Honeywell believes targets should be adjusted to spend the full 2% budget annually. Honeywell p. 2. KEEA wants 1% per year energy savings from all EDCs as well as the

plan design split 50/50 between residential customers and commercial/industrial customers. KEEA p. 11. Citizen's Power, and PennFuture want interim enforceable targets per each year of the EE&C plan. PennFuture supports savings replenishment for programs whose measure lives have expired. PennFuture p. 10: The Sustainable Energy Fund ("SEF") wants two comprehensive programs that are "stand-alone" and goes on to say that the programs should not be a summation of other measures offered in the EE&C plan. SEF p. 7. Finally, IECPA wants large commercial/industrial customers excluded from EE&C programs altogether. IECPA p. 3.

Both Honeywell and KEEA suggest that the Commission increase the consumption reduction targets proposed in the Tentative Order. KEEA specifically recommends that the Commission increase targets to 1% energy savings per year, while Honeywell believes targets should be adjusted to spend the full 2% budget annually. Honeywell p. 2; KEEA p. 5.

Contrary to the requests of the stakeholders who advocate increased targets, however, the proposed additional incremental reductions in consumption are inappropriate and should be decreased to the amounts shown in FE Table 4. Companies p. 22. Table 4, based on the SWE Market Potential Study ("MPS"), shows the savings that will be in effect in year 5 of Phase III, based on the acquisition cost assumption in the MPS and factoring in savings that are expected to expire during Phase III due to the end of their measure life. This reduction makes the savings targets consistent with the MPS and with the comments from PennFuture that support the Commission's requirement for savings to be replenished from measures whose life expires during the term of Phase III. Parties who advocate increased targets simply want the Commission to ignore the MPS and arbitrarily establish other targets that have no basis in the record.

The Companies also disagree with the comments suggesting that the Commission establish interim requirements in addition to what the Commission proposed in the Tentative Order. First, none of these recommendations are supported by the MPS, either with their viability or relative to

the impact of such increased requirements will necessarily have on the overall targets or the acquisition cost. Secondly, the EDCs need the flexibility to design their programs and plans based on the specific experience EDCs have gained through prior programs. Accordingly, the Companies support the Commission's proposal that the definition of "comprehensive program" should be determined by each EDC and its stakeholders during the design of the EE&C Plan. If the Commission instead prescribes additional requirements, this will restrict the ability of the EDCs to meet their overall compliance targets. Should the Commission nonetheless adopt additional requirements for plan design, the acquisition costs should be increased to reflect the additional cost of the additional requirements, and the overall compliance targets should be decreased to reflect the increased acquisition cost.

IECPA opposes the Commission's inclusion of Large Commercial and Industrial ("C&I") customer classes in Phase III. IECPA contends that the Commission's Phase III proposals do not reflect a thorough analysis of available EE and DR market potential. IECPA p. 5. IECPA's concern regarding the level of analysis is fully consistent with the Companies' comments regarding flaws with the DRPS that the Commission relied on to establish DR targets for Phase III. However, to the extent that the Commission excludes C&I customers from Phase III, the Commission must proportionally reduce the incremental consumption reduction targets.

2. The low income 2% target for comprehensive direct install measures is unrealistic and should be removed.

OCA, Regional Housing Legal Services of Philadelphia ("RHLS") and Citizens Power support the proposed 2% direct installation target while Energy Efficiency for All ("EFFA") and Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE") believe that the Commission should increase the proposed direct installation target from 2% to 3% of total savings. OCA p. 13; RHLS p. 3; EEFA p. 4, 10, 14; CAUSE p. 10, 15.

The parties who support the 2% amount, or an increase, fail to provide any hard facts to support their recommendation. By way of contrast, the Companies provided evidence that the 2% direct install is not possible to achieve and that the increase in the budget and infrastructure required to achieve the 2% target is not realistic. All the EDCs oppose the 2% carve-out for comprehensive direct install measures. EAP states that the proposed low income carve-outs exceed the statutory requirements, create inequities among the EDCs, and fail to account for the overlap between existing low-income weatherization programs offered through LIURP and the Department of Community and Economic Development weatherization assistance program. EAP p. 11. The Companies agree with EAP's comments.

CAUSE characterizes the sections of the Tentative Order regarding low-income as calling for a "modest" overall increase and a specific directive to include a "modicum" of direct-install measures. CAUSE p. 7. As discussed above, the Companies believe the proposed 2% target for direct install measures is unrealistic and the recommendation by CAUSE and EEFA to increase to the proposed direct-installation target to 3% only exacerbates an unreasonable goal. As shown in FE Table 7 of the Companies' comments, an increase to 2% would require an increase of approximately 400% in infrastructure capacity, which is hardly modest.

CAUSE further asserts that whole-house and/or weatherization measures represent a better investment of the low-income program dollars. CAUSE's statements are simply inaccurate. Savings from energy reports, efficiency kits, giveaways and other lower-cost program savings are fully verifiable. The SWE has consistently verified the accuracy of the EDCs' third-party evaluation contractors' methods of verifying low-income savings from the lower-cost measures. CAUSE and the other parties supporting more direct install measures fail to recognize that comprehensive direct install measures are the least cost-effective of all low-income measures. The Companies submit that requiring EDCs to ramp up comprehensive direct install programs will

result in a less equitable distribution of benefits to all classes of customers and will lower the cost-effectiveness results of both the program and plan.

3. The low income 5.5% target should include low-income participation in general residential programs with no further requirement.

The Commission proposes that each EDC obtain a minimum of 5.5% of total consumption reduction target from the low-income sector.

OCA suggests instead that the majority of savings for the low-income carve-out should not come from low-income participation in non-low-income programs but rather the savings should come from programs that are specifically targeted to the low-income sector. OCA p. 13. CAUSE also urges the Commission to limit the level of savings attributable to general residential programs, as the method used for attribution allegedly is not sufficiently accurate or verifiable. CAUSE p. 12.

Contrary to the OCA and CAUSE arguments, general residential programs have collectively reached thousands of identified low-income customers and achieved significant verified savings. The SWE has consistently verified the accuracy of the EDCs' methods of verifying low-income savings attributable from the general residential programs.

CAUSE also asserts that low-income customers are less likely to purchase major appliances or undertake building projects in rental properties. However, since major appliances and building measures are the responsibility of the landlord, general residential measures such as lighting, home energy reports and small appliances are ideal measures for low-income tenants. Contrary to the recommendations of OCA and CAUSE, the Commission's proposal to allow EDCs to continue to count savings achieved by low-income customer participation in the general residential programs is effective and will reach significant numbers of low-income customers.

4. Carve–Outs for Government Educational/Nonprofit Entities and Multifamily Housing.

i. The sector carve-out for Government Educational and Nonprofit Entities is disproportional in the Tentative Order and should be revised.

The Commission proposes that EDCs file an EE&C Plan to obtain a minimum of 3.5% of all EE requirements from the federal, state and local governments, including municipalities, school districts, institutions of higher education and non-profit entities ("G/E/NP"). This carve out was based on the SWE's estimate of program potential for this sector for all EDCs, which ranged from 3.5% to 10.4% of the total portfolio savings for each EDC.

Citizens Power suggests the target for G/E/NP should be set at 3.5% plus one half of the difference between 3.5% and the achievable potential. Citizens Power p. 4. CAUSE, OCA and RHLS all believe the G/E/NP energy savings should be higher than 3.5 %.as proposed by the Commission in the Tentative Order. CAUSE p. 16-17; OCA p. 15; RHLS p. 5.

The Companies recommend that the Commission establish the target at 33% of the program potential for the G/E/NP sector for each EDC rather than the fixed 3.5% of the total portfolio savings. The 33% of the program potential for the G/E/NP sector would result in each EDC targeting a proportionate amount of the program potential identified by the SWE. The Commission's proposal in the Tentative Order is challenging because the fixed 3.5% carve out would require Met-Ed and Penn Power to capture essentially all of the program potential for this sector while other EDCs would have to realize much smaller quotas. This fixed carve out is unfair to some EDCs and creates a budget inequity. Comments suggesting that the Commission increase the 3.5% carve out across-the-board for all EDCs would exacerbate this inequity.

The Commission recognized the inequity in targets in Phase I and adjusted the Phase II targets based on potential so that the different characteristics of each EDC's service territory were

acknowledged. Adopting the Companies' recommendation to target 33% of the program potential for the G/E/NP sector for all EDCs is fully consistent with the Commission's method of establishing the overall consumption reduction targets in Phase II.

ii. The Commission should not establish a carve out for Multifamily Housing

The Tentative Order provides: "As in Phase II, the EDCs will be allowed to continue to count qualifying low-income savings from participation in non-low-income (residential) programs, and also from qualifying multifamily housing savings towards the overall compliance target." This means there is no specific carve-out for multi-family housing. Nevertheless, Energy Efficiency for All ("EEFA") recommends that "the Commission require utilities to achieve average electric saving at the project/building level of 12% for both the residentially-metered and commercially-metered low income multifamily projects, as determined by dividing the estimated weather-normalized total building annual electricity savings by the weather-normalized total building historic annual electricity consumption." EEFA pp. 4-5. EEFA's 12% recommendation for residentially metered and commercially metered low-income multifamily projects is unreasonable and impractical. The Commission's 2013 Report on Universal Service Programs & Collections Performance showed homes that were a participant in the Low Income Usage Reduction Program ("LIURP") in 2011 achieved weather-normalized savings of 10.9%. Moreover, LIURP largely targets single-family homes with high energy use where the potential for energy savings is much greater than that of multi-family homes.

The Companies recommend that the Commission not establish a multi-family carve-out for several reasons. First, the MPS is not statistically valid to support any carve out for this sector at the EDC level. Second, any such requirement would result in programs that are redundant to the measures already offered to residential, low-income and commercial customers, causing unnecessary costs by requiring additional plan design, marketing, administration and

implementation to target the sectors. There is no reason to require a "carve-out" when doing so does not provide different program services. Third, establishing a multifamily carve out would require dedicated funding, further constraining the acquisition cost and remaining budget available to meet the overall energy savings targets. EDCs need flexibility to design programs based on their unique circumstances and further targeted requirements will reduce EDCs' flexibility.

F. Accumulating Savings in Excess of Reduction Requirements.

IECPA requests that the Commission reconsider its ruling in the Tentative Order that EDCs are permitted to spend Phase II budgets to attain savings in excess of compliance targets, which could then be counted towards Phase III for compliance. IECPA p. 14. The Companies disagree with IECPA's request. The Companies do not anticipate having significant savings that will carry over to Phase III that would warrant the need to revisit this decision. Also, as cited in the Companies' comments, there is uncertainty inherent in the MPS, including the acquisition cost assumptions upon which the targets are set. Any reduction in the Phase III budgets would only increase the compliance risk. For these reasons, the Companies believe that the request by IECPA regarding the use of excess Phase II budget is unreasonable and should not be adopted.

G. Process to Make Recommendations for Additional Measures

IECPA requests that the Commission remove consideration of rebate structures from the expedited review process. IECPA contends that changes to rebate structures can result in different compensation levels for customers implementing the same measures based on the timing of their application to the EDC. IECPA further alleges that this implicates intra-class cost subsidization and fairness issues that should be subject to the more robust comment and review activity that exists for "non-minor" changes. IECPA p. 15.

The Companies disagree with IECPA's request. As established in the Commission's Minor Plan Change Order at Docket No. M-2008-2069887, entered June 10, 2011, parties are free to file

comments and reply comments on the proposed minor plan changes. The Commission's staff is also authorized to approve, deny or transfer some or all of the proposed minor EE&C Plan changes to the Office of Administrative Law Judge for hearings. Accordingly, the request to remove the consideration of rebate structures from the expedited review process is unnecessary, as these concerns can be addressed through the current established process.

H. Procedures to Require Competitive Bidding and Approval of Contracts with CSPs.

IECPA requests that the Commission require EDCs to segregate in their annual reporting the CSP administration cost from CSP payments to participants. IECPA further requests that the CSP contract review process be made public. IECPA pp. 15-16.

The Companies disagree with IECPA's requests. All EDCs already report program costs following the standardized cost categories established by the Commission. The level of cost reporting is already segmented to provide consistent and transparent information regarding program costs, including CSP cost and customer incentives, to all parties.

The comments of KEEA, PECO, and OCA, support affording discretion to EDCs in competitively bidding CSP contracts. KEEA pp. 23-24; PECO pp. 33-36; OCA pp. 17-18. The Companies agree with the proposal by KEEA and others that EDCs not rebid programs that are continuing from Phase II to Phase III.

I. Shared Savings Incentives Should be Adopted.

KEEA recommends that the Commission consider shared savings and performance incentives to motivate utilities to exceed targets and achieve higher levels of savings. KEEA pp. 22-23. The Companies support the recommendation that the Commission consider shared- savings incentives. Such an initiative would encourage utility investments in cost-effective energy efficiency and align Commission, customer and utility interests.

The National Action Plan for Energy Efficiency addressed the role that incentive mechanisms such as shared savings play in comprehensive energy efficiency policies in its publication, Aligning Utility Incentives with Investment in Energy Efficiency.[2] Policy regarding the incentives of energy efficiency programs typically addresses three main areas: (i) program cost recovery; (ii) lost revenue recovery; and (iii) performance incentives such as shared savings. The first two areas relate to removing potential negative impacts to utilities associated with energy efficiency programs, while the last focuses on incenting utility performance to exceed established targets. Many jurisdictions recognize the need to include a utility incentive component in order to support EEC & DR programs and make them a more attractive investment for utility management.

J. On-Bill Financing Should be Rejected.

The Tentative Order did not incorporate any requirements for on-bill financing. The issue of on-bill financing is the subject of a separate working group instituted at Docket No. M-2012-2289411 with a Staff Report issued October 31, 2013.

KEEA and SEF provided comments supporting on-bill financing or repayment programs. KEEA further requests that the Commission implement a pilot program for Phase III. KEEA p. 17; SEF pp. 1, 3-4. The Companies disagree with these comments and recommend against any form of EDC on-bill financing or repayment program. Institutions that offer financing have the infrastructure and expertise to provide these services to customers. It is not appropriate for utilities to implement programs using ratepayer dollars to "compete" with financing services provided by these entities. Utility or on-bill financing would require billing system changes and additional costs to implement and manage a program that can be provided by third parties directly to the customer.

[2] National Action Plan for Energy Efficiency (2007). Aligning Incentives with Energy Efficiency. Prepared by ICF International. www.epa.gov/eeaction plan.

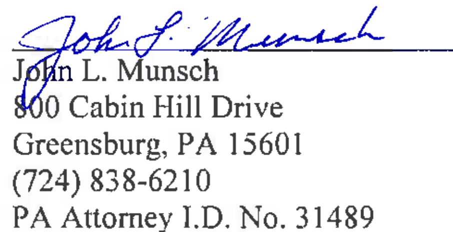
Adding ratepayer financing programs would alter the existing structure by requiring EDCs to become lenders and to undertake the responsibilities and risks associated with the complexities of that industry. Moreover, under some default scenarios, utility customers could be required to bear the costs and risks associated with EDC financing. The Companies believe it is inappropriate to place ratepayers at risk to finance individual customer projects. Such services and risks should be left to entities that have the expertise in administering consumer loans, assessing customer credit and managing these risks.

III. CONCLUSION

The proposed Phase III DR program has threshold legality issues that warrant allocating the entire Phase III program budget to energy reduction rather than peak reduction. If any DR program is permitted, it should be discretionary for EDCs to avoid multiple technical problems posed by the Commission's DR proposal. In addition, the Companies request adjustments in the areas of the Phase III proposed program energy consumption targets, low income and government/educational/nonprofit programs, and cost-benefit analysis approval.

Respectfully submitted,

Dated: May 15, 2015

By: 

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