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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  Harrisburg, PA. 17105-3265 |  |

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|  | Public Meeting held May 23, 2013 |
| Commissioners Present: |  |

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| Robert F. Powelson, Chairman | | |  |
| John F. Coleman, Jr., Vice Chairman  Wayne E. Gardner | | |  |
| James H. Cawley | | |  |
| Pamela A. Witmer | | |  |
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| Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company to Approve Modification of the Energy Efficiency and Conservation Charge Rider to Include Final Reconciliation Costs and to Recover the Full Costs for Metropolitan Edison Company’s Suspension of the Residential Direct Load Control Program Effective May 31, 2013 | Docket No. M-2009-2092222  M-2009-2112952  M-2009-2112956 |

**Opinion and Order**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration is the Petition of Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec) and Pennsylvania Power Company (Penn Power) (collectively, FirstEnergy Companies or Companies) to Approve Modification of the Energy Efficiency and Conservation Charge Rider to Include Final Reconciliation Costs and to Recover the Full Costs for Metropolitan Edison Company’s Suspension of the Residential Direct Load Control Program (Petition) filed on April 18, 2013, at the above dockets. This Order grants, in part, and denies, in part, the Companies’ Petition and tentatively approves a new mechanism for the recovery of the full costs associated with suspending the Metropolitan Edison Company’s Residential Direct Load Control Program.

**BACKGROUND**

Act 129 of 2008 (the Act or Act 129) was signed into law on October 15, 2008, and became effective on November 14, 2008. Among other things, the Act created an Energy Efficiency and Conservation (EE&C) Program, codified in the Pennsylvania Public Utility Code at Sections 2806.1 and 2806.2, 66 Pa. C.S. §§2806.1 and 2806.2. This initial program required an Electric Distribution Company (EDC) with at least 100,000 customers to adopt an energy efficiency and conservation plan (EE&C plan), approved by the Commission, to reduce electric consumption by at least one percent (1%) of its expected consumption for June 1, 2009 through May 31, 2010, adjusted for weather and extraordinary loads. This one percent (1%) reduction was to be accomplished by May 31, 2011. By May 31, 2013, the total annual weather normalized consumption is to be reduced by a minimum of three percent (3%). Also, by May 31, 2013, peak demand is to be reduced by a minimum of four-and-a-half percent (4.5%) of the EDC’s annual system peak demand in the 100 hours of highest demand, measured against the EDC’s peak demand during the period of June 1, 2007 through May 31, 2008.

On January 15, 2009, the Commission adopted an Implementation Order at Docket No. M-2008-2069887[[1]](#footnote-1) that established the standards each plan must meet, and which provided guidance on the procedures to be followed for submittal, review and approval of all aspects of the EE&C plans. The Commission subsequently approved an EE&C plan for each affected EDC.

Another requirement of Act 129 directs the Commission to evaluate the costs and benefits of the adopted EE&C Program by November 30, 2013, and every five years thereafter. The Act provides that the Commission must adopt additional incremental reductions in consumption and peak demand if the benefits of the EE&C Program exceed its costs. In accordance with that directive, on August 2, 2012, the Commission adopted an Implementation Order at Docket No. M-2012-2289411.[[2]](#footnote-2) The Phase II Implementation Order established the standards each plan must meet, to include additional incremental reductions in consumption that each EDC must meet, and provided guidance on the procedures to be followed for submittal, review and approval of all aspects of EDC EE&C plans. The Phase II Implementation Order also provided guidance on the recovery of costs for Phase II and addressed issues related to the EDCs’ Phase I budgets.

The Commission did not include any demand reduction (DR) targets and corresponding DR programs for the EDCs’ Phase II EE&C Plans. In the Phase II Implementation Order, the Commission explained that its interpretation of Section 2806.1(d)(2) of Act 129, 66 Pa. C.S. § 2806.1(d)(2), is that, in order for the Commission to prescribe specific peak DR targets for subsequent phases of Act 129, the DR programs must be proven to be cost-effective. Phase II Implementation Order at 32.

On April 18, 2013, the FirstEnergy Companies filed a petition requesting approval to amend the Companies’ Phase I Energy Efficiency and Conservation Charge Riders (EE&C-C Riders) to allow the EE&C-C Riders to remain in effect until all costs have been recovered. The EE&C-C Riders currently end on May 31, 2013, and do not provide for the recovery of Phase I costs that are incurred after May 31, 2013. The Petition also requested approval for Met-Ed to recover the full costs associated with suspending its Residential DLC Program effective May 31, 2013. The Petition included the Testimony of Kevin M. Siedt, including Exhibits KMS-1 through KMS-4, as Appendix A, and the Testimony of Timothy M. Richard, as Appendix B, as well as a redlined version of Met-Ed’s Phase I EE&C Plan reflecting the proposed changes.

A Petition to Intervene and Answer was filed by the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance and the Penn Power Users Group (collectively, Industrial Customer Groups or Groups) on May 8, 2013. The Office of Consumer Advocate (OCA) also filed Comments on May 8, 2013.

**DISCUSSION**

**A. Modification of the EE&C-C Riders**

The initial EE&C-C Riders for the Companies allowed for a 39-month computation period from March 1, 2010 through May 31, 2013. The Companies state, however, that Phase I costs will continue to accrue up to and through September 30, 2013. As such, the Companies request modification of the EE&C-C Riders to provide the ability to recover Phase I costs that accrue beyond May 31, 2013. Specifically, the Companies request approval to modify their respective EE&C-C Rider rates effective June 1, 2013, allowing them to be computed by including a calculation of the net remaining budgeted costs as of May 31, 2013, using cumulative actual revenues by class through January 31, 2013, and the latest budgeted revenues for February 1, 2013 through May 31, 2013. The Companies state that any net remaining EE&C costs would be recovered based on kilowatt-hour deliveries, except for the Industrial Class, which recovers cost on a peak load share kilowatt basis for the period June 1, 2013 through May 31, 2014. As of September 30, 2013, a final reconciliation of all actual costs incurred and actual revenue collected through September 30, 2013, plus budgeted revenues for the period October 1, 2013 through December 31, 2013, would be performed. The Companies propose to recover or refund any under- or over-collection during the period beginning January 1, 2014, and ending May 31, 2014.[[3]](#footnote-3)

The Industrial Customer Groups believe the Petition may require further investigation. Specifically, the Groups state that the Companies proposal to extend their Phase I cost recovery until September 30, 2013, may be prohibited by the Commission’s Phase II Implementation Order. The Industrial Customer Groups reference the language at page 107 of the Phase II Implementation Order, which states that the EDCs may not recover costs from Phase I after May 31, 2013, other than “to account for those program measures installed and operable on or before May 31, 2013, and to finalize the [Conservation Service Provider] and administrative fees related to Phase I.” Based on this language, the Groups believe that, depending on which costs the Companies recover through September 30, 2013, there is a potential that such a collection would be inconsistent with the Phase II Implementation Order.[[4]](#footnote-4)

The Industrial Customer Groups also request clarity regarding the recovery of costs through May 31, 2014. The Groups assert that the Petition is unclear as to why the Phase I reconciliation could not conclude at an earlier date. The Groups request that the Commission evaluate whether or not the Companies’ proposal complies with Act 129 and the Commission’s Act 129 Orders. Lastly, the Industrial Customer Groups express concern with respect to any modifications to rate design or billing associated with the Companies’ proposed reconciliation mechanism that may impact Large Commercial and Industrial customers.[[5]](#footnote-5)

The OCA expresses concern over the Companies recovering Phase I and Phase II costs concurrently. The OCA submits that, if the Commission approves the Companies’ proposal, the Companies should begin reconciliation as soon as possible, rather than waiting until January 1, 2014, and extend the recovery timeframe for a longer period than six months, without interest, in order to mitigate any impact on customers.[[6]](#footnote-6)

The Commission approves the Companies’ proposal to modify the EE&C-C Riders to recover Phase I costs that continue to accrue after the completion of Phase I. The Commission recognizes that customers may take advantage of rebates for equipment installed on or before May 31, 2013, the conclusion of Phase I, and that, as such, the Companies will incur the costs associated with those measures beyond that date.

The Industrial Customer Group questioned why the Phase I reconciliation could not conclude at an earlier date and the OCA commented that the reconciliation should begin as soon as possible, rather than waiting until January 1, 2014. To clarify, the June 1, 2013 rates that the Companies are proposing to put into effect are rates developed to reconcile costs incurred and revenue collected through May 31, 2013. The Companies will perform another reconciliation on September 30, 2013, to ensure all actual costs are being reconciled to revenues collected. This reconciliation will be used to develop rates for the five-month period of January 1, 2014 through May 31, 2014. At that time, a final 12-month reconciliation for the period ending May 31, 2014, will be performed pursuant to Section 1307(e) of the Pennsylvania Public Utility Code, 66 Pa. C.S. §1307(e). The Companies’ proposed modifications are consistent with prior Commission guidance regarding Act 129 Phase I cost recovery.

**B. Recovery of Costs of DLC Program**

Because a discontinuance of the Residential DLC Program was not anticipated at the time of the Program’s approval, Met-Ed’s budget for the Residential DLC Program did not include funds to cover the removal of equipment used to implement the program.[[7]](#footnote-7) The record shows that contracts entered into with Met-Ed customers participating in the DLC Program permits the customers to leave the program and to request the removal of the Integrated Distributed Energy Reduction (IDER) equipment.[[8]](#footnote-8) Met-Ed anticipates that, upon notifying the DLC Program participants of its expiration, a large number of customers will exercise their right to request removal of the IDER equipment.[[9]](#footnote-9) As such, Met-Ed asserts that it will incur unforeseen DLC Program costs. There is currently $226,783.00 remaining in the budget for the Residential DLC Program. Met-Ed requests a net budget increase of $3,984,171.00, taking the total Residential DLC Program budget to $4,210,954.00.[[10]](#footnote-10) For the purposes of budgeting, Met-Ed assumes that all customers will request removal of the IDER equipment.[[11]](#footnote-11) The total budget of approximately $4.2 million would support the removal of all 19,300 IDER devices that remain at customers’ homes. Met-Ed states that the anticipated removal cost, including the requested budget increase, is within its two percent (2%) budget limitation for its EE&C Plan.[[12]](#footnote-12)

Regarding the recovery of the increased budget, Met-Ed references nuclear decommissioning as an example and proposes that revenues be collected through the EE&C-C charge, with a regulatory expense and associated regulatory liability account increase for every dollar collected. As costs are actually incurred, Met-Ed states that the regulatory liability account will be reduced until there is no additional removal requests expected. At that point, any remaining balance in the regulatory liability account could, at a future point in time, be returned to customers. In the meantime, the customers’ funds would be treated as a deduction from rate base in any future rate proceeding, treating the sum similarly to customer deposits.[[13]](#footnote-13) Additionally, the $4,210,954.00 cost would be included in the final reconciliation process requested by Met-Ed in the Petition.[[14]](#footnote-14)

The OCA does not oppose the collection of the remaining costs for removal of the IDER equipment within Met-Ed’s 2% budget cap.[[15]](#footnote-15)

The Commission recognizes the need for Met-Ed to increase its Residential DLC Program budget to cover the costs of IDER device removal. As such, we approve Met-Ed’s requested budget increase of $3,984,171.00 to provide a total budget of $4,210,954.00 for its Residential DLC Program. The Commission, however, does have concerns with Met-Ed’s proposed recovery mechanism for the costs of the Residential DLC Program. In the Phase II Implementation Order, we stated that we do “not believe it to be sound policy to continue spending Phase I budgets in Phase II when those monies should be returned back to the appropriate rate classes.”[[16]](#footnote-16) While this language was in reference to costs associated with savings in excess of the 3% that apply to the Phase II reduction requirements, we believe these same concerns apply to Met-Ed’s current proposal.

Met-Ed proposes to continue spending the budget for the Residential DLC Program for IDER device removal until no additional removal requests are expected, with any remaining balance being treated as a deduction from rate base in any future rate proceeding.[[17]](#footnote-17) The Commission is concerned that a Met-Ed rate proceeding may not occur in the relatively near future. Additionally, Met-Ed did not specify that the remaining balance be included as a deduction on its *next* rate proceeding but, instead, referenced “any” future rate proceeding. We do not believe it to be sound policy to allow Met-Ed to maintain those funds in a regulatory liability account for an unknown amount of time. As such, we propose that Met-Ed be allowed to continue utilizing the Residential DLC Program budget for the removal of IDER devices until no additional removal requests are expected or until the expiration of Phase II, at which time the balance would be included in Met-Ed’s Phase II reconciliation, whichever comes first. This mechanism allows Met-Ed to pay for the costs of IDER device removal for an additional three years, following the DLC Program’s expiration on May 31, 2013, while allowing any remaining funds to be returned to customers in a reasonable timeframe. The Commission will tentatively approve this cost recovery mechanism. Parties may submit comments on the tentatively approved cost recovery mechanism within 15 days of the entrance of this Order. If no adverse comments are filed regarding the modified Met-Ed DLC Program cost recovery mechanism, this Order shall be deemed final without further Commission action.

# CONCLUSION

This Opinion and Order grants, in part, and denies, in part, the Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company to Approve Modifications of the Energy Efficiency and Conservation Charge Rider to Include Final Reconciliation Costs and to Recover the Full Costs for Metropolitan Edison Company’s Suspension of the Residential Direct Load Control Program Effective May 31, 2013. This Opinion and Order grants the request to amend the Companies’ Phase I Energy Efficiency and Conservation Charge Riders to allow the Riders to remain in effect until all costs have been recovered. This Opinion and Order also grants Metropolitan Edison Company’s request for an additional $3,984,171.00 for its Residential Direct Load Control Program, providing a total budget of $4,210,954.00 for this program. This Opinion and Order denies Metropolitan Edison’s proposed recovery mechanism for the recovery of the full costs associated with suspending its Residential Direct Load Control program and tentatively approves a new mechanism for the recovery of those costs.

**THEREFORE,**

**IT IS ORDERED:**

1. That the Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company seeking approval of modifications to their Energy Efficiency and Conservation Charge Rider to include final reconciliation costs is granted, as modified by this Opinion and Order.

2. That the Petition of Metropolitan Edison Company seeking to recover the full costs related to its suspension of the Residential Direct Load Control Program is tentatively approved, as modified by this Opinion and Order. Parties may submit comments on the tentatively approved cost recovery mechanism, as modified by this Opinion and Order, within 15 days of the entrance of this Opinion and Order. If no adverse comments are filed, this Opinion and Order shall be deemed final without further Commission action.

3. That a copy of this Opinion and Order be served on Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, the Office of Consumer Advocate, the Office of Small Business Advocate, the Bureau of Investigation and Enforcement and all parties that intervened in this proceeding.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: May 23, 2013

ORDER ENTERED: May 23, 2013

1. *See*, *Energy Efficiency and Conservation Program*, Implementation Order at Docket No. M-2008-2069887, entered January 16, 2009 (Phase I Implementation Order). [↑](#footnote-ref-1)
2. *See*, *Energy Efficiency and Conservation Program*, Implementation Order at Docket Nos. M-2012-2289411 and M-2008-2069887, entered August 3, 2012 (Phase II Implementation Order). [↑](#footnote-ref-2)
3. Petition at 10 and 11. [↑](#footnote-ref-3)
4. The Industrial Customer Groups Comments at 5. [↑](#footnote-ref-4)
5. *Id.* [↑](#footnote-ref-5)
6. OCA Comments at 4. [↑](#footnote-ref-6)
7. Petition at 11 and 12. [↑](#footnote-ref-7)
8. Testimony of Timothy M. Richard at 4. [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. Petition at 12. [↑](#footnote-ref-10)
11. Testimony of Timothy M. Richard at 5. [↑](#footnote-ref-11)
12. Petition at 10. [↑](#footnote-ref-12)
13. Testimony of Kevin M. Siedt at 6. [↑](#footnote-ref-13)
14. Petition at 12. [↑](#footnote-ref-14)
15. OCA Comments at 3. [↑](#footnote-ref-15)
16. Phase II Implementation Order at 107. [↑](#footnote-ref-16)
17. Petition at 6. [↑](#footnote-ref-17)