



McNees
Wallace & Nurick LLC

100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Pamela C. Polacek
Direct Dial: (717) 237-5368
Direct Fax: (717) 260-1736
ppolacek@mwn.com

June 15, 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 Reply 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 Reply Comments, and kindly return them to our messenger for our filing purposes.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 

Pamela C. Polacek

Counsel to the Industrial Customer Groups

PCP/km

Enclosures

c: Elizabeth Barnes, Assistant Counsel, Law Bureau (via E-mail)

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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 Jan. 19, 2010) ("Proposed Rulemaking Order"). The Proposed Rulemaking Order was published in the *Pennsylvania Bulletin* on May 1, 2010. On June 1, 2010, 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"), among others, submitted Comments in order to present their preliminary position and to address their concerns regarding the Commission's proposed regulations.

Pursuant to the established schedule in this proceeding, the Industrial Customer Groups hereby submit these Reply Comments to address specific areas of concern with respect to other stakeholders' Comments submitted in response to the Commission's Proposed Rulemaking Order.

I. REPLY COMMENTS

Unlike the Industrial Customer Groups' Comments that generally addressed preliminary concerns regarding the PUC's Proposed Rulemaking Order, these Reply Comments focus on various stakeholders' positions, as set forth in the Comments submitted on June 1, 2010.¹ The Industrial Customer Groups also reserve the opportunity to address additional issues in subsequent phases of this proceeding, as necessary.

A. 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.

In their Comments, Constellation NewEnergy, Inc. and Constellation Energy Commodities Group ("Constellation"), PPL EnergyPlus, LLC ("PPL EnergyPlus"), and PJM Power Providers Group ("P3 Group") object to the PUC incorporating provisions into its default service regulations that would allow the Commission to ensure that needed generation capacity is constructed in Pennsylvania. *See generally* Constellation Comments, pp. 13-22; PPL EnergyPlus Comments, pp. 3-6; P3 Group Comments, pp. 3-5. These parties argue, among other things, that the market will provide for new generation and that, if the PUC requires new generation to be constructed, customers will be subject to higher rates due to uneconomical investment in new generation, cost overruns from constructions, and inefficient operation of generation facilities. Constellation Comments, pp 15-19; PPL EnergyPlus Comments, pp. 3-5; P3 Group Comments, pp. 3-4. Their arguments should be rejected.

If the PJM Interconnection, L.L.C.'s ("PJM") administrative pricing mechanisms (Locational Marginal Pricing ("LMP") and the Reliability Pricing Model ("RPM")) are sending

¹ The Industrial Customer Groups' failure to address a specific proposal raised by any party does not represent the Industrial Customer Groups' support for, or acquiescence to, such proposal. The Industrial Customer Groups addressed the primary areas of concern in their Comments and submit these Reply Comments only on areas that necessitate an additional response.

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 must reserve the opportunity to take steps to ensure that needed capacity is built to produce adequate and reliable electricity for Pennsylvania's consumers. *See* Industrial Customer Groups Comments, p. 3. As the Commission may recall, LMP was originally promoted as sending the price signal to indicate where and when generating units needed to be built. When LMP failed to result in new generation, PJM created RPM to pay existing generation owners an additional subsidy so they can build new generating units. With the expiration of the rate caps, these "price signals" will now be directly experienced by Pennsylvania consumers. As a result, the Commission's ability to require the construction of new generation is needed not only from a reliability standpoint but also from a price standpoint, especially if the PJM administrative pricing mechanisms continue to result in higher costs for consumers without adequate generation being built where it is needed. Specifically, as discussed in the Industrial Customer Groups' Comments, the addition of generating capacity, including both baseload additions and strategically-sited peaking units, can reduce market prices for all consumers. *Industrial Customer Groups Comments, p. 3.* Once constructed, the output of such units should be used for both economic development power and default service power.

Moreover, these parties overstate the risk and costs to ratepayers, especially in comparison to the costs that Pennsylvania ratepayers are already paying under RPM in exchange for the "hope" that existing generators will use RPM revenues to build additional generation. For example, the Commission could structure the process so that risks associated with the construction over-runs, etc., are assigned to a competitive merchant developer, rather than being

completely absorbed by customers. The Industrial Customer Groups urge the Commission to confirm that it returns the ability to order the construction of new generation.

B. The Commission Does Not Have the Ability Under Act 129 to Completely Eliminate the Default Service Option.

In its Comments, the Retail Energy Supply Association ("RESA") suggests that a Default Service Provider ("DSP") should be responsible for the reliable provision of default service to non-shopping retail customers "until the Commission determines that it is no longer necessary to have a default service option." RESA Comments, p. 39. Under Chapter 28, all customers have the right to rely on the Electric Distribution Company ("EDC") or a Commission-approved alternative entity for default service. Nothing in Act 129 authorizes the Commission to completely eliminate default service for any customer class. As a result, the Commission should reject RESA's recommendation.

II. 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 Reply Comments.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

Pamela C. Polacek (Pa. I.D. No. 78276)

Carl J. Zwick (Pa. I.D. No. 306554)

100 Pine Street

P.O. Box 1166

Harrisburg, PA 17108-1166

Phone: (717) 232-8000

Fax: (717) 237-5300

ppolacek@mwn.com

czwick@mwn.com

Counsel to 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

Dated: June 15, 2010