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April 4, 2012

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

VIA HAND DELIVERY

RE: Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan; Docket No. I-2011-2237952

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission are the original and five (5) copies of the Comments of the Industrial Energy Consumers of Pennsylvania ("IECPA"), Duquesne Industrial Intervenors ("DII"), 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 Customers Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customer Groups") on the March 2, 2012 Secretarial Letter and March 21, 2012 *en banc* hearing in the above-referenced proceeding.

Please date stamp the extra copy of this transmittal letter and Comments, and kindly return them to our messenger for our filing purposes.

Very truly yours,

McNEES WALLACE & NURICK LLC

By Pamela C. Polacek

Pamela C. Polacek

Counsel to the Industrial Customer Groups

PCP/sar
Enclosures
c: Office of Competitive Market Oversight Retail Markets Investigation (via e-mail)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan	: : :	Docket No. I-2011-2237952

COMMENTS OF THE INDUSTRIAL CUSTOMER GROUPS ON MARCH 2, 2012 SECRETARIAL LETTER AND MARCH 21, 2012 EN BANC HEARING

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Dated: April 4, 2012

I. INTRODUCTION

As part of the Pennsylvania Public Utility Commission's ("Commission's") ongoing Investigation into Pennsylvania's Retail Electricity Market ("Retail Markets Investigation" or "RMI"), the Commission issued a Secretarial Letter on March 2, 2012, requesting input regarding three potential alternate default service models that would result in Electric Generation Suppliers ("EGSs") being chosen for the default service role, and several other items regarding the "end state" of default service. The Commission convened an *en banc* hearing on March 21, 2012, where it received testimony regarding the potential models for the "end state" of default service, as well as testimony regarding the shopping experiences from participating small business customers and information regarding potential statewide consumer education efforts. Comments regarding the Secretarial Letter and hearing are due on April 4, 2012. The Comments will be used by the Commission to develop a Tentative Order regarding the Long-Range Work Plan.

The Industrial Energy Consumers of Pennsylvania ("IECPA") is an association of energy-intensive industrial companies operating facilities across the Commonwealth of Pennsylvania. IECPA's members consume in excess of 25% of the industrial electricity in Pennsylvania and employ approximately 41,000 workers. Also sponsoring these Comments are coalitions of industrial customers receiving service from most of the Commonwealth's electric distribution companies ("EDCs"): Duquesne Industrial Intervenors ("DII"), 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"). The Industrial Customer Groups have

actively participated in the prior stages of this investigation to address issues related to Large Commercial & Industrial ("Large C&I") customers.

II. COMMENTS

The Commission's focus in the RMI process has been primarily on default service issues for the Residential and Small Commercial & Industrial ("Small C&I") classes. The Secretarial Letter contemplates potential changes to Pennsylvania's Public Utility Code and regulations that could result in EGSs serving as the default service provider, with the Electric Distribution Company ("EDC") serving as the ultimate "backstop" if an EGS in the default service role fails to perform. These proposals could apply to all customer classes, including Large C&I customers. In addition, issues such as cost recovery for consumer education efforts could result in charges to Large C&I customers, even though the target audience for the efforts is other classes. Finally, the Commission's suggestion that all PUC assessments could be recovered through a non-bypassable EDC surcharge could result in interclass cost shifting. The Industrial Customer Groups comment on all of these items below.

A. The Commission's EGS Assessment Process Should Recognize Differences in the Activities Undertaken for Customer Classes, and Should Not Be a Non-Bypassable EDC Surcharge.

In the Secretarial Letter, the Commission questions whether PUC assessments should continue to be paid by both EDCs and EGSs, or whether the assessments should be paid only by EDCs and recovered through a non-bypassable surcharge. The Industrial Customer Groups support the continuation of a system that charges assessments to both EDCs and EGSs, with appropriate allocations to reflect the customer classes (and EGSs) for which the various costs are incurred.

Currently, Section 54.38 of the Commission's regulations, 52 Pa. Code §54.38, requires EGSs to pay assessments to defray regulatory costs related to generation suppliers, including

costs of maintaining records related to licenses, compliance with Chapter 56 (residential billing standards), and fulfilling consumer education and customer information requirements. For EGSs, the PUC assessment is a cost of doing business that must be reflected in their pricing offered to customers. Based on the collective experiences of the Industrial Customer Group members, the PUC assessment is not reflected as a line item on the bill, and future pricing does not change if the EGS has underestimated or overestimated its assessment when the bid was submitted to the customer. In other words, the projected cost of the PUC assessment is not reconciled against actual costs. In this way, the PUC assessment is like any other cost of doing business (e.g., corporate taxes, marketing, etc.). By suggesting that future assessments could be paid by the EDC and recovered through a non-bypassable (and presumably reconcilable) surcharge, the Commission could be creating cost variability for shopping customers that does not exist today because the customer can opt to have this cost included in the final price rather than reflected as a reconcilable item under their EGS contract.

The Commission's suggestion that all assessments could be paid by EDCs (and recovered through a non-bypassble charge) also raises important interclass allocation issues, even under the existing system. Specifically, because Chapter 56 costs are included in the EGS assessments, the Commission arguably should make assessment distinctions for EGSs serving Residential and non-residential customers. Similarly, the Commission must undertake additional activities to review disclosure statements for EGSs serving Residential and Small C&I customers with demands below 25 kW that are not required for EGSs serving larger customers. Finally, if the Commission adopts an "end state" default service structure that includes the EGSs providing default service, this structure may require much more regulatory oversight than the current model, especially for Residential and Small C&I customers who currently have fixed-price

default service options from the EDC. Regardless of whether the assessment will be charged to both EGSs and EDCs, or charged only to EDCs, the PUC assessment process should reflect the differences in the resources and activities for each customer class.

For the foregoing reasons, the Industrial Customer Groups support continuation of an assessment approach that charges both EDCs and EGSs, with appropriate interclass allocations of costs based on the types of activities involved.

B. Consumer Education Cost Recovery Should Reflect Cost Causation.

In the RMI working group, stakeholders have been discussing potential statewide consumer education initiatives that could be undertaken to increase the awareness of Residential and Small C&I customers regarding their ability to shop for generation supply. Those customer classes are being targeted for additional education based on studies that confirm a lack of awareness or general unease with shopping among those classes. According to the Office of Consumer Advocate's shopping statistics, as of January 1, 2012, the percentage of Residential customers that were shopping in the major EDC territories varied from 0.0% to 40.5%, and the percentage of commercial customers shopping ranged from 5.4% to 52.1%. In contrast, 32.5% to 90.7% of the Large C&I customers in the major EDC territories are currently purchasing supply from an EGS, with over 90% of the Large C&I load being served by an EGS in most territories.

The Industrial Customer Groups do not believe that high customer shopping numbers are the sole or primary goal of the Competition Act; rather, the primary goal is to reduce costs and, for business and industry, to ensure that electricity rates in the Commonwealth advance our competitive advantage in comparison to other states and the international marketplace. Notwithstanding, if the Commission chooses to conduct a statewide consumer education campaign to increase shopping numbers, then the target audience for that campaign will be

Residential and Small C&I customers. The OCA's shopping statistics demonstrate that most Large C&I customers are shopping. The primary beneficiaries for the potential statewide education initiatives are EGSs serving Residential and Small C&I customers. As such, EGSs serving those classes should pay for the consumer education efforts. If the Commission chooses to have customers pay a portion of the costs, then that compensation should come from the customer classes that are the target audience for the campaign.

C. The "End State" of Default Service Should have a Single Supplier of the Large C&I Hourly Priced Product, Which Should be the EDC.

The PUC developed for discussion three potential end-state models where EGSs would provide default service. These EGSs would have heightened technical and security requirements; however, in the event one of the default service EGSs fails to perform, the EDC would be the ultimate provider of last resort and provide "backstop" service. The Secretarial Letter cautions that parties should not infer that the Commission has made a decision to transfer the default service role from the EDCs to EGSs. Rather, the Commission states that it is inviting comments regarding alternatives to the status quo.

Under Model A, default service would be provided to non-shopping and returning customers on the basis of real-time/hourly locational marginal prices (plus an administrative adder). Under Model B, default service would be provided at prevailing market prices, as established through an index, auction or other method, with the prices changing quarterly or semi-annually. Under Model C, default service would be provided through a prudent mix of contracts, with the price changing quarterly or semi-annually and all costs being reconcilable.

The Commission proposes to begin this alternative default service model on June 1, 2015, for a two year period. Suppliers would be able to provide consolidated billing (i.e., bill for the EDC's distribution charges) or a third party could handle billing. The billing entity would

provide a Purchase of Receivables Program. EDCs would continue to be responsible for metering, universal service programs, Act 129 Energy Efficiency and Conservation Programs (if extended) and PJM settlement functions. In early 2016, the Commission will analyze whether this model should continue to be used beyond the initial two year period.

The models in the Secretarial Letter raise a number of issues for all customers. First, the Commission must determine the appropriate default service product for each customer class. The Commission has determined that under the current statute, Large C&I customers should have hourly-priced default service. Although the Industrial Customer Groups support the exploration of additional product options for Large C&I customers, especially to address economic development needs, those options could co-exist with an hourly-priced default service. As a result, the Commission could maintain the same default service product for Large C&I customers under Models A or C.

Second, the Commission must consider whether the EDC will maintain a default service role. The proposed models contemplate EGSs providing "default" service, while the EDC is responsible for "backstop" service and other activities. The Industrial Customer Groups agree with the testimony of Pennsylvania's Consumer Advocate that this structure may result in duplicative costs. This could increase customers' electricity rates, and run counter to the Commission's obligation under the current statute to ensure that the rates charged to customers are just and reasonable, and that the default service plan results in the least cost to customers (over time). See 66 Pa. C.S. §§2804(3.4)(ii) and 2804(3.9). This should be thoroughly analyzed prior to any decision to create a "hybrid" approach that separates the default service role from the "backstop" role.

Third, if an EGS is going to provide default service, the Commission should consider how it will monitor pricing to ensure that the service is provided at the least cost. Although most of the Large C&I load in the Commonwealth is currently purchasing supply from EGSs, there are Large C&I customers who continue to rely on default service. This may be a voluntary choice (e.g., the customer desires the hourly product) or an involuntary reliance (e.g., the customer lacks sufficient creditworthiness, is in bankruptcy or has experienced an EGS failure). Regardless of the reason, the Large C&I customers on hourly default service should be able to confirm that the administrative adder is reasonable, and the adder should be based on the default service provider's actual costs, even if that service is provided by an EGS. EGSs should not be permitted to inflate the administrative adder for hourly service, especially if the EGSs are also marketing competitive supply in Pennsylvania. In addition, given the small load on Large C&I default service in most territories, the Commission should consider whether this service should be divided among multiple entities or provided by a single entity.

Unless strong evidence can demonstrate that administrative adders will be lower if the EGS provides the default hourly service, hourly-priced service for Large C&I customers should be provided by the EDC, not auctioned to other suppliers. Where hourly-priced service is the only default service option, it is clear that most customers shop to avoid the variability. For customers that must remain on default service because they cannot find a supplier or their chosen supplier defaults, the administrative adder should be kept as low as possible, consistent with the Act 129 requirements. Even for customers that desire hourly-priced service, ensuring that the EDC's administrative adder is as low as possible provides EGSs offering hourly-priced service with added motivation to minimize their costs. Dividing the small amount of customers relying on hourly-priced default service among multiple default EGSs, and then requiring the EDC to

perform redundant activities to be prepared in case the EGSs default, is neither efficient, nor just and reasonable.

WHEREFORE, 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 respectfully request that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Comments.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By _____

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