McNees
Wallace & Nurick LLC

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

Pamela C. Polacek
Direct Dial: 717.237.5368
ppolacek@mwn.com

May 15, 2015

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

VIA ELECTRONIC FILING

RE: Energy Efficiency and Conservation Program; Docket No. M-2014-2424864

Dear Secretary Chiavetta:

Enclosed please find the Reply Comments of the Industrial Energy Consumers of Pennsylvania ("IECPA"), 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 Pamela C. Polacek
Pamela C. Polacek

Counsel to Industrial Customer Groups

PCP/sar

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

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Energy Efficiency and Conservation Program : Docket No. M-2014-2424864

REPLY COMMENTS OF
INDUSTRIAL CUSTOMER GROUPS

I. INTRODUCTION

On March 11, 2015, the Pennsylvania Public Utility Commission ("PUC" or "Commission") issued its Tentative Implementation Order outlining the Commission's proposals to address the issues set forth at Section 2806.1(a)[1] of Act 129 of 2008 ("Act 129") for establishing Phase III of the Energy Efficiency and Conservation ("EE&C") Program.[2] The Tentative Implementation Order proposes to establish additional incremental reductions in electric consumption and peak demand for Pennsylvania's seven largest electric distribution companies ("EDCs").

On April 27, 2015, the Industrial Energy Consumers of Pennsylvania ("IECPA"), 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

---

[1] 66 Pa. C.S. § 2806.1(a).
[2] *Energy Efficiency and Conservation Program*, Docket No. M-2014-2424864, Tentative Implementation Order (Mar. 11, 2015) ("Tentative Implementation Order").

Industrial Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customer Groups") filed Comments.[3]

Pursuant to the procedural schedule established by the Commission and the Commission's May 1, 2015 Secretarial Letter Order in this proceeding, the Industrial Customer Groups hereby submit these Reply Comments to respond to key issues necessitating further response. The Industrial Customer Groups' Reply Comments, however, will not respond to every argument contained in all other parties' Comments and, therefore, the Industrial Customer Groups' decision not to respond to certain arguments should not be construed as agreement with the positions of any party. To the extent that other parties raise issues not discussed herein that conflict with the Industrial Customer Groups' Comments, the Industrial Customer Groups continue to endorse their original positions.

II. REPLY COMMENTS

A. The Commission's Phase III Proposals Are Unsupported and Fail to Account for Necessary Considerations to Achieve Cost-Effective Consumption and Demand Reduction Targets.

The Industrial Customer Groups reaffirm their position that, absent demonstration of the Commission's well-reasoned internal analysis of the costs and benefits of Phase III, continuation of the EE&C Program is unsupported by evidence and contrary to the legislative intent of

---

[3] In addition to the Industrial Customer Groups, the following parties also filed Comments: Duquesne Light Company; Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, "FirstEnergy"); PECO Energy Company ("PECO"); Citizens for Pennsylvania's Future, the Clean Air Council, the Sierra Club, the Natural Resources Defense Council and the Environmental Defense Fund (collectively, "PennFuture"); the Pennsylvania Department of Environmental Protection; PPL Electric Utilities Corporation ("PPL"); The Pennsylvania State University; Energy Efficiency for All; the Energy Association of Pennsylvania ("EAP"); Northeast Energy Efficiency Partnerships; Regional Housing Legal Services and the Philadelphia Weatherization and Conservation Collaborative; the Demand Response Supporters; Honeywell International, Johnson Controls, United Technologies Corporation, Ingersoll Rand, Schneider Electric and Whirlpool Corporation; the Keystone Energy Efficiency Alliance; the Home Performance Coalition and the Keystone Energy Efficiency Alliance; Pennsylvania Weatherization Task Force; the Office of Small Business Advocate ("OSBA"); the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania; the Office of Consumer Advocate, The Sustainable Energy Fund of Central Eastern Pennsylvania; and Citizen Power, Inc. ("Citizen Power").

Act 129.[4] One of the principal goals of Act 129 is cost reduction for consumers.[5] Although the Statewide Evaluator ("SWE") found cost-effective potential in Phase III for Energy Efficiency ("EE") and Demand Response ("DR"), the SWE's Market Potential Studies are not sufficient to demonstrate that cost-effective EE and DR can be achieved from the Large Commercial and Industrial ("C&I") class. Without this evidence, the Commission should not require Large C&I customers to pay more money towards an EDC-administered EE&C Program.

Pennsylvania's Large C&I consumers have invested tens of millions of dollars in Phases I and II of the EE&C Program, separate and apart from those customers' competition-driven operational efficiency investments over the last several decades. As explained in the Industrial Customer Groups' Comments, although energy efficiency is a laudable goal, the Commission also must consider the cost of the Plans to consumers, and the amount of energy efficiency that can be achieved without the Act 129 subsidies. Moreover, while there may be additional DR market potential in some EDCs' service territories, Large C&I customers are adequately served by the DR options available in the markets operated by PJM Interconnection, L.L.C. ("PJM"), and there is no reason to conclude that the DR participation will not continue to grow, even without an Act 129 subsidization. Given Large C&I customers' independent incentive to engage in the consumption and demand reduction activities contemplated by Act 129, and the minimal value derived from Phases I and II, the Industrial Customer Groups submit that the Commission's Phase III proposals are unsupported by the evidence and any adopted Phase III should exclude Large C&I customers.[6]

---

[4] *See* Industrial Customer Groups Comments at 5.
[5] *See* 66 Pa. C.S. § 2806.1(a).
[6] IECPA continues to seek a legislative amendment to allow Large C&I customers to opt-out of any additional phases that may be approved.

In addition to the concerns identified by the Industrial Customer Groups, a number of stakeholders concluded that the SWE's estimates of DR and EE market potential for each EDC relies on flawed assumptions and fails to delve into the level of detail required for a complete analysis of cost-effective market potential. FirstEnergy found that the proposed DR targets improperly rely on the premises that (1) every MW of DR achieved during an event has a one-to-one impact on the five coincident peaks used for PJM forecasting; (2) four-hour events over a six-day program period will successfully reduce those forecasts; and (3) day-ahead forecasting is 100% accurate.[7] FirstEnergy further found that the targets in the Tentative Implementation Order "do not account for the replacement of savings from measures that expire" and are therefore inappropriate.[8] PPL found that the SWE's DR Market Potential Study "significantly underestimates DR costs" from load curtailment and that the EE Market Potential Study did not provide enough information to help design Phase III programs such as "determining the savings potential from individual measures, determining the savings potential from various mixes of measures, and conducting sensitivity analyses on various measure mixes."[9] PPL paid a consultant to develop an alternative analysis. PECO also conducted its own analysis of the feasibility of achieving the PUC's proposals and concluded that if the EE and DR targets were finalized as proposed in the Tentative Implementation Order, PECO "would have to significantly scale back its existing measures and place a major emphasis on low-cost, high volume measures" to achieve compliance.[10]

Given the numerous and significant flaws in the SWE's analysis as identified in the Comments, the Industrial Customer Groups question whether the Commission's proposal to

---

[7] *See* FirstEnergy Comments at 10-12
[8] *See id.* at 20.
[9] PPL Comments at 17, 43.
[10] *See* PECO Comments at 4.

implement Phase III can reasonably be viewed as consistent with the legislative mandates of Act 129. The Industrial Customer Groups reiterate that it is incumbent upon the Commission to conduct an internal analysis that supports the budgets, acquisition costs, and goals of Phase III. Absent such a demonstration, Phase III of the EE&C Program is not supported as cost-effective and should therefore not be implemented.

B. The Commission Should Exercise Caution and Not Implement DR Programs in Phase III.

As a threshold matter, the Industrial Customer Groups agree with FirstEnergy that the PUC may not mandate DR targets under Section 2806.1(d)(2) for Phase III.[11] FirstEnergy reads the "plain language" of Section 2806.1(d) to mandate that Phase I DR programs be cost-effective as a definitive requirement for setting additional demand reduction targets in future Phases of the EE&C Program. As the Commission itself acknowledged, none of the DR programs for Large C&I customers were cost-effective during Phase I.[12] The adoption of DR programs and additional demand reduction targets for future phases of the EE&C Program, particularly for Large C&I customers, would therefore diverge from the plain meaning of Act 129.

Notwithstanding this statutory hurdle, the Commission should forego implementing DR programs in Phase III of the EE&C Program in light of the significant uncertainty surrounding the future of DR participation in PJM's wholesale markets. The Supreme Court recently granted *certiorari* in *EPSA v. FERC*, which will consider the merits of DR participation in PJM's day-ahead and real-time energy markets.[13] The Court's decision could significantly impact the scope and structure of any Pennsylvania demand response initiatives, with a much more robust state

[11] *See* FirstEnergy Comments at 3-7.
[12] *See Energy Efficiency and Conservation Program*, Docket No. M-2012-2289411, Final Order at 24 (Feb. 20, 2014).
[13] *Elec. Power Supply Ass'n v. FERC*, 753 F.3d 216 (D.C. Cir. 2014), *cert. granted, FERC v. Elec. Power Supply Ass'n*, 2015 U.S. LEXIS 3147 (U.S. May 4, 2015) (No. 14-840), *EnerNOC, Inc., et al., v. Elec. Power Supply Ass'n*, 2015 U.S. LEXIS 3047 (U.S. May 4, 2015) (No. 14-841).

offering needed if Federal Energy Regulatory Commission ("FERC") Order 745 is invalidated, which likely requires action outside of the Act 129 statute.[14] Until such time as the Court has rendered a decision in *EPSA*, the Commission should exercise discretion and not require DR programs for Phase III.

Moreover, there is a complete lack of consensus among stakeholders regarding the appropriate DR program design to achieve the Commission's proposed demand reduction targets for Phase III. For example, PennFuture recommends that the Commission revise its proposed DR program design to allow for "other forms of demand reduction such as peak coincident reductions from energy efficiency."[15] Citizen Power recommends that EDCs propose a "dynamic threshold" for triggering DR events.[16] PPL believes events should last "up to" four hours, while the Demand Response Supporters advocate for flexibility beyond a four-hour event.[17] These divergent recommendations, which involve critical components of DR program design, cannot be reconciled to address all issues raised in stakeholder comments. In light of stakeholders' extremely disparate conclusions regarding program methodology, the Commission should not require DR programs for Phase III of the EE&C Program.

If DR programs are mandated for Phase III of the EE&C Program, the Industrial Customer Groups agree with those stakeholders who oppose excluding participants in PJM's Emergency Load Response Program ("ELRP") from participating in Act 129 DR programs. As discussed in the Industrial Customer Groups' Comments, PJM requires an advance commitment of up to three (3) years to participate in its ELRP program. This means that a large number of customers will be paying for a DR option under Act 129 that they cannot use. Such an outcome

[14] *See* Industrial Customer Groups Comments at 9-12 (explaining that Act 129 budgets and funding mechanisms may not be appropriate to replace PJM DR programs).
[15] PennFuture Comments at 8.
[16] Citizen Power Comments at 2.
[17] *See* PPL Comments at 29; Demand Response Supporters Comments at 4.

is fundamentally unfair. The Commission should therefore adhere to cost-causation principles and allow dual participation in both PJM and Act 129 DR programs.

C. PennFuture's Proposed EE "Model Portfolio" Will Not Result In Value For Large C&I Customers.

PennFuture's Comments include a "Model Portfolio" that it suggests can be used as a guide for the evolution of Pennsylvania's EE programs.[18] The Model Portfolio includes, in relevant part, "several methods of achieving deeper C&I savings, such as using account managers for the largest customers."[19] In addition to relying on unsupported data that is inconsistent with the SWE's findings,[20] the Model Portfolio is based on the erroneous fundamental premise that EDC energy consultants are better equipped to achieve consumption and demand reduction than Large C&I customers' owners, investors and employees. PennFuture asserts that such EDC account managers "have seen significant success" in other jurisdictions by "work[ing] with each customer to structure projects and incentives that make sense for both parties."[21]

The Industrial Customer Groups submit that the erroneous assumptions and inapplicable analogies to other jurisdictions render PennFuture's Model Portfolio wholly irrelevant to the analysis of EE potential for Large C&I customers in Phase III of the EE&C Program. PennFuture assumes, without explanation or elaboration, that EDC consultants are the parties best capable of facilitating consumption reduction for each customer. This assumption ignores the realities of Pennsylvania's commercial and industrial landscape. In order to remain competitive and reduce costs, Large C&I customers typically have full-time energy managers

[18] *See* PennFuture Comments, Attachment at 1.
[19] *See id.* at 7.
[20] *See id.* at 11 (asserting that, contrary to SWE findings, "there is likely opportunity in Pennsylvania for higher savings in the commercial and industrial sector." PennFuture's analysis further fails to segregate C&I energy savings between the Large and Small customer classes).
[21] *Id.* at 22.

that are constantly evaluating how to reduce energy costs. The energy managers have intimate knowledge of the facility's operations and the potential areas to reduce energy costs. It has been the experience of the Industrial Customer Groups' members that, during Phase I, the internal energy managers seeking Act 129 support often had to educate the EDCs' consultants regarding the energy efficiency benefits of customer projects. Smaller companies can also easily engage their own energy consultants to design and coordinate custom efficiency projects, often under a guaranteed savings approach. The customer has control over the compensation and performance expectations of the consultant, and will negotiate to ensure that the services are cost-effective. Act 129 creates a bureaucracy and new cost for Large C&I consumers that impacts their energy cost management efforts. Pennsylvania's Large C&I customers are responding to the market's demand for ever-increasing energy efficiency without (and, in some cases, in spite of) the need for an EE&C Program conduit and their mandatory contributions to the Plans, which for some customers can exceed $200,000 to $400,000 per year. The PennFuture Model Portfolio creates additional bureaucracy that adds little value to customers. Because the Model Portfolio fails to reflect significant differences between the needs of Pennsylvania's industrial customers and those in other jurisdictions, PennFuture's proposal should be rejected.

The Model Portfolio further fails to take into account that Act 129 funding caps prevent Large C&I customers from obtaining the full value of custom EE projects. As the Commission is aware, 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 and recoup the payments into the Plan, a customer may need $500,000 to $1 million of funded projects for each Phase of the EE&C Program. The magnitude and scope of individualized custom projects, when coupled with the funding caps imposed on each Phase of the EDCs' Plans, limit Large C&I customers' ability to break even on these projects. Authorizing the EDC to employ additional "account managers" will not change those funding limitations. 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). Such limitations result in intra-class subsidization that prevents Large C&I customers receiving an amount of benefit that is comparable to the funding that they have provided. PennFuture's Model Portfolio ignores fundamental realities and will not result in value for Pennsylvania's Large C&I customers. For all of these reasons, PennFuture's Comments should be rejected.

D. Additional Phase III Design Issues.

1. The EAP's "Minor Change" Expedited Review Process Proposal Should Be Rejected.

EAP recommends that the Commission eliminate the need for filing a major plan modification where the EDC intends to transfer funds from one measure or program to another within the same customer class when the transfer is less than 30% of the sector level budget.[22] Although EAP's proposal would include advance notice to customers, the Industrial Customer Groups urge the Commission to reject this proposal for failing to provide customers with sufficient due process. Advance notice of a significant transfer of funds does not provide customers with the opportunity to review and respond to an EDC's assertion that such fund transfers are consistent with the PUC-approved EE&C Program. The Commission's expedited review process for minor EE&C Plan changes is already extremely limited. Interested parties have only fifteen days in which to file comments on proposed minor EE&C Plan changes after the EDC's proposed change has been filed with the PUC Secretary, and Commission staff must

[22] *See* EAP Comments at 15.

issue a Secretarial Letter approving, denying or transferring the proposed change to the Office of Administrative Law Judge within 35 days of filing.[23] In the alternative, however, the Industrial Customer Groups would support eliminating the need for a minor plan modification for certain fund transfers where the EDC has requested and obtained <u>advance consent</u> of all parties.

2. All Conservation Service Provider ("CSP") Contracts Should Be Competitively Bid in Phase III to Ensure Cost-Effectiveness and Transparency.

Several parties oppose the Commission's proposal to require competitive bidding for all CSP contracts. PECO and EAP argue that mandatory bidding will increase costs and prove "unwieldy" for smooth transitions between Phases II and III.[24] PECO further argues that mandatory bidding disrupts the "established working relationship" between EDCs and those CSPs currently providing service, which may result in program implementation delays.[25]

The Industrial Customer Groups reaffirm their support for the Commission's proposal to require that all Phase III CSP contracts be competitively bid. Requiring EDCs to engage in the competitive bidding process is consistent with Act 129 and makes certain that consumers attain maximum value for CSP services. The Commission itself found that cost considerations were not among the list of criteria justifying rejection or disapproval of an EDC's proposed CSP contact during Phase II.[26] A competitive CSP bidding process is therefore necessary to provide cost transparency and ensure that Act 129's least-cost procurement ratepayer protections are duly enforced.

PECO argues that the "value of retaining well-performing CSPs" outweighs the cost-savings to customers under a competitive bidding process. Yet PECO's Comments fail to

---

[23] *See Energy Efficiency and Conservation Program*, Docket No. M-2008-2069887, Final Order at 19 (June 10, 2011).
[24] *See* PECO Comments at 33-35; EAP Comments at 17-18.
[25] *See* PECO Comments at 35.
[26] *See* Tentative Implementation Order at 96.

articulate what "value" customers receive from prior CSP performance and how to weigh prior performance as a factor in evaluating and approving Phase III CSP contracts. Customers derive no demonstrable value from the "working relationship" between EDCs and CSPs. Moreover, any "value" derived from such a relationship is offset by the competitive opportunity for new CSPs or those that did not prevail in Phase I. The lowest qualifying bid should prevail when retaining CSP services for Phase III programs and measures, even though such a process may not be the easiest option for EDCs.

The Industrial Customer Groups agree with the Commission that "a competitive bidding process will not only obtain competitive costs for services, but also take advantage of current market dynamics, such as the use of best available technology, and the strategic business acumen of all CSPs that may be able to meet quality operational and service performance objectives at or below budget."[27] Accordingly, the Industrial Customer Groups urge the Commission to require CSPs to "sharpen their pencils" to provide least-cost service for Phase III programs and measures rather than relying on program budget data in submitting pricing for Phase III.

3. Any Adopted Phase III Budget Must Be Consistent With the Objectives of Act 129 and Cost-Causation Principles.

The Industrial Customer Groups reassert that the Commission's proposal to allow EDCs to utilize the entirety of the Phase III budget, regardless of Phase II spending and consumption reduction target attainment, is unreasonable and inconsistent with principles of cost-effectiveness. Act 129 vests the Commission with flexibility to reduce the EE&C Program budget to levels appropriate to achieve mandated statutory objectives; application of excess Phase II budgets should meet the compliance objective floor rather than the ceiling. The

[27] *Id.* at 96-97.

Industrial Customer Groups therefore urge that the Commission reconsider its Phase III budget proposal and ensure that any adopted budget reflect principles of cost-causation.

4. The Carve-Out for the Governmental, Educational and Non-Profit Sector ("G/E/NP") Should Be Reasonably Proportionate to Class Load Share.

The Tentative Implementation Order appropriately departs from the 10% carve-out for G/E/NP entities and proposes a 3.5% carve-out for Phase III of the EE&C Program.[28] Although the Industrial Customer Groups support a reduction in the G/E/NP carve-out, the Industrial Customer Groups agree with the OSBA that programs targeted at G/E/NP customers should be reasonably proportionate to those customers' share of the class load.[29] Under the current EE&C Program framework, the G/E/NP carve-out results in the subsidization of certain customers by other customers within their own rate class. Specifically for Large C&I customers, while hospitals and universities 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. The Industrial Customer Groups therefore support the OSBA's proposal to require EDCs to include customer segment detail within general rate class reporting to better track intra-class subsidization in Phase III.

5. The Industrial Customer Groups Support the Commission's Proposed Annual Reconciliation Process.

The Tentative Implementation Order proposes the use of a standardized reconciliation process and inclusion of interest on over- or under-recoveries.[30] The Commission further proposes to standardize the filing process by requiring EDCs to file an annual rate adjustment and annual reconciliation statement pursuant to Section 1307(e) of the Public Utility Code.[31]

[28] *See* Tentative Implementation Order at 62.
[29] *See* OSBA Comments at 4-5.
[30] *See* Tentative Implementation Order at 117.
[31] *See id.* at 118-119 (citing 66 Pa. C.S. § 1307(e)).

The Industrial Customer Groups wholly support the Commission's proposed annual reconciliation process and agree that providing for interest on the cost-recovery mechanism for Phase III makes the mechanism consistent with all other reconcilable cost recovery mechanisms. The Industrial Customer Groups therefore urge the Commission to adopt the annual reconciliation process as proposed.

III. CONCLUSION

WHEREFORE, Industrial Energy Consumers of Pennsylvania, 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 Reply Comments.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By Pamela C. Polacek

Pamela C. Polacek (Attorney I.D. #78276)
Elizabeth P. Trinkle (Attorney I.D. # 313763)
McNees Wallace & Nurick LLC
100 Pine Street
Harrisburg, PA 17108-1166
Phone: 717.232.8000
Fax: 717.237.5300
ppolacek@mwn.com
etrinkle@mwn.com

Counsel to the
Industrial Energy Consumers of Pennsylvania,
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

Dated: May 15, 2015