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December 12, 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-2009-2092222

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 Exceptions of the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, and the 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 Exceptions, 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)
Cheryl Walker Davis, Director, Office of Special Assistants (via 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
	:		

**EXCEPTIONS 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: December 12, 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 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 of proposed modifications to the Companies' EE&C Plans. In relevant part, the Companies proposed a funding increase of \$4.5 million and \$4 million, respectively, to their Large C&I program budgets, with the bulk of the additional funding to be dedicated to the Large C&I Equipment Programs.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 a 73% increase in the EEC-C Rider for Met-Ed's Rate Schedule GS-Large, GP, and TP customers, and 56% increase in the EEC-C Rider for Penelec's Rate Schedule GS-Large, GP, and LP customers.³ Met-Ed and Penelec further proposed to restate all EE&C program incentives as ranges so that the Companies may exercise discretion in adjusting incentive levels within those ranges as market conditions warrant without further Pennsylvania Public Utility Commission ("PUC" or "Commission") approval.⁴ The

¹ While Met-Ed, Penelec, and Penn Power jointly submitted this filing, these Exceptions focus solely on Met-Ed's and Penelec's proposed modifications to the EE&C programs available to their Large Commercial and Industrial ("C&I") customers. 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; see also Reply Brief of the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, and the Penn Power Users Group (hereinafter, "MEIUG/PICA R.B."), at n.4.

² See MEIUG/PICA M.B. at 9-12.

³ Id.

⁴ Id. at 12-13.

Companies claimed that proposed changes to their EE&C Plans are necessary to meet their obligations under Act 129.⁵

On March 10, 2011, the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), and the Pennsylvania Power Users Group ("PPUG") filed with the Commission an Answer in response to the Companies' Joint Petition. The Answer: (1) argued that the Joint Petition is deficient and does not present adequate information to accurately assess the impact of the proposed changes on the Companies' Large C&I customers; and (2) requested that the PUC initiate an investigation. MEIUG/PICA are ad hoc associations of energy-intensive commercial and industrial customers receiving electric service in Met-Ed's and Penelec's service territories, respectively. As some of the Companies' largest customers, whose manufacturing processes require significant amounts of electricity, any proposed modifications to the Companies' EE&C Plans could significantly impact MEIUG/PICA's production costs.

By Order entered March 18, 2011, the Commission assigned the Joint Petition to Administrative Law Judge ("ALJ") Dennis J. Buckley, who established a procedural schedule that included an evidentiary hearing and the submission of Main Briefs and Reply Briefs. On December 5, 2011, ALJ Buckley issued a Recommended Decision ("R.D.") in this proceeding.

MEIUG/PICA file these Exceptions in order to specifically except to the R.D.'s recommendations that the Companies have proved, by a preponderance of the evidence, that the proposed modifications to the Large C&I Equipment Program, including the significant budget increases, as well as the incentive range proposal, are just, reasonable, and appropriately

⁵ See MEIUG/PICA R.B. at 4.

balanced. For the reasons addressed more fully in these Exceptions, the PUC must reject the ALJ's recommendations on these issues.

II. EXCEPTIONS

1. **Exception No. 1: The ALJ Erred In Concluding That the Companies Demonstrated, by a Preponderance of the Evidence, That the Proposed EE&C Plan Modifications for Large C&I Customers Are Just, Reasonable, and Appropriately Balanced.**

In this proceeding, the Companies have proposed significant increases to their Large C&I program budgets. Specifically, Met-Ed proposed a \$4.5 million increase to the budget for its Large C&I customer programs, which would result in a 73% increase in the EEC-C rate for this customer class.⁶ Similarly, Penelec proposed a \$4 million budget increase for its Large C&I programs, which would translate into a 56% increase to its Large C&I customers' EEC-C rate.⁷

As the proponents of a rate change, the Companies have the burden of proving that their proposed changes are just, reasonable, and appropriately balanced.⁸ To carry this burden, the Companies must establish a case before an administrative tribunal using a preponderance of evidence as the requisite degree of proof.⁹ The standard of preponderance of the evidence is defined as the greater weight of the evidence, in view of all of the facts and circumstances of the case.¹⁰

As discussed herein, the R.D. erred by finding that the Companies have met their burden of proof. As a threshold matter, the Companies' testimony and documentary evidence

⁶ See MEIUG/PICA M.B. at 9-12.

⁷ Id.

⁸ See Pa. C.S. § 332(a); id. at § 315(a); id. at § 2806.1(a)(5).

⁹ Samuel J. Lansberry, Inc. v. Pa. PUC, 578 A.2d 600, 602 (Pa. Commw. 1990).

¹⁰ See Se-Lin Hosiery, Inc. v. Margulies, 70 A.2d 854, 856 n.1 (Pa. 1950).

demonstrated neither the Companies' progress in meeting their Act 129 obligations, nor how such significant rate increases to the Large C&I class alone would enable Met-Ed and Penelec to meet their Act 129 goals. The Companies further failed to reconcile their assertion that the proposed budget increases were necessary to address the 11% loss factor savings deficit in light of the fact that the Companies' EE&C Plans, by design, include built-in savings "cushions" that would easily cure any such deficit. Finally, the Companies failed to present evidence demonstrating that their proposed EEC-C rate increases to Large C&I customers comport with Act 129's requirement that electric distribution companies ("EDC") realize their energy efficiency and conservation objectives through a reasonable balance among all customer classes.

Unfortunately, the R.D. incorrectly relied upon the Companies' deficient testimony and incomplete data, while also excluding other relevant evidence set forth by MEIUG/PICA in this proceeding. Contrary to the R.D.'s erroneous finding, Met-Ed and Penelec have not met their burden of proof because the record is devoid of evidence demonstrating that the Companies' proposed EE&C program budget increases for Large C&I customers are just, reasonable, and appropriately balanced. Therefore, the R.D. must be reversed.

a. The ALJ Erred in Concluding the Companies Have Met Their Burden of Proving the Proposed EE&C Budget Increases Are Just and Reasonable.

The R.D. incorrectly determined that the Companies satisfied their burden of proving, by preponderance of the evidence, that their proposed EEC-C rate increases for Large C&I customers are just and reasonable.¹¹ In reaching this conclusion, the R.D. erroneously found that Met-Ed and Penelec met this requirement based, at least in part, on "limited data" presented by the Companies.¹² The R.D. further erred by finding that the proposed budget increases are just

¹¹ See R.D. at 15.

¹² Id. at 16.

and reasonable because they would enable the Companies to address an 11% savings deficit, thereby ignoring evidence that built-in EE&C Plan savings cushions would cure such deficit. As discussed herein, the R.D. reached these conclusions due to a misapplication of the "preponderance of the evidence standard." Thus, the R.D. mistakenly concluded that the Companies carried their burden of proof, and the R.D. must be reversed.

The R.D.'s initial misstep was to rely on the testimony of the Companies' witness, Mr. Fitzpatrick, which was offered, among other things, as support for Met-Ed's and Penelec's proposed funding increases for Large C&I programs.¹³ Witness Fitzpatrick testified that budget increases for the Large C&I Equipment Program were necessary because Large C&I customers' performance had exceeded expectations. Conversely, no EE&C program budget increases were proposed for residential and small C&I customer classes because performance in those classes was purportedly lagging.¹⁴ To that end, the Companies' own data suggested that residential and small C&I customers' performance levels were, at least in some instances, at 0%.¹⁵ Upon further questioning at hearings, however, Mr. Fitzpatrick explained that the 0% was not indicative of a 0% level of participation, but rather, 0% was merely used as a placeholder for those programs in which data was not currently available.¹⁶ According to Mr. Fitzpatrick, it takes months to evaluate the success of a program, which does not align with the Companies' claim that funding changes were required in the nascent part of the EE&C program to ensure success.¹⁷

¹³ Id.

¹⁴ See MEIUG/PICA M.B. at 21-24.

¹⁵ MEIUG/PICA R.B. at 5.

¹⁶ Tr. at 112, lines 10-17.

¹⁷ Id.

In other words, the Companies' testimony revealed that the proposed EE&C Plan changes were not based on actual program performance data because such data was not available, and would not be available for several months after the hearing date.¹⁸ Thus, the Companies' testimony underscores the lack of evidence regarding the Companies' progress in meeting the Act 129 goals and raises the very real risk that Met-Ed's and Penelec's requested budget increases for their Large C&I customers may be premature, at best, particularly without knowing the full level of participation by other customer classes.¹⁹ Accordingly, the Companies failed to demonstrate, by a preponderance of the evidence, that significant EEC-C rate increases to Large C&I customers are necessary to meet Met-Ed's and Penelec's Act 129 obligations.

Despite the Companies' own recognition of the lack of program performance data underlying their proposal, the R.D. erroneously concluded:

Given that the Plans have only been in existence for approximately two years, it is not a negative reflection on the Companies or the credibility of their witnesses' testimony – that changes to the Plans are needed to meet 2013 goals and that some of those changes may have to be based on some instances on limited data.²⁰

In other words, the R.D. effectively excused the Companies' failure to provide adequate information about their EE&C program performance. In fact, the R.D. misapplied this lack of evidence by using it as support for the Companies' proposition that the requested budget increases to Large C&I customers would position Met-Ed and Penelec to meet their Act 129 goals. The R.D. improperly attributed undue weight to the Companies' "limited data" in order to reach the conclusion that the Companies met their burden of proof by a preponderance of the

¹⁸ See *id.* at 91, lines 3-22 (testifying that the Companies did not have data regarding whether and to what extent the Companies met their May 31, 2011 goals); see also MEIUG/PICA M.B. at 18-19; MEIUG/PICA R.B. at 5.

¹⁹ MEIUG/PICA R.B. at 5.

²⁰ R.D. at 16 (emphasis in original).

evidence. The R.D. erred in affording greater weight to the Companies' "limited data," particularly in light of the other facts and circumstances of the case. Accordingly, the R.D. must be reversed.

The R.D. also erred by finding that the Companies met their burden of proving that the proposed Large C&I budget increases are just and reasonable because they would enable the Companies to recoup the 11% loss factor savings deficit.²¹ As discussed in MEIUG/PICA's Main and Reply Briefs, the Companies' twin obligations under Act 129 are to achieve: (1) a 1% load reduction by May 31, 2011; and (2) a 3% load reduction and 4.5% peak demand reduction by May 31, 2013.²² The Companies' Original EE&C Plans included savings "targets" that were designed to exceed Met-Ed's and Penelec's Act 129 obligations by 19% and 20%, respectively.²³ During the hearing, the Companies testified that they expected not only to meet their savings "targets," including the 19%-20% cushion, but also may have surpassed them.²⁴ Thus, the Companies' EE&C Plans have sizable built-in "cushions" that could easily absorb the purported 11% deficit without increasing the budget to the Large C&I programs.

Based on the foregoing, the R.D. erred in concluding that the Companies met their burden of proving, by a preponderance of the evidence, that the proposed Large C&I program budget increases are necessary to remedy the 11% deficit. The Companies' claims are clearly

²¹ See R.D. at 17.

²² See 66 Pa. C.S. §§ 2806.1(c) & (d); see also MEIUG/PICA M.B. at 3-4.

²³ In other words, the Companies' respective energy reduction goals as set forth in their EE&C Plans exceed Act 129's mandated energy reduction goal for May 31, 2011. Met-Ed's EE&C Plan has a built-in surplus of approximately 19.5% while Penelec's EE&C Plan has a built-in margin of 20.4%. See MEIUG/PICA M.B. at 7-8; see also Tr. at 60, lines 23-25; id. at 61, lines 1-2; id. at 62, lines 9-12; id. at 110, lines 10-25; id. at 111, lines 1-4.

²⁴ See Tr. at 59, lines 12-16.

outweighed by the undisputed fact that the Companies' EE&C programs include savings cushions that would be large enough to absorb the 11% deficit.

In sum, the R.D. mistakenly found that the Companies carried their burden of proving, by a preponderance of the evidence, that the proposed funding increases for Large C&I customers are just and reasonable. As discussed above, the Companies failed to present performance data demonstrating that the proposed EE&C Plan modifications are necessary to meet Act 129. The Companies also failed to demonstrate why the proposed changes are necessary to meet the purported 11% savings shortfall, in light of the built-in margins of their EE&C Plans. Thus, the R.D. must be reversed.

b. The ALJ Erred In Determining That the Companies Demonstrated the Proposed Budget Increases To Large C&I Customers Were Appropriately Balanced as Required by Act 129.

As previously stated, the Companies' EE&C Plan modifications solely targeted the Large C&I class for EE&C program funding increases. While Met-Ed and Penelec proposed funding increases of \$4.5 million and \$4 million, respectively, for Large C&I customers, neither Company proposed any funding increases for any of its remaining customer classes.²⁵ Over MEIUG/PICA's objections, the R.D. erroneously recommended approval of the Companies' proposed allocations by finding that the Companies' proposed allocations were not inappropriately "skewed" but rather appropriately balanced among customer classes in accordance with Act 129.²⁶ Unfortunately, the R.D.'s erroneous conclusion failed to recognize that Act 129 requires Pennsylvania's EDCs to meet their energy savings and conservation

²⁵ See Met-Ed/Penelec/Penn Power St. No. 1 at 9; *id.* at 12-13.

²⁶ R.D. at 21.

requirements through the combined efforts of all customer classes. Accordingly, the R.D. is in error and must be reversed.

As detailed in MEIUG/PICA's Main and Reply Briefs, Act 129 clearly envisions that an EDC will meet its peak and load reduction obligations based on the combined efforts of each of its customer classes.²⁷ Although a strictly proportionate distribution among customer classes is not required, EE&C program offerings cannot be "skewed toward or away from any particular class."²⁸ Rather, the EE&C program offerings must be "well-reasoned and balanced" and tailored to the "the potential for savings and reductions for each customer class."²⁹ 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 based on the contributions of each customer class.³⁰

In this proceeding, the funding increases requested by the Companies specifically target the Large C&I class, thereby modifying the Companies' previously approved balanced approach to meeting their Act 129 goals. As explained on brief, the Companies' proposed budget increases exceed what is necessary for the Large C&I class to meet its share of the Companies' respective Act 129 goals.³¹ As proposed, the Companies' amended EE&C Plans would result in Large C&I customers exceeding their load and demand reduction requirements, thereby relieving other

²⁷ See 66 Pa. C.S. § 2806.1(a)(5); see also MEIUG/PICA M.B. at 20-25; MEIUG/PICA R.B. at 8-12.

²⁸ See Energy Efficiency and Conservation Program, Docket No. M-2008-2069887, at 22-23 (Jan. 16, 2009) ("Implementation Order").

²⁹ Id. (emphasis added).

³⁰ MEIUG/PICA R.B. at 10.

³¹ See MEIUG/PICA M.B. at 37-41; MEIUG/PICA R.B. at 11-12.

customer classes from pulling their weight to satisfy the Companies' Act 129 obligations.³² Moreover, the Companies have not attempted to increase their outreach efforts to spur additional EE&C program participation from the residential and small C&I customer classes.³³ In fact, the Companies conceded that their proposals are designed to pick the low-hanging fruit by targeting the Large C&I class to assume the additional responsibility and expense of achieving Act 129 requirements.³⁴ Thus, Met-Ed and Penelec have failed to sufficiently prove that imposing such significant EE&C program funding increases upon Large C&I customers, rather than seeking increased EE&C participation from the small customer classes, to meet their Act 129 obligations is a "reasonably balanced" approach consistent with Act 129.

Unfortunately, the R.D. suggested the Companies' approach is acceptable because the Large C&I class currently assumes the smallest share of EE&C Plan costs on a percentage of customer class revenues.³⁵ As a threshold matter, the R.D. failed to recognize that the Large C&I customer class also has the fewest number of customers in comparison to the residential and small C&I classes. As a result, proposals for funding increases, particularly on the magnitude of those at issue in the instant proceeding, translate into significant increases in energy costs and, consequently, operating costs for these customers. As discussed herein and on briefs, such energy cost increases have a direct, adverse impact on the competitiveness of the Pennsylvania manufacturing facilities of Large C&I customers.³⁶ Thus, the R.D. improperly disregards the practical consequences of the Companies' proposals.

³² Id.

³³ Tr. at 55, lines 1-9.

³⁴ MEIUG/PICA M.B. at 24; see also Tr. at 55.

³⁵ See R.D. at 5.

³⁶ See MEIUG/PICA M.B. at 28-31; see also id. at 34-36.

Moreover, under the R.D.'s rationale, nothing would preclude the Companies from continuing to pick the low-hanging fruit by placing the onus – in terms of performance and payment – on Large C&I customers, rather than making the necessary effort to improve the performance of the other customer classes as contemplated by Act 129. Thus, if affirmed, the R.D. would establish a dangerous precedent that could be extrapolated to result in permitting EDCs to rely almost wholly on one class of customers in order to meet the EDCs' Act 129 goals.³⁷

Furthermore, the R.D. erred by disregarding MEIUG/PICA's customer impact testimony, which illustrated that the Companies' proposed budget increases would result in a significant burden to many Large C&I customers.³⁸ Specifically, the R.D. asserted that MEIUG/PICA failed to provide supporting testimony from a "qualified witness."³⁹ According to the R.D., the testimony of MEIUG/PICA witnesses Mark Chasse, a Senior Engineer with East Penn Manufacturing Company ("East Penn"), which is a member of MEIUG, and Todd Hammaker, a Project Engineering Associate at Appleton Papers, Inc. ("Appleton"), which is a member of PICA, was not acceptable.⁴⁰ The R.D.'s discussion of Mr. Hammaker's and Mr. Chasse's testimony suggested a fundamental misunderstanding of customer impact testimony. Based on this misunderstanding, the R.D. erred in rejecting MEIUG/PICA's testimony, the focus of which was to illustrate the potential real-life impacts of the Companies' proposed EE&C program changes.

³⁷ As the customer class with the fewest customers, any increase translates into significant dollar amounts for each Large C&I customer.

³⁸ See MEIUG/PICA M.B. at 26-36.

³⁹ See R.D. at 16.

⁴⁰ R.D. at 14.

MEIUG/PICA are ad hoc user groups that participate in proceedings before the PUC involving Met-Ed and Penelec. MEIUG/PICA have actively participated in PUC proceedings since approximately the 1980s. Throughout the years, and particularly in key proceedings, such as the Companies' Restructuring, Rate Transition and Default Service Plan proceedings, MEIUG/PICA have presented the customer impact testimony of their member representatives in order to illustrate the real-life impact of the Companies' proposals on Large C&I customers. The PUC has taken such testimony into consideration when rendering a decision.⁴¹

In this instance, East Penn and Appleton volunteered to sponsor customer impact testimony as members of MEIUG and PICA, respectively. The purpose of such customer impact testimony is to describe the impacts of a proposal on a member company in order to illustrate for the Commission the potential real-world impacts on MEIUG/PICA members in general.⁴² Customer impact testimony is submitted based on the consensus of MEIUG and PICA members, as they share the concerns raised by the customer impact witness. As in previous proceedings, the objective in this proceeding was to provide the testimony of Mr. Chasse and Mr. Hammaker in order to raise awareness regarding the potential impacts of the Companies' EE&C Plan modifications on Large C&I customers within MEIUG/PICA. Based on an apparent misunderstanding of the purpose of customer impact testimony, the R.D. failed to afford proper weight to MEIUG/PICA's customer impact testimony.

Furthermore, the R.D. sought to limit Mr. Chasse's customer impact testimony by noting that East Penn's business had gotten "a little better" with the downturn in the economy due to an

⁴¹ See, e.g., *Pa. PUC v. UGI Utilities, Inc.*, Docket No. R-00943064 (Nov. 10, 1994) (finding that the effect of PUC-established rates will have on industrial group members in the context of industrial competition is relevant to a proceeding).

⁴² See MEIUG/PICA/PPUG St. No. 1 at 6; see also MEIUG/PICA/PPUG St. No. 2 at 3-4.

uptick in replacement battery sales.⁴³ By focusing on this point, the R.D. again misses the purpose of Mr. Chasse's testimony. As discussed in MEIUG/PICA's Main Brief and Reply Brief, East Penn's annual EE&C charges are expected to increase from \$616,000 to more than \$750,000 under Met-Ed's amended EE&C Plan.⁴⁴ Energy costs are one of the most significant operating costs for Large C&I customers like East Penn. The Companies' proposal will cause energy costs to comprise an even larger share of operating costs. While replacement battery sales may be offering a bright spot in an otherwise gloomy economy, this positive development may be jeopardized if East Penn is forced pass on higher electricity costs to its customers.

Moreover, the R.D. claimed that there has been "no showing that approval of the modifications to their EE&C Plans requested by the Companies will violate the policy of promoting economic growth."⁴⁵ Again, MEIUG/PICA respectfully submit that the R.D. is incorrect on this point. Act 129 provides that it is in the public interest to promote economic growth.⁴⁶ Similarly, an objective of the Competition Act is to protect the Commonwealth's ability to compete in the national and international market place for industry and jobs.⁴⁷ East Penn and Appleton are Large C&I customers whose businesses require them to be competitive nationally and internationally.⁴⁸ These customers have testified that energy costs at their

⁴³ See R.D. at 18.

⁴⁴ See MEIUG/PICA/PPUG St. No. 2 at 5-6.

⁴⁵ See R.D. at 19.

⁴⁶ MEIUG/PICA M.B. at 34-35.

⁴⁷ Id.

⁴⁸ See MEIUG/PICA/PPUG St. No. 1 at 4-5; see also MEIUG/PICA/PPUG St. No. 2 at 6-7.

Pennsylvania facilities are growing, and that EEC-C rate increases are perpetuating that growth.⁴⁹ As a result, there is concern that these companies may lose their competitive edge.⁵⁰

While the Competition Act arguably is not designed to "completely shield" customers from economic impacts, it does envision that the PUC will give due consideration to the impact of its actions upon Pennsylvania industry in establishing just and reasonable rates.⁵¹ Rather than observe the economic development considerations set forth in the Competition Act, particularly in light of concerns memorialized in the testimony of actual members of Pennsylvania's industrial base, the R.D. disregards these concerns, incorrectly finding that there has been "no showings" that approval of the amended EE&C Plans will thwart Pennsylvania's economic development policy.⁵² Thus, the R.D. must be reversed.

In sum, the R.D. erred by finding the Companies met their burden of proof with respect to the significant budget increases for their Large C&I programs. As discussed herein, Met-Ed and Penelec lacked data regarding the various customer classes' progress in meeting their Act 129 goals and were unable to demonstrate that funding increases for Large C&I customers alone would enable the Companies to meet their Act 129 goals. Moreover, the Companies failed to show that the Large C&I funding increases were necessary to address an 11% savings deficit, despite the EE&C Plans' built-in, double digit savings margins that would easily remedy such a deficit. Furthermore, the Companies did not prove that the proposal to target the Large C&I class for funding increases satisfied Act 129's requirement that the Companies satisfy their

⁴⁹ See MEIUG/PICA/PPUG St. No. 1 at 11-12; see also MEIUG/PICA/PPUG St. No. 2 at 8-9.

⁵⁰ See MEIUG/PICA M.B. at 31-37.

⁵¹ See 66 Pa. C.S. § 2807(7).

⁵² Preamble of Act 129 of 2008, Pub. L. 159, No. 129 (codified at 66 Pa. C.S. §§ 2801, et seq.); see also id. at §§ 2802 (7) and 2803(6).

EE&C goals through the combined efforts of all customer classes. Given these significant evidentiary deficiencies, the R.D. erred in finding that the Companies met their burden of proof by a preponderance of the evidence. Accordingly, the R.D. must be reversed.

2. Exception No. 2: The ALJ Erred in Recommending Approval of the Companies' Incentive Range Proposal.

As part of this proceeding, the Companies proposed to restate all EE&C program incentives, including the incentives available under the Large C&I Equipment Program, as ranges in order to exercise discretion in awarding incentives within those ranges based on "market conditions" and without Commission oversight and approval.⁵³ In support of this proposal, the Companies identified only the contemplated incentive ranges.⁵⁴ Throughout this proceeding, MEIUG/PICA pointed out that Met-Ed and Penelec failed to provide important information about the incentive range proposal, such as the criteria and the process by which the Companies will exercise this discretion.⁵⁵ In considering MEIUG/PICA's arguments, however, the R.D. erroneously determined that such concerns "are undeveloped and without merit."⁵⁶ The R.D.'s determination conflicts with record evidence, namely, the Companies' testimony indicating that such details, in fact, have not been considered.⁵⁷ As a result, the R.D.'s recommendation on the Companies' incentive range proposal must be reversed.

As support for the recommendation to approve the Companies' incentive range proposal, the R.D. noted the Companies proposed to change the incentive structure for the Large C&I

⁵³ Tr. at 95, lines 17-21.

⁵⁴ Tr. at 96, lines 6-11.

⁵⁵ See MEIUG/PICA M.B. at 41-43; MEIUG/PICA R.B. at 21-23; see also Tr. at 99, lines 6-12; Tr. at 100, lines 8-12.

⁵⁶ R.D. at 19.

⁵⁷ See generally Tr. at 99-101.

lighting component of the C&I Equipment Program from a \$/Watt basis to a \$/kWh basis in order to enhance budget management and better capture energy savings contributions.⁵⁸ Additionally, the R.D. noted that the Companies proposed to establish an incentive range of \$0.05/kWh to \$0.09/kWh for the lighting component of the Large C&I Equipment Program.⁵⁹ Based on this skeleton of a proposal, the R.D. erroneously recommended approval of the Companies' incentive range proposal.⁶⁰

The R.D. inappropriately dismissed MEIUG/PICA's well-founded argument that the Companies' incentive range proposal failed to include important implementation details.⁶¹ As MEIUG/PICA demonstrated through the cross-examination of the Companies' witness, Mr. Fitzpatrick, the Companies could not explain with certainty how frequently they would evaluate program incentive levels in light of market conditions.⁶² Moreover, Mr. Fitzpatrick testified that the Companies' filings did not address how the incentive range proposal would be implemented.⁶³ Witness Fitzpatrick's testimony suggested that, prior to being asked these questions at hearings, the Companies had not put substantial consideration into integral components of their incentive range proposal.⁶⁴ Not surprisingly, the record does not contain substantial evidence to support the Companies' incentive range proposal. In the absence of such

⁵⁸ See R.D. at 19.

⁵⁹ Id.

⁶⁰ See R.D. at 21.

⁶¹ See R.D. at 19.

⁶² See Tr. at 99, lines 6-12; see also MEIUG/PICA M.B. at 42.

⁶³ See Tr. at 100, lines 8-12; see also MEIUG/PICA M.B. at 42-43.

⁶⁴ See MEIUG/PICA M.B. at 41-43.

substantial evidence, the R.D. mistakenly recommended approval of the incentive range proposal.

The R.D. further failed to acknowledge the potential adverse consequences of approving the Companies' ill-defined incentive range proposal. As explained in MEIUG/PICA's briefs, the Companies' incentive range proposal would present the potential for abuse of the Companies' seemingly unfettered exercise of discretion over incentive levels, as well as significant customer confusion.⁶⁵ Any purported benefits that this proposal may offer the Companies would be substantially outweighed by the potential abuse of discretion and customer confusion.⁶⁶

In short, as demonstrated at hearings and on brief, the record lacks substantial evidence to support the R.D.'s finding that the Companies' incentive range proposal is just and reasonable. At hearings, the Companies' own testimony confirmed the amorphous nature of the proposal and the lack of objective criteria that would guide the Companies' implementation of the incentive range proposal.⁶⁷ MEIUG/PICA also explained that the incentive range proposal, as filed, presented the potential for abuse of discretion by the Companies and customer confusion over changing incentive levels.⁶⁸ Accordingly, the R.D. erred in finding that the incentive proposal was just and reasonable because the record lacked sufficient evidence to support such a finding. Thus, the R.D. must be reversed.

By way of further error, the R.D. asserted that MEIUG/PICA's challenge to the incentive range proposal "appears to have been raised for the first time at the briefing stage."⁶⁹ The R.D.'s

⁶⁵ See MEIUG/PICA M.B. at 43; MEIUG/PICA R.B. at 22.

⁶⁶ *Id.*

⁶⁷ See MEIUG/PICA M.B. at 41-43.

⁶⁸ *Id.*

⁶⁹ R.D. at 19.

assertion is inaccurate. In fact, MEIUG/PICA challenged the sufficiency of the Companies' incentive range proposal from the very start of this proceeding, beginning with the Answer filed on March 10, 2011.⁷⁰ As previously stated, MEIUG/PICA also attempted to obtain more information about the incentive range proposal through discovery and cross-examination only to discover that the Companies did not have such details.⁷¹ The Companies indicated that the implementation details were missing from their filings because they had not yet been fully considered by the Companies.⁷² Thus, contrary to the R.D.'s assertion, MEIUG/PICA have challenged the soundness of the Companies' incentive range proposal throughout this proceeding.

In sum, the Companies, not MEIUG/PICA, bear the burden of providing the information needed to demonstrate, by a preponderance of the evidence, that the incentive range proposal is just and reasonable. The Companies have failed to meet their burden, as the record is lacking important implementation details regarding the incentive range proposal. Thus, the R.D. erred in recommending approval of the incentive range proposal and, therefore, the R.D. should be reversed.

⁷⁰ See Joint Answer of the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, and the Penn Power Users Group to the Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and the 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, Docket Nos. M-2009-2092222 et al., at 11-12 (filed March 10, 2011).

⁷¹ See generally Tr. at 95-101.

⁷² See generally Tr. at 99-101.

III. CONCLUSION

WHEREFORE, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, and the Penn Power Users Group respectfully request that the Commission:

1. Determine that the Recommended Decision erred in finding that the Companies met their burden of proof with respect to their proposed EE&C Plan modifications, including the significant rate increases to Large C&I customers and the incentive range proposal;
2. Reverse the Recommended Decision consistent with the Exceptions set forth herein; and
3. 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.

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Dated: December 12, 2011

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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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Dated this 12th day of December, 2011, in Harrisburg, Pennsylvania.

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