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December 19, 2008

**VIA Hand Delivery**James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120**Re: Energy Efficiency and Conservation Program and EDC Plans  
Docket No. M-2008-2069887**

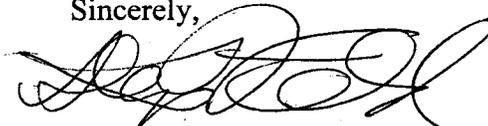
Dear Secretary McNulty:

Enclosed for filing are an original and fifteen (15) copies of Reply Comments on Draft Staff Proposal and Further Questions of November 26, 2008 on Behalf of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company in the above-referenced docket. Please date stamp the additional copy and return it as evidence of filing. Also enclosed is an electronic version of the filing on disk. An electronic copy of this document has also been e-mailed to [ra-Act129@state.pa.us](mailto:ra-Act129@state.pa.us).

As indicated on the attached Certificate of Service, copies have been served in the manner indicated.

Please contact me at the above phone number should you have any questions.

Sincerely,



Stephen L. Feld, Esquire

Enclosures

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the individuals listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant) and the Secretarial Letter of November 26, 2008 in this docket.

Service by hand delivery and electronic mail, as follows:

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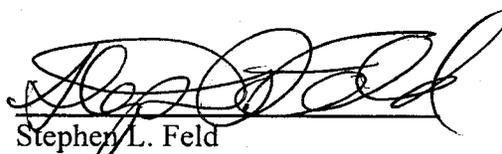
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Dated: December 19, 2008



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Energy Efficiency and Conservation** :  
**Programs and EDC Plans** : **Docket No. M-2008-2069887**  
:  
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**REPLY COMMENTS ON DRAFT STAFF PROPOSAL and FURTHER QUESTIONS  
OF NOVEMBER 26, 2008  
ON BEHALF OF METROPOLITAN EDISON COMPANY,  
PENNSYLVANIA ELECTRIC COMPANY AND PENNSYLVANIA POWER  
COMPANY**

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**TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:**

**I. INTRODUCTION**

By Secretarial letter of November 26, 2008, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) circulated a working group draft proposal (“Draft Proposal”) and further questions (“Staff Questions”) in the above docket. Initial comments on these proposals and questions were provided by interested stakeholders on December 8 and at a stakeholders’ meeting held in Harrisburg on December 10, 2008. Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company (“FirstEnergy” or “Companies”) hereby submit their Reply Comments to other stakeholder comments on these staff documents.

The Companies look forward to continuing to work with the Commission and interested stakeholders through the stakeholder process to further develop a reasonable and effective Commission Energy Efficiency and Conservation Program.

## II. APPROVAL PROCESS

The Companies' initial comments addressed the need for the Commission to distinguish among the different types of entities that could fall within the umbrella of "CSPs" because of the very broad definition of these entities in Act 129. In particular, if the Commission determines that consulting entities which may assist an EDC in the development and preparation of its plan filing are "CSPs", must be in the registry provided in Section 2806.2(a) and their selection is subject to PUC procurement requirements, then the Companies believe that the Commission needs to address a critical timing issue. An electric distribution company ("EDC") that desires to retain such a consulting firm with expertise in energy efficiency plans and analyses will need to do so well before the March 1, 2008 date established in Act 129 for creation of the CSP registry because prompt selection of such a consultant is absolutely necessary to allow the EDC to meet the July 2009 deadline for submission of its Act 129 energy efficiency/peak load reduction plan ("EDC Plan").

The Companies suggest that the Commission provide a process whereby an EDC may secure expedited approval of the retention of a consultant to assist in preparing its EDC Plan. The process should provide for the opportunity to obtain PUC approval through a Secretarial Letter of the retention of the selected consultant within seven (7) business days. The process to select and retain such a consultant should include obtaining proposals from at least three qualified consultants and listing the criteria which will be used for selection of qualified bidders based on a number of factors in addition to price, such as past and present clients, recent program experience, achievement of reductions in energy usage and peak load, qualifications of the management team and familiarity with modeling tools. Such a process will provide reasonable

assurance of the quality of work required to prepare plans and a transparent, prudent process supporting full cost recovery for the costs associated with consultant's work in preparing the plans. The Companies recommend that the Commission include such a process in its January 15, 2009 order.

Another aspect of CSPs discussed at the December 19 stakeholder meeting was the possible inclusion in the registry of all entities that install energy efficiency and conservation measures. These would include HVAC contractors, window installers, insulation contractors and similar retail suppliers. Given the broad language of Act 129, the registry could even include lending institutions. The Companies do not view Act 129 as putting the Commission in the business of a consumer protection bureau in place of other state agencies or private enterprises such as the Better Business Bureau. Rather, the context of CSPs in Act 129 relates to ensuring that the implementation of energy efficiency and conservation measures is not performed entirely by EDCs but that EDCs use "one or more" non-affiliated CSPs (Section 2806.1(b)(1)(i)(E)) and that EDCs competitively bid and the Commission approve all contracts with CSPs (Section 2806.1(a)(7) and (8)). Therefore, the registry should be a list of providers who may contract with EDCs to implement all or parts of the EDCs' Plans. Some entities included in the registry may also choose to provide services to end-use customers but the Commission's registry should not be viewed as the "Yellow Pages" of energy efficiency contractors available to consumers.

### **III. DETERMINATION OF REDUCTION REQUIREMENTS**

The stakeholder's meeting on December 10 elicited some comments on the proper manner to determine compliance with Act 129's peak load reduction requirements. The Companies support a calculation that relies on the capability of the EDC to reduce peak load by

4.5% by May 31, 2013. Some commenters advanced a position that peak load actually must be reduced by 4.5% during the 100 hours of peak loads. Aside from the impracticality of knowing which 100 hours comprise the 100 peak hours until *after* they occur, the requirement of an actual reduction ignores whether it is needed and its impact on economic development. In a very mild summer period, the EDC should not be required to interrupt load to manufacturers and other high use customers merely to meet a regulatory mandate. Rather, the interruption or cycling of load should occur when it produces the benefits of lower peak prices and/or avoid electric grid instability. As long as the EDC programs have the demonstrated capability to reduce load at peak hours, then that MW capability should be counted toward the EDC's required reduction targets. Peak load reduction capability may be demonstrated by requiring the EDC to meet the same standards which participants in PJM's (or other RTO's as applicable) various demand response markets must meet. This will ensure that the reductions will be available during those times when the benefits of such reductions will occur as projected in the EDC Plan. Further, the fact that these capabilities will be based on the same standards used by the RTO for its demand will ensure that generation suppliers bidding into EDCs' competitive procurement processes will take these reductions into account when preparing their price bids. Generation suppliers will recognize in pricing their bids that they face a lower price risk because the peak load they must meet is lower than it would be otherwise. That is, the demonstrated peak load reductions available through the EDC's Plan will cause lower peak prices and lessen the amount of peak supply that they will have to provide.

Peak load reduction capability is very consistent with the use of “deemed savings” in achieving the energy reductions required under Act 129<sup>1</sup>. Just as it is not economical or practical to verify that each individual installation of a measure produced a precise amount of energy savings, it is not economical or practical to actually reduce a customer’s load when it does not produce the intended benefit. For example, if the region experiences a very mild summer and an EDC has not implemented its demand response reductions because the RTO’s and the EDC’s systems have not seen generation scarcity during peak periods that drive high market prices, should the EDC in late September then interrupt manufacturing customers merely to show an actual reduction in peak load? At the same time, should the EDC interrupt air-conditioning use in September when the temperature is 75 degrees because it (and the RTO) had no need to do so earlier in the summer? The Companies believe that the preferable approach and the intent of Act 129 are to achieve the capability to produce peak load reductions at times when the benefits of such reductions inure to the good of the Commonwealth, customers and EDCs, not reductions for the sake of reductions. The Companies recommend the use of only summer hours (June through September) for the development of the Act 129 peak load response targets. These targets should be based on using data at the customer’s meter because this represents the actual quantity of MWs available to a customer to reduce.

#### **IV. TECHNICAL POTENTIAL STUDY**

The Office of Consumer Advocate (OCA) proposed that each EDC conduct a “Technical Potential Study” as a prerequisite to developing its July, 2009 Plan. (OCA Comments, pages 10-

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<sup>1</sup> The quantity of peak load reductions will be derived from two sources: 1) peak load response capability associated with curtailment type measures and 2) deemed peak load reductions in the updated Technical Reference Manual (“TRM”).

11) The Companies believe that there should be no separate requirement for such a study. Requiring a separate study would increase the costs of developing an EDC Plan and a separate study should be at the EDC's option. If the Commission determines that a Technical Potential Study will be a requirement, then the Companies believe that it should be performed on a statewide basis because many of the measures with technical potential will be very similar regardless of the EDC.

**V. CREDITING ENERGY AND PEAK LOAD REDUCTIONS**

The Department of Environmental Resources ("DEP") contended in its comments (Page 3) that measures should not receive both energy conservation and peak demand credit. This contention would negate, in part, the energy and peak load benefits of energy efficiency measures, does not comport with the purposes of Act 129 and should not be adopted. Such preclusion could negatively impact the implementation of certain very effective measures and create unjustified conflict among cost-effective measures, results which were not intended by the legislature. Certain measures, such as office high-efficiency lighting retrofits or air conditioning upgrades, clearly not only reduce peak load but also result in an overall reduction in energy usage, thereby saving both kWhs and KWs. The savings of both should be included in the TRC when such a measure is considered and both energy and peak load impacts should be counted as part of the required reductions. Not to do so could change the ranking of measures from a cost-effective perspective and potentially result in less cost-effective measures being implemented before or to the exclusion of more cost-effective measures.

The Companies recognize that some measures may only shift usage from on-peak periods to off-peak periods and it would not be appropriate to count shifted kWh usage as conservation

kWhs in addition to the peak load kW reductions. However, “double counting” of energy savings should not be assumed to occur with all peak load reduction measures but should be considered objectively in the review of measures in the development of the EDCs’ Plans and upgrade of the TRM.

The December 10, 2009 stakeholders meeting elicited some discussion about the duration of the energy savings associated with conservation measures. The concern seemed to center on how long the energy savings attributable to a particular measure may be counted as part of the EDC’s required reductions. Fundamentally, as long as the measure produces savings, it should be counted. The TRC considers the life of a measure and the energy and peak load reductions associated with a measure and there should not be a truncation of those savings on retroactive basis. The Companies suggest that the Commission adopt on an interim basis the measure lives published by the California Commission as guidance to the EDCs as they develop their plans with a limit of 15 years to be consistent with Act 129. (See [http://docs.cpuc.ca.gov/published/final\\_decision/11474-13.htm](http://docs.cpuc.ca.gov/published/final_decision/11474-13.htm))

## **VI. TIMING OF LOAD FORECASTS**

The Companies, OCA and others have raised concerns about the timing of completion of the future energy forecast (2009-10) and historic (2007-08) peak demand calculations<sup>2</sup>. The determination of both of these is key to calculating the amount of energy and peak load reductions that the EDCs’ Plans will have to achieve under Act 129. The Companies propose

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<sup>2</sup> The Companies support using the summer months of June, July, August and September to be coincident with PJM’s summer months and using the average of the peak 100 hours between June 1, 2007 and September 30, 2007, be utilized to calculate the 4.5 % target for 2013.

that each EDC file its 2009-10 energy forecast and historic peak load level by February 7, 2009, that the Commission post these filings on its website and that stakeholders have 15 days from such posting to file comments on the EDCs' filings. The Commission's Bureau of Conservation, Economics and Energy Planning ("CEEP") should then have until March 20 thorough issuance of a Secretarial letter to finalize the required amounts of energy and peak load reductions for each EDC. The March 20 date then gives the EDCs and relevant stakeholders about three months to review and finalize how those amounts of reductions will be achieved through the program measures included in EDCs' Plans.

## **VII. PROCESS FOR CHANGES OR ADDITIONAL MEASURES**

The Companies restate their support for EDCs being permitted to propose changes in their plans during the course of a year and not only as part of the annual review process. Such flexibility was supported by a number of other parties including CSPs. This is especially critical for 2010 and the first part of 2011 when the first reduction target must be met. Delaying plan changes until the annual report for 2010 is filed and reviewed will allow little or no time for implementation before this first compliance date. EDCs should be able to propose plan changes in late 2009 and throughout 2010 as they and the Commission gain experience with the approved programs and measures and be able to make interim adjustments on a prompt basis to better ensure that results will be achieved. Such changes could involve changing the incentive payment for a particular measure, changing eligibility requirements, increasing targeted advertising or other components of an EDC's plan.

In their December 8, 2009 comments, the Companies proposed that EDCs be allowed to file such interim, proposed changes with the Commission outside of the annual filing. The EDC

would serve the filing on those parties who participated in the original plan proceeding. The changes would then become part of the EDC's plan unless within 15 days the Commission determines through issuance of a Secretarial letter to not allow the changes to become effective. Stakeholder comments would be considered within this 15 day period and could result in the Commission deciding to not allow the changes to be implemented until further review, not to exceed 30 days. This process provides for the prompt consideration and implementation of plan changes so that interim plan adjustments may be made to ensure that measures are as effective as possible at all times.

### **VIII. TECHNICAL REFERENCE MANUAL**

Based on the discussion of "deemed savings" on December 10, the Companies support the completion of necessary updates<sup>3</sup> to the Technical Reference Manual as early as practical but no later than March 1, 2009. The use of a Secretarial Letter process will expedite the completion of the TRM. This will allow sufficient time for the EDC Plans to properly account for the standard measures and savings contained in the TRM as part of the EDC's Plans to be filed by July 1, 2009. This is not to say that the TRM should not be updated to reflect additional or changed information and experience. However, it bears repeating that such changes should only be adopted on a prospective base. As the President of the National Association of Energy Services Companies stated on December 10, "the Commission should not change the score after the game is over."

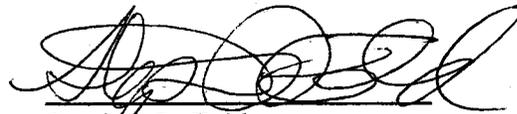
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<sup>3</sup> One of the primary updates to the TRM will be to incorporate deemed peak load reductions associated with standard demand reduction measures and energy efficiency measures.

**IV. CONCLUSION**

FirstEnergy appreciates the opportunity to provide this reply to the other parties' comments to the December 10 stakeholders' meeting and the Draft Proposal concerning the implementation of Act 129 of 2008. The Companies look forward to their continued participation in the process.

Respectfully submitted,



Dated: December 19, 2008

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