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December 8, 2008

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA HAND DELIVERY

**RE: Energy Efficiency and Conservation Program and EDC Plans; Docket No.
M-2008-2069887**

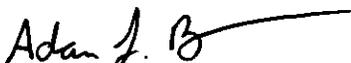
Dear Secretary McNulty:

Please find enclosed the original and fifteen (15) copies of the Comments of the Industrial Energy Consumers of Pennsylvania ("IECPA"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA"), Duquesne Industrial Intervenors ("DII"), Penn Power Users Group ("PPUG") and West Penn Power Industrial Intervenors ("WPPII") to the Draft Staff Proposal and Additional Questions issued in the above-referenced proceeding on November 26, 2008.

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

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Adam L. Benshoff

Counsel to Industrial Energy Users Group 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

James J. McNulty, Secretary

December 8, 2008

Page 2

ALB/sds

Enclosures

c: Chairman Cawley (via Hand Delivery)
Vice Chairman Christy (via Hand Delivery)
Commissioner Powelson (via Hand Delivery)
Commissioner Pizzingrilli (via Hand Delivery)
Commissioner Gardner (via Hand Delivery)
Karen Oill Moury, Director of Operations (via Hand Delivery)
Robert F. Wilson, Director, Bureau of Fixed Utility Services (via Hand Delivery)
Paul Diskin, Manager, Bureau of Fixed Utility Services (via Hand Delivery)
Mitchell A. Miller, Director, Bureau of Consumer Services (via Hand Delivery)
Robert F. Young, Deputy Chief Counsel (via Hand Delivery)
Kriss Brown, Assistant Counsel (via Hand Delivery)
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Wayne L. Williams, Director CEEP (via Hand Delivery)
Cal Birge, CEEP (via Hand Delivery)
June Perry, Director Legislative Affairs (via Hand Delivery)
Tom Charles, Manager, Office of Communications (via Hand Delivery)
Chief Administrative Law Judge, Veronica A. Smith (via Hand Delivery)
Cheryl Walker Davis, Director, Office of Special Assistants (via Hand Delivery)
All parties that provided comments at Docket No. M-2008-2069887 (via E-mail)
Parties Listed on Service List of Docket No. M-00061984 (via E-mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Energy Efficiency and Conservation Program
and EDC Plans**

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Docket No. M-2008-2069887

**COMMENTS OF 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**

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Power Industrial Intervenors

Dated: December 8, 2008

I. INTRODUCTION

On October 15, 2008, Governor Rendell signed into law House Bill 2200, or Act 129 of 2008 ("Act"). Among other things, the Act expands the Pennsylvania Public Utility Commission's ("PUC" or "Commission") oversight responsibilities and sets forth new requirements on electric distribution companies ("EDCs") for energy conservation, default service procurements, and the expansion of alternative energy sources.

On October 21, 2008, the Commission issued a Secretarial Letter seeking public comment on the initial phase of implementation, which includes aspects of the energy efficiency and conservation program required under 2806.1(a)(1)-(11).¹ On November 3, 2008, the Industrial Energy Consumers of Pennsylvania ("IECPA"), among many others, submitted general comments highlighting general areas of concern for the Commission such as program availability, cost recovery, and cost allocation. On November 26, 2008, the Commission issued its Draft Staff Proposal and Further Questions seeking additional public comment.

IECPA is an association of energy-intensive industrial companies operating facilities across Pennsylvania. IECPA's members annually consume in excess of 25% of the industrial electricity in Pennsylvania and employ approximately 75,000 workers at nearly 120 facilities across the Commonwealth. Also sponsoring these Comments are coalitions of industrial customers receiving service from most of the Commonwealth's electric distribution companies: 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 Customers").

¹ The Commission issued a subsequent Secretarial Letter on October 28, 2008, extending the due date for comments to November 3, 2008.

Because the Industrial Customers use substantial volumes of electricity in their manufacturing and operational processes, electric costs represent a sizeable component of overall operating costs, and therefore energy efficiency and conservation programs are important aspects of their energy management portfolios. In light of this direct and substantial impact, the Industrial Customers submit these Comments in order to address specific areas of concern to large commercial and industrial customers with respect to the implementation of EDC run energy conservation and energy efficiency programs. The Industrial Customers continue to look forward to working with the Commission and the other stakeholders to develop the procedures and requirements for the plans.

II. COMMENTS

The majority of the Industrial Customers' Comments will be made in response to the Commission's Additional Questions. Where necessary, specific language in the Commission's Draft Proposal has also been addressed. The Industrial Customers also reserve the opportunity to address additional issues in subsequent phases of this process, as necessary.

A. **ADDITIONAL QUESTIONS**

2. *Program Design*

- a) *Statewide vs. EDC Specific: Should the Commission encourage, by policy, a statewide approach to some programs that are likely to be effective across Pennsylvania? For example, should rebate programs be harmonized across the state? Should specific programs, Home Performance With Energy Star, and Energy Star Homes be consistently available in all EDC service territories? If so, what programs should the EDCs implement consistently across the state?*

The Commission will need to address the potential statewide application of energy efficiency and conservation measures on a program-by-program basis. To the extent that any rebate or energy audit programs are directed at the large commercial and industrial class, while it

would be reasonable to provide all Pennsylvania business with a similar opportunity, it should not be mandatory. It is of greater importance for the EDCs to develop the most beneficial programs (from a cost benefit perspective) in their individual service territories.

b) Can Act 129 programs have negative impacts on existing cost effective energy efficiency and demand side programs by 3rd parties? If so, how can this Commission avoid damaging existing 3rd party efforts when socializing Act 129 energy efficiency and demand side programs through non-bypassable charges to all customers, while increasing customer participation in these services?

The Commission must be cognizant of the fact that the Industrial Customers, most often at their own expense, have long been at the forefront of implementing energy efficiency and conservation measures as part of their overall cost containment strategies. Thus, the implementation of general Act 129 programs, whereby the costs of any program are socialized, even within the same class as permitted under the Act, can have potentially unfair and unintended consequences. In effect, the customers who have already expended the capital to implement or participate in energy efficiency measures, will be forced to not only pay again for such measures to be implemented, but potentially pay for implementation by their competitors.

It will be important for any EDC designed program to take into consideration the cost sharing impact of any proposal. One solution, may be for the general administration of the program, *i.e.* an energy audit program or lighting program, to be socialized among all members of the rate class, but any specific upgrades or actions taken based on that audit be at the individual customers' expense. This will provide the benefit of increased accessibility to customers who may not have taken advantage of such service due to cost concerns, while removing a significant competitive disadvantage from inappropriately socializing such costs.

Furthermore, the Act specifically charges the Commission with ensuring that at a minimum any measures implemented "are financed by the same customer class that will receive the *direct energy and conservation benefits*." 66 Pa. C.S. 2806.1(a)(11) (*emphasis added*). In other words, before any costs are passed through to a class of customers, the Commission should have identified the *direct* benefits on a class-by-class basis. This direct benefit requirement explicitly precludes the socialization of costs for programs that are found simply to benefit the system as a whole. Any contrary result would potentially result in inappropriate inter-class subsidization and be contrary to the statutory directive.

c) Should the Commission seek to harmonize with other Federal, State, local, RTO or other group programs? If so, what specific programs should this Commission encourage EDCs to replicate, incorporate, or leverage as part of their compliance filings? How can this best be achieved?

The overarching goal of the Act can be found in the Sections 2806.1(c) and (d), whereby the EDCs are required to reduce a specific percentage of annual consumption and peak demand. See 66 Pa. C.S. §§ 2806.1(c) and (d). In order to maximize the opportunities available to all customers and assist in the achievement of that goal, the Commission should ensure that the programs proposed by the EDCs do not negatively impact a customer's ability to participate in established programs that are readily available. For example, PJM Interconnection, L.L.C. ("PJM"), currently operates various demand side response programs for large commercial and industrial customers. See <http://www.pjm.com/markets/demand-response/demand-response.html>. Requiring, or even permitting, the EDCs to replicate such programs is an unnecessary expenditure of funds where such programs are already available. Instead, the Commission should strive to ensure that any barriers to customer participation in these established programs are removed, and that any newly proposed program does not inhibit a customer's ability to

participate. Statewide open access to such already viable programs will only assist the EDCs in reaching their goals.

3. Total Resource Test

- a) *How can the Total Resource Cost Test that must be approved by the Commission under Sections 2806.1(a)(3) and 2806.1(b)(1)(i)(I) be simplified?*

The Commission must be careful not to ignore the guidelines provided by the statute under the guise of simplicity. The Industrial Customers have no recommendation for the Commission at this time, except to maintain the integrity of the statutory definition to only include the *direct monetary cost of supplying electricity and of energy efficiency conservation measures*. See 66 Pa. C.S. § 2806.1(a) (*emphasis added*). That said, the Industrial Customers look forward to reviewing other interested parties' recommendations and addressing any concerns during the Commission's December 10, 2008, stakeholder meeting.

- b) *The Act Defines "Total Resource Cost Test" (TRC test) as "a standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures." Under this definition, may the Commission limit consideration of monetary costs to the costs incurred by EDCs?*

The Commission should not limit consideration of monetary costs of energy efficiency conservation programs to only the EDCs' incurred costs. The Act provides for the consideration of the "monetary cost of energy efficiency conservation measures." 66 Pa. C.S. § 2806.1(m). The TRC test, as defined in the California Standard Practice Manual cited by the Commission, "measures the net costs of a demand-side management program as a resource option based on the **total costs of the program, including both the participants' and the utility's costs.**" See *California Standard Practice Manual: Economic Analysis of Demand Side Programs and*

Projects, pg. 19 (*emphasis added*). In fact, the inclusion of **both** participant and utility costs is considered a primary strength of the test. *See id.* at 20. If participant costs were to be excluded from consideration, the programs effectiveness would be substantially overvalued, as the true cost of the energy efficiency conservation measure would not be represented.

c) *Can the TRC test include avoided environmental costs or other societal costs?*

The Act provides a specific definition for the TRC test as "a standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of *the monetary cost of supplying electricity* is greater than the next present value of *the monetary cost of energy efficiency conservation* measures." 66 Pa. C.S. § 2806.1(a) (*emphasis added*). The Commission is therefore bound by statutory directive to only include the *direct monetary cost* as part of the TRC test. Avoided environmental costs or other societal costs clearly fall outside the scope of the statutory definition. In fact, under the California Standard Practice Manual referenced by the Commission, the inclusion of such factors is indicative of the "Societal Test" that "goes beyond the TRC," not the TRC as set forth in the Act. *See California Standard Practice Manual: Economic Analysis of Demand Side Programs and Projects*, pg. 19. The statutory mandate is clear, and must be adhered to by the Commission.

h) *Should the methodology for calculating the Net Present Value (NPV) and B/C ratio set forth in The California Standard Practice Manual – Economic Analysis of Demand-Side Programs and Project (July 2002) be used, or is there a better alternative?*

Based on the available alternatives, the methodology presented in The California Standard Practice Manual will be appropriate for the initial implementation and evaluation of the energy efficiency conservation plans. However, the Industrial Customers support the development of national standards for the measurement, verification, and reporting of the

effectiveness of utility or EDC administered plans. Such standards should be developed through an informed stakeholder process and vetted on a continuous basis through an organization such as the North American Energy Standards Board ("NAESB"). The development of such a national standard will help to ensure the consistent evaluation of, and, therefore, the success of only the most beneficial programs. If developed, such a national standard should supplant the California Standard Practice Manual.

- i) What discount rate should be used in the calculation of NPV? How frequently should it be reevaluated? Should it be established for each EDC service territory, or for the Commonwealth as a whole?*

The Industrial Customers see no basis for the discount rate to be applied in any manner other than for the entire Commonwealth, as a whole. There does not appear to be any EDC specific variations that would warrant such an application. The greater the similarities in program evaluation across the Commonwealth the more useful the process will be not only for the PUC, but for each EDC to effectively parrot, to the extent possible, programs that continually produce a definitive cost benefit advantage.

- j) Should the elements used in the calculation of an EDC's total annual revenue be the same elements used to calculate the "avoided monetary cost of supplying electricity" under the TRC test?*

The statute defines an EDC's total annual revenue as "amounts paid to the electric distribution company for generation, transmission, distribution and surcharges by retail customers." 66 Pa. C.S. § 2806.1(m). However, the cost to "supply" electricity to a customer includes only the generation charges. Under Pennsylvania's Electricity Generation Customer Choice and Competition Act ("Competition Act"), distribution and transmission are unbundled and distinct services from the supply of electricity. See 66 Pa. C.S. § 2802(14). If the General

Assembly intended for distribution and transmission to be included, then it would have specified this in the definition (as it did with the explanation of the "total annual revenue"). Furthermore, future surcharges may or may not be related to the supply (*i.e.*, generation) function. Each must be examined independently.

k) The gas industry raised some interesting points on the net impact of displacing natural gas heating equipment (space and water) with electricity heating equipment. Should the TRC test include parameters to capture the consequences of net energy gains or losses in delivering alternative fuels to consumers?

As discussed in response to question 3(c), *supra*, the TRC test, as clearly defined by the statute, neither contemplates nor provides for the consideration of costs outside of the direct monetary costs of supplying electricity. Under the letter of the statute, the Commission simply cannot include costs related to the net energy gains or losses of the natural gas or any other alternative fuel industry. Any calculation would be speculative at best, and falls well outside of the scope of the TRC test as defined in Act 129.

6. Cost Recovery Issues

a) Can one class of customers have EE&C charges in excess of 2% of class revenues, due to an abundance of cost effective opportunities relative to other customer classes, while overall EE&C charges remain below 2% of revenues for the utility as a whole?

The plain language of the Act provides that "[t]he total cost of any plan required under this section shall not exceed 2% of the electric distribution company's total annual revenue as of December 31, 2006." 66 Pa. C.S. § 2801.6(g). In other words, an EDC is permitted to recover from customers a sum equal to 2% of its annual revenue spent implementing and administering energy efficiency and conservation programs. The Act contains no provision, explicit or implicit, that provides a similar cost recovery cap for individual customer classes.

Importantly, in determining the application of the 2% total revenue cap, the Commission must remain cognizant that the Act also establishes certain targets for the reduction of annual consumption and peak demand that each EDC must meet. *See* 66 Pa. C.S. §§ 2806.1(a) and (d). The EDCs should be provided the flexibility, as is the case under the proposed Order, to appropriately direct programs towards the customer classes where the greatest cost/benefit may be derived. *See* Draft Proposal, p. 16 ("We agree 'equitable' does not mean 'pro rata,' especially when 'cost-effective' is factored into the process"). Such flexibility will provide the EDCs with the best opportunity to achieve the consumption and peak demand targets.

That said, the Industrial Customers believe that as a result of the measures either previously enacted by individual large industrial or commercial customers or offered by third party suppliers, the majority of new EDC programs will be appropriately directed toward residential and small commercial customers as these classes currently represent a widely untapped resource. As noted previously, large commercial and industrial customers have been implementing energy efficiency and conservation efforts on their own for years. For many of the Industrial Customers, electricity costs are such a significant factor in the cost of production, that it simply makes good business sense to remain at the forefront of any potential cost reduction methodologies.

In addition, these same customers have been self-funding such programs, when economically valuable, to gain a competitive advantage in their marketplace. As a result, the Industrial Customers do not believe that there is a need to fabricate programs for the large customer classes for the sake of appearances. The EDCs have a significant obligation to meet, which comes with penalties for non-compliance, and, thus, should not be handcuffed by regulations that go above and beyond the statutory requirements for cost recovery. As long as

the program passes an appropriate cost/benefit analysis, the costs should be recovered from the class that receives the direct benefit, up to the 2% total revenue cap.

B. IMPLEMENTATION ORDER

J. EDC Cost Recovery

I. Determination of Allowable Costs

For a discussion of the Industrial Customers' position regarding the 2% total revenue cost standard, see Section II.A.6(a), *supra*.

With respect to the recovery of revenues lost due to reduced energy consumption or changes in demand, the Commission appropriately notes in this section that the Act clearly states that any such lost revenue **shall not be recoverable** under the automatic adjustment clause. 66 Pa. C.S. § 2806.1(k)(2); Draft Proposal, p. 27. The Commission also notes that the Act does provide that such lost revenues may be reflected in revenue and sales data used to calculate rates in a distribution base rate proceeding in accordance with 66 Pa. C.S. § 1308. The Industrial Customers agree that an EDC may reflect verifiable reduced revenues or sales when filing of a full distribution base rate case, subject to the traditional requirements to demonstrate that the revenue or sale reduction is expected to exist in the future test year. This could include the use of a three or five year average of revenues or sales (or other period), as appropriate. The Act clearly prohibits, however, the EDC from implementing revenue decoupling schemes to obtain compensation for the sales or revenue reductions.

2. Allocation of Costs to Customer Classes

The Act explicitly provides that any programs implemented by the EDCs "are financed by the same customer class that will receive the *direct* energy and conservation benefits." 66 Pa. C.S. § 2806.1(a)(11) (*emphasis added*). The Commission, however, states that costs that "can be

shown to provide system-wide benefits, must be allocated using generally acceptable cost of service principles as are commonly utilities in base rate proceedings." Draft Proposal, p. 28. The Commission need not, and should not, be involved in such an analysis.

The Commission must abide by the direct language of the statute and ensure that only costs that can be linked to direct energy efficiency and conservation benefits are recovered from each class. *See id.* The amorphous "system-wide benefit" is expressly disallowed under the Act and could potentially result in unjust and unreasonable inter-class cost shifting. Each program should be designed specifically for a customer class, or a group of customer classes. In such a case, generally acceptable cost of service principles should be applied. EDCs should not be permitted, and the Commission cannot countenance under the express statutory provisions of Act 129, claims by any party relating to the overall or system-wide benefits.

In addition, it is important for the Commission to maintain a focus on customers with respect to the timing of these cost impacts. The Industrial Customers, and in fact all Pennsylvanian's, are on the precipice of potentially historic rate increases if the generation rate caps are permitted to expire (which they should not be). Given the potential magnitude of an energy efficiency conservation surcharge, the Commission must be cognizant to only pass through costs that truly provide a direct benefit to customer classes. If the entire 2% is utilized by each utility, and spread on a cents per kWh basis, customers could potentially see a surcharge ranging from 1 to 2 mils/kWh, depending on the EDC. This could equate to annual payments for a small manufacturer (*e.g.*, 10 million kWh/year) from \$9,000 to \$20,000; for a mid-sized manufacturer (*e.g.*, 50 million kWh/year) from \$45,000 to \$100,000; and, for a larger manufacturer (*e.g.*, 100 million kWh/year) from \$90,000 to \$200,000. For some very large manufacturers that can use as much as 750 million kWh or more, the impact could be anywhere

from \$675,000 to \$1,500,000 annually. This would be in addition to the resources that these customers may expend on their own for energy efficiency and conservation initiatives.

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 Comments.

Respectfully submitted,

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