



Eckert Seamans Cherin & Mellott, LLC
213 Market Street - 8th Floor
Harrisburg, PA 17101

TEL 717 237 6000
FAX 717 237 6019
www.eckertseamans.com

Kevin J. Moody
717.237.7187
kmoody@eckertseamans.com

September 21, 2009

VIA ELECTRONIC FILING

James J. McNulty, Secretary
PA Public Utility Commission
400 North Street, Keystone Bldg., 2nd Fl.
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Consolidation of Proceedings and Approval of an Energy Efficiency and Conservation Plan; Docket Nos. M-2009-2092222, M-2009-2112952 and M-2009-2112956

Dear Secretary McNulty:

Enclosed please find the original, Reply Brief of Amicus Curiae Independent Oil and Gas Association of Pennsylvania in Support of Natural Gas Substitution Measures, which was electronically filed in the above-referenced matter today. As evidenced by the attached Certificate of Service, the parties of record have been served in the manner indicated.

If you have any questions regarding this filing, please contact me at your convenience.

Very truly yours,

Kevin J. Moody

KJM/jls
Enclosure

cc: Certificate of Service (w/enc)

Renardo L. Hicks, Esquire
Stevens & Lee
17 North Second Street, 16th Fl.
Harrisburg, PA 17101
rlh@stevenslee.com

Scott Perry, Esq.
Aspassia V. Staevska, Esq.
Commonwealth of PA
DEP
RCSOB, 9th Fl., 400 Market St.
Harrisburg, PA 17101-2301
scperry@state.pa.us
astaevska@state.pa.us

Christopher A. Lewis, Esq.
Christopher R. Sharp, Esq.
Melanie J. Tambolas, ESq.
Blank Rome LLP
One Logan Square
Philadelphia, PA 19103
lewis@blankrome.com
sharp@blankrome.com
tambolas@blankrome.com

Lillian S. Harris, Esq.
Hawke McKeon & Sniscak LLP
PO Box 1778
Harrisburg, PA 17105-1778
lsharris@hmslegal.com

Charis Mincavage, Esquire
Barry A. Naum, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
emincavage@mwn.com
bnaum@mwn.com

Harry S. Geller, Esq.
PA Utility Law Project
118 Locust Street
Harrisburg, PA 17101
hgellerpulp@palegalaid.net

Scott H. DeBroff, Esq.
Rhoads & Sinon LLP
One South Market Square, 12th Fl.
P.O. Box 1146
Harrisburg, PA 17108-1146
sdebroff@rhoads-sinon.com

Edward P. Yim, Esq.
Office of Rep. Camille "Bud" George
Environmental Resource & Energy Comm.
Main Capitol, 4 East Wing
P.O. Box 202074
Harrisburg, PA 17120
eyim@pahouse.net

Carolyn Pengidore, President/CEO
Clearchoice Energy
180 Fort Couch Road, Suite 265
Pittsburgh, PA 15241
carolyn@clearchoice-energy.com

Ruben S. Brown
The E Cubed Company, LLC
1700 York Ave., B1
New York, NY 10128

Hon. David Salapa
Administrative Law Judge
PA Public Utility Commission
P.O. Box 3275
Harrisburg, PA 17105-3265
dsalapa@state.pa.us

Date: September 21, 2009


Kevin J. Moody, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Metropolitan Edison	:	
Company, Pennsylvania Electric	:	
Company and Pennsylvania Power	:	Docket Nos. M-2009-209222
Company for Consolidation of	:	M-2009-2112952
Proceedings and Approval of an Energy	:	M-2009-2112956
Efficiency and Conservation Plan	:	

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing Reply Brief on the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

VIA EMAIL & FIRST CLASS MAIL

Charles D. Shields, Esquire
Carrie Wright, Esquire
Office of Trial Staff
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265
chshields@state.pa.us

Aron J. Beatty, Esq.
Candis A. Tunilo, Esq.
Tanya J. McCloskey, Esq.
Office of Consumer Advocate
5th Floor, Forum Place Bldg.
555 Walnut Street
Harrisburg, PA 17101-1923
abeatty@paoca.org
ctunilo@paoca.org
tmccloskey@paoca.org

Bradley A. Bingaman, Esquire
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
bbingaman@firstenergycorp.com

Kathy J. Kolich, Esquire
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
kjkolich@firstenergycorp.com

Daniel G. Asmus, Esq.
Office of Small Business Advocate
Commerce Building Suite 1102
300 North 2nd Street
Harrisburg, PA 17101
dasmus@state.pa.us

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Petition for Consolidation of	:	
Proceedings and Approval of Energy	:	Docket Nos. M-2009-2092222
Efficiency and Conservation Plans of	:	M-2009-2112952
Metropolitan Edison Company,	:	M-2009-2112956
Pennsylvania Electric Company and	:	
Pennsylvania Power Company	:	
	:	

**REPLY BRIEF
OF
AMICUS CURIAE
INDEPENDENT OIL AND GAS ASSOCIATION OF PENNSYLVANIA
IN SUPPORT OF
NATURAL GAS SUBSTITUTION MEASURES**

Daniel Clearfield, Esquire
Kevin J. Moody, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 9th Floor
Harrisburg, PA 17101
(717) 237-7187

*Counsel for Amicus Curiae,
Independent Oil and Gas Association
of Pennsylvania*

Date: September 21, 2009

TABLE OF CONTENTS

I. INTRODUCTION 1

II. INTEREST OF AMICUS CURIAE..... 2

III. DESCRIPTION OF EDC PLAN 3

IV. SUMMARY OF ARGUMENT 3

V. ARGUMENT..... 3

 E. Other Issues..... 4

 1. Natural gas substitution or switching measures are “energy efficiency
 and conservation measures” within the scope of Act 129. 4

VI. CONCLUSION..... 11

VII. PROPOSED ORDERING PARAGRAPH..... 11

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Delmarva Power & Light Co. v. Com.</i> , 870 A.2d 901 (Pa. 2005).....	7
<i>Com. v. Johnson</i> , 612 A.2d 1382 (Pa.Super. 1992).....	6
<i>Luther P. Miller, Inc. v. Underground Storage Tank Indemnification Bd.</i> , 965 A.2d 398 (Pa.Cmwth. 2009).....	7
<i>Pennsylvania Retailers' Associations v. Lazin</i> , 426 A.2d 712 (Pa.Cmwth. 1981).....	7
<i>Philadelphia Eagles Football Club, Inc. v. City of Philadelphia</i> , 823 A.2d 108 (Pa. 2003).....	7
<i>Yeager v. PP&L</i> , 22 F.3d 1260 (3d Cir. 1994).....	9

Administrative Cases

<i>Compliance of Commonwealth of Pennsylvania with Section 410(a) of the American Recovery and Reinvestment Act of 2009</i> , I-2009-2099881, Order entered May 6, 2009	10
<i>Energy Efficiency and Conservation Program</i> , M-2008-2069887, Implementation Order entered January 16, 2009	8
<i>Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test</i> , M-2009-2108601, Order entered June 23, 2009	8
<i>Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources – Technical Reference Manual Update (“TRM Order”)</i> , M-00051865, Order entered June 1, 2009	8

Statutes

1 Pa. C.S. § 1903.....	6
1 Pa. C.S. § 1921(a)	7

Statutes (continued)	Page(s)
1 Pa. C.S. § 1921(b).....	7
66 Pa. C.S. § 2806(1)(m).....	5
66 Pa. C.S. § 2806(1)(m)(1)(i).....	5
66 Pa. C.S. § 2806(1)(m)(1)(iii).....	5
Pub. L. No. 111-5, 123 Stat. 115 (2009).....	<i>passim</i>

Regulations

52 Pa. Code § 5.502(e).....	1
-----------------------------	---

Other

Merriam-Webster Online Dictionary.....	7
--	---

I. INTRODUCTION

As permitted by 52 Pa. Code § 5.502(e), the Independent Oil and Gas Association of Pennsylvania (“IOGA”) as *amicus curiae* submits this reply brief in response to the position of the Department of Environmental Protection (“DEP”) and the FirstEnergy companies (“FE”)¹ that natural gas substitution measures do not qualify as “energy efficiency and conservation measures” as defined in Act 129. Although DEP does not develop this argument in its brief in this proceeding,² FE argues the same position.³ FE argues further⁴ that gas switching programs would expose the FE companies to antitrust liability and are contrary to the directives in Section 410(a) of the federal American Recovery and Reinvestment Act of 2009 (“ARRA”).⁵

IOGA supports the position of the NGDCs⁶ that natural gas substitution measures that have demonstrated, sustainable, long-term electric usage reduction opportunities for retail customers constitute energy efficiency and conservation measures under Act 129. IOGA takes no position on whether any particular electricity-to-gas substitution (or switching) program should be presently included in FE’s Act 129 Plan or, alternatively, addressed in a separate proceeding.

¹ Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company.

² DEP Main Brief (MB) at 4. Alternatively, DEP phrases the issue as “whether fuel switching of any kind . . . is permissible under Act 129.” *Id.*

³ FE MB at 28, 53-55, 57-58.

⁴ *Id.* at 55-57, 60-61.

⁵ Pub. L. No. 111-5, 123 Stat. 115 (2009).

⁶ UGI Utilities, Inc.; UGI Penn Natural Gas, Inc.; UGI Central Penn Gas, Inc.; The Peoples Natural Gas Company; and National Fuel Gas Distribution Corporation.

II. INTEREST OF AMICUS CURIAE

IOGA is a non-profit trade association representing Pennsylvania independent natural gas producers and marketers. IOGA's members produce, transport and market their Pennsylvania Appalachian natural gas production to Pennsylvania natural gas distribution companies ("NGDCs") and to Commission-licensed natural gas suppliers ("NGSs") for use by Pennsylvania retail customers. IOGA's members also include NGSs that transport and market their own Pennsylvania Appalachian production, as well as the production of other companies, to Pennsylvania retail customers.

As independent producers and marketers of low cost, energy efficient Pennsylvania Appalachian natural gas, IOGA has an obvious interest in the production and use of natural gas. The Commission is well aware that the use of Pennsylvania-produced natural gas not only provides efficiency and cost savings to Pennsylvania customers, it also provides significant economic development and jobs to Pennsylvania. But the promotion of these interests and the electricity demand and consumption reductions required by Act 129 are not mutually exclusive. As shown in the brief of the NGDCs, there can be no reasonable dispute that natural gas is a more efficient end-use fuel than electricity, even when the electricity is generated by natural gas.⁷ Accordingly, IOGA's interest (and the NGDCs' interests) in natural gas production and usage to help decrease electricity usage is consistent with electricity reduction requirements of Act 129 and, thus, is also in the public interest. As the NGDCs point out, although electricity-to-gas substitution measures enable more use of natural gas at the end-use level, these types of measures "will actually result in less natural gas usage at the source" so that "not only will

⁷ NGDCs MB at 6, 9, 13, 14-18; *see also*, http://www.naturalgas.org/overview/uses_electrical.asp (Electric Generation Using Natural Gas).

electricity usage be reduced, but total energy usage [electric and gas] will be reduced also.”⁸

III. DESCRIPTION OF EDC PLAN⁹

The plans of the FE companies do not contain any gas switching measures.¹⁰

IV. SUMMARY OF ARGUMENT

Programs that enable customers to switch from less efficient usages of electricity to more efficient usages of natural gas for space heating, water heating and appliances are “energy efficiency and conservation measures” as defined in Act 129. If the Commission declines to require such programs in the FE companies’ plans in this abbreviated proceeding, the Commission should make clear that it is not because these programs are excluded from the scope of Act 129 or contrary to the purpose of Act 129.

V. ARGUMENT

A. Act 129 Conservation and Demand Reduction Requirements

1.-6. IOGA’s position on these issues is addressed in Section V.E. below (“Other Issues”).

7. Proposals for improvement of EDC plan

Not applicable; IOGA takes no position on this issue.

B. Cost Issues

1. Not applicable; IOGA takes no position on this issue.

2. Cost effectiveness/cost-benefit issues

IOGA’s position on these issues is addressed in Section V.E below (“Other Issues”).

3.-4. Not applicable; IOGA takes no position on these issues.

⁸ NGDCs MB at 24-25.

⁹ This reply brief uses the same format as the parties’ main briefs.

¹⁰ FE MB at 54.

C. CSP Issues

Not applicable; IOGA takes no position on these issues.

D. Implementation and Evaluation Issues

Not applicable; IOGA takes no position on these issues.

E. Other Issues

1. Natural gas substitution or switching measures are “energy efficiency and conservation measures” within the scope of Act 129.

DEP argues that electricity to gas substitution (or switching) measures are not “energy efficiency and conservation measures” under Act 129 and that fuel switching of any kind is not permissible under Act 129.¹¹ Consistent with DEP’s position, FE argues that gas [fuel] switching “is not specifically listed as an ‘energy efficiency and conservation measure’ under Act 129”¹² and is not in the public interest.¹³ FE also argues that gas switching programs would expose the FE companies to antitrust liability and are contrary to the directives in Section 410(a) of the ARRA.¹⁴

The position of DEP and the FE companies appears not to be consistent with the statutory definition of “energy efficiency and conservation measures” in Act 129 and the applicable principles of statutory construction, or the purpose of Act 129. In its Technical Reference Manual (“TRM”) Order, the Commission implicitly rejected the position that fuel switching is beyond the scope of Act 129. The Commission should expressly reject this position in this proceeding.

¹¹ DEP MB at 4.

¹² FE MB at 57.

¹³ *Id.* at 58.

¹⁴ *Id.* at 55-57, 60-61.

Act 129 defines “energy efficiency and conservation measures” as follows:

(1) Technologies, management practices or other measures employed by retail customers that reduce electricity consumption or demand if all of the following apply:

- (i) The technology, practice or other measure is installed on or after the effective date of this section at the location of a retail customers.
- (ii) The technology, practice or other measure reduces consumption of energy or peak load by the retail customers.
- (iii) The cost of the acquisition or installation of the measure is directly incurred in whole or in part by the electric distribution company.¹⁵

The definition then lists examples of energy efficiency and conservation (“EE&C”) measures according to: (1) fuel source (solar panels, geothermal heating); (2) application (energy efficient windows, doors, lighting and appliances; insulation; reflective roof coverings; and energy efficient heating and cooling equipment on systems; and (3) activity (retrofitting exit signs, high bay fluorescent lighting and pedestrian/traffic signals). The definition concludes with “other technologies, practices or measures approved by the commission.”¹⁶

The overriding statutory requirements are that “energy efficiency and conservation measures” must be employed by retail customers and reduce the customer’s electricity consumption or demand.¹⁷ The three conditions in subparagraphs (i), (ii) and (iii) of the definition actually impose only two additional conditions, one relating to the time and place of installation [66 Pa. C.S. § 2806.1(m)(1)(i)] and the other requiring some cost to be incurred by the electric utility [66 Pa. C.S. § 2806.1(m)(1)(iii)]. The condition in subparagraph (ii) merely restates the overriding general requirement of the reduction of consumption or peak demand.

¹⁵ 66 Pa. C.S. § 2806.1(m) (emphasis added).

¹⁶ *Id.*

¹⁷ 66 Pa. C.S. § 2806.1(m).

In view of the fact that natural gas is a more efficient end-use fuel than electricity,¹⁸ energy efficient equipment and appliances powered by natural gas and used for space heating, water heating and clothes drying, for example, clearly qualify as “energy efficiency and conservation measures” under the statutory definition.¹⁹ The position of DEP and FE ignores the overriding statutory requirements and instead incorrectly focuses on the illustrative list of examples as the controlling statutory provisions.

The list is merely illustrative of the various types of technologies, practices and measures that qualify as “energy efficiency and conservation measures” – the list does not supersede the general requirements, so there is no need for “gas switching” or “fuel switching” measures to be “specifically listed” in the definition, as FE contends. The inclusion at the end of the list of “other technologies, practices or measures approved by the commission” shows that the list is not intended to be an all-encompassing and exhaustive list. Nonetheless, the list encompasses efficient natural gas powered equipment, systems or appliances in the terms “energy efficient heating and cooling equipment or systems and energy efficient appliances.” The argument that natural gas powered equipment, systems or appliances are not included within the scope of Act 129 because the Act is concerned with reductions in electricity consumption or peak demand does not adequately focus on the specific statutory language, the applicable principles of statutory construction, or the purpose of Act 129.

The term “energy” is not defined in Act 129 or elsewhere in the Public Utility Code. Undefined words in a statute are construed according to their common and approved usage, or plain and ordinary meanings,²⁰ and dictionaries are generally used to determine the meaning of

¹⁸ NGDCs MB at 6, 9, 13, 14-18.

¹⁹ *Id.* at 6, 9, 12-14, 17-24, 25-26, 28.

²⁰ 1 Pa. C.S. § 1903; *Com. v. Johnson*, 612 A.2d 1382 (Pa.Super. 1992).

undefined words.²¹ The Statutory Construction Act also provides that “[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly” and that “[e]very statute shall be construed, if possible, to give effect to all its provisions.”²² Moreover, the plain meaning of clear and unambiguous terms cannot be ignored under the pretext of pursuing what is alleged to be the spirit of the statute.²³ In the context of Act 129, the plain and ordinary meaning of “energy” is “usable power (as heat or electricity); *also*: the resources for producing such power.”²⁴ Thus, the plain and unambiguous meaning of the term “energy” in the context of “energy efficient heating and cooling equipment or systems and energy efficient appliances” includes efficient equipment, systems or appliances powered by natural gas. The plain and unambiguous meaning of these terms is not limited to efficient electric equipment, systems or appliances.

The Commission has implicitly concluded this in two orders. In its Technical Reference Manual (“TRM”) Order – contrary to FE’s argument²⁵ – the Commission deferred a determination whether gas substitution or switching measures are “standard energy efficiency measures” that should be included in the TRM’s estimated deemed annual energy savings

²¹ *Delmarva Power & Light Co. v. Com.*, 870 A.2d 901, 910 (Pa. 2005); *Philadelphia Eagles Football Club, Inc. v. City of Philadelphia*, 823 A.2d 108, 127 (Pa. 2003) (Per Nigro, J., with two justices concurring and two justices concurring in result), *reargument denied*.

²² 1 Pa. C.S. § 1921(a).

²³ 1 Pa. C.S. § 1921(b); *Luther P. Miller, Inc. v. Underground Storage Tank Indemnification Bd.*, 965 A.2d 398, 404 n.7 (Pa.Cmwlth. 2009); *Pennsylvania Retailers’ Associations v. Lazin*, 426 A.2d 712 (Pa.Cmwlth. 1981) (court may not ignore express language of a statute).

²⁴ Merriam Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/energy>.

²⁵ FE MB at 55 (The TRM Order “*directly and unequivocally rejected UGI’s request to alter the TRM to include ‘fuel switching’ in the updated TRM.*”) (emphasis in original).

calculations, or treated as “custom measures” that are “too complex or unique” to be included in the TRM.²⁶ Thus, FE’s assertion is incorrect. By deferring the decision to include fuel switching programs in the TRM’s deemed savings calculations or to calculate “custom” savings from fuel switching programs, the Commission clearly accepted fuel (or gas) switching programs as within the scope of Act 129 in the first place. If FE’s characterization of the Commission’s TRM Order were correct, there would have been no point to the Commission’s establishing the working group. Finally, in its Total Resource Cost (“TRC”) Test Order, the Commission included a formula for the calculation of energy savings that result from fuel substitution,²⁷ which demonstrates that including fuel switching programs in the TRM may be appropriate.

FE argues that the Commission’s initial order concerning the implementation of Act 129 rejected “fuel substitution” as within the scope of Act 129 but, as FE acknowledges, the Implementation Order does not mention fuel switching programs.²⁸ This silence cannot be interpreted as a rejection of fuel substitution or switching as within the scope of Act 129, especially in view of the Commission’s subsequent TRM Order and TRC Order implicitly concluding otherwise.

FE raises two additional arguments to support its position that gas switching programs are not within the scope of Act 129. Neither argument has merit. First, FE argues that gas

²⁶ *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources – Technical Reference Manual Update (“TRM Order”),* M-00051865, Order entered June 1, 2009, at 9; TRM at 1 (“The Technical Reference Manual (“TRM”) was developed to measure the resource savings from standard energy efficiency measures.”), 7 (“Custom measures are considered too complex or unique to be included in the list of standard measures provided in the TRM.”).

²⁷ *Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test,* M-2009-2108601, Order entered June 23, 2009, Appendix at i-ii.

²⁸ FE MB at 54-55 (referencing *Energy Efficiency and Conservation Program,* M-2008-2069887, Implementation Order entered January 16, 2009).

switching programs “could expose the Companies to antitrust and anti-competition challenges” because they “may not be able to claim immunity under the state action immunity doctrine.”²⁹ As FE correctly points out, this doctrine shielded PPL from antitrust liability to its competitors because its incentive plan “was *approved* and *supervised* by the Commission.”³⁰ There is no reason – and FE does not provide any – why the inclusion of gas switching programs within the scope of EDC Act 129 Plans *approved* and *supervised* by the Commission³¹ would not provide the same immunity to the EDCs as provided to PPL in the *Yeager* case.

Second, FE argues that including gas switching programs within the scope of “energy efficiency and conservation measures” under Act 129 would violate Section 410(a) of the American Recovery and Reinvestment Act of 2009 (“ARRA”) which requires that “utility financing incentives must be aligned with helping customers use energy more efficiently.”³² FE alleges that the violation would occur because gas switching programs would result in lost revenues because the FE companies are not allowed to recover the costs of these programs because they are not “energy efficiency and conservation measures” within the scope of Act 129. The circular reasoning of the FE companies is apparent. If the Commission explicitly affirms its previous implicit determinations that gas switching programs are within the scope of Act 129, there is no lost revenue issue under Act 129 and consequently no violation of Section 410(a) of ARRA. But more to the point, the NGDCs have established that gas switching programs will help customers use energy more efficiently,³³ so gas switching programs are fully consistent with

²⁹ FE MB at 56.

³⁰ *Id.* (emphasis added) (citing *Yeager v. PP&L*, 22 F.3d 1260 (3d Cir. 1994)).

³¹ Implementation Order at 7-8, 12 (PUC approval of Act 129 Plans), 13-14, 24, 28-30 (PUC evaluation, supervision and update of Act 129 Plans).

³² FE MB at 61.

³³ NDGCs MB at 6, 9, 12-14, 17-24, 25-26, 28.

the requirements of Section 410(a) of ARRA.³⁴

Accordingly, in this proceeding the Commission should explicitly affirm its prior determinations that electricity-to-gas substitution measures are “energy efficiency and conservation measures” as defined in Act 129. The Commission should make clear that if it declines to require such additional programs in FE’s plan in this abbreviated proceeding, it is not because these programs are excluded from the scope of Act 129, but because of other considerations.

³⁴ In the Commission’s investigation concerning compliance with Section 410(a) of ARRA, IOGA’s comments pointed out the significant effect of the natural gas industry on Pennsylvania’s economy and showed why promoting the use of natural gas – particularly locally produced natural gas – as a substitute for fuel for electric power generation, home heating and transportation is consistent with the energy efficiency objectives of ARRA. *Compliance of Commonwealth of Pennsylvania with Section 410(a) of the American Recovery and Reinvestment Act of 2009*, I-2009-2099881, Order entered May 6, 2009, IOGA comments filed July 6, 2009.

VI. CONCLUSION

For the reasons set forth above, IOGA requests that the Commission reaffirm that efficient natural gas equipment, systems or appliances that reduce retail customers' electricity consumption or peak load come within the plain and unambiguous terms of Act 129's definition of "energy efficiency and conservation measures."

VII. PROPOSED ORDERING PARAGRAPH

1. Natural gas substitution or switching measures that reduce customers' electricity consumption or peak demand are "energy efficiency and conservation measures" under Act 129.

Respectfully submitted,



Daniel Clearfield, Esquire
Kevin J. Moody, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 9th Floor
Harrisburg, PA 17101
(717) 237-7187

*Counsel for Amicus Curiae,
Independent Oil and Gas Association
of Pennsylvania*

Date: September 21, 2009