**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held January 12, 2012

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

Wayne E. Gardner

James H. Cawley

Pamela A. Witmer

Metropolitan Edison Company M-2009-2092222

Request For Proposal Process

For Energy Efficiency And

Demand Response Consulting

Services

Pennsylvania Electric Company M-2009-2112952

Request For Proposal Process

For Energy Efficiency And

Demand Response Consulting

Services

Pennsylvania Power Company M-2009-2112956

Request For Proposal Process

For Energy Efficiency And

Demand Response Consulting

Services

**Opinion and Order**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance and the Penn Power Users Group (collectively MEIUG *et al.*) and the Exception Seeking Clarification of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company (collectively the FirstEnergy Companies or the Companies) filed on December 12, 2011, to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ)

Dennis J. Buckley, issued by the Commission on December 5, 2011. Replies to Exceptions were not permitted.

This Opinion and Order adopts the ALJ’s recommendation for Approval of the Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company (the FirstEnergy Companies or Companies) which modify their Energy Efficiency and Conservation Plans (EE&C Plans). The Companies have filed a black-lined version of the modified EE&C Plans (the First Amended Plans).

**Procedural History**

A detailed history of the background of this proceeding, together with that of our various other proceedings under Act 129 of 2008, P.L. 1592,

66 Pa. C.S. §§ 2806.1 *et seq.* (Act 129) was set forth in the Commission’s decisions in *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans,* Docket Nos. M-2009-2092222, *et al.* (Order entered October 28, 2009) (*October 2009 Order),* and *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.* (Order entered January 28, 2010)

(*January 2010 Order),* and *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.* (Order entered February 26, 2010) (*February 2010 Order)*. Consequently, this section is limited to a summary of the procedural history of the Companies’ First Amended EE&C Plans.

On February 18, 2011, the FirstEnergy Companies petitioned the Commission for amendment of Commission Orders approving the FirstEnergy Companies’ EE&C Plans and for approval of the Companies’ First Amended EE&C Plans. The filing took the form of a Main Petition and an Expedited Petition. The ALJ’s Recommended Decision addressed only the Main Petition since the Expedited Petition was considered and resolved by the Commission by an Order entered March 18, 2011. R.D. at 2. Likewise, this Opinion and Order will consider only the Main Petition.

On April 5, 2011, the Commission issued a Secretarial Letter stating that the Commission recognized the need to resolve the Main Petition in a timely fashion, consistent with due process. The Secretarial Letter directed the Office of Administrative Law Judge (OALJ) to proceed in this matter with a view toward the issuance of a Recommended Decision with Exceptions due no later than ten (10) days after the issuance of the Recommended Decision. Reply Exceptions would not be accepted. *Id.*

On June 28, 2011, a hearing was held at which the FirstEnergy Companies presented the testimony and exhibits of its two witnesses, and MEIUG *et al*. presented the testimony of two witnesses and associated exhibits. A hearing transcript of 192 pages was produced. R.D. at 3-5.

Main Briefs were filed by the Companies, the Office of Consumer Advocate (OCA) and MEIUG *et al*. on July 12, 2011. Reply Briefs were filed by the Companies, the OCA and MEIUG *et al*. on July 20, 2011. *Id.* As previously stated, the Recommended Decision approving the Companies’ modified EE&C Plans was issued on December 5, 2011. Exceptions[[1]](#footnote-1) were filed by MEIUG *et al.* on December 12, 2011, and an Exception Seeking Clarification was filed by the Companies on December 12, 2011.

**Discussion**

 **Legal Standards**

Initially, we are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pennsylvania, et al., v. Pa. PUC,* 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984). Any exception or argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

In Commission proceedings, the proponent of a rule or order bears the burden of proof. 66 Pa. C.S. § 332(a). To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence.

*Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact

sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109,

413 A.2d 1037 (1980).

In the instant case, the Companies bear the burden of proving by a preponderance of evidence that the proposed modifications to their EE&C Plans result in EE&C Plans that continue to satisfy the requirements of Act 129 and the prior related Orders of the Commission. Act 129 requires that an Electric Distribution Company (EDC) reduce electric consumption by at least one percent of its expected consumption for June 1, 2009, through May 31, 2010, adjusted for weather and extraordinary loads. This one percent reduction was to be accomplished by May 31, 2011.

66 Pa. C.S. § 2806.1(c)(1). By May 31, 2013, the total annual weather-normalized consumption is to be reduced by a minimum of three percent. 66 Pa. C.S. § 2806.1(c)(2). Also, by May 31, 2013, peak demand is to be reduced by a minimum of 4.5 percent 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.

66 Pa. C.S. § 2806.1(d)(1). R.D. at 8, 9.

Act 129 permits an EDC to recover, on a full and current basis from customers, all reasonable and prudent costs incurred in the provision or management of its EE&C plan. The costs, however, are limited to two percent of the EDC’s total annual revenue as of December 11, 2006. 66 Pa. C.S. § 2806.1(g) and (k). R.D. at 9.

In his Recommended Decision, the ALJ made twenty-seven Findings of Fact and reached thirteen Conclusions of Law. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

 **Description of the Proposed Changes**

Large C&I Equipment Programs - The Companies propose an additional $4.5 million in funding for Met-Ed, $4 million for Penelec and $400,000 for Penn Power. The Industrial Motors and Variable Speed Drive Program was consolidated into the Large C&I Equipment Program to leverage the success of the Large C&I Equipment Program and to raise customer awareness of the incentives available for industrial motors. In addition, the consolidation creates marketing and accounting synergies. A change in the incentive structure and incentive level of the lighting component of the Large C&I Equipment Program is also proposed. The Companies moved, effective March 1, 2011, from an incentive paid on a $/Watt basis to a $/kWh basis, which provides more consistency and a better correlation between the incentive paid and the energy savings contributed by the customer, as well as more predictability in managing program budgets. The Companies also established, effective March 1, 2011, an incentive range, not to exceed $0.09/kWh for the lighting measure[[2]](#footnote-2), with the initial incentive set at $0.05/kWh. In the event the Commission does not approve the use of a range for this incentive or the incentive level that has been established, a rebate true-up mechanism will be adopted. R.D. at 10, 11; Companies’ MB at 5.

Small C&I Programs - Proposed changes include: (1) including Small C&I customers in the peak load reduction program; (2) adjusting the incentive level and incentive structure for the Small C&I lighting measure to match the proposed changes to the Large C&I Equipment Program; (3) adding a new direct install component to the Small C&I Equipment Program to target strip malls, small grocery stores and certain restaurants to optimize savings; (4) combining the Energy Audit and Technical Assessment Program with the Small C&I Equipment Program to provide customers with a more effective introduction to the Small C&I Equipment Program and to create marketing/accounting synergies that streamline program administration; and (5) adding a new conservation kit to the Small C&I Equipment Program through opt-in distribution, initially offering CFL bulbs to test market acceptance and to achieve increased market penetration with the intent to add measures as market conditions warrant. All of these changes are funded by shifting funds from existing Small C&I customer program budgets. No party challenged any of these proposed changes to the Small C&I programs either through testimony or during the evidentiary hearing. R.D. at 11;

Companies’ MB at 5, 6.

Residential Programs - Proposed changes include: (1) consolidating the Residential Whole Building Comprehensive Program with the Home Energy Audit and Outreach Program; (2) adding a new Behavioral Modification Program to induce savings through dissemination of benchmark usage data and tips for reducing consumption;
(3) increasing incentives for air conditioner and heat pump tune-ups from $25 to a not-to-exceed $60 in order to increase customer participation; (4) setting incentives for CFLs at a range of $0.75 to $1.50/bulb and a not-to-exceed level of $2.50/bulb for specialty bulbs in order to increase market penetration in the CFL market; (5) adding Energy Conservation kits for multi-family residential and master-metered facilities to increase CFL market penetration and generate interest in efficiency measures among multi-family tenants; and (6) replacing the Pump and Motor Single Speed incentive with a variable speed pool pump incentive up to $200 per pump to maximize savings. To fund these changes, funds from under-performing programs such as the New Home Construction program, the Appliance Turn-In Program and the Energy Efficient HVAC Equipment Program have been shifted to the Home Energy Audit and Outreach Program and the Multi-Family Building Program. No party challenged any of these proposed changes to the Residential Programs either through testimony or during the evidentiary hearing. Companies’ Main Brief at 6-7. In fact, the position of the OCA is that the Companies’ proposed modifications to the Residential Programs, within the existing Residential budget, are reasonable. R.D. at 11, 12; Companies MB at 6, 7; OCA MB at 5.

Government Program Changes - Increased funds were proposed to raise incentive ranges to levels consistent with those offered to Large and Small C&I customers in order to generate or renew interest in these offerings. This program change was the subject of the Expedited Petition previously approved by the Commission. R.D. at 12; Companies’ MB at 7.

Other Changes - The Companies also have proposed editorial changes for purposes of clarifying or correcting the Current EE&C Plans, and changes to streamline administration of certain programs. R.D. at 12; Companies’ MB at 7.

Changes to the EEC-C Rider - The Companies proposed changes to the EEC-C Riders that serve as the cost recovery mechanism for approved measures. These riders are financed by the customer sector that receives the direct energy and conservation benefits of the measure. All customer rider charges are changing to reflect revised sales and revenue collection projections, however, only the Large C&I rider charge is increasing as a result of increases in program budgets. R.D. at 12; Companies’ MB at 7.

The changes included in the First Amended EE&C Plans are necessary in order to put the Companies in a position to achieve their 2013 statutory EE&C requirements. The Companies’ EEC-C riders, which recover EE&C Plan costs from customers, have been recalculated to reflect reconciliation amounts and to reflect an increase in spending on programs benefitting Large C&I customers. The proposed rate changes assume an October 1, 2011 effective date. R.D. at 13; Companies’ MB at 8.

**Positions of the Parties**

 **The Companies’ Positions**

The Companies' Main Petition cited three reasons that support the proposed changes to the Companies’ current EE&C Plan. First, the decision of the Statewide Evaluator (SWE) and the Commission’s Bureau of Conservation, Economics and Energy Planning (CEEP)[[3]](#footnote-3) that Act 129 savings projections should be calculated at the retail level for compliance purposes, and at the system generation level for Total Resource Cost (TRC) purposes, resulted in the Companies’ savings projections in the current EE&C Plans to be overstated by approximately eleven percent. That is because the current EE&C Plans assume an eleven percent transmission and distribution loss factor that was used to gross up all EE&C program savings to reflect savings at the system generation level. Second, certain programs are performing at energy or demand savings levels below projections due to the downturn in the economy, updates to the Technical Resource Manual (TRM) and unexpected low customer participation levels. Third, programs such as the Commercial & Industrial (C&I) Equipment Programs were exceeding participation level expectations such that current funding is fully committed, requiring suspension of the programs until additional funding is approved by the Commission. R.D. at 9, 10; Companies’ MB at 3, 4.

The projected changes in savings levels are primarily based on the loss factor adjustment, updates to the TRM and customer participation levels. Program changes are based on either an increase in budgets for Large C&I Equipment Programs or a shift in funds from under-performing programs or components of programs. Nevertheless, the overall budget remains within statutory spending caps and affected programs continue to pass the TRC Test on an individual and portfolio basis. R.D. at 10; Companies’ MB at 4.

 **MEIUG *et al.’s* Position**

MEIUG *et al*., contended that the Companies have failed to prove through a preponderance of the evidence that the proposed increases for the Large C&I class are just and reasonable. MEIUG *et al*., MB at 16; MEIUG *et al*. RB at 3-7. It is further asserted by MEIUG *et al*., that the record is devoid of evidence regarding the Companies’ year-to-date progress in meeting its Act 129 requirements as well as accurate data or information to support the level of projected shortfall in meeting these statutory requirements. MEIUG *et al*., MB at 17.

Additionally, MEIUG *et al*., contend that the Companies have not yet implemented their respective Demand Response Programs, and thus do not have information on how these programs will perform. *Id.* at 18. MEIUG *et al*., also assert that the Companies have not increased their outreach efforts to the Residential and Small C&I customers and therefore have failed to sufficiently prove that they must impose such a significant increase on the Large C&I customers. *Id.* MEIUG *et al*., also contend that the Companies have failed to prove how the proposed modifications will enable them to meet their Act 129 requirements. *Id.*

Finally, MEIUG *et al*. contend that the Companies’ incentive range proposal lacks sufficient detail to assess its justness and reasonableness and must be rejected. MEIUG *et al*. RB at 21; R.D. at 19. MEIUG *et al*. also assert that the Companies have not sufficiently defined the incentive range proposal, so neither the Parties nor the Commission can evaluate whether the proposal will be administered by the Companies in an even-handed manner. MEIUG *et al*. RB at 23; R.D. at 19.

 **The OCA’s Position**

The OCA supports the Companies’ proposed Plan changes for the Residential class but takes no position with respect to funding from other customer classes. OCA MB at 3; R.D. at 20. The OCA is opposed to the recommendation of MEIUG *et al*. that the Companies should increase Residential energy efficiency and conservation measures as well as the budget for Residential customers. OCA MB at 3-4, citing MEIUG *et al*. Statement 1 at 9; R.D. at 20. The OCA supports maintaining current Residential budget levels while targeting funds in an efficient manner; i.e. shifting funds from under-performing Residential programs to other programs or components of programs for Residential customers. OCA MB at 3-4; R.D. at 20.

The OCA, however, has modified its initial position with respect to the discretion to be afforded to the Companies in making future changes to their Plans in the form of authority to change rebate levels and credits without first having to file a petition with the Commission. OCA MB at 5; R.D. at 20. Having participated in this proceeding and after reviewing the Companies’ testimony and responses, the OCA submits that the level of ranges proposed by the Companies is reasonable provided that the Companies apply those ranges in a timely and even-handed manner and through a defined process. OCA MB at 4-5; R.D. at 20. Further, the OCA believes the stakeholder process provides a reasonable venue for presenting changes in program incentive levels and for the participants to discuss the effectiveness and appropriateness of such changes. OCA MB at 9. As such, the OCA supports the Companies’ use of the stakeholder process for prospective changes made within Commission-approved incentive ranges. *Id.*

In its Reply Brief, the OCA addressed MEIUG *et al*.’s proposition that the proposed modifications to the Current EE&C Plans are “inappropriately skewed toward the Large C&I class,” particularly the contention by MEIUG *et al*., that the Companies’ proposed modifications exploit the Large C&I class to compensate for the “apathy” of the Small C&I and Residential classes. R.D. at 20. The OCA believes that any suggestion of “apathy” is unfounded and unsupported. OCA RB at 1; R.D. at 20. The OCA points out that the Residential class already bears and will continue to bear the majority of Plan

costs. OCA RB at 2, citing Companies’ Exhibit 2, Appendix G, Tables 2 and 5, and Companies’ Exhibit CVF-1 Supplemental; R.D. at 20.

Although the OCA did not present a witness of its own, the OCA relied on the testimony of the Companies’ witnesses to support its basic contention that the Commission directive that measures be ‘tailored to usage and to the potential for savings’ is reflected in the Companies’ proposed modifications to the Residential Programs in the Current EE&C Plans. Thus, it is the OCA’s opinion that MEIUG *et al.’s* suggestions to the contrary are without merit. OCA RB at 3-4; R.D. at 20.

 **The** **ALJ’s Recommendation**

The ALJ found that the Companies presented substantial evidence that demonstrated: (1) the need for each proposed program change; (2) that each program affected by the proposed changes, along with the amended portfolio of programs as a whole, passes the TRC test; (3) that the budget for the programs included in the First Amended EE&C Plans remains below the two percent spending cap as required by Act 129; and (4) that the proposed changes to the EEC-C rider charges are calculated consistent with the riders as approved by the Commission as part of its approval of the Current EE&C Plans. R.D. at 13.

The ALJ found that MEIUG *et al*.’s contention that the Companies’ incentive range proposal lacks sufficient detail to assess its justness and reasonableness is undeveloped and without merit. R.D. at 19. The ALJ also concluded that

MEIUG *et al*.’s assertion that the Companies have not sufficiently defined the incentive range proposal, so neither the Parties nor the Commission can evaluate whether the proposal will be administered by the Companies in an even-handed manner, is not supported by record evidence and that MEIUG *et al*. does not make it clear why evaluation of the proposal is empirically impossible. MEIUG *et al*. RB at 23; R.D. at 19.

The ALJ also found that the direct testimony presented by MEIUG *et al*. was so limited and unqualified as to be without any probative value. R.D. at 13. According to the ALJ, MEIUG *et al.,* presented testimony from two non-expert witnesses with no experience in designing or evaluating this type of program and who were not sufficiently familiar with either Act 129 or the Companies’ First Amended EE&C Plans. R.D. at 14.

 **MEIUG *et al*.’s Exceptions to the ALJ’s Recommendation**

In its first Exception, MEIUG *et al*., states that the ALJ erred in concluding that the Companies demonstrated, by a preponderance of the evidence, that the proposed EE&C Plan modifications for the Large C&I Equipment Program are just, reasonable, and appropriately balanced. MEIUG *et al*., Exc. at 3. This position is based upon MEIUG *et al’s*.,belief thatthe ALJ erroneously relied on Company testimony that budget increases for the Large C&I Equipment Program were necessary because Large C&I customers’ performance had exceeded expectations. *Id.* at 5. Conversely, due to lagging performance, the Companies did not propose program budget increases to the Residential and Small C&I classes. *Id.* at 6. Further, MEIUG *et al.,* stated that, since actual performance data was not available to measure any contribution from the Residential and Small C&I classes in achieving Act 129 goals, any budget increases to the Large C&I classes may be premature. *Id.* Therefore, according to MEIUG *et al.*, the Companies did not demonstrate by a preponderance of the evidence the necessity to increase the Act 129 obligations of the Large C&I classes. *Id.* Thus, MEIUG *et al.*, believes that the ALJ’s finding improperly attributed undue weight to the Companies’ limited Residential and Small C&I performance data. *Id.*

MEIUG *et al.,* also believes the ALJ erred by finding that the Companies met their burden of proving that the proposed budget increases for the Large C&I classes are just and reasonable because the increases would enable the Companies to recoup the eleven percent loss factor savings deficit. MEIUG *et al.,* Exc. at 7; R.D. at 17. Additionally, MEIUG *et al*., states that the Companies’ current EE&C Plans were designed to exceed their Act 129 obligations by a magnitude sufficient to absorb the eleven percent deficit without increasing the budget of the Large C&I programs.

MEIUG *et al.,* Exc. at 7.

Next, MEIUG *et al.,* contend that the ALJ erred by determining that the proposed increases to the Large C&I customers are appropriately balanced as required by Act 129. MEIUG *et al.,* Exc. at 8. It is the opinion of MEIUG *et al.,* that the ALJ failed to recognize that Act 129 requires the energy savings and conservation requirements be met through the combined efforts of all customer classes. *Id.,* at 8-9. Additionally, MEIUG *et al.* states that the ALJ improperly disregarded the practical consequences of the Companies’ proposals. MEIUG *et al.,* Exc. at 10. The proposal for funding increases of the magnitude at issue here would significantly increase energy costs and consequently operating costs for the Large C&I customers. *Id.* Accordingly, MEIUG *et al.,* believe that the ALJ’s recommendation should be reversed. *Id.* at 9, 11.

 **Disposition**

MEIUG *et al.’s* position that the ALJ erroneously relied on Company testimony that budget increases for the Large C&I Equipment Program are necessary is without merit. It is clear from the record that the funds originally allocated to these programs have been fully committed for Met-Ed and Penelec while Penn Power expects its funds to be fully committed by Plan Year 3. First Amended EE&C Plan at

Section 1.1.1.; R.D. at 17. With the infusion of additional funding as proposed, the Companies will be able to anticipate further reductions as prescribed by Act 129.

The record also supports the reallocation of funds within the Residential and Small C&I classes. The response from the Residential and Small C&I customer classes will not be measureable in the short term. The programs in place for Residential and Small C&I customers, on an individual customer basis, are much smaller than the programs in place for the Large C&I customer class. Additional time is needed for the impact of these programs to be quantified. The proposed Residential and Small C&I reallocation of funds will enhance the Companies’ potential to achieve the benefit of Act 129 reductions from these customer classes. Additionally, we believe that the Companies’ proposals satisfy the Commission directive that measures be “tailored to usage and to the potential for savings.” *Energy Efficiency and Conservation Program,* Docket No. M-2008-2069887 (Implementation Order entered January 16, 2009) at 22.

We agree with the ALJ’s finding that the Companies have met their burden of proof through the testimony of competent witnesses supported by extensive documentary evidence that the proposed modifications produce appropriately balanced and just and reasonable rates. Further, based upon the evidentiary record developed regarding this issue, we shall deny MEIUG *et al.’s* first Exception.

MEIUG *et al.* in its second Exception, asserts that the ALJ erred in recommending approval of the Companies’ incentive range proposal. MEIUG *et al.,* Exc. at 15. In support of this Exception, MEIUG *et al.* contends that the proposal provides the Companies with unfettered discretion in awarding incentives within the proposed incentive ranges. The Companies’ discretion is to be based upon yet undefined market conditions and without Commission oversight and approval.[[4]](#footnote-4) *Id.* MEIUG *et al*. further contends that the ALJ erred because the Companies could not explain with certainty how frequently program incentive levels would be evaluated based upon market conditions. *Id.* MEIUG *et al*. also believes that the ALJ’s recommendation should be reversed because any purported benefits from this proposal would be substantially outweighed by the potential for abuse of discretion by the Companies as well as the potential for customer confusion. Exc. at 17.

We agree with the ALJ’s adoption of the OCA’s position on this issue. We find that the level of incentive ranges proposed by the Companies is reasonable, provided that the Companies apply those ranges in a timely and even-handed manner and through a defined process. Additionally, we fully support the ALJ’s recommended adoption of the OCA’s position that any modifications in rebate levels within the established ranges be fully vetted in the context of the Commission-approved stakeholder process.

The ALJ also concluded that MEIUG *et al*.’s assertion that neither the parties nor the Commission can evaluate whether the Companies’ proposal will be administered in an even-handed manner, is without merit. We agree with the ALJ’s finding that MEIUG *et al*.’s assertion is not supported by record evidence. Accordingly, we shall deny MEIUG *et al.’s* second Exception.

 **The Companies’ Exception Seeking Clarification**

As previously noted, the Companies, on December 12, 2011, filed an Exception Seeking Clarification regarding the ALJ’s recommendation that they continue to use the Large C&I stakeholder process to ensure that future changes are applied prospectively and in an even-handed manner. Companies’ Exc. at 2; R.D. at 25. The Companies state in their Exception that they do not oppose this recommendation and fully intend to employ the Companies’ EE&C stakeholder process, not a new or separate stakeholder process. Companies’ Exc. at 2.

 **Disposition**

We agree with the ALJ’s recommendation that adopted the OCA’s position that changes to incentive levels within the approved ranges should be vetted within the Commission-approved stakeholder process prior to implementation[[5]](#footnote-5). However, we clarify that this directive does not require the creation of a new and separate stakeholder process; existing Commission-approved stakeholder processes shall be used. *See,* *October 2009 Order* and *Energy Efficiency and Conservation Program,* Docket No. M-2008-2069887 (Final Order entered June 10, 2011).

We believe this process will benefit the Companies, interested Parties and the Commission by reducing administrative costs; reducing the time it takes to end underperforming programs, and implement or expand more effective programs; and increasing the ability of the Companies’ First Amended EE&C Plans to meet the goals of Act 129 in a cost-effective manner. Accordingly, the Companies’ Exception Seeking Clarification is granted.

**Conclusion**

For the foregoing reasons, based upon our review of the record, the ALJ’s Recommended Decision and the Parties’ Exceptions, we will approve the changes to the Current EE&C Plans proposed by the Companies in their Main Petition, including the proposed changes to the EEC-C Rider charges, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions filed by the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, and the Penn Power Users Group on December 12, 2011, to the Recommended Decision of Administrative Law Judge Dennis J. Buckley, issued on December 5, 2011, are denied.

2. That the Exception Seeking Clarification filed by Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company on December 12, 2011, to the Recommended Decision of Administrative Law Judge Dennis J. Buckley, issued on December 5, 2011, is granted.

3. That the Recommended Decision of Administrative Law Judge Dennis J. Buckley issued on December 5, 2011, is adopted, as clarified by this Opinion and Order.

4. That the “Main Petition,” filed on February 18, 2011, by Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company at Docket Nos. M-2009-2092222, M-2009-2112952, and
M-2009-2112956 is granted.

5. That Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company's proposed EEC-C charges, as amended by Supplemental Exhibit CVF-1 may become effective on one day’s notice.

6. That Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company shall use the Large C&I stakeholder process as outlined in *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans,* Docket Nos. M-2009-2092222, M-2009-2112952 and M-2009-2112956, and *Energy Efficiency and Conservation Program,* Docket No. M-2008-2069887 (Final Order entered

June 10, 2011), to ensure that further changes to incentive within the approved ranges are applied prospectively and in an even-handed manner.

7. That the instant proceedings at Docket Nos. M-2009-2092222, M-2009-2112952 and M-2009-2112956 be marked closed.

 **BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: January 12, 2012

ORDER ENTERED: January 12, 2012

1. The Companies jointly submitted their proposed changes, and the Recommended Decision approved the changes to the EE&C Plans of all three FirstEnergy Companies, but the Exceptions of MEIUG *et. al* focus solely on the proposed changes in the EE&C Plans of Metropolitan Edison Company and Pennsylvania Electric Company. MEIUG *et al*., Exc. at 1, n. 1. [↑](#footnote-ref-1)
2. The kwh-based incentive/rebate offered to various customer groups under various measures is a one-time rebate based upon one-year’s kWh savings times the then applicable program rate shown in Table 5: Program Rebate Schedule, on a per company basis. [↑](#footnote-ref-2)
3. Now part of the Commission’s Bureau of Technical Utility Services. *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No.
M-2008-2071852 (Order entered August 11, 2011). [↑](#footnote-ref-3)
4. MEIUG *et al.,* initially challenged the sufficiency of the incentive range proposal in their Joint Answer to the instant proceeding. *See,* ¶¶ 26-28 of Answer dated March 10, 2011. [↑](#footnote-ref-4)
5. Noting that Commission approval is required to implement any change to the incentive ranges. [↑](#footnote-ref-5)