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June 1, 2010

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

VIA HAND DELIVERY

RE: Implementation of Act 129 of October 15, 2008; Default Service; Docket No. L-2009-2095604

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") an original and fifteen (15) 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 Coalition ("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") 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
Carl J. Zwick

Counsel to the Industrial Customer Groups

CJZ/sds
Enclosures
c: Elizabeth Barnes, Assistant Counsel, Law Bureau (via E-mail)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Act 129 of	:	
October 15, 2008; Default Service	:	Docket No. L-2009-2095604

COMMENTS OF THE INDUSTRIAL CUSTOMER GROUPS

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Dated: June 1, 2010

I. INTRODUCTION

On January 19, 2010, in accordance with Act 129 of 2008 ("Act 129"), the Pennsylvania Public Utility Commission ("PUC" or "Commission") issued its proposed Rulemaking Order to recommend changes in the Commission's regulations to reflect the default procurement provisions of Act 129. *See Implementation of Act 129 of October 15, 2008; Default Service*, Docket No. L-2009-2095604 (Order entered January 19, 2010) ("Proposed Rulemaking Order").

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 Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII"), (collectively, "Industrial Customer Groups") submit these Comments to address their preliminary position and concerns regarding the Commission's proposed changes to its default service regulations.[1]

IECPA is a 24 member *ad hoc* group of energy intensive industrial customers of electricity and natural gas. More than 41,000 Pennsylvanians are employed by IECPA member companies, which use significant amounts of electricity and natural gas in their operations. DII, 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. Several issues and regulations as proposed by the Commission may impact large customers. The Industrial Customer Groups submit these Comments to explain how certain changes proposed by the Commission will affect large customers, as well as to respond to the sixteen questions posed by the Commission in its Proposed Rulemaking Order. Because

[1] The Industrial Customer Groups' failure to address a specific proposed regulation does not represent the Industrial Customer Groups' support for, or acquiescence to, such proposal. The Industrial Customer Groups are only addressing primary areas of concern in these Comments.

many of the proposed changes to the default service regulations mirror the statutory language of Act 129, the Industrial Customer Groups do not object to such changes and will not address them in these Comments. Rather, the Industrial Customer Groups' Comments focus primarily on the sixteen questions raised by the Commission.

II. COMMENTS

A. Proposed 52 Pa. Code § 54.186 – The Provision Allowing a DSP To Offer a Negotiated Rate To Large Customers May Be Better Reflected in Proposed 52 Pa. Code § 54.187.

The Industrial Customer Groups note that in Section 54.186(b)(1)(iii)(A), the Commission intends to include a provision that would allow a default service provider ("DSP"), in its sole discretion, to offer a negotiated rate for service to a customer with a peak demand of 15 MW or greater at one meter location within the DSP's service territory. Although this provision is required by House Bill 1530 of 2007 ("H.B. 1530"), the provision may be better reflected in Section 54.187, which sets forth the rate design for default service products. Because Proposed Section 54.187 addresses issues of rate design and cost recovery, while Proposed Section 54.186 deals with default service procurement and implementation, the provision may more appropriately relate to Proposed Section 54.187.

B. Questions Regarding Interpretation of Act 129's Procurement Requirements

To further resolve certain ambiguities that exist with regard to the statutory interpretation of Act 129's procurement requirements, the Industrial Customer Groups submit the following responses to the sixteen questions that the Commission included within its Proposed Rulemaking Order. The Industrial Customer Groups limit their responses to issues that are relevant to larger customers.

(1) What is meant by "least cost to customers over time?"

No Response.

(2) What time frame should the Commission use when evaluating whether a DSP's procurement plan produces least cost to customers over time?

No Response.

(3) In order to comply with the requirement that the Commission ensure that default service is adequate and reliable, should the Commission's default service regulations incorporate provisions to ensure the construction of needed generation capacity in Pennsylvania?

Yes, the Commission should seek to promote the construction of new generation capacity and should require that a portion of that capacity be dedicated to economic development on a cost-of-service basis. These units could be owned and operated by the DSP, a competitive developer, or the Commonwealth (if no other entity will construct the units). The addition of generating capacity, including both baseload additions and strategically-sited peaking units, can reduce market prices for all consumers. If the PJM Interconnection, L.L.C.'s ("PJM") administrative pricing mechanisms (Locational Marginal Pricing ("LMP") and the Reliability Pricing Model ("RPM")) are sending alleged "price signals" that the addition of generation capacity is necessary, but wholesale market participants are not responding by building new capacity, then the Commission should take steps to ensure that needed capacity is built to produce adequate, reliable and reasonably-priced electricity for Pennsylvania's consumers. Once constructed, the output of those units can be used for both economic development power and default service power.

(4) If the Commission should adopt a provision to ensure the construction of needed generation capacity, how should the default service regulations be revised?

The Commission's regulations should incorporate provisions explaining the criteria under which economic development power will be made available. The Industrial Customer Groups suggest the following criteria:

To be eligible to be served by economic development power, a commercial or industrial customers must:

(1) Enter into a contract to take all its power needs for the account from the economic development power supplier; and

(2) Meet two or more of the following criteria:
(i) Be a manufacturer; or
(ii) Be a large consumer of power in this Commonwealth; or
(iii) Be a user whose electricity bill is a high percentage of their conversion cost, manufacturing cost less raw materials cost; or
(iv) Use power at a high load factor on an annual basis; or

(v) Help create or retain a substantial number of jobs in this Commonwealth; or
(vi) Help maintain the profitability of a Commonwealth business at risk; or
(vii) Create new capital investment in this Commonwealth; or
(viii) Have demonstrated a long-term commitment to this Commonwealth, as evidenced by the longevity of operations; or
(ix) Help other businesses in the Commonwealth to remain competitive by lowering their input costs; or
(x) Help retain a business at risk of moving to a location outside of this Commonwealth.

(5) Which approach to supply procurement – a managed portfolio approach or a full requirements approach – is more likely to produce the least cost to customers over time?

No Response.

(6) What is a "prudent mix" of spot, long-term, and short-term contracts?

A "prudent mix" of spot, long-term, and short-term contracts would require a DSP to maintain a portfolio of contracts for each customer class that includes some combination of these contracts. At a minimum, two types of products must be included to constitute a "mix." Providing only hourly priced service does not result in a "prudent mix" of spot, long-term, and short-term contracts for the Large Commercial and Industrial ("C&I") customer class because it includes only one product (i.e., spot-market purchases). To comply with the Commission's "prudent mix" standard, as applied to spot, long-term and short-term contracts, 52 Pa. Code § 69.1805(3) should be modified to require a combination of service options. This, in turn, would ensure that DSPs enter into a combination of contracts to serve the Large C&I class.

(7) Does a "prudent mix" mean that the contracts are diversified and accumulated over time?

No Response.

(8) Should there be qualified parameters on the prudent mix? For instance, should the regulations preclude a DSP from entering into all of its long-term contracts in one year?

No Response.

(9) Should the DSP be restricted to entering into a certain percentage of contracts per year?

No Response.

(10) Should there be a requirement that on a total-DSP basis, the "prudent mix" means that some quantity of the total-DSP default service load must be served through spot

market purchases, some quantity must be served through short-term contracts, and some quantity must be served through long-term contracts?

The "prudent mix" standard should be evaluated for each customer class. The parameters of the "prudent mix" can vary by class, as long as each class has a mix of at least two of the products.

(11) Should there be a requirement that some quantity of each rate class procurement group's load be served by spot market purchases, some quantity through short-term contracts, and some quantity through long-term contracts? In contrast, should a DSP be permitted to rely on only one or two of those product categories with the choice depending on what would be the prudent mix and would yield the least cost to customers over time for that specific DSP?

See Responses to Questions 6 and 10, supra. Specifically, to be considered a "prudent mix," the DSP must maintain a combination of more than one type of contract for each customer class.

(12) Should the DSP be required to hedge its positions with futures including natural gas futures because of the link between prices of natural gas and the prices of electricity?

No Response.

(13) Is the "prudent mix" standard a different standard for each different customer class?

The "prudent mix" standard could be a different standard for each customer class. Regardless of whether the "prudent mix" standard varies between customer classes, however, a "prudent mix" would still require more than one type of contract for each customer class. For example, while the Residential class may have a different "mix" of contracts than the Large C&I class, each class would nonetheless be required to have a "mix" of (i.e., more than one type of) products in its procurement portfolio.

(14) What will be the effects of bankruptcies of wholesale supplier to default service suppliers on the short and long term contracts?

No Response.

(15) Does Act 129 allow for an after-the-fact review of the "cost reasonableness standard" in those cases where the approved default service plan gives the EDC substantial discretion regarding when to make purchases and how much electricity to buy in each purchase?

No Response.

(16) How should the requirement that "this section shall apply" to the purchase of AECs be implemented. Section 2807(e)(3.5) states that "the provisions of this section shall

apply to any type of energy purchased by a default service provider to provide electric generation supply service, including energy or alternative energy portfolio standards credits required to be purchased, etc."

No Response.

III. CONCLUSION

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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