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December 21, 2012

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

VIA ELECTRONIC FILING

**RE: Petition of Metropolitan Edison Company For Approval of its Act 129 Phase II
Energy Efficiency and Conservation Plan; Docket No. M-2012-2334387**

**Petition of Pennsylvania Electric Company For Approval of its Act 129 Phase II
Energy Efficiency and Conservation Plan; Docket No. M-2012-2334392**

**Petition of Pennsylvania Power Company For Approval of its Act 129 Phase II
Energy Efficiency and Conservation Plan; Docket No. M-2012-2334395**

**Petition of West Penn Power Company For Approval of its Act 129 Phase II
Energy Efficiency and Conservation Plan; Docket No. M-2012-2334398**

Dear Secretary Chiavetta:


Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Comments on behalf of the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), the Penn Power Users Group ("PPUG"), and the West Penn Power Industrial Intervenors ("WPPII") in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served with a copy of this document.

Sincerely,

McNEES WALLACE & NURICK LLC

By


Teresa K. Schmittberger

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

Enclosures

c: Administrative Law Judge Elizabeth H. Barnes (via First Class Mail and E-Mail)
Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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Certificate of Service

Docket Nos. M-2012-2334387, M-2012-2334392,

M-2012-2334395 and M-2012-2334398


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Industrial Intervenors

Dated this 21st day of December, 2012, at Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Metropolitan Edison Company	:	
For Approval of its Act 129 Phase II	:	Docket No. M-2012-2334387
Energy Efficiency and Conservation Plan	:	
	:	
Petition of Pennsylvania Electric Company	:	
For Approval of its Act 129 Phase II	:	Docket No. M-2012-2334392
Energy Efficiency and Conservation Plan	:	
	:	
Petition of Pennsylvania Power Company	:	
For Approval of its Act 129 Phase II	:	Docket No. M-2012-2334395
Energy Efficiency and Conservation Plan	:	
	:	
Petition of West Penn Power Company	:	
For Approval of its Act 129 Phase II	:	Docket No. M-2012-2334398
Energy Efficiency and Conservation Plan	:	

**COMMENTS OF THE MET-ED INDUSTRIAL USERS GROUP,
PENELEC INDUSTRIAL CUSTOMER ALLIANCE, PENN POWER
USERS GROUP, AND WEST PENN POWER INDUSTRIAL INTERVENORS**

I. INTRODUCTION

A. Act 129 History

On October 15, 2008, Governor Rendell signed into law House Bill 2200, or Act 129 of 2008 ("Act 129" or "Act"). Among other effects, Act 129 expanded the Pennsylvania Public Utility Commission's ("PUC" or "Commission") oversight responsibilities and set forth new requirements for electric distribution companies ("EDCs")¹ with respect to energy conservation, default service procurements, and the expansion of alternative energy sources.

Specifically, with regard to energy efficiency and conservation ("EE&C"), Act 129 required EDCs to adopt a plan, approved by the Commission, to reduce electric consumption by

¹ As articulated in the Act, only EDCs with at least 100,000 customers are required to submit energy efficiency and conservation programs. *See* 66 Pa. C.S. §§ 2806.1, *et seq.*

at least 1% by May 1, 2011, and by at least 3% by May 31, 2013, adjusted for weather and extraordinary loads. 66 Pa. C.S. § 2806.1(c). In addition, by May 31, 2013, peak demand was to be reduced by a minimum of 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. *See id.* § 2806.1(d). By November 30, 2013,² the Commission was required to evaluate the cost-effectiveness of the aforementioned EE&C programs. *See id.* § 2806.1(c)(3). If the benefits of the programs exceeded the costs, then the Commission would impose additional reductions on the eligible EDCs. *See id.*

Consistent with the Act's requirements, on July 1, 2009, all Pennsylvania EDCs, including the Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power"), and West Penn Power Company ("West Penn") (collectively, "Companies") filed with the Commission proposed EE&C plans (*i.e.*, "Phase I EE&C Plans"), which sought to meet the Act's EE&C requirements. Met-Ed's, Penelec's, and Penn Power's Phase I EE&C Plans were initially adopted on October 28, 2009, but subject to further revisions.³ West Penn's Phase I EE&C Plan was initially adopted on October 23, 2009, and also was subject to further revisions.⁴

² The Commission also engaged an independent consultant, the Statewide Evaluator, to evaluate the cost-effectiveness of certain EE&C programs before this date.

³ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, 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, Order (Oct. 28, 2009); *see, e.g., Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, 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, Order (Jan. 28, 2010).

⁴ *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093218, Order (Oct. 23, 2009); *see, e.g., Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093218, Order (Mar. 1, 2010).

B. PUC Phase II Implementation Order

On August 2, 2012, the Commission issued an Implementation Order establishing the procedural and substantive requirements for EDCs' Phase II EE&C Plans. Importantly, the Commission held that energy efficiency programs should be continued during Phase II based on the Statewide Evaluator's ("SWE") Market Potential Study, which indicated that energy efficiency programs were cost-effective for consumers during Phase I. Implementation Order, p. 12. Mandatory demand reduction programs, however, were not to be included in Phase II Plans, because the cost-effectiveness of Phase I demand reduction programs could not be evaluated before Phase II implementation. Implementation Order, p. 40. In addition, the Commission stressed the importance of developing balanced Phase II EE&C Plans (*i.e.*, plans that do not disproportionately impact specific customer classes). Implementation Order, p. 87. Finally, the Commission outlined the following procedural process in its Implementation Order:

The Commission will publish a notice of each proposed plan in the *Pennsylvania Bulletin* within 20 days of its filing. In addition, the Commission will post each proposed plan on its website. An answer *along with comments* and recommendations are to be filed within 20 days of the publication of the notice in the *Pennsylvania Bulletin*. Each plan will be referred to an Administrative Law Judge (ALJ), who will establish a discovery schedule and hold a public input hearing(s) in the EDC's service territory upon request of any party, as well as an evidentiary hearing(s) on issues related to the EE&C plan. Such hearings are to be completed on or before the 65th day after a plan is filed, after which, the parties will have 10 days to file briefs. The EDC will then have 10 days to submit a revised plan or reply comments or both. The ALJ will then certify the record to the Commission.

Id. at 62 (emphasis added).

C. Brief Summary of the Companies' Phase II EE&C Plans

On November 13, 2012, the Companies petitioned the Commission for approval of their Phase II EE&C Plans ("Petition"). The Companies' Phase II EE&C Plans propose to fulfill the requirements of Act 129 through the implementation of nine energy efficiency programs for four of the Company's customer sectors – Residential, Small Commercial and Industrial ("C&I"), Large C&I, and Governmental/Non-Profit. *See* Petition, pp. 13-14. Specifically, the Companies have targeted four programs for the residential sector, two programs for the Small C&I sector, two programs for the Large C&I sector, and one program for Government/Non-Profit customers. *See id.* The Companies anticipate meeting the Act 129 energy savings requirements at a total overall cost to the Companies' ratepayers of approximately \$234,192,081 over the lives of the Phase II EE&C Plans, which represents approximately two percent of the Companies' combined revenues as of December 31, 2006, multiplied by three to reflect the three-year duration of the Plans. *See* Direct Testimony of Edward C. Miller, Companies Statement No. 2, p. 9.

On December 11, 2012, the Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customer Groups") filed a Petition to Intervene and Answer in this proceeding in order to protect members' interests. The Industrial Customer Groups' Petition to Intervene was granted by ALJ Elizabeth H. Barnes at the December 19, 2012, Prehearing Conference.

The Industrial Customer Groups are *ad hoc* associations of energy-intensive Large C&I customers receiving electric service in the Companies' service territories. Members of the Industrial Customer Groups have the option to purchase electric generation supply service from the Companies (as the default service providers) or from Electric Generation Suppliers ("EGS"). Electricity costs comprise a significant portion of operational costs for all members of the

Industrial Customers Groups. The Industrial Customer Groups are therefore concerned with issues regarding the rates, terms, and quality of their electricity service and, as a result, have been actively involved in many of the Companies' proceedings, including their Phase I EE&C Plan proceedings.

Consistent with the process outlined in the Implementation Order and approved at the Prehearing Conference, the Industrial Customer Groups are submitting these Comments in order to set forth their preliminary positions and concerns regarding the Companies' proposed Phase II EE&C Plans. The Industrial Customer Groups will supplement these positions in their post-hearing briefs and reserve the opportunity to modify positions and submit recommendations regarding additional issues based on the arguments raised by other parties, the factual evidence adduced during the evidentiary hearings, and any further clarifications regarding the Phase II EE&C Plans provided by the Companies during the course of discovery or adjudication of the Plans.

II. COMMENTS

A. The Companies' Phase II EE&C Plans Must Be Closely Reviewed and Monitored To Ensure Compliance with the Act 129 Requirement of Offering Energy Efficiency Programs to Customer Classes in an Equitable Manner.

Act 129 requires the Commission to establish "[s]tandards to ensure that each plan includes a variety of energy efficiency and conservation measures and will provide the measures equitably to all classes of customers." 66 Pa. C.S. § 2806.1(a)(5). In the Implementation Order, the Commission interpreted this mandate as requiring that "EDCs must offer a well-reasoned and balanced set of measures that are tailored to usage and to the potential for savings and reductions for each customer class." Implementation Order, p. 87. Fundamentally, it is important that classes neither receive a disproportionate share of EE&C Plan benefits nor bear a

disproportionate burden of the costs in relation to the overall plan. To achieve this objective, the Companies' Phase II EE&C Plans should reflect parity between the overall revenues received by an EDC from a customer class and the Phase II EE&C Plan budget allocated to the same customer class.

With regard to the Large C&I customer class, the Companies' proposed Phase II EE&C Plan appears reasonably balanced from a cost allocation standpoint. The Companies' proposed Phase II EE&C Plans present a total of nine programs. *See* Petition, pp. 13-14. Of these, two of the programs are assigned to Large C&I customers. *Id.* The costs associated with these two programs, which will be charged to Large C&I customers by each of the Companies, are as follows: Met-Ed, \$13,597,744 (18.6% of Phase II budget); Penelec, \$9,438,291 (14.0% of Phase II budget); Penn Power, \$2,358,198 (12.0% of Phase II budget); and West Penn, \$10,911,278 (15.7% of Phase II budget). Phase II EE&C Plans, Appendices E, Table 5. This allocation reasonably aligns with cost causation principles, as the Companies receive approximately 13% of total revenues from all of its Large C&I customers.⁵ *See id.*

Although EE&C Plans are primarily governed by Act 129, the Commission and all stakeholders should remain cognizant of the enormity of collecting an additional \$234,192,081 on top of traditional electric distribution rates. The significant expenses proposed to be collected through the Companies' Phase II EE&C Plans warrant scrupulous review of cost allocation methodologies to ensure that customers pay for Act 129 program expenses in proportion to their available benefits. While the Companies' Phase II EE&C Plans appear to follow the cost causation principles set forth in Act 129, the Industrial Customer Groups encourage the

⁵ The Companies have yet to explain which customer classes would be charged for the Phase II EE&C Government/Non-Profit programs. If these costs are assigned to Large C&I customers, the Industrial Customer Groups reserve the right to reevaluate their assessment of the Companies' proposed cost allocation.

Commission to closely monitor the Companies' cost allocation methodologies to ensure that implementation of the Companies' Phase II EE&C Plans does not create interclass subsidization.

B. Companies' Phase II Cost Recovery Mechanism for Large C&I Customers Remains Appropriate.

The Companies propose to continue the Phase I cost recovery methodology during Phase II for Large C&I customers, which "is expressed on an individual basis using the Customer's Peak Load Contribution." Petition, p. 16. The Industrial Customer Groups endorse this cost recovery mechanism, particularly with respect to the calculation of Large C&I customer demand based on individual customers' PLCs. Utilization of the PLC provides consistent charges to customers and further encourages peak load reduction by both EE&C Plan participants and non-participants. Finally, because PLCs are determined annually on a one-time basis, a demand charge based on the PLC provides a consistent charge to customers and constant, reliable cost recovery to EDCs.

C. The Industrial Customer Groups Encourage the Companies To Facilitate a Smooth Transition Between Phase I and Phase II EE&C Plans.

The Commission's Implementation Order recognizes the importance of a "smooth transition" between Phase I and Phase II. Implementation Order, p. 114. The Commission further found that programs installed by customers after Phase II has begun (*i.e.*, June 1, 2013) will no longer be eligible for Phase I funds. *Id.*

The Industrial Customer Groups welcome the Commission's efforts to remain consistent with cost causation principles (*i.e.*, the program benefits are only triggered when costs are incurred). Nevertheless, the Industrial Customer Groups also support a smooth transition between Phase I and Phase II, which could be a challenge for those customers installing program measures at the end of Phase I. As a result, at a minimum, the Industrial Customer Groups recommend that the Companies endeavor to inform all customers participating in Phase I

programs of the impending deadline for receiving Phase I funds. In addition, the Companies should provide a streamlined application process for those customers who fail to install measures before the expiration of Phase I, but would continue to be eligible for incentives under the Companies' Phase II Plans.

D. The Industrial Customer Groups Reserve the Right To Challenge the Companies' Proposed Phase II Programs After Completion of the SWE's Final Audit.

As acknowledged in the Implementation Order, the Commission faces the difficult task of structuring Phase II EE&C Plans prior to completion of the inaugural Phase I EE&C Plans. In assessing the cost effectiveness of Phase I EE&C Plans, the Commission relied upon the SWE Market Potential Study based on "national trends in energy efficiency programs, Pennsylvania-specific circumstances and forward-looking cost estimates... ." Implementation Order, p. 14. Although the Commission adopted the Market Potential Study's finding that the "benefits of a Phase II Act 129 program will exceed the costs," the Commission also noted that "we cannot definitively determine whether the benefits of the Phase I EE&C Program exceeded its costs, as Phase I is not yet complete." *Id.* at 13. The Industrial Customer Groups agree with the Commission's acknowledgement that the cost-effectiveness of Phase I EE&C Plans remains uncertain and submits that any assessment of Phase II costs and benefits remains similarly tenuous. Accordingly, with appreciation of the tremendous revenues associated with the Companies' Phase II EE&C Plans, the Industrial Customer Groups intend to monitor the Commission's review of the Companies' Phase I Plans and reserves the right to petition for changes to the Companies' Phase II EE&C Plans based upon the results of the final Phase I analysis.

In addition to the Market Potential Study relied upon by the Implementation Order, the Commission should condition any findings with regards to the Companies' Phase II EE&C Plans

upon the potential for further modification based upon its forthcoming SWE audit and Commission evaluation of Phase I EE&C Plans. On or around June 1, 2013, the SWE will audit all Phase I energy efficiency programs, including those within the Companies' Phase I Plans that may be continued during Phase II. *See* Implementation Order, p. 70. Additionally, the Commission will complete an evaluation of Phase I EE&C Plans by November 30, 2013 and, as required by Act 129, determine "how the plan will be adjusted on a going-forward basis as a result of the evaluation." *Id.* at 13; *see also* 66 Pa. C.S. § 2806.1(b)(1)(i)(J). With the Phase I Plans continuing through May 31, 2013, the Phase I EE&C Plans cannot be evaluated in their entirety prior to completion of the instant proceeding. As a result, the SWE audit and/or the Commission's evaluation may provide critical information regarding cost-effectiveness of these programs that has yet to be available to stakeholders.

To ensure that the Companies' Phase II Plans appropriately reflect any relevant findings from the SWE audit or the Commission's pending evaluation of Phase I EE&C Plans, the Industrial Customer Groups intend to review the SWE analysis related to the Large C&I programs. The Industrial Customer Groups will assess the cost-benefit results of the Large C&I programs based on actual results, and may, in the future, argue that the program design was inappropriate and contrary to the Act 129 requirements and goals. Accordingly, the Industrial Customer Groups reserve the right to challenge any such programs based on the results of the 2013 SWE audit and the Commission evaluation.

III. CONCLUSION

WHEREFORE, the Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, 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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