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January 14, 2014

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

**VIA ELECTRONIC FILING**

**RE: Energy Efficiency and Conservation Program;
Docket Nos. M-2012-2289411 and M-2008-2069887**

Dear Secretary Chiavetta:

Enclosed please find the Reply Comments of Industrial Customer Groups regarding Tentative Order issued in the above-referenced proceeding on November 14, 2013.

Very truly yours,

McNEES WALLACE & NURICK LLC

By
Elizabeth P. Trinkle

Counsel to Industrial Customer Groups

EPT/emp
Enclosure

c: Megan G. Good (via e-mail)
Kriss Brown (via e-mail)

**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| Energy Efficiency and Conservation Program | : | Docket No. M-2012-2289411 |
| | : | M-2008-2069887 |

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**REPLY COMMENTS OF**
**INDUSTRIAL CUSTOMER GROUPS**

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## I. INTRODUCTION

On November 14, 2013, the Pennsylvania Public Utility Commission ("PUC" or "Commission") issued its Tentative Order presenting the Amended Act 129 Demand Response ("DR") Study Final Report ("Amended Final Report") as prepared by the Statewide Evaluator ("SWE").[1] The Tentative Order seeks comment on a peak demand reduction program ("Proposed DR Model") providing an alternative approach to the top 100 hours methodology. The Tentative Order also summarizes the findings of the SWE's Preliminary Wholesale Price Suppression and Prospective Total Resource Cost ("TRC") Analysis.

On December 30, 2013, the Industrial Energy Consumers of Pennsylvania, Duquesne Industrial Intervenors, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors (collectively, "Industrial Customer Groups") filed Comments. In addition to the Industrial Customer Groups, the following parties filed Comments: Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively,

[1] *Energy Efficiency and Conservation Program*, Docket Nos. M-2012-2289411, *et al.*, Tentative Order (Nov. 14, 2013) ("Tentative Order").

"FirstEnergy Companies"); PPL Electric Utilities Corporation ("PPL"); PECO Energy Company ("PECO"); the Office of Consumer Advocate ("OCA"); Comverge, Inc., EnerNOC, Inc., and Johnson Controls, Inc. (collectively, "DR Providers"); the Electric Power Generation Association ("EPGA"); the Energy Association of Pennsylvania ("EAP"); and Citizens for Pennsylvania's Future, Clean Air Council, Keystone Energy Efficiency Alliance, and the Sierra Club (collectively, "Environmental Commenters").

Pursuant to the procedural schedule established by the Commission in this proceeding, the Industrial Customer Groups hereby file these Reply Comments to respond to key issues necessitating further response. The Industrial Customer Groups' Reply Comments, however, will not respond to every argument contained in all other parties' Comments and, therefore, the Industrial Customer Groups' decision not to respond to certain arguments should not be construed as agreement with the positions of any party. To the extent that other parties raise issues not discussed herein that conflict with the Industrial Customer Groups' Comments, the Industrial Customer Groups continue to endorse their original positions.

## II. REPLY COMMENTS

The Industrial Customer Groups generally agree with those Comments recommending that DR programs for Large Commercial and Industrial ("C&I") customers be excluded for future phases of the Commission's Act 129 Energy Efficiency and Conservation ("EE&C") Program.[2] DR programs for Large C&I customers were not cost-effective in Phase I, nor are they be likely to be cost-effective in Phase III absent significant overhaul and speculative assumptions regarding wholesale price suppression and "avoided" Transmission and Distribution ("T&D") expenses. The Industrial Customer Groups reiterate that the price signals available to

[2] The Industrial Customer Groups' agreement with the conclusions of other parties that a subsequent phase is not warranted should not be taken as agreement with each and every argument raised by these parties.

available to these customers in the PJM Interconnection, L.L.C. ("PJM") energy, capacity and DR markets warrant exclusion of these customers from future phases of the EE&C Program. Contrary to the SWE's assumptions in the Amended Final Report, the proposed DR Model set forth in the Tentative Order would result in direct competition between the Act 129 programs and the PJM Emergency Load Response Program ("ELRP").

As set forth herein, the Industrial Customer Groups support PPL and EAP's reading of the plain language of Act 129 as the correct interpretation of the legislature's intent with respect to future phases of DR programs. The Industrial Customer Groups support the concept of cost standardization for Act 129 energy efficiency programs, but urge the Commission to adopt an approach that achieves the intended goal of customer parity. The Industrial Customer Groups further urge the Commission to reject proposed revisions to the TRC test as unduly speculative and incompatible with Pennsylvania's DR programs, and to look to PJM market signals as the appropriate gauge for DR.

### A. The Plain Language of Act 129 Forecloses the Possibility of Future DR Programs and Demand Reduction Targets

As set forth in their Comments, both PPL and EAP make clear that future DR programs and demand reduction targets are neither permissible nor justified under Act 129.[3] PPL cites to the "plain language" of Act 129, which mandates that the PUC establish additional demand reduction targets "[i]f the commission determines that the benefits of the [EE&C] plans exceed the costs."[4] Given that the Commission has determined through the SWE's Amended DR Study that Phase I DR programs were not cost effective, both PPL and EAP read Act 129 as foreclosing the Commission from establishing future demand reduction targets. In addition, PPL notes that

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[3] EAP Comments at 5; PPL Comments at 6.
[4] 66 Pa. C.S. § 2806.1(d)(2).

unlike Act 129 energy efficiency programs, DR programs were not intended by the General Assembly to continue beyond Phase II without additional legislative action.[5]

The Industrial Customer Groups fully agree with EAP and PPL's statutory interpretation of Act 129. The plain language of Section 2806.1(d)(2) clearly mandates that Phase I DR programs be cost-effective as a definitive requirement for setting additional demand reduction targets in future Phases of the EE&C Program. As demonstrated in the SWE's Amended Final Report, only one DR program for Large C&I customers was cost-effective during Phase I.[6] The adoption of DR programs and additional demand reduction targets for future phases of the EE&C program, particularly for Large C&I customers, would therefore diverge from the plain meaning of Act 129.

### B. Cost Standardization for Energy Efficiency Should Ensure Statewide Customer Parity

PECO's Comments urge the Commission to establish a statewide percentage allocation of Act 129 funds for energy efficiency programs instead of calculating EDC-specific targets.[7] PECO recommends that the Commission adopt a funding range between 14-18% of an EDC's Act 129 funds to be dedicated to achieving peak load reduction. PECO argues that using a percentage of total Act 129 funds achieves greater parity among Pennsylvania customers than adopting an exact dollar amount or MW reduction target; as such, Pennsylvania customers will no longer pay different proportions energy efficiency costs depending upon the EDC service territory in which they are located.[8]

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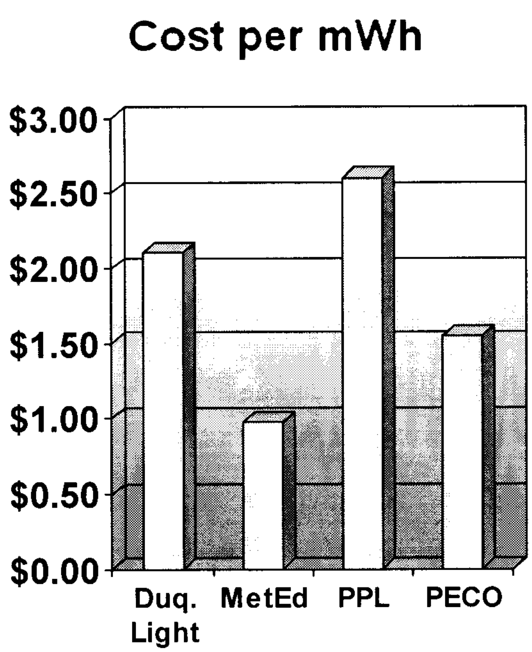
[5] PPL Comments at 6-7, comparing 66 Pa. C.S. § 2806.1(c)(3) ("the commission shall evaluate the costs and benefits [of the EE&C program] [b]y November 30, 2013, and every five years thereafter") with 66 Pa. C.S. § 2806.1(d)(2) (governing DR programs).
[6] Amended Final Report at 66.
[7] PECO Comments at 19.
[8] *See id.*

While the Industrial Customer Groups generally support the concept of cost standardization for Act 129 energy efficiency programs, the Industrial Customer Groups question whether PECO's standardization proposal achieves the intended goal of customer parity. Although the current EDC-based methodology results in cost disparity to customers across the Commonwealth's service territories, standardization based on statewide percentage allocation does not address the disparate impact of EE&C program costs on Large C&I customers. Act 129 EE&C programs currently represent an additional cost of approximately $1.00-$2.50 per mWh for Large C&I customers.[9] The following table compares the overall 2014 projected annual cost for similar industrial customers throughout the Commonwealth:




For a customer with 20 MW load in the PPL service territory, the costs associated with Act 129 implementation increased costs over tariff rates by more than $322,000 per year. The total EE&C Phase II three-year cost impact for a PPL customer with 1 MW load is less than $100,000, while the impact to a 20 MW customer is approximately $1.1 million. Given the

[9] Based on a 70% load factor for Large C&I customers.

significantly disparate cost impact to customers within an EDC's service territory, the Industrial Customer Groups urge the Commission to consider cost standardization in a manner that truly ensures a proportionate cost impact to customers.

The Industrial Customer Groups further question whether PECO's proposed funding range of 14-18% of an EDC's overall Act 129 funds is appropriately allocated to peak load reduction. Act 129 requires that the total budget for an EE&C plan "not exceed" 2% of the EDC's total annual 2006 revenues; the statute does not mandate that the maximum cap be employed.[10] Moreover, the 2% cap was premised on the EE&C Programs being comprised of two programs: energy efficiency and DR. Given the SWE's finding in the Amended Final Report that the vast majority Phase I DR programs (particularly for Large C&I customers) were not cost-effective, the Industrial Customer Groups urge the Commission to reduce budget for the EE&C Program budget for these customers in each service territory by 50%. As the Industrial Customer Groups noted in their Comments, the 2% EE&C budget cap has remained at this level throughout Phase II despite the elimination of DR goals. Rather than mandate a 14-18% allocation of the current 2% budget cap to demand reduction goals, if the Commission determines that DR programs for Large C&I customers will not prove cost-effective in future phases of the EE&C Program, the Commission should accordingly reduce the budget for these customers by 50% to appropriately account for energy and efficiency goals while ensuring these customers are not subsidizing the DR goals of other customer classes.

### C. DR Should Continue to Be Maximized in the PJM Markets As an Important Component of Demand Reduction

The Environmental Commenters, utilizing data set forth in a report prepared for the Cost-Effectiveness Working Group of the National Action Plan on Demand Response, identify

[10] 66 Pa. C.S.. § 2806.1(g).

additional factors for inclusion in the TRC test to better reflect the cost-effectiveness of DR programs. Based on this analysis, the Environmental Commenters recommend that the TRC test include increased energy consumption and environmental compliance costs, and that avoided energy, avoided ancillary service costs and avoided environmental compliance costs be included as "benefits" for purposes of the TRC.

The Industrial Customer Groups agree with the Environmental Commenters that Demand Response is an important tool in overall demand reduction and should be deployed in a cost-effective manner. Where the Industrial Customer Groups disagree with the Environmental Commenters is in the suggestion that the TRC test, as modified pursuant to the Environmental Commenters' suggestions, warrants ongoing ratepayer funded Act 129 DR programs. As set forth more fully in their December 30, 2013 Comments, the Industrial Customer Groups question whether DR programs for Large C&I customers can provide incremental value over the established PJM markets in future phases of the EE&C program. As the SWE concluded in the Amended Final Report, any determination regarding whether to include DR goals in Phase III should be "based on a prospective TRC analysis of a revised demand program design that provides incremental value over the PJM competitive markets." Accordingly, rather than focus on modification of the TRC test to achieve cost-effectiveness for Act 129 DR programs, the Industrial Customer Groups submit that the future focus on DR is appropriately in the context of PJM markets.

In addition to commenting on potential additions to the TRC test, the Environmental Commenters identify "avoided" capacity costs, "avoided" T&D costs and wholesale price suppression effects as TRC benefit categories that the SWE "included but underestimated" in its analysis. The Industrial Customer Groups urge the Commission to reject the Environmental

Commenters' analysis as unduly speculative and inapplicable to the DR programs utilized in Phase I of the EE&C Program. The T&D assumptions adopted by the Environmental Commenters are based on proxies not comparable to Pennsylvania. Moreover, the Industrial Customer Groups are not convinced that the parameters cited in the Environmental Commenters' analysis are correct. T&D Planning in Pennsylvania has not changed as a result of DR programs, especially not those under Act 129. The Industrial Customer Groups therefore urge the Commission to reject the Environmental Commenters proposed "underestimated" TRC benefit categories as unduly speculative and inappropriate for analysis of Act 129 DR programs.

### D. FERC, Not the Commission, Is the Appropriate Forum To Address PJM Market Design

EPGA's Comments express concern that the SWE's recommendations go beyond what is required by Act 129 in developing additional "benefits" of certain DR programs where the SWE has already concluded that those programs are not cost-effective. As such, EPGA believes that adopting the SWE's recommendations would improperly shift the Commission's focus from applying the law to assisting certain programs in passing the TRC. EPGA further argues that viewing wholesale price suppression as a benefit of DR programs fails to consider the effects of such programs on PJM markets, including early generation retirements and skewed long-term price signals.

EPGA also uses the Comments to launch an attack on the design of the PJM DR Programs and other federal issues. The Industrial Customer Groups submit that those arguments are appropriately addressed before PJM and at FERC rather than the PUC. The Industrial Customer Groups will reserve their arguments on such issues for the proper fora – PJM and FERC.

**E. Although Act 129 DR Programs and the PJM ELRP Are Distinct, PJM Market Signals Serve As the Guidepost for Load Curtailment**

With respect to load curtailment programs, the DR Providers recommend that further research be conducted to determine avoided T&D costs in each EDC service territory and that the Commission consider dual participation in Act 129 DR programs as well as PJM's ELRP when implementing any future DR programs. The DR Providers argue that Act 129 DR programs and the PLM ELRP are independent and should therefore be offered independently.

The Industrial Customer Groups acknowledge the independence of Act 129 DR programs and PJM ELRP and agree that there is not a perfect correlation between PJM emergency DR event days and customer-specific or event-specific peak hours. However, the Industrial Customer Groups caution that fashioning additional Act 129 DR goals that provide incremental value over the PJM market signals will prove very difficult. The Commission must serve as the steward of the ratepayer funding that is paid into Act 129 to balance the interests of the customers that <u>would participate</u> in the future DR offering and those <u>will not or cannot participate</u>. As set forth in the Industrial Customer Groups' Comments, even those customers that do not directly participate in the PJM DR programs may be engaging in DR-like strategies (such as peak shaving) to respond to the PJM market signals. Layering an additional DR offering on top of the PJM programs is very difficult in this type of market, and is not equivalent to the types of programs that can be offered in an integrated resource planning regulatory system where the PJM market structures do not exist (for either consumption or DR). The Industrial Customer Groups therefore urge the Commission to exclude the Large C&I customer class from any future Act 129 DR programs due to the likely "competition" that will occur with the existing PJM DR programs and market price signals.

## III. CONCLUSION

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

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By______________________________

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Dated: January 14, 2014