|  |
| --- |
| **PENNSYLVANIA****PUBLIC UTILITY COMMISSION****Harrisburg, PA 17105-3265** |
| Public Meeting held March 14, 2013 |
| Commissioners Present:Robert F. Powelson, ChairmanJohn F. Coleman, Jr., Vice ChairmanWayne E. GardnerJames H. Cawley, StatementPamela A. Witmer |
| Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Consolidation of Proceedings and Approval of Act 129 Phase II Energy Efficiency and Conservation Plans | Docket Nos. M-2012-2334387, M-2012-2334392, M-2012-2334395 andM-2012-2334398 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Joint Petition (Joint Petition) of Metropolitan Edison Company (Met Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power) and West Penn Power Company (West Penn) (collectively, FirstEnergy or the Companies) for Consolidation of Proceedings and

Approval of Act 129 Phase II Energy Efficiency and Conservation Plans (Plans[[1]](#footnote-1)), filed on November 13, 2012. Also before the Commission is the Joint Petition for Full Settlement of Non-Reserved Issues (Joint Settlement) filed by the Parties on January 28, 2013. In accordance with the Commission’s Order in *Energy Efficiency and Conservation Program*, Docket Nos. M-2012-2289411 and M-2008-2069887 (Order entered August 3, 2012) (*Phase II Implementation Order*), Administrative Law Judge (ALJ) Elizabeth H. Barns certified the record in this proceeding on February 7, 2013. For the reasons fully delineated hereinbelow, *inter alia*, the Joint Petition and the Joint Settlement are granted, in part, and denied, in part, on the condition that no Party to the Joint Settlement exercises its right to withdraw therefrom.

**I. Background**

On October 15, 2008, House Bill 2200 was signed into law as Act 129 with an effective date of November 14, 2008. Among other requirements, Act 129 directed that Energy Efficiency and Conservation (EE&C) Programs be developed by each of the Commonwealth’s largest electric distribution companies (EDCs) and be approved by the Commission. Specifically, Act 129 required each EDC with at least 100,000 customers to adopt a plan to reduce energy demand and consumption within its service territory. Initially, the Act required each affected EDC to adopt a plan to reduce electric consumption by at least one percent of its expected consumption for June 1, 2009 through May 31, 2010, by May 31, 2011. By May 31, 2013, the total annual weather-normalized consumption was to be reduced by a minimum of three percent. Also, by May 31, 2013, peak demand was to be reduced by a minimum of four-and-a-half percent of each 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 (*Phase I Implementation Order*) which 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 (and, in some cases, modifications to the 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, the Commission issued a Secretarial Letter on March 1, 2012, at Docket No. M-2012-2289411 seeking comments on several issues related to the design and implementation of any future phase of the EE&C Program, and whether additional incremental consumption and peak demand reduction targets would be adopted. On May 10, 2012, in response to the comments received pursuant to the Secretarial Letter, the Commission issued a Tentative Implementation Order (*Phase II* *Tentative Implementation Order*) to begin the process of evaluating the costs and benefits of the initial EE&C Plans and the possible establishment of new reduction targets. In the *Phase II* *Tentative Implementation Order*, the Commission found that the benefits of a Phase II Act 129 Program will exceed the costs. Therefore, the Commission proposed the adoption of additional required incremental reductions in consumption for another program term and sought additional comments on its specific proposals.

Subsequently, in response to the comments filed pursuant to the *Phase II* *Tentative Implementation Order*, on August 2, 2012, the Commission adopted the *Phase II Implementation Order* that established the standards each plan must meet (including the 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. Within the *Phase II Implementation Order*, the Commission tentatively adopted EDC-specific consumption reduction targets as set forth in Table 1 in Section A.2.c.1 of that Order. The targets varied from a high of 2.9% for PECO to a low of 1.6% for West Penn Power Company. The *Phase II Implementation Order* provided that these targets would become final for any covered EDC that did not petition the Commission for an evidentiary hearing by August 20, 2012. Additionally, the *Phase II Implementation Order* provided that, if an EDC filed a petition for an evidentiary hearing, the matter would be referred to the Office of Administrative Law Judge for hearings with the record being certified to the Commission by November 2, 2012.

On August 20, 2012, the Companies filed Petitions for Reconsideration and Clarification of the *Phase II Implementation Order.* Also, on August 20, 2012, PPL Electric Utilities Corporation (PPL) filed a Petition for Reconsideration of the *Phase II Implementation Order*. On August 30, 2012, the Commission granted the Petitions filed by FirstEnergy and PPL pending further review of, and consideration on, the merits. The Office of Consumer Advocate (OCA) filed separate Answers to the FirstEnergy and PPL Petitions on August 30, 2012, and on the same date, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed a Response to PPL’s Petition.

Also, on August 20, 2012, the Companies filed a Petition for an Evidentiary Hearing on the Energy Efficiency Benchmarks Established for the Period June 1, 2013 through May 31, 2016 by the *Phase II Implementation Order*, and the matter was assigned to the Office of Administrative Law Judge with a certified record deadline of November 2, 2012.

On September 4, 2012, PECO filed a Motion for Leave to File a Motion for Reconsideration and a Petition for Reconsideration of the *Phase II Implementation Order.* On September 13, 2012, the Commission adopted an Order granting PECO’s Motion for Leave to File a Motion for Reconsideration. On September 19, 2012, the Clean Air Council and the Sierra Club (CAC/SC) filed an Answer to PECO’s Petition for Reconsideration.

By Reconsideration Order entered September 27, 2012, at Docket Nos.
M-2012-2289411 and M-2008-2069887 (*Phase II Reconsideration Order*), the Commission denied the Petitions for Reconsideration and Clarification filed by FirstEnergy and the Petitions for Reconsideration filed by PPL and PECO.

On October 19, 2012, a hearing was held regarding the energy efficiency benchmarks pertaining to the Companies. On November 2, 2012, ALJ Barnes issued an Order Certifying Record to the Commission identifying the documents that comprise the evidentiary record in the energy efficiency benchmarks proceeding. In an Opinion and Order at Docket Nos. P-2012-2320450, P-2012-2320468, P-2012-2320480, and
P-2012-2320484, entered on December 5, 2012, this Commission affirmed the energy efficiency benchmarks established in the *Phase II Implementation Order* for Met Ed, Penelec, Penn Power and West Penn.

# II. Procedural History

In the *Phase II Implementation Order* we adopted an EE&C plan approval process that included the publishing of a notice of each proposed plan in the *Pennsylvania Bulletin* within twenty days of the filing of the plan, as well as posting of each proposed plan on the Commission’s website. Answers, along with comments and recommendations, were to be filed within twenty days of the publication of the notice in the *Pennsylvania Bulletin*. Each plan filed in November, 2012 was to be assigned to an Administrative Law Judge for an evidentiary hearing within sixty-five days after the plan was filed, after which, the parties had ten days to file briefs. The EDC then had ten days to submit a revised plan or reply comments or both. The ALJ was directed to then certify the record to the Commission. The Commission will then approve or reject all or part of a plan at public meeting within 120 days of the plan filing. *Phase II Implementation Order* at 61 and 62.

 In the *Phase II Implementation Order,* we directed each EDC to file its proposed Phase II EE&C plan on November 1, 2012. *Id*. at 63-66. On November 1, 2012, the Commission issued a Secretarial Letter notifying the EDCs that, due to Hurricane Sandy and the need for EDC personnel to focus on storm response duties, the Phase II EE&C plans were to be filed on or before November 15, 2012. Met-Ed, Penelec, Penn Power, and West Penn each timely filed a Joint Petition for approval of their Act 129 Phase II EE&C Plans on November 13, 2012. Notice of the Joint Petition was published in the *Pennsylvania Bulletin* on December 1, 2012, with a comment period ending December 21, 2012. 42 *Pa. B.* 7372. Additionally, the Joint Petition and Initial Plans were posted on the Commission’s website at <http://www.puc.pa.gov>.[[2]](#footnote-2) Also on November 13, 2012, the Companies filed a *Joint Petition for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans Phase II of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company*. The petitions were assigned to ALJ Barnes.

 The following Parties filed Notices of Intervention or Petitions to Intervene, which were not contested: the Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA); UGI Utilities Inc. – Gas Division, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc. (UGI or UGI Distribution Companies); The Pennsylvania State University (PSU); Wal-Mart Stores East, LP and Sam’s East, Inc. (WalMart); Community Action Association of PA (CAAP); the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, West Penn Industrial Intervenors (collectively, Industrials); and Citizens for Pennsylvania’s Future (PennFuture). Comments on the Initial Plans were submitted by the OCA and the Industrials.

 Subsequent to the Prehearing Conference held in this case on December 19, 2012 and before the expiration of the twenty day intervention period on December 21, 2012, one additional entity, Comverge, Inc. (Comverge), filed a Petition to Intervene.

 On December 20, 2012, a Hearing Notice was issued setting January 17, 2013, as the date for the evidentiary hearing in this case. On December 28, 2012, a Scheduling Order was issued setting forth a procedural schedule, granting petitions to intervene, consolidating the dockets for hearing, modifying discovery rules, and setting forth other miscellaneous directives. Also on December 28, 2012, a Protective Order was entered.

 On January 14, 2013, Comverge filed a Petition for Admission *Nunc Pro Tunc* of the Direct Testimony of Raymond G. Berkebile. On January 15, 2013, the Companies filed an Answer objecting to the direct testimony as being late-filed in violation of the Scheduling Order’s deadline of January 8, 2013.

 On January 17, 2013, a hearing was held in Harrisburg, Pennsylvania. The hearing was attended by the Companies, the OCA, the OSBA, UGI Distribution Companies, the Industrials, CAUSE-PA, PennFuture, Comverge, WalMart, and CAAP. A seventy-nine page transcript was filed by the court reporter on January 18, 2013.

At the hearing, Comverge stated that, in light of a stipulation with the Companies regarding its issues, it moved to withdraw its Petition for Admission *Nunc Pro Tunc* of Testimony. This was granted by Order entered on January 17, 2013.

 The Order entered on January 17, 2013, amended the procedural schedule in light of the Companies’ representation that an oral agreement had been made with all Parties except for the UGI Distribution Companies. Main briefs and a joint settlement petition with statements in support were directed to be filed on or before January 28, 2013. Reply briefs, revised EE&C plans, and/or reply comments were to be filed on or before February 6, 2013.

Main Briefs were filed on January 28, 2013 by UGI and FirstEnergy. Also on January 28, 2013, the Joint Settlement was filed. On January 28, 2013, the Industrials filed a letter indicating they had no opposition to the Joint Settlement. On January 29, 2013, PSU filed a Statement in Support of Settlement and a signed settlement page. The Companies filed Red-lined and clean versions of the revised Phase II EE&C Plans on February 6, 2013. The Companies and UGI filed Reply Briefs on February 6, 2013.

On February 7, 2013, ALJ Barnes certified the record to the Commission for consideration and disposition.

**III. Description of the Plans**

1. **Joint Settlement**

As noted above, a Joint Petition for Full Settlement of Non-Reserved Issues[[3]](#footnote-3) and Statements in Support were filed on January 28, 2013, resolving all contested issues except for the issues raised by UGI. The specific settlement terms relating to the Companies’ EE&C Plan are as follows:

1. The Companies offer to increase the number of annual stakeholder meeting from two to four, and offer to hold additional ad hoc meetings, via telephone conference at stakeholder request. Further, the Companies will continue to meet with community based organizations on a quarterly basis as is currently done and will provide written materials distributed for such meetings to parties entering into the settlement, upon request.
2. Within 90 days of approval of the EE&C plans, the Companies will agree to contact major natural gas distributors in their service territories for the purpose of trying to find ways to better coordinate the Companies’ whole home retrofit programs with like programs provided by the natural gas distributors, and will report the results at subsequent stakeholder meetings.
3. The Companies will allow customers to submit a single application for multiple measures installed under Phase II as a result of a comprehensive audit, provided that the multiple measures are all proposed and completed at the same time. The Companies will also discuss with their implementation vendor(s) the possibility of offering a tiered incentive structure for customers who meet certain audit retrofit performance specifications and will report their findings at their then next stakeholder meeting. Assuming that such an offering does not significantly decrease the cost-effectiveness and tracking and verifying results, and there is no significant opposition from stakeholders, the Companies will seek to modify their EE&C plans through the Commission’s standard processes, if necessary, with express support for such modifications being provided by the Joint Petitioners.
4. The Companies will target evaluation funds for annual evaluation of the energy savings associated with the Home Energy Reports (aka Energy Usage Reports) and will share the results of such evaluations and any recommendations being proposed based on such results with interested parties during the Companies’ next applicable stakeholder meeting.
5. In the event the Companies’ Residential New Construction Program becomes fully subscribed during the term of the plans, the Companies will discuss the issue with its stakeholder group. Assuming that there is no significant opposition from such group, the Companies will seek approval to transfer additional funding from anticipated available funds allocated to other residential programs to the extent such transfer does not hinder the Companies’ goal attainment and adheres to the Companies’ budget caps and the Commission’s cost-effectiveness requirements. Assuming such change meets these requirements, the Companies will seek expedited approval through the Commission’s plan modification procedures, with such proposed change being affirmatively supported by the Joint Petitioners.
6. Within 60 days of the approval of the Companies’ EE&C Plans, the Companies will meet in a collaborative with interested stakeholders to discuss recommendations for the reallocation of residential customer dollars from the Energy Efficiency Kits and the Home Energy Reports (HER) Programs to: (i) the Residential Energy Efficient Products Program to include HVAC, water heating, and ENERGY STAR® appliances measures, and (ii) the Residential Home Performance Program for building shell measures and weatherization measures recommended through the Audit program to obtain more of the potential savings for these measures identified in the Statewide Evaluator’s (SWE) Electric Energy Efficiency Potential for Pennsylvania Study. While the Companies will entertain suggestions for the reallocation of such funding, it is within the discretion of the Companies to accept or reject any such recommendations made by any party, with such acceptance not being unreasonably withheld. It is expressly acknowledged and agreed that rejection of any recommendation that causes the Companies to exceed their two percent spending cap or places at risk the Companies’ ability to achieve their statutory Phase II energy efficiency targets shall be deemed a reasonable rejection. The Companies will share their rationale for any such rejections. The Joint Petitioners agree that any agreed-upon changes to the programs will be requested through the Commission’s “Minor Changes” process, if necessary. Nothing contained herein restricts any Joint Petitioner’s rights in the “Minor Changes” process.
7. The Companies will revise their Low Income Programs to target increased energy savings by at least ten percent over the plan targets as currently proposed for low income programs. To the extent that additional funding is required to support the targeted increase in energy savings, the Companies will shift up to $1 million in funds currently in the general residential programs to specific low income programs, with the understanding that within 60 days of the Companies’ EE&C plans being approved, the Companies will meet with Joint Petitioners who are interested in low income programs to discuss the results of its evaluation to increase the energy savings achieved through the dedicated low income programs. While the Companies will entertain suggestions for the use of such funding, it is within the discretion of the Companies to accept or reject any such recommendations made by any party, with such acceptance not being unreasonably withheld. It is expressly acknowledged and agreed that rejection of any recommendation that causes the Companies to exceed their two percent spending cap or places at risk the Companies’ ability to achieve their statutory Phase II energy efficiency targets shall be deemed a reasonable rejection. Further, within nine months of the Companies’ EE&C plans being approved, the Companies will meet with these same parties and will review the results of the implemented recommendations. It is further acknowledged and agreed that the Companies may reallocate funds agreed to be dedicated to the specific low income programs through this paragraph to general residential programs, should it be determined that the actual results are not meeting expectations as established during the initial meeting, or the Companies, in their discretion, cannot achieve their statutory Phase II energy efficiency targets if such funding continues. The Companies agree to share with the affected parties their rationale should any such conclusions be drawn. The Companies will file such changes through the Commission’s “Minor Changes” process, if necessary. Nothing contained herein restricts any party’s rights in the “Minor Changes” process.
8. The Companies will work to develop a dedicated marketing plan for low income customers to target their participation in all residential programs. Within 90 days of approval of the Companies’ EE&C plans, the Companies will meet with Joint Petitioners interested in low income programs and review all marketing materials for all low income and general residential programs. The Companies will consider all suggested improvements made by the low income advocates, but adoption of any such change is within the discretion of the Companies, with such adoption not being unreasonably rejected by the Companies. The Companies will share their rationale for any such rejection.
9. During 2013, the Companies will investigate the market for heat pump water heaters within their respective service territories. The Companies will share the results of the pilot developed under the LIURP program in Penn Power’s service territory as described in Maria Frederick’s testimony[[4]](#footnote-4) and will study and share the results no later than their first stakeholder meeting in 2014. Should the results of the pilot demonstrate the feasibility of installing more heat pump water heaters within the available low income budget, the Companies will discuss during its stakeholder meeting the possibility of expanding the budget for such installations. Further, the Companies will use reasonable efforts to target and install up to an additional 20 heat pump water heaters for low income customers annually across the Companies’ combined service territories. Further the Companies will investigate the feasibility of adding an add-on heat pump to existing water heaters and will report their findings during an upcoming stakeholder meeting.
10. The Companies will continue to cross market all low income programs offered by the Companies to confirmed low income customers. They will also continue to direct confirmed low income customers to other federal and state agency sponsored low income programs for which the customer qualifies as described in Ms. Frederick’s testimony.[[5]](#footnote-5)
11. The Companies will continue to meet with Community Based Organizations (CBOs) on a quarterly basis to discuss, among other things, issues involving the Companies’ low income EE&C program offerings as described in Ms. Frederick’s testimony.[[6]](#footnote-6)
12. The Companies will work with the SWE to develop a survey methodology that is acceptable to the SWE that assesses low income customer participation in non-low income programs. Prior to conducting the survey, the Companies will discuss the survey methodology agreed-upon by the SWE. The Companies will share the results of any such survey during an upcoming stakeholder meeting.
13. The Companies will continue to require its vendors and contractors who implement low income programs and install low income energy efficiency measures to use commercially reasonable efforts to coordinate any such installations and implementations with natural gas providers located within the applicable Company’s service territory as explained by Ms. Frederick in her testimony.[[7]](#footnote-7)
14. The educational materials included within the energy efficiency kits will include the following information for customers: (i) information on kit contents; (ii) installation instructions; (iii) household energy savings tips; (iv) CFL disposal instructions; and (v) marketing materials for other residential programs. The Companies further agree to include low income education as an agenda item in the meeting contemplated in Paragraph 8 above for the purpose of seeking suggested improvements in said materials; however, the adoption of any such suggested improvements shall be within the discretion of the Companies, with such adoption not being unreasonably rejected. The Companies will explain their rationale for any such rejection.
15. The Companies will withdraw their request for an extension of their reconciliation period for Phase I costs in this proceeding and will, instead, make such a request in a separate proceeding as suggested by OCA.
16. The Companies will add the following stipulated facts into the evidentiary record in this proceeding and their respective Phase II Plans shall be amended to include: Combined Heat and Power (CHP) projects may be approved as eligible custom measure projects, if found to be cost effective as indicated by a Total Resource Cost (TRC) score above 1.0, as calculated in accordance with the Technical Reference Manual (TRM) standards or other Commission guidelines or directives. In addition, each eligible project must not be above 10 MW in size, are intended solely for customer on-site use (not wholesale merchant projects), produce retail energy savings to a FirstEnergy operating company (Company) (i.e., the reduction of electricity consumption), are installed and operational during Phase II and comply with all Company interconnection and standby service rules and requirements.
17. The Companies will add the following stipulation into the evidence in this proceeding and their respective Phase II Plans shall be amended to include: Large Commercial and Industrial Phase I applications with respect to projects that have not been completed prior to the conclusion of Phase I will be processed as part of the same Phase II Programs without re-application, consistent with the Companies’ EE&C Plan review and eligibility requirements.
18. In exchange for the above concessions by the Companies, the Joint Petitioners agree to support the Companies’ EE&C Plans as modified above, and as described by Maria Frederick during her rebuttal testimony,[[8]](#footnote-8) and will not pursue any other issues not addressed herein that are included in any Joint Petitioner’s testimony.

*See* Joint Settlement at 4-11.

1. **The Plans**

FirstEnergy states that it coordinated EE&C development efforts across its four Pennsylvania operating companies to achieve cost efficiencies and to offer a consistent set of EE&C programs to the customers served by the four companies. FirstEnergy claims that this effort has resulted in a comprehensive set of measures that have been grouped into programs that represent the Companies’ best efforts to achieve the additional consumption reduction targets adopted by the Commission, within the mandated spending limitations. FirstEnergy further states that its plans were designed to do the following:

1. Assist each company in obtaining the required reductions in consumption prescribed by the Commission;
2. Assist each company in obtaining at least 25% of the consumption reduction targets each year of Phase II;
3. Assist each company in obtaining a minimum of 10% consumption reductions from units of federal, state and local governments;
4. Offer residential and small commercial customers comprehensive programs and measures;
5. Assist each company in obtaining a minimum of four-and-a-half percent of their consumption reduction requirements from the low-income sector through the combination of direct low-income customer participation in low-income programs and the proportion of low-income customer participation in the residential sector programs;
6. Include specific energy efficiency measures for households at or below 150% of the federal poverty income guidelines, in proportion to that sector’s share of the total energy usage in the respective service territories by including measures that are at least proportional to low-income sector energy usage in the program targeted directly to low-income customers;
7. Give special emphasis and consideration to multifamily housing; and 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 by offering at least one energy efficiency program to each customer class.

Joint Petition at 10-12.

 The FirstEnergy Plans offer a suite of programs for all major customer segments and are an expansion of elements currently included in their existing Phase I Plans. Programs for residential customers include: an appliance turn-in program; an energy efficient products program; a home performance program; and a low income program. Programs for small and large commercial and industrial (C&I) customers include a C&I energy efficient equipment program and a C&I energy efficient building program targeted to both classes of customers. The Companies will also offer a program to government and institutional customers. FirstEnergy asserts that its plans leverage the existing programs and include a mix of expanded and new services that take maximum advantage of current opportunities, volume cost efficiencies and a variety of delivery channels that are anticipated to result in significant levels of customer participation. Joint Petition at 13 and 14. The Companies will not begin offering incentives and rebates to customers until Commission approval of the Companies’ Plans and will ensure that the rebates apply to only those measures installed and commercially operable after May 31, 2013. *Id*. at 18.

 FirstEnergy states that the plans include cost estimates for implementation of all measures. FirstEnergy proposes a cost-recovery tariff mechanism in accordance with 66 Pa. C.S. § 1307, that is designed to ensure full and current cost recovery of prudent and reasonable costs to fund all Phase II program measures, as well as administrative costs and all other costs necessary for compliance with the Act, to include the incremental costs incurred to design, create, and obtain Commission approval of the plans. FirstEnergy states that the total costs of the Companies’ Plans for the 36-month Phase II period to be recovered will not exceed two percent of the Companies’ total annual revenue as of December 31, 2006 on a comparable 36-month period. Costs associated with low-income usage reduction programs established under 52 Pa. Code Chapter 58 were excluded from this calculation, along with all costs associated with the SWE. Joint Petition at 14 and 15

The Companies propose to recover these costs through a Phase II Energy Efficiency and Conservation Charge (Phase II EE&C-C) Rider, which is calculated separately for residential, commercial and industrial customers for each company. The Phase II EE&C-C Riders involve a price per kilowatt-hour charge, except for the industrial customer class that uses the industrial customer’s peak load contribution in kilowatts, and will be billed on that basis throughout the Phase II period. These Riders are to become effective on June 1, 2013. These Phase II rates will change annually for the purpose of reconciliation. The Companies will file an annual report of collections under the rider within 30 days following the conclusion of each Phase II EE&C-C reconciliation year, with the rates being subject to annual review and audit by the Commission. Finally, FirstEnergy notes that any revenue received from the Companies’ successful bidding of energy efficiency resources into the PJM capacity market will be allocated to the customer class that provided the savings for the energy efficiency resources and will be used to offset that customer class’ rider charge. Joint Petition at 16 and 17.

**IV. Discussion**

**A. Legal Standards**

The Company has the burden of proof in accordance with 66 Pa. C.S.
§ 332(a). Courts have held that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied,* 529 Pa. 654, 602 A.2d 863 (1992). That is, the Company’s evidence must be more convincing, by even the smallest amount, than that presented by the other Parties. *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).

We note that any issue that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that the Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*,

625 A.2d 741 (Pa. Cmwlth. 1993); *see also*, *generally*, *University of Pennsylvania v.*

*Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

**B. Phase II Conservation Requirements**

**1. Overall Conservation Requirements**

In the *Phase II Implementation Order* at 24, the Commission tentatively adopted the consumption reduction targets recommended by the SWE and proposed in the Tentative Implementation Order, as depicted in Table 1. As noted above in Section I of this Order, in an Opinion and Order at Docket Nos. P-2012-2320450,
P-2012-2320468, P-2012-2320480, and P-2012-2320484, entered on December 5, 2012, this Commission affirmed the energy efficiency benchmarks established in the *Phase II Implementation Order* for Met Ed, Penelec, Penn Power and West Penn. In addition, the Commission has required the EDCs to submit plans that were designed to achieve at least 25 percent of the total target amount in each Phase II program year. *See Phase II Implementation Order* at 28. The percentage reduction targets that each FirstEnergy Company must meet by May 31, 2016, as well as their three-year cumulative MWh figures, are as follows:

|  |  |  |
| --- | --- | --- |
| **EDC** | **Three-Year % of 2009/10****Forecast Reductions** | **Three-Year MWh Value of 2009/10 Forecast Reductions** |
| Met-Ed | 2.3 | 337,753 |
| Penelec | 2.2 | 318,813 |
| Penn Power | 2.0 | 95,502 |
| West Penn | 1.6 | 337,533 |

The Plans must include specific proposals to achieve or exceed these required reductions in consumption. 66 Pa. C.S. § 2806.1(b)(1)(ii). The Commission is required to analyze how the program and individual plans will enable the EDC to meet or exceed the required reductions in consumption. 66 Pa. C.S. § 2806.1(a)(4). The Commission is also required to develop procedures to ensure compliance with these requirements. 66 Pa. C.S. § 2806.1(a)(9).

The Plans of Met Ed, Penelec, Penn Power and West Penn propose total energy savings of 351,451 MWh, 324,944 MWh, 95,782 MWh and 348,200 MWh, respectively, by the end of Program Year 2015 (May 31, 2016). Companies’ Plans at Appendix E, Table 2. Met Ed proposes to obtain 42%, 31% and 31% of its Phase II total consumption reduction target in Program Years 2013, 2014 and 2015 respectively. Penelec proposes to obtain 40%, 31% and 31% of its Phase II total consumption reduction target in Program Years 2013, 2014 and 2015 respectively. Penn Power proposes to obtain 37%, 32% and 31% of its Phase II total consumption reduction target in Program Years 2013, 2014 and 2015 respectively. And West Penn proposes to obtain 43%, 30% and 30% of its Phase II total consumption reduction target in Program Years 2013, 2014 and 2015 respectively. Companies’ Plans at Appendix E, Table 2.

In review of FirstEnergy’s Plans, we find that the Plans project total energy savings that will meet or exceed the Phase II targets set forth in the *Phase II Implementation Order*. In addition, we find that the plans are designed to achieve at least 25 percent of the total energy savings in each Phase II program year.

**2. Requirements for a Variety of Programs Equitably Distributed**

The Commission’s EE&C Program must include “standards 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). As in Phase I, the Commission expects the EDCs to provide a reasonable mix of energy efficiency programs for all customers. The EDCs are also required to provide comprehensive measures such as whole house installations and must include at least one such comprehensive measure for each of the residential and small commercial rate classes. *See Phase II Implementation Order* at 88 and 66 Pa. C.S. § 2806.1(b)(1)(ii).

The Companies’ Plans contain nine different programs distributed across all customer classes. Met Ed proposes 33 measures for residential and low income customers. Met Ed’s Plan at 32. Met Ed also proposes 50 measures for small commercial and industrial customers. *Id*. at 52. Met Ed further proposes 22 measures for large commercial and industrial customers.  *Id.* at 69. Finally, Met Ed proposes 25 measures for Government/Education/Non-Profit customers. *Id.* at 82. Met Ed proposes to spend 50% of the total Plan budget on residential (exclusive of low-income) programs, 10% on residential low-income programs, 20% on small commercial and industrial programs, 19% on large commercial and industrial programs and 2% on Government/Education/Non-Profit programs. *Id.* at Appendix E, Table 5.

Penelec proposes 33 measures for residential and low income customers. Penelec’s Plan at 32. Penelec also proposes 50 measures for small commercial and industrial customers. *Id.* at 52. Penelec further proposes 22 measures for large commercial and industrial customers. *Id.* at 68. Finally, Penelec proposes 25 measures for Government/Education/Non-Profit customers. *Id*. at 81. Penelec proposes to spend 48% of the total Plan budget on residential (exclusive of low-income) programs, 14% on residential low-income programs, 22% on small commercial and industrial programs, 14% on large commercial and industrial programs and 2% on Government/Education/Non-Profit programs. *Id.* at Appendix E, Table 5.

Penn Power proposes 33 measures for residential and low income customers. Penn Power’s Plan at 32. Penn Power also proposes 50 measures for small commercial and industrial customers. *Id.* at 51. Penn Power further proposes 22 measures for large commercial and industrial customers. *Id.* at 68. Finally, Penn Power proposes 25 measures for Government/Education/Non-Profit customers. *Id.* at 81. Penn Power proposes to spend 46% of the total Plan budget on residential (exclusive of low-income) programs, 18% on residential low-income programs, 22% on small commercial and industrial programs, 12% on large commercial and industrial programs and 3% on Government/Education/Non-Profit programs. *Id.* at Appendix E, Table 5.

West Penn proposes 33 measures for residential and low income customers. West Penn’s Plan at 32. West Penn also proposes 50 measures for small commercial and industrial customers. *Id.* at 52. West Penn further proposes 22 measures for large commercial and industrial customers. *Id.* at 69. Finally, West Penn proposes 25 measures for Government/Education/Non-Profit customers. *Id.* at 82. West Penn proposes to spend 43% of the total Plan budget on residential (exclusive of low-income) programs, 10% on residential low-income programs, 27% on small commercial and industrial programs, 16% on large commercial and industrial programs, and 4% on Government/Education/Non-Profit programs. *Id.* at Appendix E, Table 5.

We conclude that the Companies’ Plans meet the requirement to provide a variety of measures to all customer classes in an equitable manner. The record evidence shows that the Plans contain nine different programs distributed across all customer classes, two comprehensive programs to residential customers and one comprehensive program to small commercial customers. The Companies have provided at least one energy efficiency program for each customer class and at least one comprehensive measure to the residential and small commercial customers.[[9]](#footnote-9) Therefore, we conclude that the Companies’ Plans comply with the provisions of 66 Pa. C.S. §§ 2806.1(a)(5) and 2806.1(b)(1)(ii), and the *Phase II Implementation Order*.

**3. Ten Percent Government/Educational/Non-profit Requirement**

For Phase II, EE&C Plans are again required to obtain a minimum of ten percent (10%) of all consumption reduction requirements from federal, state and local governments, including municipalities, school districts, institutions of higher education and nonprofit entities. *Phase II Implementation Order* at 45. In addition, the EDCs were encouraged to give special emphasis and consideration to multifamily housing within the government/educational/nonprofit sector and to reach out to the Pennsylvania Housing Finance Agency (PHFA) for assistance and coordination efforts. *Phase II Implementation Order* at 49. In addition, multifamily properties are not required to be owned by a non-profit or government entity to qualify under the government/educational/nonprofit sector, provided they are financed under a federal or state affordable housing program and they have long-term use restrictions in place. *Phase II Implementation Order* at 50.

The Plans include programs for the government/educational/nonprofit sector that are anticipated to exceed the 10% reduction requirement. Companies’ Plans at Appendix E, Table 2. In addition, the Plans permit multifamily properties not owned by a non-profit or government entity to qualify for their government/educational/nonprofit programs, provided they are financed under a federal or state affordable housing program and they have long-term use restrictions in place. Met Ed’s Plan at 86 and 87, Penelec’s Plan at 85 and 86, Penn Power’s Plan at 85 and 86, and West Penn’s Plan at 86 and 87. Consequently, we conclude that the Companies’ Plans meet the requirements of the *Phase II Implementation Order* to obtain a minimum of ten percent (10%) of all consumption reduction requirements from the government/educational/nonprofit sector.

**4. Low-income Program Requirements**

For Phase II, the Commission continued the requirement that each EDC’s EE&C Plan include specific energy efficiency measures for households at or below 150% of the federal poverty income guidelines (FPIG), in proportion to that sector’s share of the total energy usage in the EDC’s service territory. In addition, the Commission required each EDC to obtain a minimum of four-and-a-half percent (4.5%) of its total consumption reduction requirements from the low-income sector. The EDCs are permitted to use energy savings, verified by an SWE approved survey method, obtained from customers with incomes at or below 150% of the FPIG to meet this 4.5% goal. EDCs are also permitted to include savings from multifamily housing, up to the percentage of customers living in the multifamily housing with incomes at or below 150% of the FPIG to meet this 4.5% goal.

The Companies’ Plans have 42 of 113 measures (or 36% of total measures) that specifically target low-income customers. Companies’ Plans at 122. Notably, this amount is greater than the Companies’ estimates of total energy usage attributable to low-income customers in the FirstEnergy Companies’ service territories. Companies’ Plans at 122. We find that the Companies’ Plans comply with the requirement that an EE&C plan include a number of low-income measures in proportion to the low-income households’ usage of total energy usage in each of the Companies’ service territories.

 In their Plans, Met Ed, Penelec, Penn Power and West Penn propose total energy savings from low-income customers of 18,902 MWh, 21,124 MWh, 4,661 MWh and 16,907 MWh, respectively, by the end of Program Year 2015 (May 31, 2016). Companies’ Plans at Appendix E, Table 2. In addition, in the Joint Settlement, the Companies agreed to revise their low income programs to target increased energy savings by at least 10% over the plan targets as originally proposed. Joint Settlement at 6. Based on this, we find that the Plans include programs that are anticipated to exceed the requirement to obtain 4.5% of the total consumption reduction requirement from low-income customers.

**5. Proposals for Improvement of the EDCs’ Plans**

The Commission’s EE&C Program must include “procedures to make recommendations as to additional measures that will enable an electric distribution company to improve its plan and exceed the required reductions in consumption.” 66 Pa. C.S. § 2806.1(a)(6). We begin by discussing specific proposals (if any) for improving specific programs targeted toward residential, commercial and industrial customers. We then discuss generic issues that affect multiple programs proposed by FirstEnergy (if any), regardless of customer class.

Initially, we note that through the Joint Settlement, FirstEnergy agrees to adopt or to investigate and study several improvements proposed by the Parties to the Joint Settlement. All Parties to this proceeding either agreed to the Joint Settlement or did not oppose the Joint Settlement. As these proposed improvements are addressed in the Companies’ Plans as amended by the Joint Settlement, and as there are no remaining contested issues related to these proposed improvements, we will not discuss them in this Opinion and Order.

The only remaining proposed improvement that was not adopted or addressed in the Joint Settlement is that proposed by UGI in relation to the Plans submitted by Met Ed, Penelec and West Penn[[10]](#footnote-10) (Three Companies). UGI proposed several fuel switching alternatives and the elimination of an incentive to improve the Plans of the Three Companies.

**a. Positions of the Parties**

UGI claimed that the inclusion of said alternatives could increase the electricity savings produced over the life of the plans by 1.25 billion kWh, amounting to an additional 17% in total savings. UGI M.B. at 1.

To achieve these additional savings, UGI proposed that the Three Companies alter their Plans as follows:

1. Provide the same incentive as [they] proposed for efficient water heating measures to each customer who installs a natural gas water heater with an energy factor greater than 67% (the efficiency of an ENERGY STAR® natural gas water heater).
2. Provide in lieu of, or as an alternative to, the Air Source Heat Pump (ASHP) measure an incentive payment of $1,400 to each residential customer who installs a natural gas furnace with an annual fuel use efficiency (AFUE) greater than 95% and a SEER 15 electric central air conditioning unit; and an incentive payment of $2,500 to each residential customer who installs a natural gas furnace with an AFUE greater than 95% and a SEER 16 electric central air conditioning unit.
3. Eliminate the payment of incentives to promote ground source heat pump (GSHP) installations.
4. Prohibit the payment of incentives where fuel switching from natural gas to electric could result.
5. Inform the [Three] Companies’ customers of the true electricity savings that would be achieved by employing natural gas water heating and natural gas space heating measures and provide such measures the same

exposure as other efficient equipment measures in their Phase II education, awareness and outreach programs.

UGI M. B. at 5-6.

UGI contends that substituting the natural gas option for a SEER 15 ASHP will produce annual per-participant savings of 11,428 kWh for Met-Ed customers, 13,741 kWh for Penelec customers, and 11,399 kWh for West Penn Power customers, which would amount to an increase in potential annual savings of almost 2000%. UGI M.B. at 16. UGI further contends that the installation of natural gas water heaters, in comparison, would be cost-effective with a TRC ratio of 1.97 using Met-Ed’s same assumed participation levels. UGI estimates that, if Met-Ed were to adopt UGI’s proposed modification, up to $2,205,506 of additional TRC benefits for Met-Ed customers could be generated. UGI St. 1 at 22-24; Exhibit UGI-2 at 1. For Penelec, UGI claims that the TRC would increase from 0.45 to 2.01 yielding up to $1,907,703 of additional benefits, and West Penn’s water heating measure would increase from 0.37 to 1.78 yielding an additional $2,507, 696 in TRC benefits. Exhibit UGI-2 at 2 and 3.

UGI supports its proposal for natural gas space heating in a similar manner, stating, via Mr. Raab’s testimony, that adopting the proposed modification to incent the installation of natural gas space heating and air conditioning would increase Met-Ed’s TRC ratio from 0.61 to 1.72 generating $4,255,762 additional TRC benefits for Met-Ed customers. UGI St. 1 at 26-27; Exhibit UGI-3 at 1. For this measure for Penelec, UGI states that the TRC ratio would increase from 0.46 to 1.88 with additional benefits of $3,116,902, and West Penn would see its TRC ratio increase from 0.50 to 1.36 with additional monetary benefits of $1,836,053. Exhibit UGI-3 at 2 and 3.

UGI states that the GSHP measure encourages free-ridership as the Three Companies’ proposed incentive would only cover a fraction of the total cost of the measure and, thus, will not have an effect on a customer’s decision to install a GSHP. UGI St. 1 at 17-19. Therefore, UGI states that the measure should be eliminated from the Three Companies’ Plans and the funding reallocated to fuel switching measures. UGI M.B. at 23-24.

FirstEnergy counters UGI’s arguments by providing three primary arguments. First, the Companies argue that fuel switching is not required by law or Commission Order. Second, FirstEnergy states that UGI’s fuel switching recommendations are an attempt by UGI to increase its sales and profits. Lastly, FirstEnergy avers that the purported benefits underlying UGI’s recommendations are based on assumptions and estimates that are not supported by facts. FirstEnergy M.B. at 19-24.

Of significance, FirstEnergy asserts that UGI’s proposals are not supported by facts. FirstEnergy states that UGI’s TRC calculations are flawed, claiming that all of UGI’s benefit cost calculations are based on a TRC formula that used the NYMEX price of gas in Louisiana. The Companies’ witness, Charles V. Fullem, explained that the use of these values for the price of natural gas understates the cost of natural gas and does not provide an equivalent comparison with the electric benefit cost calculations. This is due to the electric benefit cost calculation being based on the cost of electricity at the customer’s meter and therefore includes retail transmission and distribution charges, while the NYMEX price of natural gas does not include equivalent charges. NT at 85 and 86. FirstEnergy charges that the TRC results presented by UGI are skewed and overstate the net benefits of natural gas measures installed in Pennsylvania. FirstEnergy M.B. at 23-24. Additionally, FirstEnergy rebuts UGI’s claim that the rebates currently included in the Plans may actually increase electric load. FirstEnergy claims that UGI’s witness, during cross examination, acknowledged that he did not know whether these incentives have this effect. NT at 80. Further, FirstEnergy argues that the calculation presented by UGI’s witness is also flawed by additional unsubstantiated assumptions and estimates. FirstEnergy M.B. at 23-25.

FirstEnergy goes on to challenge UGI’s assertion that the programs UGI proposes will obtain more than a billion additional kWh savings and monetary savings of more than $12 million. FirstEnergy notes that in order to achieve the magnitude of savings asserted by UGI, all of the Companies’ customers would have to have access to natural gas and participate in UGI’s proposed programs by switching to natural gas. FirstEnergy states that the record evidence shows that six percent to 28 percent of its customers have access to natural gas. FirstEnergy asserts that UGI’s assumed market penetration rates are between five and ten times what is supported by the record. FirstEnergy asserts that UGI has failed to demonstrate that there is adequate potential for the UGI proposals to obtain an additional billion kWh savings or that the savings can be obtained within the two percent spending cap. FirstEnergy R.B. at 10 and 11.

**b. Disposition**

Based on evidence and testimony presented, the Commission rejects UGI’s proposals to modify the Companies’ Plans. The Commission agrees with the Companies that their Plans, as modified by the Joint Settlement, demonstrate that they will be able to meet or exceed their Phase II consumption reduction targets. Furthermore, the Commission agrees with FirstEnergy that UGI failed to provide substantial unequivocal, credible evidence of record, to support its assertions. Specifically, we find that UGI’s testimony exaggerated the savings potential and TRC levels of its proposals. In addition, we find that UGI failed to support its claim that the Companies’ Plans inappropriately increase electric load or that the Plans incent switching from natural gas or other fuel sources to electric.

The Commission will, however, continue to require all of the FirstEnergy Companies in Pennsylvania to continue to collect and track data regarding any incident of fuel switching, as in Phase I. Specifically, we direct that FirstEnergy track appropriate data, in coordination with the Statewide Evaluator, including at least the following: (1) type of appliance or equipment and fuel source being replaced; (2) the availability of natural gas at the customer’s location or immediate area; and (3) whether electric appliances or equipment were installed in areas where natural gas is available.

**C. Cost Issues**

**1. Plan Cost Issues**

The Act allows an EDC to recover all prudent and reasonable costs relating to the provision or management of its EE&C plan, but limits such costs to an amount not to exceed two percent of the EDC’s total annual revenue as of December 31, 2006, excluding low-income usage reduction programs established under 52 Pa. Code Chapter 58. 66 Pa. C.S. § 2806.1(g).

 **a. Phase I Excess**

In the *Phase II Implementation Order*, the Commission directed that savings in excess of an EDC’s three percent consumption reduction target are to be applied towards that EDC’s Phase II consumption reduction target. This raised issues regarding Phase I and Phase II budgets. The Commission directed that the EDCs be allowed to continue Phase I spending through the entirety of Phase I, ending May 31, 2013, even if they have already attained their three percent reduction targets. In addition, the Commission stated that program measures installed and commercially operable on or before May 31, 2013, as well as CSP or administrative fees related to Phase I are considered Phase I expenses. As such, the Commission allowed the EDCs to utilize their Phase I budgets past May 31, 2013, solely to account for those program measures installed and commercially operable on or before May 31, 2013, and to finalize the CSP and administrative fees related to Phase I. EDCs may not use Phase I funds for Phase II programs. *Phase II Implementation Order* at 104-107.

Through the Joint Settlement, the Companies have withdrawn their request for an extension of their reconciliation period for Phase I costs in this proceeding and will, instead, make such a request in a separate proceeding. Joint Settlement at 10.

**b. Phase II Allowable Costs**

The level of costs that an EDC will be permitted to recover in implementing its EE&C program was established in the Phase I proceedings, which we continued in Phase II. Each EDC is to include a calculation of the total amount of EE&C costs it will be permitted to recover (exclusive of expenditures on low-income usage reduction programs established under 52 Pa. Code Chapter 58) based on the two percent limitation as set forth in the Act, which will represent the maximum level of spending on EE&C measures that will be recoverable under the EDC’s Plan. *Phase II Implementation Order* at 102.

Each EDC is to provide a careful estimate of the costs relating to all EE&C programs and measures as set forth in its plan. These costs are to include both capital and expense items relating to all program elements, equipment and facilities, as well as an analysis of all related administrative costs. The EDC must also provide ample support to demonstrate that all such costs are reasonable and prudent in light of its plan and the goals of the Act, keeping in mind that the total level of these costs must not exceed the two percent limitation. *Id*.

As in Phase I, EDCs will be allowed to recover both the ongoing costs of its plan, as well as incremental costs incurred to design, create, and obtain Commission approval of the plan. All costs submitted for recovery in an EDC’s plan will, however, be subject to review by the Commission to determine whether the costs are prudent and reasonable, and are directly related to the development and implementation of the plan. Furthermore, EE&C measures and associated costs that are approved by the Commission will again be subject to after-the-fact scrutiny. *Phase II Implementation Order* at 103.

With regard to the two percent limitation provision, we will continue to interpret the “total cost of any plan” as an average annual amount, rather than an aggregate cap for the plan period. In addition, the Commission will continue to interpret “amounts paid to the [EDC] for generation, transmission, distribution and surcharges by retail customers,” set forth as the definition of the EDC total annual revenue in 66 Pa. C.S. § 2806.1(m), to include all amounts paid to the EDC for generation service, including generation revenues collected by an EDC for an EGS that uses consolidated billing. *Phase II Implementation Order* at 103 and 104.

We further note that the SWE contract will be funded by a proration from the EDCs and handled in the same manner as Phase I[[11]](#footnote-11) and be recovered from the EDCs consistent with Subsection 2806.1(h) of the Act, 66 Pa. C.S. § 2806.1(h). *See Phase II Implementation Order* at 69-71.

The two percent cost caps for Met Ed, Penelec, Penn Power and West Penn are $74,600,683, $68,924,226, $19,979,366 and $70,687,806 respectively. Companies’ Plans at 18. The total projected costs for the Phase II Plans of Met Ed, Penelec, Penn Power and West Penn are $74,598,368, $68,919,366, $19,979,460 and $70,689,241 respectively. Companies’ Plans at Appendix E, Table 6C. As the total projected costs for Met Ed’s and Penelec’s Phase II Plans are less than or equal to those Companies’ associated two percent cost caps, we find that Met-Ed and Penelec comply with the two percent cost cap requirement. We note, however, that while Penn Power and West Penn exceed their respective budget caps by $94 and $1,435, we also recognize that the plan costs, as well as other plan values, are estimates that will require adjustments over time. As such, we do not believe it prudent or cost effective to require Penn Power and West Penn to submit revised plans addressing these minor overages at this point. We will, however, note that by not rejecting these Plans based on this discrepancy, we are not approving cost recovery up to these amounts; we will only permit Penn Power and West Penn to recover amounts up to the 2% caps, or $19,979,366 for Penn Power and $70,687,806 for West Penn.

**2. Cost Effectiveness/Cost-Benefit Issues**

Act 129 requires an analysis of the costs and benefits of each EE&C plan, in accordance with a TRC test approved by the Commission. *See* 66 Pa. C.S.
§ 2806.1(a)(3). The Act also requires an EDC to demonstrate that its plan is cost-effective using the TRC test and that the plan provides a diverse cross-section of alternatives for customers of all rate classes. *See* 66 Pa. C.S. § 2806.1(b)(1)(i)(I). The Act defines the total resource cost test as “a standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures.” 66 Pa. C.S. § 2806.1(m).

The purpose of using the TRC test to evaluate the EDCs’ specific programs is to track the relationship between the benefits to customers and the costs incurred to obtain those benefits. The TRC test has historically been a regulatory test. Sections 2806.1(c)(3) and 2806.1(d)(2), 66 Pa. C.S. §§ 2806.1(c)(3) and (d)(2), as well as the definition of the TRC test in Section 2806.1(m), 66 Pa. C.S. § 2806.1(m), provide that the TRC test be used to determine whether ratepayers, as a whole, received more benefits (in reduced capacity, energy, transmission, and distribution costs) than the implementation costs of the EDCs’ EE&C plans. *See Phase II Implementation Order* at 79.

The Plans of Met Ed, Penelec, Penn Power and West Penn show cost-benefit ratios of 1.5, 1.5, 1.3 and 1.5, respectively, on a whole plan basis. Companies’ Plans at Appendix E, Table 1. As such, we find that the Companies’ Plans, as a whole, are cost-effective.

**3. Cost Allocation Issues**

The Act requires that all approved EE&C measures be financed by the customer class that receives the direct energy and conservation benefit of such measures. 66 Pa. C.S. § 2806.1(a)(11). No parties raised an issue regarding the cost allocation in the Companies' Plans. Upon review of the Companies’ Plans, we find that the Plans appropriately allocate costs to the customer class that receives the direct energy and conservation benefit of such measures.

**4. Cost Recovery Issues**

Act 129 provides that an EDC “shall recover on a full and current basis from customers, through a reconcilable adjustment clause under Section 1307, all reasonable and prudent costs incurred in the provision or management of [an EE&C] plan.” 66 Pa. C.S. § 2806.1(k). The Commission is allowing EDCs to begin implementation of Phase II EE&C Plans, upon Commission approval of those plans. Specifically, the EDC may begin performing administrative duties related to its Phase II EE&C Plan. This includes, but is not limited to, contracting with CSPs, trade allies and vendors; preparing marketing materials associated with Phase II measures; contracting with an independent evaluator; etc. EDCs, however, may not begin offering incentives and rebates to customers. In order to claim savings in Phase II for a measure, that measure must be installed and commercially operable no earlier than June 1, 2013. The Commission directed that the recovery of Phase II costs allowed to be incurred during Phase I are to be deferred until Phase II cost recovery rates become effective. The Phase II costs are to be clearly identified and distinguishable from Phase I costs and are to be accounted for separately from Phase I costs. The Phase II costs are to be reconciled against the Phase II funds collected during the first year of Phase II. *Phase II Implementation Order* at 114 and 115.

The Commission directed each EDC to develop a Phase II reconcilable adjustment clause tariff mechanism in accordance with 66 Pa. C.S. § 1307 and include this mechanism in its Phase II EE&C Plan. The Phase II cost recovery mechanism is to be a separate cost recovery mechanism from that used for Phase I. Such a mechanism is to be designed to recover, on a full and current basis, without interest, from each customer class, all prudent and reasonable EE&C costs that have been assigned to each class. The cost recovery mechanism shall be non-bypassable, and structured such that it will not affect the EDC’s price-to-compare. The mechanism shall be set forth in the EDC’s tariff, accompanied by a full and clear explanation as to its operation and applicability to each customer class. *Phase II Implementation Order* at 118.

The Companies have proposed a Phase II Energy Efficiency and Conservation Charge Rider (Phase II EE&C-C) to recover their costs related to their Phase II Plans. The Phase II EE&C-C rider for Met Ed and Penelec is to be applied to each billing unit during a billing month to customers served under their Tariff, except those served under the Borderline Service rates. The Phase II EE&C-C rider for Penn Power and West Penn is to be applied to each billing unit during a billing month to customers served under their Tariff. Under all the Companies’ Phase II EE&C-C riders, the residential, non-profit, commercial, and street lighting customer classes are charged on a per kWh basis, with the industrial customer class being charged on a per kW PLC basis. For West Penn, its Phase II EE&C-C rider for Tariff No. 37 covering the Pennsylvania State University, will be charged on a per kW PLC basis. FirstEnergy Plans at Appendix F.

Upon review of the Companies’ proposed Tariffs, we reject them for the following reasons. First, we find that the proposed Phase II EE&C-C Riders have several cost components that will be allocated to the various customer classes, but the proposed Riders do not provide a description of the basis to be used for the allocation of the costs. The proposed tariffs provide that the costs incurred and projected to be incurred associated with the Customer Class specific Phase II EE&C-C Programs will be recovered from that Customer Class. The proposed tariffs also provide for an allocated portion of certain costs to each of the Customer Classes for recovery from that Customer Class. These costs include: any indirect costs; incremental administrative start-up costs incurred by the Company through May 31, 2013 in connection with the development of the Companies’ Phase II EE&C Programs; the costs the Companies incur and project to incur to fund the Commission’s statewide evaluator contract; and any costs the Companies incur and project to incur to fund any future Commission-approved demand response programs, or successor demand response programs. We believe it to be appropriate that these costs are allocated amongst the Customer Classes for recovery; however, the proposed Riders do not provide a description of the methodology that the Companies will apply in the allocation of these costs. To ensure that the allocation methodology is appropriately designed on an equitable basis, and applied in a consistent manner, we direct the Companies to modify their proposed Riders when they submit their compliance filings to include a detailed description of the allocation methodology that will be used for these costs.

Second, we find that the proposed Phase II EE&C-C Riders do not identify a twelve-month reconciliation period to comply with Section 1307(e) and will be subject to audit. 66 Pa. C.S. § 1307(e). Our preference is that the twelve-month Section 1307(e) reconciliation period and data match as submitted in any annual Phase II EE&C-C rate adjustments submitted in accordance with approved Riders. Accordingly, we direct the Companies to modify their proposed Riders when they submit their compliance filings to identify the twelve-month reconciliation period.

Lastly, we note that the proposed Phase II EE&C-C Riders provide for annual rate changes to be filed on March 31 of each year to become effective the following June 1. This rate adjustment schedule results in the Companies using nine months of actual data and three months of estimated data in their “E” factor over/under collection that will be reflected in the rates that will become effective June 1. We prefer that the annual rate changes be filed on May 1 of each year to become effective the following June1. This will allow the Companies to reflect an additional month of actual data in the rates that will become effective June 1. We direct the Companies to submit riders that adopt this annual rate change filing schedule.

To the extent that the Joint Settlement adopts the Phase II EE&C-C Riders, we reject that portion of the Joint Settlement. We note that Paragraph 22 of the Joint Settlement permits the Parties thereto to withdraw from the Joint Settlement in the event that the Commission does not approve the Joint Settlement as filed. We will therefore require all Parties to the Joint Settlement to notify the Commission, within five business days of the entry date of this Opinion and Order, whether they are exercising their right to withdraw from the Settlement. If any Party exercises the right to withdraw, the Joint Settlement and the Petition shall be rejected. If no Party exercises the right to withdraw, the Joint Settlement, and the Petition, shall be granted in part and denied in part, consistent with this Order.

**D. Conservation Service Provider Issues**

The Commission’s EE&C Program must include a requirement for the participation of conservation service providers in the implementation of all or part of a plan. 66 Pa. C.S. § 2806.1(a)(10). The Commission is required to establish procedures requiring EDCs to competitively bid all contracts with conservation service providers. 66 Pa. C.S. § 2806.1(a)(7). The Commission is also required to establish procedures to review all proposed contracts with conservation service providers prior to the execution of the contract. 66 Pa. C.S. § 2806.1(a)(8). The Commission has the authority to order the modification of a contract to ensure that plans meet consumption reduction requirements. *Id*.

As the EDCs had competitively bid the contracts with current CSPs in Phase I, the Commission only required the EDCs to competitively bid CSP contracts in Phase II for new programs or measures that were not implemented in Phase I and for any new CSP to perform services for a program or measure that was implemented in Phase I and retained in Phase II. The Commission also required the EDCs to submit, for Commission approval all Phase II CSP contracts, including those contracts for CSPs the EDC is retaining from Phase I. Any contract for a CSP that is being retained must include a justification for retaining the CSP and the costs associated with the contract. *Phase II Implementation Order* at 98.

In Section 4.3 of the respective plans, the Companies state that they will contract with one or more CSP(s) to implement the portfolio of programs in their Plans. The CSP(s) will be responsible for the start-up and ongoing management of new programs including staffing, development of website(s),[[12]](#footnote-12) promotional strategies, and processes ensuring quality and other controls supporting successful program transition and implementation. The CSP(s) will support consumer education initiatives and be the interface with the customer on many of the programs being offered. Companies’ Plans at 104 and 105.

The Companies anticipate contracting with CSPs to support the Residential sector program manager(s), Commercial and Industrial sector program manager(s), including the governmental sector, Tracking/Reporting system and evaluation, monitoring and verification (EM&V). The Companies anticipate issuing RFPs, in accordance with its previously approved process, for all sector program management activities. Companies’ Plans at 105. The Companies also note that a contract with a CSP will not be binding until after approval by the Commission of both the contract and the related program. *Id*. at 22.

The Parties raised no Conservation Service Provider issues that are not addressed in the Joint Settlement or elsewhere in this Opinion and Order.

On the basis of our review of the record, we shall approve the provisions for the utilization of CSPs outlined in Section 4.3 of the Companies’ respective Plans, having found them to be reasonable and in compliance with Act 129 and the *Phase II Implementation Order*.

**E. Implementation and Evaluation Issues**

**1. Implementation Issues**

The Act requires the Commission to establish procedures to ensure compliance with the consumption reduction requirements of the Act. 66 Pa. C.S.
§ 2806.1(a)(9). The consumption reduction requirements are outlined in the Act at Sections 2806.1(c) and (d). 66 Pa. C.S. §§ 2806.1(c) and (d).

The Companies’ Program Management and Implementation Strategies are contained in Section 4 of their respective Plans. This section states that generally, the Companies will have overall administration and oversight of the Plan. Specific activities that the Companies will oversee include plan development, execution of marketing campaigns, Quality Assurance/Quality Control and tracking activities. The Companies will also utilize third party vendors, CSPs, partners, trade allies, community-based organizations, and other entities engaged in energy-efficiency to perform various program implementation and support duties. These duties include assistance with plan design and implementation, EM&V and the installation of the tracking and reporting tool. Companies’ Plans at 91.

The Parties raised no implementation issues that are not addressed in the Joint Settlement or elsewhere in this Opinion and Order.

On the basis of our review of the record, we shall approve the implementation and management strategies contained in Section 4 of the respective Plans, having found them to be reasonable and in compliance with Act 129.

We, however, believe it would be beneficial for FirstEnergy to set reasonable deadlines for the submission of all incentive applications following the in-service date of a measure during Phase II, and any future phases of the EE&C Program. Therefore, we shall direct FirstEnergy to establish reasonable deadlines as part of their Phase II incentive application process, if it has not already done so.

**2. Monitoring and Reporting Issues**

The Commission’s EE&C Program is to include an evaluation process, including a process to monitor and verify data collection, quality assurance and the results of each plan and the program. 66 Pa. C.S. § 2806.1(a)(2). Consistent with this requirement, each EDC’s Plan is to “explain how quality assurance and performance will be measured, verified and evaluated.” 66 Pa. C.S. § 2806.1(b)(1)(i)(C). Each EDC is required to submit an annual report to the Commission relating to the results of its EE&C Plan. 66 Pa. C.S. § 2806.1(i)(1).

For Phase II, the Commission directed the EDCs to continue using the reporting schedule established in the May 25, 2011 Secretarial Letter.[[13]](#footnote-13) EDCs are to submit two Act 129 annual reports per program year. The first annual report, due July 15, is to be a preliminary report providing each EDC’s reported savings for its EE&C portfolio for that program year. The second annual report, due November 15, is to be a final annual report providing verified savings for the EDC’s EE&C portfolio for that program year, the cost-effectiveness evaluation (TRC test), the process evaluation, as well as items required by Act 129 and Commission Orders. In addition to the annual reports, the Commission directs the EDCs to file quarterly reports for the first three quarters of each reporting year, due 45 calendar days from the end of the respective quarter. The Commission directs that fourth quarter reporting information be included in the preliminary annual report. Reports should be filed with the Commission’s Secretary and SWE. Also, the Commission directs the EDCs to post all reports on their websites and the Commission will publish the reports on its website for public access.[[14]](#footnote-14) *Phase II Implementation Order* at 78.

The Companies’ monitoring and reporting strategies are contained in Sections 5 and 6 of their respective Plans. In Section 5, the Companies indicate that they have put into place Applied Energy Group Inc.’s (AEG’s) tracking and reporting system across all FirstEnergy operating companies. AEG’s comprehensive system will have the ability to monitor the progress of the various programs being offered and generate the reports required by the Commission. The reporting and tracking system also will have the ability to track a customer through program-specific statuses and to provide customized reports. Additionally, as part of the Companies’ Plans, a model has been created to project the amount of energy savings and demand reduction derived from the implementation of each measure. This model will be used to compare the actual to projected energy savings and demand reduction goals. Companies’ Plans at 105-107.

In Section 6, the Companies describe how quality assurance will be measured, verified and evaluated. Specifically the Companies present examples of specific steps that they took toward quality assurance and quality control during the design phase of the plans. These steps included:

* Administering customer surveys, using the results to design or select EE&C measures
* Validating EE&C program assumptions with stakeholders
* Using adequately qualified and experienced personnel, including contractors, to assist with the design and implementation of EE&C Programs
* Selecting EE&C measures compliant with the requirements of the 2012 Technical Resource Manual
* Using proven approaches to reach both the energy savings and demand reduction targets set for each Company
* Communicating frequently and effectively with interested parties and other stakeholders on EE&C program design and objectives
* Verifying that Established EE&C program design procedures and approaches are being followed.

Companies’ Plans at 109.

 The Companies also state that, during the implementation phase of their Plans, they will acquire selected program managers (or CSPs) to present processes that accurately document and verify data used to support energy savings and peak load reductions. The Companies also will perform their own quality assurance processes, either directly or through contract auditors, to ensure the accuracy and reliability of the reported data and savings. Furthermore, the Companies will use an EM&V Consultant to develop and implement EM&V processes and procedures. Companies’ Plans at 109.

The Parties raised no monitoring or reporting issues that are not addressed in the Joint Settlement or elsewhere in this Opinion and Order.

On the basis of our review of the record, we shall approve the monitoring and reporting strategies contained in Sections 5 and 6 of the respective Plans, having found them to be reasonable and in compliance with Act 129.

**V. Conclusion**

For the reasons set forth, *supra*, we will grant, in part, and deny, in part, the Joint Petition for Consolidation of Proceedings and Approval of Act 129 Phase II Energy Efficiency and Conservation Plans, as well as the Joint Petition for Full Settlement of Non-Reserved Issues, subject to the condition that no Party to the Joint Petition exercises the right to withdraw therefrom. Finally, we shall deny FirstEnergy’s request to approve the proposed tariff provisions to implement a Section 1307 surcharge to recover Phase II Plan costs; **THEREFORE,**

**IT IS ORDERED:**

1. That each of the Parties to the Joint Petition for Full Settlement of Non-Reserved Issues shall file with the Commission, and serve on all Parties to this proceeding, within five business days of the date this Opinion and Order is entered, a notice of whether it wishes to withdraw from the Joint Settlement Petition.
2. That, if any Party elects to withdraw from the Joint Petition for Full Settlement of Non-Reserved Issues, the Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Consolidation of Proceedings and Approval of Act 129 Phase II Energy Efficiency and Conservation Plans, together with the Joint Petition for Full Settlement of Non-Reserved Issues Initial Decision shall be denied, without further action by this Commission, and:

a. That Metropolitan Edison Company shall file with this Commission, and serve on all Parties of record in this proceeding, a revised Energy Efficiency and Conservation Plan consistent with this Opinion and Order, within sixty days of the entry of this Opinion and Order. Interested parties will have ten days to file comments on the revised Phase II Energy Efficiency and Conservation Plan, with reply comments due ten days thereafter. The Commission will approve or reject the revised Phase II Energy Efficiency and Conservation Plan at a public meeting within sixty days of the date of the filing of the revised plan.

 b. That Metropolitan Edison Company shall submit with its revised Phase II Energy Efficiency and Conservation Plan a revised cost recovery mechanism and appropriate tariffs, consistent with this Opinion and Order.

 c. That Pennsylvania Electric Company shall file with this Commission, and serve on all Parties of record in this proceeding, a revised Energy Efficiency and Conservation Plan consistent with this Opinion and Order, within sixty days of the entry of this Opinion and Order. Interested parties will have ten days to file comments on the revised Phase II Energy Efficiency and Conservation Plan, with reply comments due ten days thereafter. The Commission will approve or reject the revised Phase II Energy Efficiency and Conservation Plan at a public meeting within sixty days of the date of the filing of the revised plan.

 d. That Pennsylvania Electric Company shall submit with its revised Phase II Energy Efficiency and Conservation Plan a revised cost recovery mechanism and appropriate tariffs, consistent with this Opinion and Order.

e. That Pennsylvania Power Company shall file with this Commission, and serve on all Parties of record in this proceeding, a revised Energy Efficiency and Conservation Plan consistent with this Opinion and Order, within sixty days of the entry of this Opinion and Order. Interested parties will have ten days to file comments on the revised Phase II Energy Efficiency and Conservation Plan, with reply comments due ten days thereafter. The Commission will approve or reject the revised Phase II Energy Efficiency and Conservation Plan at a public meeting within sixty days of the date of the filing of the revised plan.

 f. That Pennsylvania Power Company shall submit with its revised Phase II Energy Efficiency and Conservation Plan a revised cost recovery mechanism and appropriate tariffs, consistent with this Opinion and Order.

 g. That West Penn Power Company shall file with this Commission, and serve on all Parties of record in this proceeding, a revised Energy Efficiency and Conservation Plan consistent with this Opinion and Order, within sixty days of the entry of this Opinion and Order. Interested parties will have ten days to file comments on the revised Phase II Energy Efficiency and Conservation Plan, with reply comments due ten days thereafter. The Commission will approve or reject the revised Phase II Energy Efficiency and Conservation Plan at a public meeting within sixty days of the date of the filing of the revised plan.

 h. That West Penn Power Company shall submit with its revised Phase II Energy Efficiency and Conservation Plan a revised cost recovery mechanism and appropriate tariffs, consistent with this Opinion and Order.

1. That, if no Party elects to withdraw from the Joint Petition for Full Settlement of Non-Reserved Issues, the Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Consolidation of Proceedings and Approval of Act 129 Phase II Energy Efficiency and Conservation Plans, is granted, in part, and denied, in part, consistent with this Opinion and Order.
2. That, if no Party elects to withdraw from the Joint Petition for Full Settlement of Non-Reserved Issues, the Joint Petition for Full Settlement of Non-Reserved Issues is granted, in part, and denied, in part, consistent with this Opinion and Order.
3. That, if no Party elects to withdraw from the Joint Petition for Full Settlement of Non-Reserved Issues, Metropolitan Edison Company’s Phase II Energy Efficiency and Conservation Plan, as modified by the Joint Settlement, is approved in part and rejected in part, consistent with this Opinion and Order.

 a. That Metropolitan Edison Company shall file with this Commission, and serve on all Parties of record in this proceeding, a revised Phase II Energy Efficiency and Conservation Charge Tariff Rider consistent with the modifications directed in this Opinion and Order, within sixty days of the entry of this Opinion and Order. Interested parties will have ten days to file comments on the revised portions of the Phase II Energy Efficiency and Conservation Charge Rider, with reply comments due ten days thereafter. The Commission will approve or reject the revised portions of the Phase II Energy Efficiency and Conservation Charge Rider at a public meeting within sixty days of the date of the filing of the revised rider.

b. That Metropolitan Edison Company is permitted to implement any portion of its Phase II Energy Efficiency and Conservation Plan that was approved without modification by this Opinion and Order.

c. That Metropolitan Edison Company shall track appropriate data regarding fuel switching, in coordination with the Statewide Evaluator, including at least the following: (1) type of appliance or equipment and fuel source being replaced; (2) the availability of natural gas at the customer’s location or immediate area; and, (3) whether electric appliances or equipment were installed in areas where natural gas is available.

1. That, if no Party elects to withdraw from the Joint Petition for Full Settlement of Non-Reserved Issues, Pennsylvania Electric Company’s Phase II Energy Efficiency and Conservation Plan, as modified by the Joint Settlement, is approved in part and rejected in part, consistent with this Opinion and Order.

 a. That Pennsylvania Electric Company shall file with this Commission, and serve on all Parties of record in this proceeding, a revised Phase II Energy Efficiency and Conservation Charge Tariff Rider consistent with the modifications directed in this Opinion and Order, within sixty days of the entry of this Opinion and Order. Interested parties will have ten days to file comments on the revised portions of the Phase II Energy Efficiency and Conservation Charge Rider, with reply comments due ten days thereafter. The Commission will approve or reject the revised portions of the Phase II Energy Efficiency and Conservation Charge Rider at a public meeting within sixty days of the date of the filing of the revised rider.

b. That Pennsylvania Electric Company is permitted to implement any portion of its Phase II Energy Efficiency and Conservation Plan that was approved without modification by this Opinion and Order.

c. That Pennsylvania Electric Company shall track appropriate data regarding fuel switching, in coordination with the Statewide Evaluator, including at least the following: (1) type of appliance or equipment and fuel source being replaced; (2) the availability of natural gas at the customer’s location or immediate area; and, (3) whether electric appliances or equipment were installed in areas where natural gas is available.

1. That, if no Party elects to withdraw from the Joint Petition for Full Settlement of Non-Reserved Issues, Pennsylvania Power Company’s Phase II Energy Efficiency and Conservation Plan, as modified by the Joint Settlement, is approved in part and rejected in part, consistent with this Opinion and Order.

 a. That Pennsylvania Power Company shall file with this Commission, and serve on all Parties of record in this proceeding, a revised Phase II Energy Efficiency and Conservation Charge Tariff Rider consistent with the modifications directed in this Opinion and Order, within sixty days of the entry of this Opinion and Order. Interested parties will have ten days to file comments on the revised portions of the Phase II Energy Efficiency and Conservation Charge Rider, with reply comments due ten days thereafter. The Commission will approve or reject the revised portions of the Phase II Energy Efficiency and Conservation Charge Rider at a public meeting within sixty days of the date of the filing of the revised rider.

b. That Pennsylvania Power Company is permitted to implement any portion of its Phase II Energy Efficiency and Conservation Plan that was approved without modification by this Opinion and Order.

c. That Pennsylvania Power Company shall track appropriate data regarding fuel switching, in coordination with the Statewide Evaluator, including at least the following: (1) type of appliance or equipment and fuel source being replaced; (2) the availability of natural gas at the customer’s location or immediate area; and, (3) whether electric appliances or equipment were installed in areas where natural gas is available.

1. That, if no Party elects to withdraw from the Joint Petition for Full Settlement of Non-Reserved Issues, West Penn Power Company’s Phase II Energy Efficiency and Conservation Plan, as modified by the Joint Settlement, is approved in part and rejected in part, consistent with this Opinion and Order.

 a. That West Penn Power Company shall file with this Commission, and serve on all Parties of record in this proceeding, a revised Phase II Energy Efficiency and Conservation Charge Tariff Rider consistent with the modifications directed in this Opinion and Order, within sixty days of the entry of this Opinion and Order. Interested parties will have ten days to file comments on the revised portions of the Phase II Energy Efficiency and Conservation Charge Rider, with reply comments due ten days thereafter. The Commission will approve or reject the revised portions of the Phase II Energy Efficiency and Conservation Charge Rider at a public meeting within sixty days of the date of the filing of the revised rider.

b. That West Penn Power Company is permitted to implement any portion of its Phase II Energy Efficiency and Conservation Plan that was approved without modification by this Opinion and Order.

c. That West Penn Power Company shall track appropriate data regarding fuel switching, in coordination with the Statewide Evaluator, including at least the following: (1) type of appliance or equipment and fuel source being replaced; (2) the availability of natural gas at the customer’s location or immediate area; and, (3) whether electric appliances or equipment were installed in areas where natural gas is available.

1. That any directive, requirement, disposition or the like contained in the body of this Opinion and Order, which is not the subject of an individual Ordering Paragraph, shall have the full force and effect as if fully contained in this part.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: March 14, 2013

ORDER ENTERED: March 14, 2013

1. As noted herein, the plans filed on November 13, 2012, were modified during the proceedings. Accordingly, the term “Plans” will be used to refer to the Plans as amended to date, while the November 13, 2012 plans will be referred to as the Initial Plans. [↑](#footnote-ref-1)
2. Each of the four Companies’ Petitions has a separate docket number because of anticipated separate compliance filings in the future among the four companies. These docket numbers were assigned regarding the respective companies as follows: (1) Met-Ed, M-2012-2334387; (2) Penelec, M-2012-2334392; (3) Penn Power, M-2012-2334395; and (4) West Penn, M-2012-2334398. [↑](#footnote-ref-2)
3. The Joint Petitioners are FirstEnergy, the OCA, CAUSE-PA, PennFuture, CAAP, the OSBA, Comverge and PSU. The Industrials filed a letter stating that they do not oppose the Settlement. [↑](#footnote-ref-3)
4. *See* NT at 88-96. [↑](#footnote-ref-4)
5. *Id*. [↑](#footnote-ref-5)
6. *Id*. [↑](#footnote-ref-6)
7. *Id*. [↑](#footnote-ref-7)
8. *Id*. [↑](#footnote-ref-8)
9. The Companies’ Plans at Section 3.1.4 note that the Companies offer comprehensive measures to residential customers, including whole house treatments through the Residential Home Performance Program and Low-Income Program.  The Home Performance Program includes home audits with additional incentives for home retrofits as well as incentives for efficient new home construction.  The Companies also offer comprehensive measures to the small commercial sector through energy audits, direct installation, custom building, and new construction measures. [↑](#footnote-ref-9)
10. UGI did not propose an improvement to Penn Power’s Plan. [↑](#footnote-ref-10)
11. In Phase I, we concluded that the expense related to the SWE is not a cost component of the FirstEnergy Companies’ individual plans, but, rather, a cost component of the overall program instituted by the Commission. Accordingly, we found that the Companies’ recovery for their respective shares of the costs for the SWE would not be subject to the two percent cap on the cost of the individual EE&C Plans. *See 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 (Order entered October 28, 2009) at 67 and 68. [↑](#footnote-ref-11)
12. The Companies note that while FirstEnergy personnel will manage the overall content on the Companies’ public internet domain, [www.firstenergycorp.com](http://www.firstenergycorp.com), the CSP(s) will be responsible for generally managing their section of the site and updating it as necessary. [↑](#footnote-ref-12)
13. *See Energy Efficiency and Conservation,* Secretarial Letter at Docket No. M-2008-2069887, dated May 25, 2011 (May 25, 2011 Secretarial Letter). [↑](#footnote-ref-13)
14. <http://www.puc.state.pa.us/electric/Act129/Act129_EDC_Reporting.aspx>. [↑](#footnote-ref-14)