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July 20, 2011

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

VIA HAND DELIVERY

RE: Met-Ed Request for Proposal Process for Energy Efficiency and Demand Response Consulting Services; Docket No. M-2009-209222

Penelec Request for Proposal Process for Energy Efficiency and Demand Response Consulting Services; Docket No. M-2009-2112952

Penn Power Request for Proposal Process for Energy Efficiency and Demand Response Consulting Services; Docket No. M-2009-2112956

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the original and nine (9) copies of the Reply Brief of the Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, and Penn Power Users Group, in the above-referenced proceedings.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and the Main Brief, and kindly return them for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By *Vasiliki Karandrikas*
Vasiliki Karandrikas

Counsel to the Met-Ed Industrial Energy Users Group, Penelec Industrial Customer Alliance, and Penn Power Users Group

VK/sds

Enclosures

c: Administrative Law Judge Dennis J. Buckley (via E-mail and Hand Delivery)
Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Met-Ed Request for Proposal Process for Energy Efficiency and Demand Response Consulting Services	:	Docket No.	M-2009-2092222
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Penelec Request for Proposal Process for Energy Efficiency and Demand Response Consulting Services	:	Docket No.	M-2009-2112952
	:		
	:		
Penn Power Request for Proposal Process for Energy Efficiency and Demand Response Consulting Services	:	Docket No.	M-2009-2112956
	:		

**REPLY BRIEF OF THE MET-ED INDUSTRIAL USERS GROUP,
THE PENELEC INDUSTRIAL CUSTOMER ALLIANCE,
AND THE PENN POWER USERS GROUP**

Air Liquide Industrial U.S. LP
American Refining Group Inc.
Appleton Papers Inc.
Cambridge-Lee Industries, LLC
Cargill Taylor Beef
Carpenter Technology Corporation
Dixie Consumer Products, LLC, Lehigh Valley
E.I. du Pont de Nemours and Company
East Penn Manufacturing Company
Electralloy, a G.O. Carlson, Inc., Co.
Ellwood National Steel
Ellwood Quality Steels Company
Erie Forge & Steel, Inc.
Exide Technologies, Inc.
Farmers Pride, Inc.
Glen-Gery Corporation

Harley-Davidson Motor Company – York Division
Knouse Foods Cooperative, Inc.
Magnesita Refractories Co.
Pittsburgh Glass Works, L.L.C.
PPG Industries, Inc.
Procter & Gamble Paper Products Company
RH Sheppard Co., Inc. – Foundry Division
Royal Green LLC
Sheetz, Inc.
Standard Steel
Sweet Street Desserts, Inc.
Team Ten, LLC - American Eagle Paper Mills
The Plastek Group, Inc.
Tray-Pak Corporation
U.S. Silica Company
Wegmans Food Markets, Inc.

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Dated: July 20, 2011

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I. INTRODUCTION

On February 18, 2011, Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), and Pennsylvania Power Company ("Penn Power"), filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") a Joint Petition for Amendment of the Orders Approving Energy Efficiency and Conservation Plans and Petition for Approval of First Amended Energy Efficiency and Conservation ("EE&C") Plans ("Joint Petition"),¹ seeking approval to modify the Companies' Original EE&C Plans. Specifically, Met-Ed and Penelec requested an increase in funding of \$4.5 million and \$4 million, respectively, to their Large Commercial and Industrial ("C&I") Programs' budgets.² Met-Ed and Penelec proposed to recover the requested budget increases via their respective Energy Efficiency and Conservation Charge ("EEC-C") Riders, which, if approved, would result in an increase in the EEC-C Rider of 73% for Met-Ed customers on Rate Schedules GS-Large, GP, and TP, and 56% for Penelec customers on Rate Schedules GS-Large, GP, and LP.³

Pursuant to the procedural schedule, Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), and Penn Power Users Group ("PPUG") submitted a Main Brief in the above-captioned proceeding on July 12, 2011.⁴ MEIUG/PICA received Main Briefs from the Companies and the Office of Consumer Advocate ("OCA").⁵ MEIUG/PICA

¹ While Met-Ed, Penelec, and Penn Power jointly submitted this filing, this Reply Brief focuses solely on Met-Ed's and Penelec's proposed modifications for Large C&I programs. Thus, Met-Ed and Penelec collectively are referred to herein as the "Companies." See also Main Brief of the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, and the Penn Power Users Group (hereinafter, "MEIUG/PICA M.B."), at n.1.

² See *id.* at 10-12.

³ *Id.*

⁴ As in the Main Brief of MEIUG, PICA, and PPUG, this Reply Brief focuses solely on MEIUG's and PICA's concerns in response to the Companies' Main Brief and proposed EE&C program modifications affecting Large C&I customers. Thus, MEIUG and PICA collectively are referred to herein as "MEIUG/PICA."

⁵ Neither the Office of Small Business Advocate nor the Office of Trial Staff submitted Main Briefs.

submit this Reply Brief to respond to issues raised by the Companies and the OCA in their Main Briefs.

As discussed more fully herein, MEIUG/PICA submit that: (1) the Companies have failed to prove, by a preponderance of the evidence, that the proposed changes to their Large C&I programs are just and reasonable; (2) the Companies' interpretation of Act 129 is misguided, resulting in Amended EE&C Plans that inappropriately require Large C&I customers to carry the burden of meeting the Companies' Act 129 goals; (3) although they carry the greatest individual monetary burden, many of the largest customers are unable to take advantage of the programs available to the Large C&I class, thereby thwarting one of the objectives of Act 129; (4) OCA misunderstands MEIUG/PICA's position regarding the need to spur Small C&I and Residential customers' interest in the Companies' EE&C programs in order to ensure that the Companies maintain a reasonable balance among the customer classes as Met-Ed and Penelec attempt to achieve their Act 129 goals; and (5) the Companies' incentive range proposal lacks sufficient detail to assess its justness and reasonableness and, therefore, must be rejected.

For these reasons, MEIUG/PICA respectfully request that the Commission: (1) find that the Companies have not met their burden of proving that the requested modifications to their EE&C Plans are just and reasonable; (2) deny the Companies' proposal to increase the budgets for their Large C&I programs and significantly increase the EEC-C rates for Large C&I customers; (3) in the alternative, to the extent that the Commission permits the Companies to increase their Large C&I program budgets, limit such funding increases to the amount necessary for the Large C&I class to meet its share of the Companies' overarching Act 129 requirements; (4) reject the Companies' proposals to restate all incentives as ranges; and (5) take any such

action deemed necessary or appropriate to ensure just and reasonable EEC-C rates for Large C&I customers on Met-Ed's and Penelec's systems.

II. REPLY ARGUMENT

A. **The Companies Have Failed To Prove, By a Preponderance of the Evidence, That the Proposed EE&C Plan Changes Are Just and Reasonable for the Large C&I Customer Class.**

In this proceeding, the Companies have requested Commission approval to make significant changes to their EE&C Plans with respect to their Large C&I programs. Specifically, Met-Ed proposes a \$4.5 million increase to the budget for its Large C&I programs and a 73% increase in the EEC-C rate to recover these costs from such customers.⁶ Penelec proposes a \$4 million budget increase for its Large C&I programs and a 56% increase to its Large C&I customers' EEC-C rate.⁷ Both Companies propose to allocate a significant portion of the requested budget increases to their Demand Response Programs for Large C&I customers without providing any additional details about this proposal.⁸ Met-Ed and Penelec further propose to restate all EE&C program incentives, including incentives for Large C&I programs, as ranges so that they may exercise unfettered discretion in adjusting incentive levels pursuant to "market conditions" and without further PUC approval.⁹

⁶ See Direct Testimony and Exhibits of George L. Fitzpatrick (hereinafter, "Met-Ed/Penelec/Penn Power St. No. 1"), p. 10; see also Supplemental Exhibit CVF-1 of Charles V. Fullem (hereinafter, "Met-Ed/Penelec/Penn Power Ex. Supp. CVF-1"), p. 1, line 16.

⁷ See Met-Ed/Penelec/Penn Power St. No. 1, p. 10; see also Met-Ed/Penelec/Penn Power Ex. Supp. CVF-1, p. 2, line 16.

⁸ See Met-Ed/Penelec/Penn Power St. No. 1, pp. 9-10.

⁹ Id. at 20; see also Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Amendment of the Orders Approving Energy Efficiency and Conservation Plans and Petition for Approval of First Amended Energy Efficiency and Conservation Plans (hereinafter, "Met-Ed/Penelec/Penn Power Ex. No. 1") at ¶¶ 26 & 32.

Throughout this proceeding, the Companies have claimed the proposed changes to their EE&C Plans are necessary to position Met-Ed and Penelec to meet their 2013 requirements under Act 129.¹⁰ In their Main Brief, the Companies contend that they have presented "ample evidence" regarding the need for their proposed changes, consistent with their obligations under the Commission's regulations.¹¹ Contrary to the Companies' claims, however, they have failed to meet, by a preponderance of evidence, their burden of proving that the proposed changes to the Large C&I programs are necessary to meet their post-2011 Act 129 obligations, much less that such changes result in just and reasonable treatment for Large C&I customers. By contrast, as discussed herein and more fully in their Main Brief, MEIUG/PICA have presented compelling evidence that demonstrates that Met-Ed's and Penelec's proposals would inappropriately discriminate towards the Large C&I class by requiring these customers to shoulder the burden of helping the Companies meet the majority of their Act 129 goals.

In accordance with Act 129, the Companies must achieve a 3% load reduction and a 4.5% peak demand reduction by May 31, 2013.¹² As stated more fully in MEIUG/PICA's Main Brief, the record is devoid of evidence demonstrating how the Companies' proposals will permit them to meet their post-2013 obligations under Act 129. As a threshold matter, the Companies have failed to provide evidence regarding year-to-date progress in meeting their Act 129 requirements. Nor have the Companies provided adequate information regarding their projected shortfalls in meeting those requirements.¹³ Unsubstantiated assertions in the Companies' Main

¹⁰ See, e.g., Main Brief on behalf of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company (hereinafter, "Met-Ed/Penelec/Penn Power M.B."), p. 25.

¹¹ See *id.* at 8.

¹² See 66 Pa. C.S. §§ 2806.1(c)(2) & (d)(1).

¹³ See MEIUG/PICA M.B., pp. 17-18.

Brief that "[t]hese programs...are putting the Companies on the path to fulfill their Act 129 post-2011 reductions," without more, does not remedy this informational deficiency.¹⁴ As a result, there is insufficient evidence regarding the Companies' current status in meeting their Act 129 requirements and, consequently, supporting the claim that the proposed changes are necessary.

By way of illustration, during hearings, counsel for MEIUG/PICA questioned Witness Fitzpatrick regarding a summary of the performance of the Companies' various EE&C programs.¹⁵ According to Mr. Fitzpatrick, certain programs are exceeding the Companies' expectations, while others are falling short of expectations.¹⁶ Importantly, however, several of the programs, including Residential and Small C&I programs, are currently listed at a progress level of 0%.¹⁷ Witness Fitzpatrick explained that the absence of data reflects the fact that the Companies' evaluation process takes several months to assess the savings impact of such programs.¹⁸ In other words, progress may have been made with respect to Residential and Small C&I customers participating in these programs, however, the Companies do not yet have all of the data available for review. Mr. Fitzpatrick's testimony underscores the lack of record evidence regarding the Companies' current progress in meeting their Act 129 goals and raises the very real risk that the Companies' requested budget increases for their Large C&I customers may be premature, particularly without knowing the full level of participation in certain programs by other customer classes.

¹⁴ See Met-Ed/Penelec/Penn Power M.B., p. 25.

¹⁵ See generally Transcript of June 28, 2011 hearing ("Tr.") at 75-76; *id.* at 111-12; see also MEIUG/PICA/PPUG Cross-Examination Exhibit No. 4, Attachment A, pp. 2-4

¹⁶ *Id.*

¹⁷ See generally MEIUG/PICA/PPUG Cross-Examination Exhibit No. 4, Attachment A, pp. 2-4.

¹⁸ See Tr. at 112, lines 10-17.

Additionally, the Companies have proposed a number of modifications with respect to their Residential and Small C&I programs.¹⁹ These customer classes represent a significant source of untapped peak demand and load reduction potential. Accordingly, it would be prudent for the Companies to evaluate the effectiveness of these program changes, which will be implemented within the parameters of the Companies' existing EE&C Plan budget, before seeking to raise the budgets for Large C&I customers.

Furthermore, of their requested budget increases, the Companies propose to allocate \$2.5 and \$2 million, respectively, to their Demand Response Programs for Large C&I customers.²⁰ The record, however, contains no information about current customer performance nor expected improvements in customer performance due to the availability of increased funding for the Large C&I Demand Response Programs.²¹ Because these programs "haven't really [been] implemented...to any great extent,"²² the Companies only have certain "forecasts."²³ In other words, the Companies seek to increase the budgets of programs that are not yet available to customers. Thus, the record lacks information supporting the Companies' position that simply increasing the budgets for their respective Large C&I Demand Response Programs will position the Companies to meet their Act 129 requirements.

Finally, the Companies' incentive range proposals are based on the premise that unspecified market conditions will guide Met-Ed's and Penelec's exercise of discretion in

¹⁹ See Met-Ed/Penelec/Penn Power St. No. 1, pp. 12-13.

²⁰ See Met-Ed/Penelec/Penn Power St. No. 1, p. 10.

²¹ See MEIUG/PICA M.B., pp. 18-19.

²² Tr. at 93, lines 7-8.

²³ *Id.* at 95, lines 1-7.

adjusting incentives for Large C&I programs.²⁴ Based on the Companies' Joint Petition and testimony, the proposals' details are not only conspicuously absent from the record but also have not even been fully vetted by the Companies.²⁵ In fact, at hearings, Met-Ed/Penelec Witness Fitzpatrick could not articulate a concrete plan for how the Companies would administer their incentive range proposals.²⁶ Accordingly, the Companies failed to provide the Commission with information to describe, in adequate detail, Met-Ed's and Penelec's incentive range proposals, much less to offer a sound basis for assessing the justness and reasonableness of such proposals.

None of the arguments advanced in the Companies' Main Brief refute the fact that Met-Ed's and Penelec's proposals lack sufficient record support. The Companies have failed to prove, by a preponderance of evidence, that the proposed change to their Large C&I programs are necessary to meet their Act 129 obligations. As such, the Commission lacks a reasonable basis to conclude that the Companies' proposals are just and reasonable. Therefore, the Companies' proposed changes must be rejected.

B. The Companies' Interpretation of Act 129 Is Misguided, Resulting in Amended EE&C Plans That Inappropriately Require Large C&I Customers To Carry the Burden of Meeting the Companies' Act 129 Goals.

Met-Ed and Penelec propose significant increases to their respective Large C&I program budgets, which result in significant increases to EEC-C rates for Large C&I customers. The Companies request these increases based on the unsubstantiated claim that doing so will position the Companies to meet their Act 129 requirements for 2013.²⁷ As proposed, EEC-C rates for Large C&I customers on Met-Ed's system (*i.e.*, Rate Schedules GS-Large, GP, and TP) will soar

²⁴ See Met-Ed/Penelec/Penn Power Ex. No. 1 at ¶¶ 26, 32; see also Met-Ed/Penelec/Penn Power St. No. 1, p. 20.

²⁵ See MEIUG/PICA M.B., pp. 41-43.

²⁶ See Tr. at 99, lines 6-12.

²⁷ See Met-Ed/Penelec/Penn Power Ex. No. 1 at ¶ 44.

above current EEC-C rates, from \$0.30/kW to \$0.52/kW, or by approximately 73%.²⁸ Under Penelec's proposal, the Large C&I budget increase results in a 56% jump in the EEC-C rates for Large C&I customers (i.e., Rate Schedules GS-Large, GP, and LP), from \$0.34/kW to \$0.53/kW.²⁹

In support of their proposals, the Companies argue that Act 129 directs electric distribution companies ("EDCs"), including Met-Ed and Penelec, to develop EE&C Plans that would achieve the most energy savings per expenditure through the most cost effective use of resources.³⁰ The Companies further attempt to justify their proposal to exploit Large C&I customers by claiming *pro rata* spending is not required and selectively quoting the Commission's Implementation Order.³¹ A careful reading of Act 129 and the relevant language in the Implementation Order, however, provides a reasonable basis to conclude that the Commonwealth's policy makers did not intend that EDCs achieve Act 129's goals by overrelying on the efforts of one particular customer class. Rather, an EDC's realization of Act 129 requirements must be accomplished in a reasonably balanced manner such that all customer classes partake in energy efficiency efforts. The Companies' proposals do not comport with Act 129 and, therefore, must be rejected.

Act 129 clearly envisions that an EDC will meet its peak and load reduction obligations based on the joint efforts of all customer classes. According to Act 129, each EE&C Plan "shall include...standards to ensure that each plan includes a variety of energy efficiency and

²⁸ See MEIUG/PICA M.B., pp. 10-11.

²⁹ See id. at 11-12.

³⁰ See Met-Ed/Penelec/Penn Power M.B., pp. 20-21.

³¹ Id.; see also Energy Efficiency and Conservation Program, Docket No. M-2008-2069887 (Jan. 16, 2009) ("Implementation Order").

conservation measures and will provide the measures equitably to all classes of customers."³²

Moreover, an EDC must demonstrate that it "provides a diverse cross section of alternatives for customers of all rate classes."³³ Thus, Act 129 contemplates that an EDC will fulfill the peak demand and energy reductions based on the combined efforts of each of its customer classes.

During the implementation proceedings, the Commission recognized that each customer class must contribute load and peak demand savings to meet the requirements of Act 129. While the Commission did not require a "proportionate distribution of measures among customer classes," neither did it sanction an overreliance on a single class or single program.³⁴ According to the Commission:

We agree that "equitable" does not mean "pro rata," especially when cost-effectiveness is factored into the process. EDCs must offer a well-reasoned and balanced set of measures that are tailored to usage and to the potential for savings and reductions for each customer class. We believe the overall limitations on cost recovery and the specific limitation tying costs to a benefited class...will ensure that offerings will not be skewed toward or away from any particular class. There is no single set of measures that will fit all EDCs and the myriad mix of customers. It is entirely possible that the most cost effective energy efficiency and demand response programs may not come proportionally from each customer class.³⁵

Although a strictly proportionate distribution among customer classes is not required, the Commission appropriately recognized that EE&C program offerings cannot be "skewed toward or away from any particular class."³⁶ Rather, EE&C program offerings must be "well-reasoned

³² 66 Pa. C.S. § 2806.1(a)(5) (emphasis added).

³³ Id. at § 2806.1(b)(1)(i)(I) (emphasis added).

³⁴ See Implementation Order at 22-23.

³⁵ Id. (emphasis added).

³⁶ Id.

and balanced" and tailored to "the potential for savings and reductions for each customer class."³⁷

In approving the Companies' Original EE&C Plans, the Commission determined that the Companies offered a reasonably balanced approach to realize their Act 129 requirements. Act 129 requires Met-Ed and Penelec to achieve a 3% load reduction and a 4.5% peak demand reduction by May 31, 2013.³⁸ The Companies offered a number of programs available to Residential, Small C&I, Large C&I, and Governmental/Institutional customers.³⁹ As evidenced by their EE&C Plans, the Companies represented that they would achieve their statutorily mandated peak demand and load reductions for the 2011-2013 period based on the contributions of each customer class.

The Companies readily admit that the Small C&I and, in Met-Ed's case, Residential customer classes are not realizing their potential in terms of producing the expected savings levels to meet their share of the Companies' Act 129 requirements.⁴⁰ Despite underwhelming activity by Residential and Small C&I customers, however, the Companies have failed to recalibrate their approach in order to attract interest in such programs. As a threshold matter, neither the Joint Petition nor the Companies' witnesses presented evidence that the Companies have revisited their strategy for generating interest by Residential and Small C&I customers,

³⁷ Id. (emphasis added).

³⁸ See 66 Pa. C.S. §§ 2806.1(c)(2) & (d)(1).

³⁹ See MEIUG/PICA M.B., p. 5.

⁴⁰ See MEIUG/PICA/PPUG Cross-Examination Exhibit No. 2, Attachment A, p. 2.

despite acknowledging that these customer classes are not participating as projected.⁴¹ In fact, at hearings, Witness Fitzpatrick conceded that the Companies have not made any changes to their customer outreach or education strategy, such as taking a more proactive approach.⁴² The Companies' failure to act is even more egregious given that Met-Ed's and Penelec's Residential and Small C&I customers are paying EEC-C rates designed to recover the costs to carry out such educational efforts by the Companies.⁴³

Instead of assisting the Residential and Small C&I customers to realize their potential load and demand reduction savings, the Companies seek excessive budget increases for their respective Large C&I customer class, in order to take advantage of the fact that Large C&I customers' interest levels have surpassed expectations.⁴⁴ As detailed herein and in MEIUG/PICA's Main Brief, the Companies' requested budget increases exceed what is necessary for the Large C&I customer class to meet its share of the Companies' Act 129 obligations.⁴⁵ While requesting a minimal increase (e.g., \$1.2 million for Met-Ed and \$3.4 million for Penelec) in the Large C&I programs to ensure that this customer class meets its individual class goal may be viable, requesting significantly more, and in Met-Ed's case, more than double that amount

⁴¹ See, e.g., Met-Ed/Penelec/Penn Power St. No. 1, p. 11, lines 20-23 (noting that "certain program results are below those anticipated at the time the Current Plans were developed" and funds must be shifted "from these underperforming programs to more effective programs"); id. at 12, lines 3-32 (describing the shift in funds due to Small C&I program changes); id. at 13, lines 1-32 (discussing shifts in funding for the Residential customer class).

⁴² Tr. at 55 ("There are a number of ways that our programs are made known to all customers. I don't think we've made any changes right now....").

⁴³ 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, et al. (Oct. 28, 2009) ("October 2009 Order"), p. 70 (directing that the Companies track costs related to educating consumers about Met-Ed's and Penelec's EE&C Plans "for reporting and reconciliation purposes").

⁴⁴ See, e.g., Met-Ed/Penelec/Penn Power M.B., pp. 17-18.

⁴⁵ See MEIUG/PICA M.B., pp. 37-41.

(e.g., \$4.5 million for Met-Ed and \$4 million for Penelec), to require the Large C&I class to carry the burden of meeting a sizable portion of the Companies' Act 129 goals is not reasonable.⁴⁶

Based on the foregoing, the Companies' proposed budget increases are excessive. In fact, there is no reasonable correlation between the Companies' proposed budget increases and the remaining reductions required by the Large C&I class. The Companies' proposals, as filed, would effectively result in Large C&I customers exceeding their load reduction requirements and likely meeting or exceeding their demand reduction obligations, which, in turn, would relieve the other customer classes from pulling their weight to accomplish Met-Ed's and Penelec's 2013 reductions in accordance with Act 129. Thus, the Companies' proposals are inappropriately skewed toward the Large C&I customers and must be rejected as inconsistent with Act 129.

C. Although They Carry the Greatest Individual Monetary Burden, Many of the Largest Customers Are Unable To Take Advantage of the Programs Available to the Large C&I Class, Thereby Thwarting One of the Objectives of Act 129.

As a result of the Companies' request to significantly increase the budgets for the Large C&I programs, both Met-Ed's and Penelec's EEC-C rates will increase dramatically. While the Companies suggest that the affected customers can recoup these costs via participation in the Act 129 programs, the Companies fail to recognize that such participation is limited due to various factors, including the business costs that must factor into such participation, lack of information regarding the Companies' demand response programs, and the speculative nature of the return on investment from these programs. Accordingly, many of the largest C&I customers may never be able to recapture the significant monies they are remitting via the EEC-C Rider.

The Companies' proposals to increase the Large C&I program budgets result in dramatic EEC-C rate increases of 73% and 56% for Large C&I customers on Met-Ed's and Penelec's systems,

⁴⁶ Id.

respectively.⁴⁷ As customer representatives from Appleton Papers Inc. ("Appleton") and East Penn Manufacturing Company, Inc. ("East Penn") testified during hearings, the proposed rate increases have significant real world impacts for their manufacturing facilities. For East Penn, a Large C&I customer taking service pursuant to Rate Schedule TP, Met-Ed's proposal would result in approximately \$750,000 in EE&C payments.⁴⁸ Similarly, for Appleton, a Large C&I customer taking service pursuant to Rate Schedule LP, Penelec's proposal would translate into EE&C payments of more than \$280,000.⁴⁹ For energy-intensive end-use customers like East Penn and Appleton, such electricity cost increases cause a corresponding increase in production costs, which is harmful to Large C&I customers' competitiveness,⁵⁰ growth,⁵¹ and long-term viability,⁵² particularly during the current economic recession.⁵³

One of the considerations behind Act 129 was the assumption that, while customers would remit the costs for the programs needed for EDCs to meet their Act 129 goals, customers may receive a return on their monies through participation in the resulting programs. Unfortunately, despite the significant rate increase for Large C&I customers, the incentives offered under the Companies' Large

⁴⁷ Id. at 26-27.

⁴⁸ Id. at 28.

⁴⁹ Id. at 29.

⁵⁰ See, e.g., Direct Testimony and Exhibits of Mark Chasse of East Penn Manufacturing Company, Inc., as a Member of the Met-Ed Industrial Users Group (hereinafter, "MEIUG/PICA/PPUG St. No. 2"), p. 6 ("If East Penn were to increase its prices to account for higher electricity costs, East Penn could be placed at a disadvantage with respect to manufacturing sites in other states and countries.").

⁵¹ See, e.g., Tr. at 187, lines 4-25; id. at 188, line 1 (according to Witness Hammaker, if Appleton's production costs are higher, corporate headquarters will shift production to its sister facility, resulting a loss in production).

⁵² See, e.g., Direct Testimony and Exhibit of Todd Hammaker of Appleton Papers Inc., as a Member of the Penelec Industrial Customer Alliance (hereinafter, "MEIUG/PICA/PPUG St. No. 1"), p. 13 (noting that extended shifts in production would eventually create a situation where Appleton's Spring Hill facility is not viable, likely resulting in closure or relocation to an international site).

⁵³ See Tr. at 186, lines 23-25; id. at 187, lines 1-5 (describing the negative impacts of the current recession); see also MEIUG/PICA M.B., pp. 27-31.

C&I programs provide little, if any, meaningful relief for such customers.⁵⁴ While the Companies dispute this fact, arguing that East Penn and Appleton will "possibly benefit in the future" from such programs,⁵⁵ the Companies' argument inappropriately ignores record evidence on point and, therefore, must be disregarded.

As detailed in MEIUG/PICA's Main Brief, Large C&I customers like East Penn and Appleton implemented extensive energy efficiency and conservation measures prior the Companies' EE&C Plans becoming effective. As MEIUG/PICA Witness Hammaker testified during hearings, the extent of Appleton's efforts have caused third-party consultants engaged to investigate potential energy savings to advise that further study would not be cost-effective because Appleton has "an extremely efficient operation."⁵⁶ According to MEIUG/PICA Witness Mark Chasse, East Penn similarly implemented significant energy efficient measures well in advance of Act 129 in order to remain competitive.⁵⁷ Thus, while Large C&I customers are funding sizable portions of the Companies EE&C Plan costs, they have no meaningful opportunity to take advantage of these incentives.

To be clear, MEIUG/PICA are not alleging that Large C&I customers have identified every ounce of potential energy savings. Rather, Large C&I customers, such as East Penn and Appleton, have achieved an exceptional level of energy efficiency, and further incremental improvements are not supported by a cost-benefit analysis.⁵⁸ Moreover, while the incentives offered under the Companies' Large C&I EE&C programs would constitute a potential benefit, the costs, including the

⁵⁴ See generally MEIUG/PICA M.B., pp. 31-34.

⁵⁵ See Met-Ed/Penelec/Penn Power M.B., pp. 21-24.

⁵⁶ Tr. at 188, lines 23-25; *id.* at 189, lines 1-7.

⁵⁷ MEIUG/PICA/PPUG St. No. 2, p. 7

⁵⁸ Tr. at 188.

cost of capital, infrastructure upgrades, wiring updates, and new distribution equipment,⁵⁹ may outweigh the benefits. Thus, as part of the cost-benefit analysis preceding any key business decision, a Large C&I customer must weigh the necessary investment against the potential cost.⁶⁰ If a Large C&I customer determines that the benefit does not outweigh the cost, then the measure cannot be pursued.⁶¹

The Companies also claim that the Large C&I Demand Response Programs offer financial benefits to Appleton and East Penn, citing a payment of \$9.50 per kW per quarter.⁶² According to MEIUG/PICA Witness Hammaker, however, Appleton chose not to participate in Penelec's Large C&I Demand Response Program due to the risks associated with doing so. Specifically, he explained:

[W]e are a 24/7 operation, and in today's economy we try to minimize our inventory, so we are building to orders. With that [Demand Response] program, we felt it put our ability to meet customer orders at risk and...we found it just not acceptable for the risk that was associated with it.⁶³

In short, Appleton was concerned that participation in Penelec's Demand Response Program would jeopardize its ability to meet its customers' needs, a risk that was magnified by the current state of the economy. Moreover, the lack of information regarding implementation of the Companies' Demand Response Programs may also cause hesitation. For example, the Companies have only begun the roll-out of the Demand Response Programs, resulting in

⁵⁹ See, e.g., Surrebuttal Testimony of Mark Chasse of East Penn Manufacturing Company, Inc., as a Member of the Met-Ed Industrial Users Group (hereinafter, "MEIUG/PICA/PPUG St. No. 2-S"), p. 5.

⁶⁰ Tr. at 188.

⁶¹ *Id.*

⁶² See Met-Ed/Penelec/Penn Power M.B., p. 22.

⁶³ Tr. at 164, lines 10-15.

customers having little knowledge regarding the timing and length of any demand reduction the Companies may call to meet their Act 129 goals.

As noted by Mr. Hammaker, the perceived risk relates to the potential for load curtailment.⁶⁴ Due to the lack of information about Penelec's Demand Response Program, Appleton felt the risks of participating in the PJM Interconnection, L.L.C. ("PJM") program were "very minimal relative to what Penelec's demand reduction offered."⁶⁵ As a result, rather than participate in the newly implemented Penelec Demand Response Program, Appleton chose to participate in PJM's long-established Demand Response Program, which was perceived as the less risky and, consequently, less costly option.⁶⁶ Thus, the related uncertainty may cause such programs to be perceived as risky and costly by Large C&I customers, thereby creating a potential chilling effect on participation.

Similarly, the Companies claim that East Penn may benefit under Met-Ed's EE&C Plan through a grid scale energy storage project currently under development, which would enable East Penn to qualify for incentives under Met-Ed's EE&C Plan.⁶⁷ According to MEIUG/PICA Witness Chasse, however, the primary purpose of this project is to provide frequency regulation, a product that can be sold in the wholesale power market and, presumably, that revenue stream (and not Act 129 incentives) provided the economic justification for such project.⁶⁸

⁶⁴ Tr. 164, lines 19-23.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Met-Ed/Penelec/Penn Power M.B., p. 22.

⁶⁸ Tr. at 205.

Notwithstanding, the project is still under construction.⁶⁹ As such, the Companies' claimed financial benefits for East Penn are too speculative at this time.

Finally, the Companies attempt to discredit East Penn and Appleton, two of their largest, most efficient customers, by casting them in an unfavorable light based on their inexperience with the design of EE&C programs and measures, the entirety of the Companies' EE&C Plans, and the interpretation of Act 129.⁷⁰ As threshold matter, MEIUG/PICA's witnesses have been utterly forthright that the purpose of their testimony is to provide the Commission with information regarding the potential impact of the Companies' proposal on Large C&I customers, as seen through the eyes of two Large C&I customers.⁷¹ Moreover, MEIUG/PICA's witnesses are clearly not attorneys nor experts in utility EE&C Plan development, nor have they held themselves out as such. It is also true that their experience with Act 129 programs is limited to the Large C&I programs.⁷² They are the representatives within their respective companies who are responsible for paying the invoices from Met-Ed and Penelec as well as managing energy-related costs for their facilities.⁷³ As such, they are quite qualified to testify regarding the cost impacts of the Companies' EE&C Plan proposals from a customer perspective.

As discussed herein and MEIUG/PICA's Main Brief, energy costs are a significant cost of doing business for Large C&I customers, such as Appleton and East Penn, and the ability to

⁶⁹ See *id.* at 214, lines 1-4.

⁷⁰ See Met-Ed/Penelec/Penn Power M.B. at 19.

⁷¹ See, e.g., MEIUG/PICA/PPUG St. No. 1, p. 6; MEIUG/PICA/PPUG St. No. 2, pp. 3-4; Tr. at 148, lines 19-24; Tr. at 194, lines 15-21.

⁷² Both Companies received minimal incentives pursuant to Met-Ed's and Penelec's Large C&I Programs. See MEIUG/PICA/PPUG St. No. 1, p. 8; MEIUG/PICA/PPUG St. No. 2, p. 5.

⁷³ MEIUG/PICA/PPUG St. No. 1, p. 2; MEIUG/PICA/PPUG St. No. 2, p. 2.

contain such costs is critical to the retention of Pennsylvania's industry.⁷⁴ A facility's failure to remain profitable in light of rising energy costs presents the risk of lost production opportunities, which may cause a facility to become unprofitable over time.⁷⁵ As MEIUG/PICA's witnesses testified, it is important to view the Companies' proposed cost increase in the context of other regulatory cost increases, such as the Companies' Non-Utility Generation ("NUG") Rider, which on its own will increase East Penn's and Appleton's energy costs by millions of dollars.⁷⁶ In addition, environmental compliance costs further increase the cost of doing business in Pennsylvania.⁷⁷ Regulatory costs, coupled with the continuing pressure to cut costs due to the uncertainty related to the recession, present the Companies' industrials with very difficult decisions, and the Commission must be cognizant of these decisions when determining whether to require these customers to shoulder additional costs.

The Companies' EE&C programs do little for extremely efficient Large C&I customers with respect to offsetting the extraordinary rate increases proposed by the Companies.⁷⁸ Despite the lack of a meaningful opportunity to participate in such programs, Large C&I customers must pay significant sums toward funding the Companies' EE&C programs. This scenario, plus rising regulatory costs and the current state of the economy, compounds the negative impact of the Companies' proposed EE&C Plan modifications upon their Large C&I customers.⁷⁹ Under these circumstances, Large C&I customers may be forced to reevaluate the future of their facilities

⁷⁴ See MEIUG/PICA M.B., pp. 35-36.

⁷⁵ Tr. at 187, lines 10-12.

⁷⁶ See MEIUG/PICA M.B., pp. 35-36.

⁷⁷ Id.

⁷⁸ Id., pp. 31-34.

⁷⁹ See id. at 35-36.

within the Met-Ed and Penelec service territories. Such an outcome is clearly inconsistent with the legislative intent underlying Act 129, the Competition Act, and the Commonwealth's economic development policy.⁸⁰

D. The OCA Misunderstands MEIUG/PICA's Position Regarding the Need To Revitalize Small C&I and Residential Customer Interest in the Companies' EE&C Programs.

In its Main Brief, the OCA explains that it is opposed to MEIUG/PICA's recommendation "that the Companies increase the energy efficiency and conservation measures and budget of the Residential customers."⁸¹ Unfortunately, the OCA misinterprets MEIUG/PICA's recommendation as seeking to increase the budget for Residential customer programs.⁸² Contrary to the OCA's interpretation, MEIUG/PICA do not recommend an increase in the Companies' budgets for Residential or Small C&I customers. In fact, MEIUG/PICA take no position on the appropriateness of the budget levels for these other customer classes. MEIUG/PICA's concern centers on remedying the projected shortfalls in savings for these customer classes by revitalizing Residential and Small C&I customers' interest in these programs.

As discussed herein, as well as in MEIUG/PICA's Main Brief, Act 129 requires each class to do its fair share to meet an EDC's mandated load and peak demand reductions. In promulgating Act 129, lawmakers envisioned that the combined efforts of each class would enable the EDC to satisfy the requirements in a reasonably balanced manner. The Commission's

⁸⁰ MEIUG/PICA/PPUG M.B., pp. 34-36.

⁸¹ Main Brief of the Office of Consumer Advocate (hereinafter, "OCA M.B."), pp. 4-5 (citing the Direct Testimony of MEIUG/PICA Witness Mark Chasse, which provides, in relevant part, Met-Ed should "focus its efforts on increasing the energy efficiency and conservation measures that could be undertaken by Residential and Small C&I customers").

⁸² Id. at 6. Notably, the OCA does not take a position on the correct application of funding for other customer classes. Id. at 3.

approval of the Companies' EE&C Plans indicates that Met-Ed and Penelec presented a reasonably balanced strategy to achieve their Act 129 obligations based on the combined contributions of their customers.⁸³

According to the OCA, the Companies' Original EE&C Plans emphasized reductions from the Residential classes.⁸⁴ The Original EE&C Plans also contemplated targets for each of the other customer classes, including the Small and Large C&I customers. To date, however, the Residential and Small C&I customer classes are clearly struggling to meet their share of the Companies' Act 129 reduction requirements.⁸⁵ As the OCA acknowledges, Met-Ed's Residential programs are "under-subscribed."⁸⁶ Met-Ed's and Penelec's Small C&I programs are also displaying lackluster interest from their target customers. In most cases, Met-Ed and Penelec predict double-digit deficits in meeting their load and peak demand reductions.⁸⁷

Despite this disappointing level of participation by the Residential and Small C&I customers, the Companies have done very little to improve the situation. At hearings, when asked about the Companies' direct outreach efforts to Residential and Small C&I customers, Witness Fitzpatrick explained that the Companies have examined the level and availability of rebates.⁸⁸ When asked about the Companies' direct outreach efforts to make such customers aware of available rebates, Witness Fitzpatrick explained there are an unspecified "number of

⁸³ Accord OCA M.B., p. 6 ("The Companies' distribution of measures and the associated budgets between the customer classes was based on their judgment as to how to best achieve the reductions mandated by Act 129 while staying within the statutory budget caps.") (emphasis added).

⁸⁴ Id.

⁸⁵ See MEIUG/PICA M.B., pp. 22-23.

⁸⁶ OCA M.B., p. 8.

⁸⁷ See MEIUG/PICA M.B., pp. 22-23.

⁸⁸ Tr. at 54, lines 17-25.

ways that [the Companies'] programs are made known to all customers," but that he did not believe the Companies had made any changes to those approaches.⁸⁹ Thus, despite the unremarkable level of interest in Residential and Small C&I programs, and projected deficits in meeting the load and peak demand reductions expected of these customer classes, the Companies have not revised their direct outreach approach, which is clearly ineffective. This result is even more egregious because the Companies' customers, including the Residential class, are assuming a sizable share of the Companies' EE&C budget, which already includes the cost of marketing and outreach activities.⁹⁰

As detailed in its Main Brief, MEIUG/PICA's position is that the Companies should assume a more proactive approach to assist their Residential and Small C&I customer classes in realizing their load and demand reduction potential. If the current outreach approach is not producing the expected results, which it is clearly not, then the Companies must revise their approach in order to optimize the peak demand and load reduction savings potential of their Residential and Small C&I classes.

E. The Companies' Incentive Range Proposal Lacks Sufficient Detail To Assess Its Justness and Reasonableness and, Therefore, Must Be Rejected.

Met-Ed and Penelec request, without providing a clear implementation strategy, the Commission's permission to unilaterally change EE&C incentive payments without additional Commission oversight and approval.⁹¹ Because the Companies fail to sufficiently define their incentive range proposal, MEIUG/PICA respectfully request that the Companies' proposal be rejected.

⁸⁹ *Id.* at 55, lines 1-9.

⁹⁰ See October 2009 Order, p. 70.

⁹¹ See generally Met-Ed/Penelec/Penn Power M.B., pp. 25-27; Met-Ed/Penelec/Penn Power Ex. No. 1 at ¶ 32; Met-Ed/Penelec/Penn Power St. No. 1, p. 9; Tr. at 101, lines 2-5.

In their Main Brief, Met-Ed and Penelec enumerate purported "reasons" for their incentive range proposal, citing to Witness Fitzpatrick's Direct Testimony, but the Companies do not sufficiently explain the details of how they plan to apply the proposal.⁹² The Companies also indicate that they have already implemented the incentive ranges, without Commission approval to do so, subject to "additional rebates should the Commission not agree with these changes."⁹³ Given the Companies' lack of definition and transparency as to how they intend to administer the proposed EE&C incentive range approach, any purported benefits that this proposal may offer the Companies is substantially outweighed, not only by the potential for abuse of discretion in awarding incentives, but also by the significant probability of customer confusion resulting from the proposal. The proposal also fails to provide this Commission with adequate information, as required by Act 129, to determine whether the Companies are pursuing their statutory obligations in a cost-effective and prudent manner.⁹⁴

The OCA notes, in its Main Brief, that "after further review" the OCA believes "that ranges for incentive levels are reasonable provided that the Companies apply those ranges in an even-handed manner through a defined process so that no discrimination results."⁹⁵ Based on the record evidence in this proceeding, however, the Commission, MEIUG/PICA, and the OCA will not be able to effectively evaluate whether the Companies apply the incentive ranges in an even-handed manner. The record lacks critical information necessary to evaluate the Companies' proposal, and without a sufficiently defined implementation strategy, Met-Ed and Penelec's incentive range proposal confers upon the Companies an unfettered ability to change incentive

⁹² See *id.*

⁹³ *Id.* at 26.

⁹⁴ See 66 Pa. C.S. § 2806.1(b)(2).

⁹⁵ OCA M.B., p. 9.

levels without due process being afforded to interested parties. The Commission must be given an opportunity to review and, if warranted, approve any changes to the Companies' EE&C incentive levels.

Because the Companies do not sufficiently define their incentive range proposal, neither the Commission nor the parties can evaluate whether the proposal would be administered by the Companies in an even-handed manner. MEIUG/PICA therefore respectfully request that this Commission reject the Companies' proposal and, to the extent the Companies have already implemented incentive level changes without Commission approval, require the Companies to rectify such changes.

III. CONCLUSION

WHEREFORE, the Met-Ed Industrial Users Group and the Penelec Industrial Customer Alliance respectfully request that Pennsylvania Public Utility Commission:

- i. Find that the Companies have failed to prove that the proposed modification to the Large C&I programs are just and reasonable;
- ii. Find the Companies' First Amended Plans fail to comport with the requirements of Act 129;
- iii. Deny the Companies' proposals to increase the budgets for their Large C&I programs and significantly increase the EEC-C rates for Large C&I customers;
- iv. In the alternative, if the Commission grants the Companies' request for increased funding of their Large C&I programs, limit such funding to the amount necessary for the Large C&I class to meet its goals for purposes of the Act 129 requirements;
- v. Reject the Companies' proposal to restate all incentives as ranges; and
- vi. Take any such action deemed necessary or appropriate to ensure just and reasonable rates for Large C&I customers.

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Dated: July 20, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

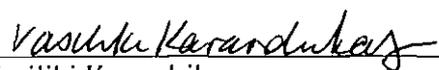
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