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December 19, 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 Reply Comments of 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 November 14, 2008, Secretarial Letter and requested at the Act 129 Working Group Meeting.

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

Very truly yours,

McNEES WALLACE & NURICK LLC

By Adam L. Benshoff
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

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)
Louise Fink Smith, Assistant Counsel (via Hand Delivery)
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	:	**Docket No. M-2008-2069887**

REPLY 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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Dated: December 19, 2008

I. INTRODUCTION

On October 15, 2008, Governor Rendell signed into law House Bill 2200, or Act 129 of 2008 ("Act" or "Act 129"). 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") *et. al.* (collectively, "Industrial Customers"),[2] 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. Per the Commission's request, on December 8, 2008, IECPA submitted additional comments on the Draft Staff Proposal and Further Questions. IECPA also actively participated in the December 10, 2008, Act 129 Working Group Meeting.

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

[2] 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 the Comments are coalitions of industrial customers receiving service from most of the Commonwealth's 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").

Pursuant to the Commission's November 14, 2008, Secretarial Letter, and as requested at the Act 129 Working Group Meeting, Industrial Customers hereby submit these Reply Comments 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.

II. COMMENTS

The Industrial Customers' Reply Comments address important issues raised in the other parties Comments, as well as issues discussed during the Act 129 Working Group Meeting.[3]

- The Office of Small Business Advocate's ("OSBA") has appropriately interpreted Act 129 to cap EDC recovery from ratepayers to 2% of the EDC's annual budget for year 2006, not 2% annually. Act 129 clearly reads "[t]he **total cost** of any plan required under this section shall not exceed 2% of the electric distribution companies total annual revenue as of December 31, 2006." 66 Pa. C.S. § 2806.1(g) (*emphasis added*).

- The OSBA also appropriately recommends that the Commission clarify its Order to expressly provide for a full adjudicatory proceeding with respect to each EDC's energy efficiency and conservation plan. *See* OSBA Comments, pp. 2-3. In order for the Commission to afford parties appropriate due process, an opportunity should be provided for parties to propound discovery, participate in evidentiary hearings, and submit briefs. This opportunity for customers to participate becomes increasingly more important given the significance of the potential rate increases (anywhere from $9,000 to upwards of $1.5 million annually)[4], as well as the timing of this increase as all Pennsylvanian's face

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

[4] If the entire 2% is utilized annually (which it should not be under the language of the Act 129) 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 or more kWh/year, the impact could be anywhere from $675,000 to $1,500,000 annually.

potentially historic rate increases if the generation rate caps are permitted to expire (which they should not be).

- The Reinvestment Fund proposed a requirement that all of the EDCs' plans be designed to achieve at least an 80% reduction of each class's pro rata share of the statutorily mandated reduction to ensure equitable offerings to customers. *See* The Reinvestment Fund Comments, p. 8. Such a requirement is not necessary under Act 129, and may in fact significantly hinder the EDCs ability to achieve its reduction goals by potentially eliminating beneficial programs due to a desire to reach the 80% safe harbor. 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"). As explained more fully in the Industrial Customers' Comments, because larger customers are already independently investing in energy efficiency and conservation measures, the reduction that can be obtained from this class may be less than what can be obtained from programs directed at other classes.

- The Act specifically charges the Commission with ensuring that 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 provide "system-wide benefits" as advocated by various parties.

- Contrary to the proposal of Reliant Energy, Inc., the Total Resource Cost ("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*). The inclusion of **both** participant and utility costs is considered a primary strength of the test. *See id.* at 20. To achieve an accurate measure of a program the Commission must ensure that all direct costs are appropriately accounted for or benefits could be substantially overvalued. Moreover, the proposals by PennFuture and other parties to include such things as avoided societal costs, avoided environmental costs, or costs of avoided supply interruptions should be rejected. *See, e.g.*, PennFuture Comments, p. 5. Such costs clearly fall outside the scope of the statutory definition, which includes only "the ***direct monetary cost of supplying electricity*** and ***of energy efficiency conservation measures***." *See* 66 Pa. C.S. § 2806.1(a) (*emphasis added*).

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 Reply Comments.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By Adam L B

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Date: December 19, 2008