McNees
Wallace & Nurick LLC

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

Elizabeth P. Trinkle
Direct Dial: 717.237.5378
Direct Fax: 717.260.1759
etrinkle@mwn.com

March 1, 2013

To: Bureau of Consumer Services ("BCS")
Bureau of Technical Utility Services ("TUS")

VIA E-MAIL

Re: Pennsylvania On-Bill Repayment Program

Dear BCS/TUS:

On January 16, 2013, the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Bureau of Consumer Services ("BCS") and Bureau of Technical Utility Services ("TUS") (jointly, "Staff") convened the second Stakeholders' Meeting to further discuss issues related to the potential development and implementation of an On-Bill Repayment ("OBR") program in Pennsylvania. In the week following the Meeting, Commission Staff circulated copies of the proposed OBR Model and a list of discussion topics, requesting that stakeholders submit comments in preparation for the next Working Group meeting. Per this request, please find below the comments of the Industrial Customer Groups.[1]

As an initial matter, the Industrial Customer Groups appreciate Staff's decision to pursue an OBR program in Pennsylvania rather than an On-Bill Financing ("OBF") model. As set forth in the Industrial Customer Groups' December 17, 2012 comments, an OBR model, as compared to an OBF model, may reduce the financial risks born by electric distribution companies ("EDCs") and customers through third parties funding any adopted program and bearing the associated risk of default. The proposed OBR Model, as explained during the January 16, 2013 meeting, seems to place the risk of non-payment largely on the Capital Pool Participants, which would hopefully help mitigate the potential for financial harm to Pennsylvania's EDCs and consumers in the event of any default. With that being said, and as discussed more fully below, further precautions are still warranted with respect to implementation of an OBR pilot program to ensure that ratepayers, including Large Commercial and Industrial ("C&I") customers, are adequately insulated from bearing any costs stemming from default or program implementation issues.

With regard to the OBR Model itself, the Industrial Customer Groups do not oppose the proposed structure and the utilization of an independent On-Bill Administrator to operate and coordinate the program; however, Staff must ensure that any changes to the currently proposed Model do not create the risk of financial harm for Pennsylvania EDCs and their customers. Specifically, although the proposed OBR Model places the risk of default almost

[1]For purpose of these comments, the Industrial Customer Groups include the Industrial Energy Consumers of Pennsylvania ("IECPA"), Met-Ed Industrial Users Group ("MEIUG"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), Penelec Industrial Customer Alliance ("PICA"), PP&L Industrial Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII").

entirely on the Capital Pool Participants, it is imperative that these entities explicitly agree to bear all costs and risks of default. Capital Pool Participants should not be afforded any regulatory loophole to shift default losses to consumers if aspects of the OBR Model, such as the repayment obligation flowing with the meter or the handling of partial payments, are subsequently altered by the PUC or invalidated by any type of court of common pleas and/or appellate court. Furthermore, if governmental, non-profit, or institutional ("GNI") entities are carved out as eligible for participation in the Model as "Energy Users," then any GNI customers taking service under any utility's Large C&I rate schedules should be classified as "Small C&I customers" for purposes of implementation and cost collection of the OBR pilot program. Because Large C&I customers would not qualify for participation as Energy Users (nor do the Industrial Customer Groups believe that the OBR pilot program should be applied to Large C&I customers), Large C&I customers should not bear any costs or risks associated with a loan program for which they are ineligible.

In addition to these concerns, the Industrial Customer Groups offer comments on the following discussion topics:

- The metrics that will determine the success of the pilot program;
- The number of projects to be included in the pilot program;
- The length of the pilot program and whether the program should include a set monetary cap;
- The utilization of, and cost recovery for, an energy audit;
- Inclusion of safety and repair costs in an OBR loan; and
- Whether the program should be restricted to Act 129 energy efficiency projects, and whether coordination with interested gas companies should be explored.

First, the Industrial Customer Groups recommend that only a minimal number of projects be included in the pilot program and that the pilot be limited to Act 129 energy and efficiency projects. Limiting the number of projects approved under the pilot program will ensure adequate parameters in addressing and responding to any issues that arise during the course of implementation, while still providing an adequate barometer in determining whether the OBR Model functions as expected. Moreover, a limited number of projects in the pilot program will serve as an indicator of the On-Bill Administrator's operating capabilities during full-scale deployment, while also providing a less complex opportunity for implementing changes to the OBR Model to correct any issues that may arise during the course of the pilot. The Industrial Customer Groups also support limiting the pilot program to energy and efficiency projects qualifying for funding under Act 129. Given that the formation of the OBR Working Group was mandated by the Commission's August 2, 2012, Phase II Energy Efficiency and Conservation Final Order ("Order"), it is fitting that any eligible projects within an approved OBR program be subject to the standards governing Act 129 energy and efficiency project loans.

Second, the Industrial Customer Groups recommend that the length of the pilot program be shorter than the suggested 18-month plan. As noted in our December 17, 2012, comments, it is essential that any adopted program minimize the risk of customer default to protect not only investors, but also other customer groups from bearing any unexpected program-related costs. Limiting the program to 12 months or less will minimize the risk of default, while providing an adequate benchmark for determining the pilot's success. In addition, all

project loans should be subject to a low monetary cap to limit default risk and should exclude costs not directly related to the project such as energy audits and safety and repair costs. Although these costs may be considered as related to the pilot program's implementation, their impact on the program is as-yet incalculable. In order to further minimize default risks, energy audits should be excluded from the pilot program entirely, and safety and repair costs should be borne by Small C&I customers taking advantage of the pilot program.

Finally, as noted previously, the Industrial Customer Groups submit that the pilot program should be limited to Act 129 qualifying energy and efficiency projects; however, the Industrial Customer Groups oppose the suggestion that interested gas companies be allowed to participate in the pilot program. The OBR Model, as proposed, places significant operating responsibilities on the On-Bill Administrator to facilitate financial transfers and coordinate the review and approval of all loan applications. Allowing for interested gas companies to participate would not only exceed the scope of the Commission's mandate in its August 2, 2012 Order, it would also inappropriately expand what should be considered a true "pilot" program. In other words, the pilot program should be limited in scope initially to ensure that implementation occurs in the manner currently expected. Expanding such scope to include natural gas companies could result in unexpected costs and concerns.

The Industrial Customer Groups thank BCS and TUS for the opportunity to further comment on the future of an OBR program in Pennsylvania. We look forward to further discussing these important matters at the April 12, 2013 Working Group Meeting.

Sincerely,

McNEES WALLACE & NURICK LLC

By

Charis Mincavage (Attorney I.D. #82039)
Elizabeth P. Trinkle (Attorney I.D. #313763)
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: 717.232.8000
Fax: 717.237.5300
cmincavage@mwn.com
etrinkle@mwn.com

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