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June 3, 2011

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

VIA HAND DELIVERY

RE: Investigation of Pennsylvania's Retail Electricity Market; Docket No. I-2011-2237952

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") an original and five (5) copies of the Comments of the Industrial Energy Consumers of Pennsylvania ("IECPA"), Duquesne Industrial Intervenors ("DII"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Coalition ("PICA"), Penn Power Users Group ("PPUG"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customers Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customer Groups") in the above-referenced proceeding.

Please date stamp the extra copy of this transmittal letter and Comments, and kindly return them to our messenger for our filing purposes.

Very truly yours,

McNEES WALLACE & NURICK LLC

By

Shelby A. Linton-Keddie

Counsel to the Industrial Customer Groups

SLK/km

Enclosures

c: Office of Competitive Market Oversight (via E-mail)
Patricia Krise Burket, Assistant Counsel, Law Bureau (via E-mail)
H. Kirk House, Assistant Counsel, Office of Special Assistants (via E-mail)

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SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation of Pennsylvania's :
Retail Electricity Market : Docket No. I-2011-2237952
:

COMMENTS OF THE INDUSTRIAL CUSTOMER GROUPS

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Dated: June 3, 2011

I. INTRODUCTION

In 1996, Pennsylvania passed the Electricity Generation Customer Choice and Competition Act ("Competition Act" or "Act"). See 66 Pa. C.S. §§ 2801-2812.¹ As part of the Act, the Legislature stated that "[e]lectric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions." 66 Pa. C.S. § 2802(9). Further, the Legislature also recognized that "[t]he cost of electricity is an important factor in decisions made by businesses concerning locating, expanding and retaining facilities in this Commonwealth." 66 Pa. C.S. § 2802(6).

In an effort to stay abreast of the changing electricity marketplace since the Competition Act was passed in 1996, the Pennsylvania Public Utility Commission ("PUC" or "Commission"), during the context of the recent FirstEnergy—Allegheny Power merger indicated that a statewide investigation would be conducted "with the goal of making recommendations for improvements to ensure that a properly functioning and workable competitive retail electricity market exists in the state."² To that end, the PUC entered an Order on April 29, 2011, initiating an investigation into Pennsylvania's retail electricity market. While the investigation itself will proceed in two distinct phases, the Commission's April 29, 2011, Order only initiates "phase one" of the investigation, which seeks answers to a number of questions "designed to assess the status of the current retail market and explore what changes need to be made to allow customers to best realize the benefits of competition." April 26, 2011, Order at 2.

¹ Act 129 of 2008 subsequently amended Chapter 28 of the Public Utility Code and added Sections 2813-2815. 66 Pa. C.S. §§2813-2815,

² See *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and First Energy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company and Trans-Allegheny Interstate Line Company*, Docket Nos. A-2010-2176520 and A-2010-2176732 (Order entered March 8, 2011), at 46.

The Industrial Energy Consumers of Pennsylvania ("IECPA") is an association of energy-intensive industrial companies operating facilities across the Commonwealth of Pennsylvania. IECPA's members consume in excess of 25% of the industrial electricity in Pennsylvania and employ approximately 41,000 workers. Also sponsoring these Comments are coalitions of industrial customers receiving service from most of the Commonwealth's Electric Distribution Companies ("EDCs"): Duquesne Industrial Intervenors ("DII"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customer Groups").

Because the Industrial Customer Groups use substantial volumes of electricity in their manufacturing and operational processes, electric costs represent a sizable component of overall operating costs, and therefore, as recognized by the General Assembly in the Competition Act, "[t]he cost of electricity is an important factor in decisions made by businesses concerning locating, expanding and retaining facilities in this Commonwealth." In light of this direct and substantial impact, the Industrial Customer Groups submit these Comments in order to highlight areas of concern to Large Commercial and Industrial ("C&I") customers with respect to the Commission's investigation into Pennsylvania's retail electricity market. The Industrial Customer Groups do not, at this time, have definitive positions regarding many of the directed questions. As customers that would like to see full achievement of the benefits envisioned by the Competition Act, the Industrial Customer Groups believe that this investigation should be focused on ensuring that Pennsylvania's business and industry have access to electricity rates that enable the Commonwealth to remain competitive in the national and global marketplace, while

also ensuring that all customers have just and reasonable electricity rates. Focusing on the number of customers that are shopping is inappropriate unless those shopping statistics are coupled with electricity rates that enable Pennsylvania to attract and retain jobs. Introducing direct access for customers to alternative electricity suppliers was a means to achieve the Commonwealth's economic development and ratepayer-focused goals. Pennsylvania's past and future efforts must keep the original goal in mind. The Industrial Customer Groups look forward to working with the Commission and other stakeholders in subsequent phases of this investigation.

II. COMMENTS

A. In Addition to Focusing on Issues Specific to Pennsylvania's Retail Electric Market, the Commission Should Take This Opportunity to Also Focus Reforming the Wholesale Markets.

As indicated above, the Industrial Customer Groups will be addressing general areas of concern, and will not, in this phase of the investigation, be responding specifically to every question posed by the PUC in the April 26, 2011, Order. To that end, and upon review of the Commission's eleven questions, the Industrial Customer Groups remain concerned that the Commission's investigation does not adequately address the fundamental flaws in the wholesale markets that undermine retail customers' efforts to obtain appropriate pricing from Electric Generation Suppliers ("EGSs"). The Industrial Customer Groups urge the Commission to expand the investigation to include wholesale market reforms that the Commonwealth should support related to PJM Interconnection, LLC's ("PJM") Locational Marginal Pricing ("LMP") energy system and the Reliability Pricing Model ("RPM") capacity system. The Commission participates at the Federal level regarding these issues, which the Industrial Customer Groups and other customer interests believe are inflating pricing in comparison to alternative approaches

that could be pursued. In the end, all EGSSs provide pricing based on the PJM mechanisms, so these concepts are extremely important to attaining the goals of the Competition Act. The *Industrial Customer Groups* would welcome the opportunity to engage in a constructive dialogue with the Commission through this investigation to determine whether the PJM administrative pricing models for energy and capacity are helping, or hindering, the achievement of Pennsylvania's goals.

B. Consistent with the Competition Act, Electric Distribution Companies Should Offer Fixed Economic Development Rates.

To meet the goals of the Competition Act, it should be mandatory for Electric Distribution Companies ("EDCs"), as default service providers, to offer a fixed-price option for large customers (*i.e.*, greater than 500 kW in maximum registered peak load). An overarching objective of the Competition Act is to "benefit all classes of customers and to protect this Commonwealth's ability to compete in the national and international marketplace for industry and jobs." 66 Pa. C.S. § 2802(7). As the General Assembly determined when passing the Competition Act, the "cost of electricity is an important factor in decisions made by businesses concerning locating, expanding, and retaining facilities in this Commonwealth." *Id.* § 2802(6). To protect the Commonwealth's ability to retain existing and entice new business and industry, and in light of the General Assembly's recognition that a key to realizing this objective is linked to the cost of electricity, the Commission should mandate that EDCs or alternate default service providers offer long-term, fixed-price default service options for larger customers; otherwise, Large C&I customers will be severely disadvantaged in their ability to compete in the national and international marketplace for industry and jobs. Such an outcome clearly contravenes the intent of the Competition Act.

The Competition Act also recognizes EDCs' ability to develop and implement rates that will specifically address customers' needs. Under Section 2806(h), the Commission has the authority to "approve flexible pricing and flexible rates, including negotiated contract-based tariffs designed to meet the specific needs of a utility customer and to address competitive alternatives." See 66 Pa. C.S. § 2806(h). Due to varying circumstances, many Large C&I customers need long-term price certainty in order to manage and anticipate energy costs. The lack of a long-term, fixed-price option will undermine these customers' cost management efforts and, consequently, place them at a competitive disadvantage vis-à-vis industry rivals located in lower-cost jurisdictions. In light of the Competition Act's intent to permit negotiated tariffs in order to meet the needs of a specific utility customer, requiring EDCs (or other default service providers) to offer a long-term, fixed-price option is consistent with the Competition Act.

The Competition Act further requires that electric service be available to all customers on reasonable terms and conditions. See 66 Pa. C.S. § 2802(9). Only having a Price-to-Compare ("PTC") that is "adjusted on a monthly basis, or more frequently" for Large C&I customers is not reasonable, because it subjects such customers to arbitrary price increases, which can detrimentally affect load usage. Moreover, frequent adjustments, which are largely driven by unpredictable LMP prices, resulting from a flawed wholesale market design that is highly sensitive to steep and volatile natural gas prices, may also result in higher than expected prices. Because large customers such as the members of the Industrial Customer Groups utilize significant amounts of electricity, this can result in significant budget expenditures. This level of price volatility undermines a company's business planning procedures. If large customers are unable to specifically determine and plan for budgetary expenses, their ability to manage energy costs and, thus, optimize production/manufacturing processes will likely be compromised. As a

result, allowing a default service pricing strategy that undermines large customers' ability to do business in the Commonwealth is directly inconsistent with the Competition Act, which recognizes that electric service is "essential...to orderly economic development." 66 Pa. C.S. § 2802(9).

The intent of the Competition Act is to provide a default service provider that is a competitive alternative to the marketplace. See 66 Pa. C.S. § 2806(h). If there is no requirement for EDCs (or other default service providers) to offer a long-term, fixed-price option for large customers, such customers will be forced into the competitive market in order to obtain fixed-price options and, consequently, the DSP will not be a competitive alternative. Under this scenario, Electric Generation Suppliers ("EGSs") would have the opportunity to raise their fixed prices significantly above what the market would otherwise bear merely because EGSs would control the universe of fixed-price options and, consequently, could exercise considerable leverage vis-à-vis customers seeking such options. As a result, large customers would be subject to unjust and unreasonable rates from EGSs as a direct result of the lack of a fixed-price option for Provider of Last Resort ("POLR") rates.

Artificially boosting shopping levels by such means is not consistent with true competition or success under the Competition Act. Mandating that default service providers offer a long-term, fixed-price option for Large C&I customers will ensure that default service providers represent a competitive alternative in the post-restructuring marketplace. Moreover, such a long-term, fixed-price option offered by EDCs, as default service providers, can act as a benchmark to discipline the prices that EGSs, if left unfettered, could demand in the market. Accordingly, EDCs should be required to offer at least one long-term, fixed-price option for Large C&I customers.

C. Response to Question 9: What Changes, to Regulations or Otherwise, Can the Commission Implement on Its Own under the Existing Default Service Paradigm to Improve the Current State of Competition in Pennsylvania?

To date, the Industrial Customer Groups have noticed wide variations in the adder for Hourly Price Default Service throughout the Commonwealth. If hourly priced service ("HPS") is the primary default service option for Large C&I customers, the adder should be as minimal as possible. In this investigation, the Industrial Customer Groups would like to discuss the variations among EDC territories and determine whether a standardized approach to HPS that minimizes the adder is possible.

III. CONCLUSION

While the Industrial Customer Groups support the PUC investigation's goal of "making recommendations for improvements to ensure that a properly functioning and workable competitive retail electricity market exists in the state," Industrial Customer Groups' question whether shopping statistics are the appropriate measure of the "success" or "failure" of a model. Throughout this investigation, the Industrial Customer Groups urge the Commission to ensure that the goals of the Competition Act are achieved, in order to ensure that Pennsylvania can continue to be a place in which businesses will locate, expand and retain facilities in the Commonwealth. The Industrial Customer Groups look forward to working with the Commission and other interested stakeholders throughout all phases of the investigation.

WHEREFORE, the Industrial Energy Consumers of Pennsylvania, Duquesne Industrial Intervenors, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Comments.

Respectfully submitted,

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Dated: June 3, 2011