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April 27, 2015

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 No. M-2014-2424864**

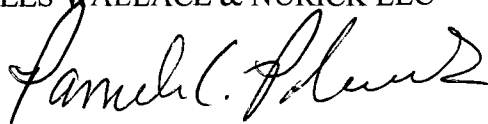
Dear Secretary Chiavetta:

Enclosed please find the Comments of the Industrial Energy Consumers of Pennsylvania ("IECPA"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customer Groups") regarding the above-referenced proceeding.

Very truly yours,

McNEES WALLACE & NURICK LLC

By

  
Pamela C. Polacek

Counsel to Industrial Customer Groups

PCP/sar

Enclosure

c: Megan G. Good (via e-mail)  
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Energy Efficiency and Conservation Program : Docket No. M-2014-2424864**

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**COMMENTS OF  
INDUSTRIAL CUSTOMER GROUPS**

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**I. INTRODUCTION**

On March 11, 2015, the Pennsylvania Public Utility Commission ("PUC" or "Commission") issued its Tentative Implementation Order outlining the Commission's proposals to address the issues set forth at Section 2806.1(a)<sup>1</sup> of Act 129 of 2008 ("Act 129") for establishing Phase III of the Energy Efficiency and Conservation ("EE&C") Program.<sup>2</sup> The Tentative Implementation Order proposes to establish additional incremental reductions in electric consumption and peak demand for Pennsylvania's seven largest electric distribution companies ("EDCs"). The Commission's proposals incorporate the findings of the Act 129 Statewide Evaluator ("SWE") Energy Efficiency ("EE") and Demand Response ("DR") Market Potential Studies, which were released to the public on February 27, 2015.

The Industrial Energy Consumers of Pennsylvania ("IECPA"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customer Groups") submit these Comments in response to the Tentative

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<sup>1</sup> 66 Pa. C.S. § 2806.1(a).

<sup>2</sup> *Energy Efficiency and Conservation Program*, Docket No. M-2014-2424864, Tentative Implementation Order (Mar. 11, 2015) ("Tentative Implementation Order").

Implementation Order. IECPA is a 20-member association of energy-intensive industrial customers of electricity and natural gas. More than 41,000 Pennsylvanians are employed by IECPA member companies alone. MEIUG, PICA, PAIEUG, PPLICA, and WPPII are all *ad hoc* groups of commercial, institutional, and industrial customers of electricity that participate in various proceedings before this Commission, including the EE&C Plan proceedings for their respective EDCs. Because the cost of electricity (including government-imposed costs such as EE&C surcharges) is a substantial aspect of the operating budgets of the members of the Industrial Customer Groups, the Commission's proposal to implement a Phase III of the EE&C Program is of particular concern.<sup>3</sup>

In the Pennsylvania electric markets, energy efficiency is one of the primary strategies that businesses and manufacturers use to reduce energy costs. The majority of non-residential customers in Pennsylvania purchase electric supply from Electric Generation Suppliers ("EGSs") and, in those negotiations, receive market signals regarding the value of energy efficiency efforts. Those price signals feed into business decisions regarding the pursuit of efficiency and conservations projects. Progressive-minded and cost-conscious consumers make decisions every day to upgrade lighting, replace motors, replace heating, ventilating and air conditions ("HVAC") systems and explore complex industrial process enhancements to remain competitive. Businesses have been making those decisions for many years prior to Act 129.

Under Act 129, the Commission must make periodic decisions regarding whether and to what extent consumers must continue to pay for a centralized, EDC-administered energy efficiency and demand reduction program. The funding for the Act 129 programs comes from ratepayers, including all of the costs of the EDC's administrative teams, the marketing and

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<sup>3</sup> The positions set forth herein reflect the collective views of the intervention groups and do not necessarily reflect the views of each individual member.

advertising, the Conservation Service Provider ("CSP") payments, the customer grants, the SWE compensation and all other expenses of the Act 129 programs. As a result, the Commission has a duty to evaluate whether the programs for each class are cost-effective and in the public interest. Each \$10,000 that a customer contributes to Act 129 is \$10,000 that the customer does not have for its own energy efficiency initiatives or other business needs.

The Industrial Customer Groups adamantly oppose the Commission's determination to implement a Phase III of the EE&C Program that includes Large Commercial and Industrial ("C&I") customer classes. Based on the SWE's findings, as presented in the EE and DR Market Potential Studies and adopted in the Tentative Implementation Order, there is insufficient evidence to support a Phase III EE&C program that includes EE measures and/or DR programs for Large C&I customers. The SWE's EE report fails to analyze potential based on the actual class categories upon which the EDCs establish their plans (*i.e.*, Residential, Small C&I and Large C&I). As such, the Commission lacks the necessary evidentiary record to conclude that it is just and reasonable to continue to require Large C&I customers to pay the surcharges to fund Phase III. In addition, based on the SWE's explanation during the technical conference, the goals established by the Commission for each EDC do not take into account the class potential in each territory or the acquisition costs produced in the SWE's EE Market Potential Study, and rather are based on United States Environmental Protection Agency ("EPA") guidelines. At this point in time, and after over \$1 billion has been paid into the EE&C programs (with another \$1 billion proposed for Phase III), a more thorough analysis must be provided to justify continuing this funding by any customer class.

Similarly, in addition to creating an unnecessary DR offering that will compete with those offered in the existing PJM Interconnection, L.L.C. ("PJM") markets, the DR proposals

and associated cost stated in the Tentative Implementation Order are not supported by specific SWE-confirmed analysis. Although the SWE at least segregated smaller and larger customers for the DR Market Potential Study, the Commission's recommendation for Phase III DR is a "blackbox" with customers unable to determine what compensation they will receive. The Commission's proposal also prohibits those customers in the PJM programs from participating in the Act 129 offering. Because PJM requires an advanced commitment of up to three (3) years to participate in its program, this means that a large number of customers will be paying for a DR option under Act 129 that they cannot use. This is fundamentally unfair.

EE&C Programs have been conducted for six (6) years. Many larger customers have historically derived little value from such measures at significant cost during Phases I and II of the EE&C Program.<sup>4</sup> The SWE's conclusions with respect to Large C&I market potential are not based on a thorough analysis of this customer sector and do not reflect the cost assumptions necessary to determine whether Large C&I programs are truly cost-effective. The Commission's proposal to implement Phase III will result in the unnecessary expenditure of Large C&I customer funds that adversely impacts investment in Pennsylvania's economic growth. For all of these reasons, the Industrial Customer Groups urge the Commission to eliminate Phase III EE&C Program initiatives for Large C&I customers.

Notwithstanding, the Industrial Customer Groups will also provide substantive comments regarding the Tentative Implementation Order proposals. These comments should not be construed as an endorsement of the continuation of the EE&C Plans for Large C&I customers.

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<sup>4</sup> A mandatory utility-administered EE&C program creates "winners" and "losers." Some customers have seen value in the EE&C programs, while others have not. For this reason, IECPA is seeking a legislative amendment to allow Large C&I customers to opt-out of any additional phases that may be approved.

## II. COMMENTS

### A. **The Commission's Phase III Proposals Do Not Reflect A Thorough Analysis of Available EE and DR Market Potential in Pennsylvania.**

The Tentative Implementation Order adopts, part and parcel, the entirety of the SWE's estimates of DR and EE potential for each EDC without evidence of any reasonable internal analysis of the SWE's findings and recommendations. Consistent with the statutory directives of Act 129, the Commission is tasked with "evaluat[ing] the costs and benefits of the program" and "determin[ing] that the benefits of the program exceed the costs."<sup>5</sup> The Industrial Customer Groups express their continued frustration with the PUC's inability (or unwillingness) to identify the internal analysis conducted that supports the budgets, acquisition costs, and goals of Phase III as described in the Tentative Implementation Order. Based on the experience that the Commission has gained to date with the various EDC Plans and measures, a more thorough analysis should be possible.

The SWE's analysis cannot and should not serve as a substitute for the Commission's reasoned judgment regarding the cost-effectiveness of the EE&C Program. Absent demonstration of the Commission's well-reasoned internal analysis of the costs and benefits for Phase III, the Industrial Customer Groups submit that the continuation of the EE&C Program is contrary to the legislative intent of Act 129.

In fact, the SWE's analysis itself is only cursory and does not delve into the level of EDC-specific detail that is necessary. For example, in the DR Market Potential Study, the SWE's analysis of C&I programs employed an average value of 15% for program administration (*i.e.*, non-incentive) costs across all EDCs. According to the SWE, this assumption includes

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<sup>5</sup> 66 Pa. C.S. § 2806.1(c).

program marketing, administration, CSP fees and evaluation.<sup>6</sup> Such an assumption does not accurately reflect variances among EDCs with respect to such cost. Moreover, the Large C&I sample is characterized by those accounts with a peak load contribution ("PLC") greater than 75 kW.<sup>7</sup> The analysis does not delve further into customer load profiles or address DR potential by industry.

Despite the assertions relied upon in the Tentative Implementation Order, the SWE's analysis of EE and DR market potential does not support the continuation of the EE&C Program for Large C&I customers. The evidence offered by the SWE reflects limited sampling of Large C&I customers, and its analysis fails to include or address necessary cost assumptions for program participation. As such, the SWE's analysis presents an incomplete picture with respect to the remaining available cost-effective measures for Large C&I customers, if any. More importantly, the Large C&I class has ample incentive to pursue EE projects without the existence of a centralized, EDC-administered program. Small changes in energy prices translate into large changes in cost for Large C&I customers. The overwhelming majority of Large C&I customers participate in the retail supply market and use its price signals to optimize their pursuit of EE, consistent with their goals to continuously improve productivity while maximizing free cash flow and minimizing debt. This motivation predates retail choice, as manufacturing has been facing fierce competitive pressures for many years, and customers have continuously evaluated EE as a strategy to address those pressures.

Equally important, the SWE claims to be "portfolio agnostic" in its conclusions and recommendations to the Commission regarding the Phase III targets. In other words, the SWE and the Commission cannot articulate the mixture of measures that enables each EDC to reach its

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<sup>6</sup> See Demand Response Potential for Pennsylvania, Final Report, p. 24, *available at* <http://www.puc.pa.gov/pcdocs/1345077.docx> ("DR Market Potential Study").

<sup>7</sup> See *id.* at 73.

targets within the allowable budget, nor can the SWE and the Commission explain how that total budget is assumed to be distributed among customer classes. This failure (or unwillingness) may be the direct cause of the large variability in EE&C costs throughout the Commonwealth. Attached as Tab 1 is a comparison of the annual and 5-year costs that similar customers would pay in each EDC territory based on the current rates. For a 5 MW Industrial customer, the annual EE&C surcharge costs can vary from \$4,800 (West Penn Power Company ("West Penn")) to \$51,960 (PPL Electric Utilities Corp. ("PPL")). Clearly, there are not such substantial differences between the West Penn territory and the PPL territory to justify such a disparate difference. The substantial cost variability is a fundamental flaw in the Act 129 Program as administered to date by the PUC. The Industrial Customer Groups raised this issue in the December 19, 2015, Comments on Phase III; however, the Commission has not addressed this problem. The Commission must conduct a more thorough analysis before it can conclude that the EE&C surcharges are just, reasonable and not unduly discriminatory.<sup>8</sup>

In the EE Market Potential Study, non-residential customers are analyzed by sector as "commercial" or "industrial" by market segment; there are no cost-effectiveness analyses based on the customers' usage or load profiles, which are critical to understanding the remaining EE benefit to Large C&I customers.<sup>9</sup> Moreover, the SWE indicated during the April 8, 2015 stakeholder meeting that its EE models for market potential analysis were "largely agnostic" and did not include critical cost assumptions beyond those prescribed by the EPA guidelines for conducting EE potential studies. The policy guide upon which the SWE purportedly relies indicates that "The Guide is provided to assist in the implementation of the National Action Plan for Energy Efficiency's five key policy recommendations for creating a sustainable aggressive

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<sup>8</sup> See 66 Pa. C.S. §1301.

<sup>9</sup> See Energy Efficiency Potential Study for Pennsylvania, Final Report pp. 38-54, available at <http://www.puc.pa.gov/pedocs/1345079.pdf>.



national commitment to energy efficiency."<sup>10</sup> This is not a neutral, Pennsylvania-specific approach. Such gaping holes in the SWE's analysis make clear that further evaluation is needed to determine whether Phase III EE and DR programs will be cost-effective for Large C&I customers. The Industrial Customer Groups respectfully submit that the Commission must engage in such evaluation pursuant to the mandates of Act 129 before requiring further EE measures and/or DR programs applicable to Large C&I customers.

Progressive companies within Pennsylvania seek out and have implemented a variety of initiatives to reduce energy costs on their own as a matter of competitiveness and to remain viable. Requiring companies to contribute to a third Phase of EE&C funding diverts key resources that these companies could use for EE or other important business objectives to remain vibrant employers in Pennsylvania. The Commission is suggesting a five-year (5) duration for Phase III. Under this proposal, if the currently-effective rates continue, the larger customers in some territories will pay an additional \$1 to \$2 million for Phase III. Due to the per project funding limits and the complex administrative process in many EDC plans to obtain project funding, it is highly unlikely that these customers will receive sufficient funding from the program to offset those payments. The Tentative Implementation Order does not establish that this continued subsidy for other entities' energy efficiency projects is just, reasonable and in the public interest.

In its Phase I Implementation Order, the Commission determined that each customer class must be offered at least one EE measure and one DR measure to meet the Act 129 requirements that the programs must be equitable to all customer classes.<sup>11</sup> The Commission has

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<sup>10</sup> See Guide for Conducting Energy Efficiency Potential Studies at ES-1 (Nov. 2007), *available at* [http://www.epa.gov/cleanenergy/documents/suca/potential\\_guide.pdf](http://www.epa.gov/cleanenergy/documents/suca/potential_guide.pdf) (emphasis added).

<sup>11</sup> See *Energy Efficiency and Conservation Program*, Docket No. M-2008-2069887, Implementation Order at 22 (Jan. 16, 2009) ("Phase I Implementation Order").

wisely departed from that prior determination by adopting the SWE's conclusion that DR measures should not be required for customers below 75 kW because there is insufficient evidence to establish that such measures are cost-effective.<sup>12</sup> Given the incomplete factual analysis of Large C&I EE potential, the strong shopping statistics for the class, and the inherent business motivation for large energy users to pursue EE and DR, the Commission should make a similar determination by excluding the Large C&I class from Phase III EE goals.

**B. The Proposed DR Program Design May Be Attractive to Some Customers, But the Commission Should Not Adopt a DR Goal for Phase III.**

Based on the SWE's recommendations, the Tentative Implementation Order proposes to utilize the following methodology for DR programs: (1) the EDC's day-ahead forecast is above 96% of forecasted annual system peak for dispatch; (2) DR events would begin at 2:00 p.m.; (3) DR events would last four (4) hours in duration; and (4) the program would include a maximum of six (6) events per year.<sup>13</sup> Those C&I customers participating in PJM's Emergency Load Response Program ("ELRP") are not eligible to participate. The Tentative Implementation Order notes that the Commission "looks forward to comments regarding whether this methodology strikes the appropriate balance within the program budget constraints."<sup>14</sup>

The DR program that the Commission describes is very similar to the peak-shaving actions that a customer may undertake to reduce its capacity obligation with PJM. Some customers already do this without the assistance of the EDC and without receiving compensation. Since the PJM wholesale and Pennsylvania retail electric markets already provide the price signals to engage in this behavior, it may be attractive to customers to get paid additional amounts through Act 129; however, the Commission must consider whether it is fair

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<sup>12</sup> See Tentative Implementation Order at 38; DR Market Potential Study at 6-9.

<sup>13</sup> See Tentative Implementation Order at 37-38.

<sup>14</sup> *Id.* at 38.

to have other customers subsidizing this program. On the whole, the Industrial Customer Groups do not support implementation of Phase III DR goals as proposed by the Commission because many customers have already committed to the market-based options at PJM for multiple years. It is unfair for PJM-participating Large C&I customers to pay for an Act 129 program in which they cannot participate.

The market already offers DR options. Customers have made commitments for three (3) years into the future to participate in the PJM ELRP. Others may be under multiple year contracts with PJM CSPs that extend even further. Although there may be additional DR market potential in some territories, PJM CSPs are competitive businesses with a profit motivation to solicit those customers. The universe of DR customers has grown incrementally over the years due to the marketing by CSPs. There is no reason to conclude that the CSP market will not continue to grow, even without an Act 129 subsidization.

The SWE is also unable to articulate a key element of the DR program design – the compensation that customers will be paid in exchange for their curtailment commitment. The SWE indicated that it considered a number of scenarios, but cannot indicate the scenario adopted by the PUC. The Industrial Customer Group members cannot even opine regarding the attractiveness of the Commission's proposal without this information.

Furthermore, if this DR program is approved (despite these objections), the Commission must order the costs to be paid for by all customer classes. The SWE's analysis of the cost-effectiveness of this design rests on an assumed reduction of clearing prices during peak

periods. This benefits all customer classes, not just the Large C&I class. As such, any cost recovery should come from all customer classes.<sup>15</sup>

As the Industrial Customer Groups have explained in prior Commission proceedings, fashioning additional Act 129 DR goals that provide incremental value over the PJM market signals will prove very difficult.<sup>16</sup> The Commission must serve as the steward of the ratepayer funding that is paid as a result of Act 129 to balance the interests of the customers that would participate in the future DR offering and those that will not or cannot participate. 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 DR goals from any Phase III due to the likely "competition" that will occur with the existing PJM DR programs and market price signals.

Removing the DR goals from Phase III is also consistent with the Federal Energy Regulatory Commission's ("FERC") actions to retain the "status quo" pending a decision from the United States Supreme Court regarding the legality of FERC Order 745.<sup>17</sup> FERC recently placed PJM's DR "Backup Plan" on hold until the Supreme Court acts. The Supreme Court will

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<sup>15</sup> See Phase I Implementation Order at 36-37 ("[t]hose costs that relate to measures that are applicable to more than one class, or that can be shown to provide system-wide benefits, must be allocated using reasonable and generally acceptable cost of service principles as are commonly utilized in base rate proceedings.").

<sup>16</sup> See, e.g., *Energy Efficiency and Conservation Program*, Docket Nos. M-2012-2289411, *et al.*, Reply Comments of the Industrial Customer Groups (Jan. 14, 2014).

<sup>17</sup> *Elec. Power Supply Ass'n v. FERC*, 753 F.3d 216 (D.C. Cir. 2014), *pet. for cert. filed*, *FERC v. Elec. Power Supply Ass'n*, (U.S. Jan. 15, 2015) (No. 14-840), *EnerNOC, Inc., et al., v. Elec. Power Supply Ass'n*, (U.S. Jan. 15, 2015) (No. 14-841).

resolve the question of whether the Commonwealth will need to consider a more substantial DR alternative or whether we can continue to rely on the very robust PJM offerings.

Finally, although the Industrial Customer Groups agree that a Commission-administered load curtailment program should be considered as a contingency plan if the PJM DR programs are eliminated, the Act 129 construct is an inappropriate vehicle to address this contingency. The PJM programs currently provide many more DR opportunities than can be accommodated by the Act 129 budgets. In addition, the funding mechanisms and cost-effectiveness screening under Act 129 may not be appropriate for an expanded DR program that is replacing the PJM programs. If the Commonwealth must run a DR program in lieu of the PJM programs, the design and operation will be critical and should be thoroughly examined. Without careful analysis and program design, reliability may suffer. As a result, any substitute for the PJM DR programs should therefore be pursued through a stakeholder process or legislative vehicle outside of the Act 129 construct.

**C. The Commission Should Ensure That Any Measures Adopted for Phase III Reflect Act 129's Dual Goals of Energy Efficiency and Robust Economic Growth.**

As explained in the previous sections, the recommended EE and DR goals for Phase III are fundamentally flawed and unsupported. Notwithstanding the position previously articulated that there should be no Phase III for the Large C&I class, the Industrial Customer Groups offer these substantive comments on the Commission's proposals.

**1. Proposed Five-Year Phase Length.**

The Tentative Implementation Order proposes a five-year consumption reduction requirement for each EDC for Phase III that is based on the 2009/2010 energy forecasts. These consumption reduction requirements vary by EDC and are based on the "specific mix of program

potential, acquisition costs and available funding allocated to EE programs."<sup>18</sup> EDCs would be required under this proposal to design their EE&C plans to achieve at least 15% of their consumption reduction target in each program year. As in Phase II, the Commission proposes that this requirement be limited to the Commission's review and approval of the EE&C Plans and not be a target subject to the penalty provisions of Act 129.

The Industrial Customer Groups oppose a five-year term for Phase III. The SWE's analysis and the Commission's proposals flowing therefrom lack a sufficient evidentiary basis to demonstrate that any additional Phase is warranted, and certainly not a five-year phase. A three-year term should be approved (if any additional Phase is approved).

## **2. Accumulated Savings in Excess of Reduction Requirements.**

The Tentative Implementation Order expresses concern that continued carryover of all excess savings from Phase II to Phase III of the EE&C Program will lead to a scenario in which an EDC meets most, if not all, of its reduction target simply with carryover savings.<sup>19</sup> The Commission therefore proposes that EDCs be allowed to bank only those savings attained in Phase II in excess of their Phase II targets for application toward Phase III targets. In other words, the EDC cannot take into account any carry-forward amounts from Phase I.

The Industrial Customer Groups strongly urge the Commission to reconsider its proposal to limit carryover savings to savings actually achieved in Phase II. Given that consumers ultimately bear the costs of Act 129, preventing EDCs from banking accumulated savings in excess of reduction requirements in previous Phases of the EE&C Program deprives consumers of the achieved value for which they have paid. The Industrial Customer Groups therefore submit that all accumulated excess savings be carried over to Phase III to provide ratepayers with

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<sup>18</sup> See Tentative Implementation Order at 42.

<sup>19</sup> See *id.* at 70.

the maximum value of achieved efficiency savings they have paid for during both Phase I and Phase II.

### **3. Application of Excess Phase II Budget.**

The Tentative Implementation Order proposes to allow EDCs to utilize the entirety of the Phase III budget, regardless of Phase II spending and consumption reduction target attainment.<sup>20</sup> The Tentative Implementation Order cites the Commission's belief that it would be more beneficial to all parties, including ratepayers, for EDCs to be permitted to spend Phase II budgets to attain savings in excess of compliance targets, which could then be used in Phase III for compliance, without a commensurate reduction in Phase III budgets.

The Industrial Customer Groups submit that the Commission's proposal is unreasonable and inconsistent with principles of cost-effectiveness. As the Industrial Customer Groups have consistently identified, EDCs' EE&C budgets are statutorily capped at a maximum value only; no minimum budget is statutorily prescribed. The Commission has flexibility to reduce the budget to levels appropriate to achieve the energy and efficiency objectives of Act 129. Reducing the Phase III budget, rather than allowing for the maximum statutory cap regardless of Phase II spending and attainment, would be more consistent with the intent of the statute, which requires the Commission to examine energy efficiency and conservation as separate regulatory objectives. Moreover, unless the Commission modifies its proposal regarding the carry-forward of kWh savings, then customers are not benefitted from spending the full budget. The Industrial Customer Groups, therefore, urge the Commission to reconsider its Phase III EE&C budget proposal and ensure that any adopted budget is consistent with the objectives of Act 129 and cost-causation principles.

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<sup>20</sup> See *id.* at 109.

#### **4. "Minor Change" Review Process.**

The Tentative Implementation Order proposes to adopt the vast majority of the Phase II expedited review process for minor EE&C Plan changes.<sup>21</sup> As in Phase II, the Commission would allow for expedited review of proposals to add an additional measure or changes to the conditions of a measure, including rebate structure or amount, so long as the change does not increase the overall costs to that customer class.

The Industrial Customer Groups respectfully request that the Commission remove consideration of rebate structures from the expedited review process. Changes to rebate structures can result in vastly different compensation levels for customers implementing the same measures based on the timing of their application to the EDC. This implicates intraclass cost subsidization and fairness issues that should be subject to the more robust comment and review activity that exists for "non-minor" changes.

#### **5. Procedures to Require Competitive Bidding and Approval of Contracts with CSPs.**

Although the Tentative Implementation Order notes that Act 129 does not grant the Commission power to amend CSP contracts or to approve amendments based upon cost considerations, the Commission proposes to require that all Phase III contracts be competitively bid.<sup>22</sup> This proposal departs from the Commission's Phase II rules exempting EDCs from competitively bidding CSP contracts for EE&C programs and measures. As with previous Phases, the Commission would require EDCs to provide detailed justification regarding the use (or lack thereof) of a CSP to perform EE&C Plan functions.

The Industrial Customer Groups support the Commission's proposal and further recommend that CSP costs for each EE&C measure be reported by the EDCs in their annual

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<sup>21</sup> See *id.* at 94.

<sup>22</sup> See *id.* at 95.



reports, and be separately stated from any compensation that is provided to the customers of the CSP service. For example, if the Commission approves a DR measure that relies on CSP administration, the measure costs should be segregated into "CSP administration" and "participant payments." Payments to CSPs for other services should be publicly available and classified as administrative costs for reporting purposes. The Commission should further consider cost-effectiveness as a component of evaluating an EDC's justification for use or non-use of CSPs for EE&C measures. CSP-related costs should be included in the EDCs' estimates of all EE&C program administrative costs to ensure the Commission's determination of allowable costs is just and reasonable. The Industrial Customer Groups further submit that EDCs should not be permitted to recover any costs for acts that are inconsistent with their EE&C Plans. Finally, the Industrial Customer Groups recommend that the CSP contract review process be public and transparent.

**6. Customers Should Be Allowed to Bid EE and DR in the PJM Markets.**

The Tentative Implementation Order imposes no requirement on EDCs to bid qualified EE and DR resources into the PJM capacity market; however, the Commission proposes flexibility for EDCs to voluntarily bid such resources if feasible and reasonable to do so. In light of the Commission's proposal to vest EDCs with discretion as to whether to bid capacity resources, the Industrial Customer Groups urge the Commission to require the EDC to state in its plan whether it intends to bid into the PJM markets. If not, then the Commission must expressly authorize customers to bid qualified resources into the PJM capacity market.

**7. Any DR Measures Should Allow Annual Customer Decision Regarding Participation.**

As previously discussed, the Industrial Customer Groups recommend that the Commission remove the proposed DR goals. If, however, the Commission persists in pursuing

DR goals for Phase III, the goals should be refined so that customers can decide on an annual basis whether to participate. Many large DR loads have already committed to the PJM programs through the 2017/18 Delivery Year, and will likely have participated through CSPs in the 2018/19 Delivery Year Base Residual Auction by the time the PUC issues its Final Order. If the Commission orders additional DR measures for Phase III, those customers should have the option to participate during any year when they are not committed to PJM. Further, the EDC's interim goals during the Phase should be scaled to anticipate possible increased participation in the Act 129 offering after the 2018/19 Delivery Year.

### **III. CONCLUSION**

One of the primary (if not the primary) goals of Act 129 is cost reduction for consumers. Pennsylvania's Large C&I consumers have invested tens of millions of dollars in Phases I and II. This is in addition to the investments those companies have been making for the last twenty (20) to thirty (30) years to operate more efficiently in order to survive in their industries. Because of caps on the size of the compensation and other program requirements, the types of customized projects that large customers pursue are not fully recovered by Act 129 measures. Large customers pursue an efficiency project due to its cost reduction benefits to the organization's overall strategic interests, with any Act 129 grant seen simply as a way to recoup some of what has been paid into the program. Act 129 grants do not motivate large consumers to implement EE programs. This is why a total of fourteen (14) states (of the roughly twenty-four (24) that have EE programs) have either eliminated the program for large consumers or provided a voluntary opt-out.

Although the SWE found potential for energy efficiency in the "industrial" and "commercial" classes, the report is not sufficient to demonstrate that cost-effective energy

efficiency is available from the Large C&I class. Because many Large C&I customers implemented energy efficiency projects when rate caps were expiring, and the Commission has ordered two Phases of EE&C funding since then, the low and mid-hanging fruit has been harvested. There is no evidence that cost-effective fruit remains for the Large C&I class. The early movers should not continue to pay a tax to subsidize the education and implementation efforts of others in the Large C&I class that have not responded to the supply market signals regarding the importance of energy efficiency.

Furthermore, the implementation of a duplicative DR goal and program is unnecessary at this time. Many customers are committed to the PJM programs for future years. The Commission should follow the FERC's example by placing any decisions on a DR alternative "on hold" until the Supreme Court issues its determination of the viability of FERC Order 745. After that, all state stakeholders should convene to determine any steps that are needed by the Commonwealth.

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

Respectfully submitted,

McNEES WALLACE & NURICK LLC

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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

Dated: April 27, 2015

Tab 1

**TAB 1**  
**Comparison of Annual and 5-Year Costs that Similar Customers Would Pay in Each EDC Territory**

	<b>Electric Distribution Company Annual EE&amp;C Costs</b>													
	Duquesne		Met-Ed		PECO		Penelec		PennPower		PPL		West Penn	
	Commercial	Industrial	Commercial	Industrial	Commercial	Industrial	Commercial	Industrial	Commercial	Industrial	Commercial	Industrial	Commercial	Industrial
<i>Phase II EE&amp;C Rate (Large C&amp;I)</i>	\$350.41/month and \$0.12/kW-PLC	\$481.19/month and \$0.01/kW-PLC	\$0.00086/kWh	\$0.19/kW-PLC	\$0.0024/kWh	\$0.79/kW-PLC	0.00086/kWh	\$0.13/kW-PLC	\$0.00063/kWh	\$0.31/kW-PLC	\$0.00148/kWh	\$0.866/kW-PLC	\$0.00085/kWh	\$0.08/kW-PLC
500 kW (Mid-Sized Office Building)	\$4,924.92		\$3,013.44		\$8,409.60		\$3,013.44		\$2,207.52		\$5,185.92		\$2,978.40	
2 MW (Larger Office Building/Hospital)	\$6,014.28		\$4,560.00		\$18,960.00		\$3,120.00		\$7,440.00		\$20,784.00		\$1,920.00	
5 MW (Mid-Sized Industrial)	\$6,374.28		\$11,400.00		\$47,400.00		\$7,800.00		\$18,600.00		\$51,960.00		\$4,800.00	
15 MW (Foundry)	\$7,574.28		\$34,200.00		\$142,200.00		\$23,400.00		\$55,800.00		\$155,880.00		\$14,400.00	
30 MW (Larger Industrial)	\$9,374.28		\$68,400.00		\$284,400.00		\$46,800.00		\$111,600.00		\$311,760.00		\$28,800.00	
50 MW (Mid-Sized Steel Manufacturer)	\$11,774.28		\$114,000.00		\$474,000.00		\$78,000.00		\$186,000.00		\$519,600.00		\$48,000.00	

*\*EE&C Rates used in the above analysis are those effective as of April 1, 2015*

*\*Commercial rate used to calculate 500 kW customer costs; Industrial rate used to calculate 2 MW and greater customer costs*

*\*80% load factor assumed for purposes of kWh-based charges*

*\*Customer demand level utilized for purposes of PLC-based charges*

**TAB 1**  
**Comparison of Annual and 5-Year Costs that Similar Customers Would Pay in Each EDC Territory**

	<b>Electric Distribution Company 5-Year EE&amp;C Costs</b>													
	Duquesne		Met-Ed		PECO		Penelec		PennPower		PPL		West Penn	
	Commercial	Industrial	Commercial	Industrial	Commercial	Industrial	Commercial	Industrial	Commercial	Industrial	Commercial	Industrial	Commercial	Industrial
<i>Phase II EE&amp;C Rate (Large C&amp;I)</i>	\$350.41/month and \$0.12/kW-PLC	\$481.19/month and \$0.01/kW-PLC	\$0.00086/kWh	\$0.19/kW-PLC	\$0.0024/kWh	\$0.79/kW-PLC	0.00086/kWh	\$0.13/kW-PLC	\$0.00063/kWh	\$0.31/kW-PLC	\$0.00148/kWh	\$0.866/kW-PLC	\$0.00085/kWh	\$0.08/kW-PLC
500 kW (Mid-Sized Office Building)	\$24,624.60		\$15,067.20		\$42,048.00		\$15,067.20		\$11,037.60		\$25,929.60		\$14,892.00	
2 MW (Larger Office Building/Hospital)	\$30,071.40		\$22,800.00		\$94,800.00		\$15,600.00		\$37,200.00		\$103,920.00		\$9,600.00	
5 MW (Mid-Sized Industrial)	\$31,871.40		\$57,000.00		\$237,000.00		\$39,000.00		\$93,000.00		\$259,800.00		\$24,000.00	
15 MW (Foundry)	\$37,871.40		\$171,000.00		\$711,000.00		\$117,000.00		\$279,000.00		\$779,400.00		\$72,000.00	
30 MW (Larger Industrial)	\$46,871.40		\$342,000.00		\$1,422,000.00		\$234,000.00		\$558,000.00		\$1,558,800.00		\$144,000.00	
50 MW (Mid-Sized Steel Manufacturer)	\$58,871.40		\$570,000.00		\$2,370,000.00		\$390,000.00		\$930,000.00		\$2,598,000.00		\$240,000.00	

*\*EE&C Rates used in the above analysis are those effective as of April 1, 2015*

*\*Commercial rate used to calculate 500 kW customer costs; Industrial rate used to calculate 2 MW and greater customer costs*

*\*80% load factor assumed for purposes of kWh-based charges*

*\*Customer demand level utilized for purposes of PLC-based charges*