**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held February 25, 2010

Commissioners Present:

James H. Cawley, Chairman

Tyrone J. Christy, Vice Chairman

Kim Pizzingrilli

Wayne E. Gardner

Robert F. Powelson

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

**TABLE OF CONTENTS**

[I. Introduction 1](#_Toc254676617)

[II. Procedural History 2](#_Toc254676618)

[III. Description of the Second Revised Plans 5](#_Toc254676619)

[IV. Discussion 6](#_Toc254676620)

[A. Cost Issues 6](#_Toc254676621)

[1. Cost Effectiveness/Cost-Benefit Issues 6](#_Toc254676622)

[a. *January 2010 Order* 8](#_Toc254676623)

[b. Positions of the Parties 8](#_Toc254676624)

[c. Disposition 9](#_Toc254676625)

[2. Cost Recovery Issues 9](#_Toc254676626)

[a. Cost Recovery through a Separate Surcharge or Within Distribution Rates 10](#_Toc254676627)

[b. Required Bidding of Met Ed and Penelec’s Demand Response Measures into PJM’s Reliability Pricing Model Auction 11](#_Toc254676628)

[c. Contingency Reserve 12](#_Toc254676629)

[B. Implementation and Evaluation Issues 14](#_Toc254676630)

[1. Monitoring and Reporting Issues 14](#_Toc254676631)

[a. *January 2010 Order* 14](#_Toc254676632)

[b. Positions of the Parties 15](#_Toc254676633)

[c. Disposition 15](#_Toc254676634)

[2. Evaluation Issues 16](#_Toc254676635)

[a. *January 2010 Order* 16](#_Toc254676636)

[b. Positions of the Parties 17](#_Toc254676637)

[c. Disposition 17](#_Toc254676638)

[E. Other Issues -- Projects Installed Between July 1, 2009, and Commission Approval of the Plans 17](#_Toc254676639)

[a. *January 2010 Order* 17](#_Toc254676640)

[b. Positions of the Parties 18](#_Toc254676641)

[c. Disposition 18](#_Toc254676642)

[V. Conclusion 20](#_Toc254676643)

**OPINION AND ORDER**

**BY THE COMMISSION:**

# I. Introduction

In *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans*, Docket No. M-2009-2092222 *et al.* (Order entered October 28, 2009) (*October 2009 Order*), the Pennsylvania Public Utility Commission (Commission) approved in part and rejected in part the Energy Efficiency and Conservation Plans (Plans) filed by Metropolitan Edison Company (Met Ed), Pennsylvania Electric Company (Penelec) and Pennsylvania Power Company (Penn Power) (collectively, FirstEnergy or the Companies) pursuant to Act 129 of 2008 (Act 129 or the Act). The Commission required the Companies to submit revised Plans within sixty days. The Companies timely submitted revised Plans (Revised Plans). By Opinion and Order dated January 28, 2010 (*January 2010 Order*), the Commission approved in part and rejected in part the Revised Plans. The Commission required the Companies to submit further revised Plans within sixty (60) days. Now before the Commission for consideration and disposition are the Companies’ further revised Energy Efficiency and Conservation Plans (Second Revised Plans). For the reasons set forth herein, we will approve the Second Revised Plans, consistent with this Opinion and Order.

# II. Procedural History

A detailed history of this proceeding, together with that of our various other Act 129 proceedings, was set forth in the *October 2009 Order* and the *January 2010 Order*. Consequently, this section summarizes the procedural history of this matter.

The Parties to this proceeding are: the Office of Consumer Advocate (OCA); the Office of Trial Staff (OTS); the Office of Small Business Advocate (OSBA); the Department of Environmental Protection (DEP); the Met-Ed Industrial Users Group (MEIUG), the Penelec Industrial Customer Alliance (PICA) and the Penn Power Users Group (PPUG) (collectively, MEIUG *et al*.);[[1]](#footnote-1) Field Diagnostic Services, Inc. (FDSI);[[2]](#footnote-2) Direct Energy Business, LLC (Direct Energy);[[3]](#footnote-3) the Association of Community Organizations for Reform Now (ACORN);[[4]](#footnote-4) Rep. Camille “Bud” George (Rep. George);[[5]](#footnote-5) UGI Utilities, Inc., - Gas Div., UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc. (collectively, UGI Distribution Companies);[[6]](#footnote-6) Peoples Natural Gas Company d/b/a Dominion Peoples (Dominion Peoples);[[7]](#footnote-7) National Fuel Gas Distribution Corporation (NFG);[[8]](#footnote-8) Constellation New Energy, Inc. (Constellation);[[9]](#footnote-9) EnerNOC, Inc. (EnerNOC);[[10]](#footnote-10) and Comperio Energy LLC, d/b/a ClearChoice Energy (ClearChoice).[[11]](#footnote-11)

FirstEnergy filed the Plans on July 1, 2009. The *October 2009 Order* approved in part and rejected in part the Plans. On November 12, 2009, the OSBA filed a Petition for Reconsideration (Petition)*.* By Opinion and Order entered November 19, 2009, the Commission granted reconsideration pending review of, and consideration on, the merits. The Commission denied the Petition by Order entered on December 17, 2009 (*December 2009 Order)*. The Companies submitted Revised Plans, which were approved in part and rejected in part by the *January 2010 Order*.

On February 5, 2010, the Companies filed the Second Revised Plans. The Companies stated:

Due to the fact that certain charges are recovered over a fixed time period through a rate based on the number of months in said time period, the Companies respectfully request that the Commission approve their Final Plans at the Public Meeting of February 25, 2010 and enter an Order immediately thereafter so as to minimize the monthly charge to customers.

Companies’ Cover Letter dated February 5, 2010, at 3.

The *January 2010 Order* permitted the Parties to file Comments with the Commission within ten days of the filing of the Second Revised Plans. Reply Comments could be filed with the Commission within ten days after the deadline for filing Comments. By Secretarial Letter dated February 12, 2010, the Parties were notified that the period for filing Reply Comments would be shortened in order to expedite consideration of the Second Revised Plans.

Comments were received from MEIUG *et al*., who subsequently filed correspondence with the Commission withdrawing its comments because its concerns had been resolved. The Companies submitted correspondence stating that it would not file Reply Comments.

# III. Description of the Second Revised Plans

The Plans were described in detail in the *October 2009 Order*,and the Revised Plans were described in detail in the *January 2010 Order.* As a result, this section will focus on the contents of the Second Revised Plans and, more specifically, on the differences between the Second Revised Plans and the Revised Plans.

According to the Companies, the Second Revised Plans incorporate the changes directed by the Commission in the *January 2010 Order*. The Companies state that the Second Revised Plans make no additional changes to the Revised Plans. Met Ed’s Second Revised Plan at 1, Penelec’s Second Revised Plan at 1, Penn Power’s Second Revised Plan at 1.

*Inter alia*, the Second Revised Plans:

* Contain updated information regarding the Companies’ reporting and tracking systems;
* Calculate rates based on the assumption that the Energy Efficiency and Conservation Charge Rider (EEC-C Rider) will become effective on March 1, 2010;
* State that EE&C costs will be recovered for the Non-profit and Street Lighting customer classes through distribution rates;
* Remove a proposal in the Revised Plans for retroactivity to July 1, 2009 for certain programs; and
* Acknowledge that the Companies will not shift program funds within a customer class or between customer classes without prior Commission approval.

Companies’ Cover Letter dated February 5, 2010, at 2.

# IV. Discussion

In Commission proceedings, the proponent of a rule or order bears the burden of proof. 66 Pa. C.S. § 332(a). To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

We note that any issue that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. [Consolidated Rail Corporation v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) see also, generally, [University of Pennsyl­vania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

## A. Cost Issues

### 1. Cost Effectiveness/Cost-Benefit Issues

Each EDC must demonstrate that the plan is cost effective using a Total Resource Cost (TRC) Test approved by the Commission. 66 Pa. C.S.   
§ 2806.1(b)(1)(i)(I). In addition, the Commission’s EE&C Program must include an analysis of the cost and benefit of each plan, in accordance with the TRC Test approved by the Commission. 66 Pa. C.S. § 2806.1(a)(3).

In *Energy Efficiency and Conservation Program*, Docket No.   
M-2008-2069887 (Order entered January 16, 2009) (*Implementation Order)*, we addressed the TRC Test and its role in the design of the EDC’s EE&C plans as follows:

The Commission directs that EDCs evaluate the cost effectiveness of each of its energy efficiency or demand reduction programs using the TRC test to be set forth in the version of the *California Manual* adopted by this Commission. The TRC test will take into account the combined effects of a program on both participating and non‑participating customers based on the costs incurred by the EDC and participating customers. In addition, the Commission expects the benefits calculated in the TRC test will include the avoided supply costs, such as the reduction in transmission, distribution, generation and capacity costs valued at marginal cost for the periods when there is a consumption reduction. The avoided supply costs should be calculated using net program savings, savings net of changes in energy use that would have happened in the absence of the program. The persistence of savings over time should also be considered in the net savings.

The Commission further expects that the costs calculated in this test will include the program costs paid by the utility and the participants, plus the increase in supply costs for the periods in which consumption is increased. Thus, for example, all equipment, installation, operation and maintenance costs, cost of removal (less salvage value), and administrative costs, regardless of who pays for them, should be included.

*Implementation Order* at 15.

The particular requirements and testing constraints for the EDCs’ application of the TRC Test to their respective EE&C Plans are set forth in *Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test*, Docket No.

M-2009-2108601 (Order entered June 23, 2009)*.* Also, it must be verified that the FirstEnergy Companies’ EE&C Plans pass the TRC Test with a total plan cost benefit ratio greater than 1.0. *Implementation Order* at 16.

#### a. *January 2010 Order*

In our *January 2010 Order*, we found that the Revised Plans’ overall and programmatic TRC calculations continued to meet the requirements of the TRC Test as set forth in the *Implementation Order* at 16. The overall TRC for Met Ed’s Revised Plan increased slightly, while the overall TRCs for Penelec’s and Penn Power’s Revised Plans remained unchanged. Several program-specific TRCs changed minimally in the Revised Plans due to modifications required by our *October 2009 Order*, but they continued to meet the TRC Test requirements. We also found that the Revised Plans complied with our requirement that updated TRC calculations be included in the Companies’ annual reporting process. *January 2010 Order* at 29.

We noted, however, that the Revised Plans included two additional rate classes, Street Lighting and Non-profit. We found that the Companies’ TRC calculations should provide more programmatic detail regarding these additional rate classes. Therefore, we directed the Companies to include specific line items in the TRC calculations for Governments/Non-profits for: (a) programs aimed at the Street Lighting customer class, (b) programs aimed at the Non-profit customer class, and (c) programs aimed at all remaining Government/Non-profit customers.  *January 2010 Order* at 29.

#### b. Positions of the Parties

The Second Revised Plans, which did not change the methodology for calculating the TRC, calculate overall TRC Test values of 2.46, 2.32, and 2.08, for Met Ed, Penelec and Penn Power, respectively. Met Ed’s Second Revised Plan at 21, Penelec’s Second Revised Plan at 21, and Penn Power’s Second Revised Plan at 21. The Companies also provided updated TRC calculations for all programs and customer classes, including separate calculations for the Street Lighting, Non-profit, and all remaining Government programs. Met Ed’s Second Revised Plan at 117-121 (Tables 7A-7E), Penelec’s Second Revised Plan at 120-124 (Tables 7A-7E), and Penn Power’s Second Revised Plan at 114-118 (Tables 7A-7E).

No Parties filed any comments regarding the Second Revised Plans’ TRC Test calculations.

#### c. Disposition

We find that the Second Revised Plans’ overall and programmatic TRC calculations continue to meet the requirements of the TRC Test, as set forth in the *Implementation Order* at 16. The overall TRCs for Met Ed, Penelec and Penn Power remain unchanged. Met Ed’s Second Revised Plan at 21, Penelec’s Second Revised Plan at 21, Penn Power’s Second Revised Plan at 21. We also find that the updated TRC Benefits Tables for the Governmental/Non-profit sector were changed to report specifically the TRCs for Street Lighting, Non-profit, and all remaining Government/Non-profit programs, as required by the *January 2010 Order,* while the total costs, benefits and TRCs for these combined programs remained unchanged. Met Ed’s Second Revised Plan at 121, Penelec’s Second Revised Plan at 124, Penn Power’s Second Revised Plan at 118. We therefore approve this aspect of the Second Revised Plans.

### 2. Cost Recovery Issues

Act 129 provides that an EDC “shall recover on a full and current basis from customers, through a reconcilable adjustment clause under Section 1307, all reasonable and prudent costs incurred in the provision or management of [an EE&C] plan.” 66 Pa. C.S. § 2806.1(k). The Act also states:

The plan shall include a proposed cost-recovery tariff mechanism, in accordance with Section 1307 (relating to sliding scale or rates; adjustments), to fund the energy efficiency and conservation measures and to ensure full and current recovery of the prudent and reasonable costs of the plan, including administrative costs, as approved by the commission.

66 Pa. C.S. § 2806.1(b)(1)(i)(H).

#### a. Cost Recovery through a Separate Surcharge or Within Distribution Rates

#### 

##### (1) *January 2010 Order*

In our *January 2010* Order, we noted that the Companies’ Revised Plans included two cost recovery classes (the Non-profit and Street Lighting customer classes) that were not included in their original Plans. Our review of the Revised Plans failed to locate any provision indicating how approved EE&C costs will be recovered for the new classes. The Companies were required to address this deficiency in their Second Revised Plans. *January 2010 Order* at 36.

##### 

##### (2) Positions of the Parties

The Companies propose recovering EE&C program costs from the Non-profit and Street Lighting customer classes through distribution rates. Met Ed’s Second Revised Plan at 2, Penelec’s Second Revised Plan at 2 and Penn Power’s Second Revised Plan at 2.

No other Parties commented on this aspect of the Second Revised Plans.

##### (3) Disposition

In the *October 2009 Order*, we directed the Companies to incorporate recovery of approved EE&C costs as an addition to their currently approved distribution rates. *October 2009 Order* at 88. We made an exception, however, for the commercial and industrial customer classes. The Companies were directed to list the EEC-C Rider as a separate line item on commercial and industrial customers’ bills. *Id*. at 88-89.

The Companies’ Second Revised Plans incorporate recovery of approved EE&C costs for the Non-profit and Street-Lighting customer classes as an addition to their currently approved distribution rates. We find that this fully complies with our *October 2009 Order* and our *January 2010 Order.*

#### b. Required Bidding of Met Ed and Penelec’s Demand Response Measures into PJM’s Reliability Pricing Model Auction

##### (1) *January 2010 Order*

Beginning with the Auction conducted in May 2009, PJM modified its RPM auction process to allow for the inclusion of energy efficiency and demand response resources. Qualifying energy efficiency and demand response resources can now bid into the PJM auction as a capacity resource and, if cleared, receive capacity payments. In our *October 2009 Order,* we stated that we expect the Companies to take full advantage of savings made available from PJM programs. *October 2009 Order* at 92.

The Companies made corresponding changes in their Revised Plans. In our *January 2010* Order, we found that the Revised Plans of Met Ed and Penelec complied with the *October 2009 Order’s* directive on this issue. We simply noted that Penn Power is not currently in the PJM and directed Penn Power to revise its EE&C Plan to indicate that this provision will apply to Penn Power when it joins the PJM. *January 2010 Order* at 39.

##### (2) Positions of the Parties

Penn Power’s Second Revised Plan states that, upon joining PJM, Penn Power will bid its Residential Direct Load Control programs into the PJM Reliability Pricing Model. Penn Power’s Second Revised Plan at 2 and 39.

No other Parties commented on this aspect of the Second Revised Plans.

##### (3) Disposition

We find that, with respect to this issue, Penn Power has modified its EE&C Plan as directed by our *January 2010 Order.*

#### c. Contingency Reserve

##### (1) *January 2010 Order*

The *October 2009 Order* rejected the Companies’ proposal to create a contingency reserve for unforeseen events that may arise during the period in which the Plans are in effect. *October 2009 Order* at 94-95. In our *January 2010 Order*, we found that the Revised Plans were largely consistent with our directive to remove the contingency reserve from the estimated cost of the Plans and the calculation of the recovery rate developed therein. *January 2010* Order at 41-42. Nonetheless, we directed the Companies to strike the following language from each of the Revised Plans:

The Company has held back a portion of the funds that became available predominantly from the changes in the [Direct Load Control] budgets for the purpose of financing: (i) important programmatic changes; (ii) potential additions that are found to be necessary and/or desirable as the Company and its stakeholders collect and assess key program performance metrics over the course of each program’s deployment and operation; and (iii) unforeseen events that may arise over the next four years. Given the current economic conditions at the State, Federal and global levels, as well as the newness of this entire Act 129 process, this may prove to be a valuable risk management tool that will help to ensure that the Company meets its demand reduction targets.

Met Ed’s Revised Plan at 94; Penelec’s Revised Plan at 94; Penn Power’s Revised Plan at 85. *January 2010 Order* at 42.

In addition, the *January 2010 Order* agreed with the OSBA’s argument regarding a *de facto* contingency reserve. Specifically, the OSBA noted that in the Revised Plans, the Companies reserved the right to spend up to the 2% cap as necessary to achieve their energy savings targets. The OSBA argued that, “by reserving the right to spend up to the 2% cap without prior Commission approval, the Companies have created a *de facto* contingency reserve.” OSBA Comments at 10. In order to avoid ambiguity about the Companies’ ability to modify their Revised Plans without prior Commission approval, we required the Companies to include language in the Second Revised Plans stating that they will seek Commission approval before increasing the cost of their EE&C Plans.  *January 2010 Order* at 42-43.

##### (2) Positions of the Parties

The Second Revised Plans of the Companies delete the language quoted above, regarding their original contingency reserve proposal. Second Revised Plans at Section 4.1.2.

The Second Revised Plans also clearly indicate that the Companies will seek Commission approval prior to increasing the total cost of their EE&C Plans. Second Revised Plans at Section 4.1.2.

No other Parties commented on these aspects of the Second Revised Plans.

##### (3) Disposition

With regard to the contingency reserve issue, we find that the Companies have revised their EE&C Plans consistent with our *January 2010 Order.*

## B. Implementation and Evaluation Issues

### 1. Monitoring and Reporting Issues

The Commission’s EE&C Program is to include an evaluation process, including a process to monitor and verify data collection, quality assurance and the results of each plan and the program. 66 Pa. C.S. § 2806.1(a)(2). Consistent with this requirement, each EDC’s Plan is to “explain how quality assurance and performance will be measured, verified and evaluated.” 66 Pa. C.S. § 2806(b)(1)(i)(C). Each EDC is also required to submit an annual report to the Commission relating to the results of its EE&C Plan. 66 Pa. C.S. § 2806.1(i)(1).

#### a. *January 2010 Order*

As required by our *October 2009 Order*, the Companies’ Revised Plans provided the Commission with an update on the development of their reporting and tracking systems. *October 2009 Order* at 119-120. Considering that the reporting and tracking systems were not yet in place, the Companies were directed to provide the Commission with a further update on these systems in the Second Revised Plans. We concluded that we would address this topic further based on the information in the Second Revised Plans. *January 2010 Order* at 50.

With regard to the projected cost of these systems, we concluded that, although the cost as stated in the Revised Plans was significantly higher than estimated in the original Plans, the revised cost information was a result of more recent information regarding what vendors are charging for reporting and tracking system services of this magnitude. We noted, however, that actual expenditures for these systems will be subject to review during the annual review and reconciliation process. *January 2010 Order* at 50.

#### b. Positions of the Parties

In their Second Revised Plans, the Companies state that they have evaluated nine proposals for a reporting and tracking system. Five CSPs were selected for interviews and demonstrations. The Companies anticipate making a final selection in February, 2010. Following execution of a contract with a CSP, the Companies will submit the contract to the Commission for review consistent with the *Implementation Order.* Met Ed’s Second Revised Plan at 102; Penelec’s Second Revised Plan at 105; and Penn Power’s Second Revised Plan at 99.

No other Parties commented on this aspect of the Second Revised Plans.

#### c. Disposition

We find that the Companies have complied with our *January 2010 Order* by providing updated information in their Second Revised Plans. We will approve the reporting and tracking system in the Second Revised Plans, subject to approval of the Companies’ contract with a CSP, consistent with the *Implementation Order.*

### 2. Evaluation Issues

As stated above, the Commission’s EE&C Program is to include an evaluation process, including a process to monitor and verify data collection, quality assurance and the results of each plan and the program. 66 Pa. C.S. § 2806.1(a)(2). Consistent with this requirement, each EDC’s Plan must require an annual independent evaluation of its cost-effectiveness as well as a full review of each five-year plan. To the extent possible, the Plan must also state how it will be adjusted on a going-forward basis as a result of the evaluation. 66 Pa. C.S. § 2806.1(b)(1)(i)(J).

#### a. *January 2010 Order*

#### 

In the *January 2010 Order*, we approved the evaluation provisions in the Revised Plans, even though the evaluation budgets in the Revised Plans had increased to four to five percent of the entire portfolio budget compared to the Plans considered in the *October 2009 Order*. We concluded that this change was due to updated information. The Companies had increased their evaluation, monitoring and verification (EM&V) budgets after meetings with Commission staff and the Commission’s statewide evaluator when drafting the statewide evaluation audit plan, which is the blueprint that companies must follow to evaluate their energy program measures. *January 2010 Order* at 53.

Even though we approved the evaluation provisions in the Revised Plans, we agreed with the OSBA that the Revised Plans must be modified to acknowledge that an EDC cannot shift program funds within a customer class, or between customer classes, without prior Commission approval. *Id*.

#### b. Positions of the Parties

The Second Revised Plans reflect the necessity to acquire Commission approval prior to shifting any program funds within or among customer classes. Second Revised Plans at Section 4.1.2.

No other Parties commented on this aspect of the Second Revised Plans.

#### c. Disposition

We find that the Companies have revised the evaluation provisions in their EE&C Plans consistent with our *January 2010 Order*.

## E. Other Issues -- Projects Installed Between July 1, 2009, and Commission Approval of the Plans

#### a. *January 2010 Order*

Our *January 2010 Order* considered the Companies’ proposal that certain programs be retroactive to July 1, 2009. Our review of the record revealed no testimony or exhibits discussing the proposal, which was introduced for the first time in the Revised Plans. Hence, the grandfathering provision was not included in the version of the Plans that was subjected to hearings. Moreover, the Companies’ Revised Plans included no explanation for this change or any analysis as to how these modifications would affect the Companies’ projected energy savings or costs. *January 2010 Order* at 56-57.

The *January 2010 Order* rejected the Companies’ grandfathering proposal because the Companies failed to carry their burden of proving that the proposal is reasonable. We directed that the Second Revised Plans remove all language implementing this proposal. Moreover, we expected that the denial of the grandfathering proposal would have an impact on the data concerning the pertinent programs (e.g., the proposed costs and energy savings of the pertinent programs), which would, in turn, impact other data shown in the Revised Plans (e.g., total projected energy savings, total projected plan costs, and certain TRC Test calculations). As a result, we directed the Companies to modify their EE&C Plans accordingly or explain why the data do not need to be changed due to our denial of the grandfathering proposal. *January 2010 Order* at 57-58.

#### b. Positions of the Parties

The Second Revised Plans delete the language, contained in the Revised Plans, that certain programs would be retroactive to July 1, 2009. The Revised Plans further state “The removal of the retroactivity request does not affect the data concerning the pertinent programs because the Modified Plan design of December 2, 2009 did not assume any participation in the proposed retroactivity time period.” Met Ed’s Second Revised Plan at 2, n. 5; Penelec’s Second Revised Plan at 2, n. 5; and Penn Power’s Second Revised Plan at 2, n. 5.

No other Parties commented on this aspect of the Second Revised Plans.

#### c. Disposition

During our review of the Revised Plans, we noted that the projected energy savings and budgets for certain programs had changed from those shown in the Companies’ original Plans. There was no explanation of these differences in the Revised Plans. We believed that some portion of these changes was due to the retroactivity proposal. Nevertheless, we acknowledge that the Revised Plans made numerous other changes in the Plans. We will therefore accept the Companies’ representation that the data in the EE&C Plans do not need to be recalculated because the Companies did not assume any level of participation during the retroactivity period.

In each of the Companies’ Second Revised Plans, all provisions making programs retroactive to July 1, 2009, have been eliminated. This is in full compliance with our *January 2010 Order.*

# V. Conclusion

For the reasons set forth above, we will approve the Second Revised Energy Efficiency and Conservation Plans submitted by Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company, consistent with this Opinion and Order. The Companies are permitted to implement any portion of their Plans that has been approved without modification by this Commission in the *October 2009 Order*, the *January 2010 Order* or this Opinion and Order; **THEREFORE;**

**IT IS ORDERED:**

1. That Metropolitan Edison Company’s Second Revised Energy Efficiency and Conservation Plan, as filed on February 5, 2010, is approved, consistent with this Opinion and Order.

2. That Metropolitan Edison Company is permitted to implement its Second Revised Energy Efficiency and Conservation Plan, consistent with this Opinion and Order.

3. That Metropolitan Edison Company’s Supplement No. 19 to Tariff Electric – PA. P.U.C. No. 50 is approved and may be placed into effect March 1, 2010.

4. That Pennsylvania Electric Company’s Second Revised Energy Efficiency and Conservation Plan, as filed on February 5, 2010, is approved, consistent with this Opinion and Order.

5. That Pennsylvania Electric Company is permitted to implement its Second Revised Energy Efficiency and Conservation Plan, consistent with this Opinion and Order.

6. That Pennsylvania Electric Company’s Supplement No. 18 to Tariff Electric – PA. P.U.C. No. 79 is approved and may be placed into effect March 1, 2010.

7. That Pennsylvania Power Company’s Second Revised Energy Efficiency and Conservation Plan, as filed on February 5, 2010, is approved, consistent with this Opinion and Order.

8. That Pennsylvania Power Company is permitted to implement its Revised Energy Efficiency and Conservation Plan, consistent with this Opinion and Order.

9. That Pennsylvania Power Company’s Supplement No. 64 to Tariff Electric – PA. P.U.C. No. 35 is approved and may be placed into effect March 1, 2010.

10. That any directive, requirement, disposition or the like contained in the body of this Opinion and Order that is not the subject of an individual Ordering Paragraph shall have the full force and effect as if fully contained in this part.

11. That a copy of this Opinion and Order be served on Steven Pincus, Assistant General Counsel for the PJM Interconnection, LLC and on the Senior Manager of Resource Adequacy for the Midwest Independent Transmission System Operator, Inc.

12. That the Secretary’s Bureau mark this case closed.



**BY THE COMMISSION,**

James J. McNulty

Secretary

(SEAL)

ORDER ADOPTED: February 25, 2010

ORDER ENTERED: February 26, 2010

1. MEIUG, PICA and PPUG are *ad hoc* associations of energy-intensive commercial and industrial customers receiving electric service in FirstEnergy’s service territories. MEIUG, *et al.,* Joint Petition to Intervene at ¶ 3. [↑](#footnote-ref-1)
2. FDSI develops “monitoring and diagnostic solutions for the HVAC industry that are generated from proprietary technologies, services and products that deliver front-line decision support for technicians, contractors, end-users and other stakeholders.” FDSI Petition to Intervene at ¶ 4. [↑](#footnote-ref-2)
3. Direct Energy is an electric generation supplier (EGS) licensed to provide retail electricity supply and related services to commercial, industrial and governmental customers in Pennsylvania. Direct Energy Petition to Intervene at ¶ 1. [↑](#footnote-ref-3)
4. ACORN is “an advocacy and membership organization whose mission is to advocate on behalf of low and lower income persons on numerous consumer issues, including access to and affordability of utility service.” ACORN Petition to Intervene at ¶ 7. [↑](#footnote-ref-4)
5. Rep. George is a customer of FirstEnergy. In addition, Rep. George’s district office receives electric service from FirstEnergy. Rep. George Petition to Intervene at ¶ 7. [↑](#footnote-ref-5)
6. The UGI Distribution Companies provide natural gas distribution services in the FirstEnergy territories. UGI Distribution Companies Petition to Intervene at ¶¶ 3-5. [↑](#footnote-ref-6)
7. Dominion Peoples is a regulated utility providing natural gas service in FirstEnergy’s service territories. Dominion Peoples Petition to Intervene at ¶ 3. [↑](#footnote-ref-7)
8. NFG is a natural gas distribution company whose service territory overlaps the service territories of Penelec and Penn Power. In addition, NFG is a customer of Penelec and Penn Power. Order Granting Petitions to Intervene at 3. [↑](#footnote-ref-8)
9. Constellation is a licensed EGS in FirstEnergy’s service territories. Constellation Petition to Intervene at ¶ 5. [↑](#footnote-ref-9)
10. EnerNOC is an energy services provider operating in Pennsylvania. EnerNOC Petition to Intervene at ¶ 1. [↑](#footnote-ref-10)
11. ClearChoice is a registered conservation service provider (CSP) providing curtailment services in the Met Ed and Penelec service territories. ClearChoice Petition to Intervene at ¶ 3. [↑](#footnote-ref-11)