**Energy Association of Pennsylvania**

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June 3, 2011

Rosemary Chiavetta, Esq., Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

**RE: Implementation of Act 129 of 2008 – Total Resource Cost Test 2011 Revisions (Docket No. M-2009-2108601)**

Dear Secretary Chiavetta,

Enclosed for filing are an original and 15 copies of the Energy Association of Pennsylvania's Comments in the above-referenced docket.

Sincerely,

Donna M.J. Clark
Vice President and General Counsel



cc: Robert F. Powelson, Chairman
John F. Coleman, Vice Chairman
James H. Cawley, Commissioner
Tyrone J. Christy, Commissioner
Wayne E. Gardner, Commissioner
Gregory A. Shawley (electronic copy)
Louise Fink Smith (electronic copy)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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| Implementation of Act 129 of 2008-<br>Total Resource Cost (TRC) Test<br>2011 Revisions | :<br>:<br>: | Docket No. M-2009-2108601 |

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**COMMENTS OF THE ENERGY ASSOCIATION OF PENNSYLVANIA ON THE PROPOSED 2011 REVISIONS TO THE TOTAL RESOURCE COST TEST**

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**Introduction**

On May 6, 2011, the Pennsylvania Public Utility Commission ("PUC" or "Commission") entered a Tentative Order, proposing further refinements to the Pennsylvania Total Resource Cost ("TRC") test that had previously been adopted at this docket on June 23, 2009 ("2009 PA TRC Test Order"). In the 2009 PA TRC Test Order, the Commission recognized the possibility that the TRC test established in 2009 "may be amended in the future by order of the Commission based upon our experience and/or input from stakeholders." See 2009 PA TRC Test Order at paragraph 3, p. 32. The Commission provided for a stakeholder group to address issues identified in the 2009 PA TRC Test Order and "such other issues as may arise in the total resource cost test process." Id. at paragraph 2. The instant Tentative Order seeks further input from interested parties on issues relative to demand response, net-to-gross calculations, fuel switching, TRC calculations and TRC reporting.

Initially, the Tentative Order established a fifteen (15) day period for filing public comments until May 23 and a reply comment due date ten (10) days thereafter on June 2.

The Energy Association of Pennsylvania ("EAP" or "Association"), pursuant to Section 1.15 of Chapter 52 of the Pennsylvania Code (52 Pa. Code §1.15), for itself, its members and all interested parties requested and was granted an extension of time until Friday, June 3 for the filing of comments. The Commission further extended the deadline to file reply comments until Monday, June 13.

Act 129 requires the Commission to approve a TRC test which will be used by an electric distribution company ("EDC") to determine whether approved and implemented energy efficiency and conservation programs are cost effective. As defined under the statute, the TRC test is "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 avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency and conservation measures." 66 Pa. C.S.A. § 2806.1(m).

The Tentative Order identifies five subject areas for comment and seeks input with respect to the TRC test to be applied through May 31, 2013, and "to a lesser extent, on the use of the TRC test beginning June 1, 2013".[1] Discussion and resolution of the TRC issues set forth in the Tentative Order is critical both in assessing the current Act 129 efforts and in determining the parameters which will inform the Commission as it establishes the targets and rules for programs after May 31, 2013.

The EAP appreciates the opportunity to submit the following comments on behalf of its member EDCs subject to Act 129.

[1] Implementation of Act 129 of 2008 - Total Resource Cost (TRC) Test – 2011 Revisions (Docket No. M-2009-2108601) at Page 1.

**Comments**

Overall, EAP believes the Commission's Tentative Order accurately reflects the resolution of TRC test issues identified in the 2009 PA TRC Test Order and discussed on February 28 and March 14, 2011 by the Technical Working Group ("TWG") composed of the EDCs subject to Act 129, the Statewide Evaluator ("SWE") and Commission staff primarily from the Bureau of CEEP ("CEEP"). EAP offers the following substantive comments and seeks clarification on a number of points raised in the Tentative Order. Individual EDCs will file comments as well addressing the issues raised in the Tentative Order. EAP reserves its right to file reply comments.

**A. Demand Response**

1. **Application of TRC Test Calculation to DR Programs**

EAP has no comments to offer at this time.

2. **Treatment of DR Payments to CSPs and EDCs from PJM**

In its Tentative Order, the Commission proposes that PJM payments to CSPs for Demand Response market participation be excluded from TRC calculations while proposing that PJM payments to EDCs for Demand Response participation in economic programs be included. EAP suggests that both types of payments should be treated the same and excluded.

To the extent that participation in PJM DR programs would have occurred in the absence of Act 129 DR programs (i.e., the PJM charges or payments are not directly related to <u>incremental</u> DR provided by Act 129), any charges, penalties, or payments from the PJM DR programs should be ignored for purposes of Act 129, regardless of whether the charges, penalties, or payments are to/from a CSP, a customer, or an EDC. In that case, PJM DR programs are completely independent programs from Act 129 and the PJM DR revenues are unrelated to Act 129 and should be ignored for purposes of Act 129.

If Act 129 DR is incremental to PJM DR programs (e.g., demand response from a new Act 129 direct load control program that previously did not exist or additional load curtailment above and beyond what the customer would have achieved from PJM DR programs) and the Act 129 DR program has revenue, charges, or penalties from PJM DR programs (economic, RPM, capacity, etc.), then it may be appropriate to include that revenue, charge, or penalty as a cost or benefit for Act 129 TRC regardless of whether it is to/from a CSP, a customer, or an EDC. However, it will be very difficult or impossible for the EDC (or the EDC's independent evaluator who performs the TRC calculations) to know those PJM DR payments for the reasons stated below:

- The customer could have different CSPs for the PJM DR program and the Act 129 DR program; or, the customer could be its own PJM CSP. There would be no contractual way for the EDC to force the customer or the customer's PJM DR CSP to disclose the PJM payments;
- PJM economic DR events could be declared as far out as 60 days after the operating day (after the Act 129 event). PJM settlements are frequently adjusted after-the-fact;
- Very difficult and costly for the EDC to track and verify; and,
- CSPs and customers will not likely disclose PJM DR revenues for competitive reasons and the information is otherwise confidential.

The TRC recognizes costs and benefits regardless of whether they are incurred by the utility or the participant. The TRC should not treat PJM DR payments differently based on whether the recipient of the payment is the EDC, the customer, or the EDC's CSP because it distorts cost-effectiveness testing and results. For example, if a PJM payment to the EDC is included as a benefit but the same PJM payment is ignored if it is paid to the EDC's CSP, then the TRC will artificially look more favorable for EDC self-managed DR programs compared to using a CSP. EAP is concerned that such a result could be viewed as discriminatory and asks the Commission to treat both types of payments in a consistent manner.

### 3. Treatment of DR Payments to CSPs and Participants from PJM

EAP has no comments to offer at this time.

### 4. Treatment of American Reinvestment and Recovery Act of 2009 (ARRA) Funds

EAP has no comments to offer at this time.

### 5. Measure Life For DR Programs

EAP has no comments to offer at this time.

## B. Net-To-Gross

### 1. Net-To-Gross Research and Applications

The Commission, in its Tentative Order, proposes to direct the EDCs to develop and conduct Net-to-Gross ("NTG") studies and that the NTG studies be funded out of the EDCs' Act 129 2% program budgets. Tentative Order at p. 18.

The Commission explained that NTG research studies can be used for three different potential applications: 1) to inform program decision makers when a mid-course program adjustments should be made; 2) to inform program decision makers when an entire program (containing perhaps several measures) should be phased out as it is no longer needed to incent customers to adopt an array of high-efficiency measures, because customers are making such decisions even in the absence of program incentives; and 3) to adjust the gross verified savings figures by netting out the savings attributable to free riders, spillover, and rebound effects for the purposes of determining net-verified savings that are to be used for compliance purposes. Tentative Order at pp. 16-17.

The Commission is proposing that the SWE would coordinate and approve the development of common methodologies to be used in the NTG studies. The results would then be reported to the SWE and used by the EDCs to determine when a measure or program should be removed from the EE&C portfolio because it is no longer cost-effective to offer incentives. Furthermore, for the period of June 1, 2009, through May 31, 2013, the Commission's Tentative Order does not propose using the NTG research to adjust the gross verified energy savings that are used for compliance purposes to determine whether an EDC has met its mandated Act 129 reduction targets.

While EAP generally agrees with this approach, it is not in agreement that NTG studies should necessarily be funded out of the EDC's Act 129 2% program budget. See discussion at Section E.1. below.

Additionally, for the next version of Act 129 EE&C (beyond May 31, 2013), EAP recommends using gross verified savings for compliance targets and using net verified savings for program design and effectiveness purposes. If net verified savings are the basis for future compliance targets, then program cost caps must be increased or the compliance targets must be decreased to account for the net-to-gross factor (typically on the order of 25%).

The total gross verified savings are truly realized by customers and, therefore, should represent the Act 129 savings for compliance purposes. The NTG factor attributes (*i.e.*, allocates) the savings between the Act 129 program and factors outside the program. The portion attributed to the Act 129 program is the net verified savings (gross verified savings x NTG factor = net verified savings). Regardless of this allocation, the full gross verified savings was realized by customers. NTG is a "funding equity issue" related to the use of Act 129 program funding, *i.e.*, should Act 129 ratepayer funds be used for measures/programs that would have largely occurred (fully or substantially) in the absence of Act 129 programs. Therefore, EAP contends that net verified savings should be used to judge program effectiveness, not compliance in any next iteration of EE&C plans.

## C. Fuel Switching

### 1. TRC Inputs For Fuel Switching

EAP has no comments to offer at this time.

### 2. Fuel Switching Appliance Efficiency

EAP has no comments to offer at this time.

## D. TRC Calculations

### 1. Database For Deemed Customer Costs or Incremental Measure Costs as Applicable

EAP has no comments to offer at this time.

### 2. Basis of TRC Benefits – Reported Savings or Verified Savings; and Basis of TRC Costs – Actual Costs or Committed Costs

EAP has no comments to offer at this time.

### 3. Definition of "Incentives" In TRC For Energy Efficiency Measures

EAP has no comments to offer at this time.

### 4. Avoided Cost Calculations and Forecasts

In this section, the Commission addresses the calculation of avoided cost with respect to electricity, specifically whether EDCs should use historical data or forecast data from the "BLS Electric Power GTD sector price index" as a basis for the escalation rate and for how many years the BLS factor should be applied. Tentative Order, pp. 24-27. The Commission proposes that EDCs used historical average annual growth rate from a BLS index (provided as part of the Tentative Order) for the period 2003 through the most recently available annual data point as a template for the rate of escalation between the end of the 2013 program year and the beginning of the EIA Annual Energy Outlook in year 11. Tentative Order, p. 26.

First, EAP recommends that in the proposed resolution (Tentative Order, page 26) the reference to "PJM ...distribution" should be removed as PJM does not retain distribution cost data.

Additionally, EAP requests confirmation from the Commission that the use of this growth rate would apply only to EDCs' new programs (those proposed between now and May 31, 2013) consistent with the proposed resolution of the avoided cost issue in the Commission's Tentative Order. See Tentative Order, p. 29, Section III.D.6.

5. **Inclusion or Exclusion of Customer Avoided Operating and Maintenance Costs in the TRC Calculation**

EAP has no comments to offer at this time.

6. **Avoided Costs in the Benefit/Cost Ratios and in the Approved EE&C Plans and Avoided Costs Commencing June 1, 2013**

In the Tentative Order at page 29, the Commission proposes that,

> "through May 31, 2013, an EDC should use the most current forecast of avoided costs when filing a new program (or an EE&C plan) for Commission approval. For program measures that have not been changed, regardless of methodology or data used by an EDC to calculate its original Commission-accepted portfolio TRC test, the avoided costs figures included in TRC calculations in previously approved EE&C/DR program plans need not be updated for the period June 1, 2009, to May 31, 2013, by present or future avoided cost figure revisions or updates. However, any new programs proposed by EDCs between now and May 31, 2013, would use the appropriately updated and most current avoided cost forecasts available at that point in time."

While the EAP member EDCs are performing (and will perform) the current programs pursuant to Commission guidance, EAP suggests that, for future phases of Act 129, treatment of "avoided distribution costs" as reflected in fully loaded retail distribution and transmission rates in the 2009 TRC Order is incorrect and a misrepresentation of the value of distribution costs that might be avoided based on program energy savings. Avoided distribution rates are appropriate for use in a participant test, but not in a total resource cost test.

Some EDC distribution rates have not increased since restructuring in the mid '90s, and are less than likely to escalate by the BLS (or other) scaling factor with energy and capacity pricing as the current Order directs.

As such, the EAP does not believe that retail distribution rates should be included as avoidable costs after May 31, 2011. EAP and its members pledge to work with the Commission, SWE and stakeholders in this proceeding to identify and support an alternative methodology of determining avoided costs.

In Section D.6. of the Tentative Order, the Commission proposed that, through May 31, 2013, an EDC should use the most current forecast of avoided costs when filing a new program (or an EE&C plan) for Commission approval. For previously-approved program measures that have not been changed, regardless of methodology or data used by an EDC to calculate its original TRC Test, the Commission will not require the EDCs to update avoided costs figures included in original TRC calculations for the period June 1, 2009, to May 31, 2013. However, the Commission will require the EDCs to update and utilize appropriately updated and most current avoided cost forecasts available at that point in time for any new programs proposed by EDCs between now and May 31, 2013.

The Companies believe that the use of multiple avoided costs within the same phase of Act 129 is extremely problematic, especially for EDCs who seek to continue to improve their plan and programs. First, having multiple sets of avoided costs adds additional complexity to the plans by requiring additional modeling, reporting and tracking functionality to be able to assign different sets of avoided costs to different programs and measures. In essence, this creates an EE&C Plan with a variety of avoided rates for different programs and measures. Next, this recommendation creates additional disparity between the EDCs in that EDCs may have the same programs evaluated using avoided costs that are based on different points in time, further making comparisons between the EDCs plans and programs difficult. Last, the recommendation will also create the situation where the adoption of a program by an EDC either benefits or penalizes the program solely by virtue of when the EDC proposes the program.

Therefore, the Companies recommend that the Commission accept the original (i.e., as filed and approved) avoided costs for all programs and measures throughout the current phase of the plan regardless of when the programs or measures were proposed. This recommendation ensures that the cost-effectiveness of the EE&C plans and programs are all completed according to avoided costs that are consistently determined. As an alternative, the Companies suggest that if the avoided costs are required to be updated during the current phase of the plan, an alternative method would be to base this requirement on the addition of new programs that significantly contribute to or change the source of energy savings of the plan. Further, the Companies recommend that any requirement to update avoided costs of the plan be limited to one time during the current phase to avoid adding unnecessary administration and costs. Finally, the Companies suggest that the addition of new programs should not necessarily require new avoided costs, unless the new programs significantly change the source of energy savings from the plan. One update during the four year period should adequately address any concerns with the original avoided costs. The Companies believe that this balances consistent evaluation of the plans and programs with recognizing updated avoided costs when there are new programs that significantly impact the source of energy savings for the plan.

## E. TRC Reporting

### 1. Baseline Study Research

In its Tentative Order, the Commission proposes that, "consistent with the RFP contract, EDCs conduct baseline studies in consultation with the SWE and that the SWE is to coordinate, review and approve such studies" and, further, resolves that the "results of the studies are to be reported to the SWE by December 1, 2011." Tentative Order at p. 30. EAP agrees that baseline market research is important to determining energy efficiency penetration in the marketplace so as to inform the setting of Act 129 goals for possible post May 31, 2013 energy efficiency and conservation plans.

However, EAP notes that the Commission's implementation requirements and guidance developed for the current EE&C plans were established in an expedited timeframe following passage of the legislation and that the legislation dictated a July 1, 2009 date for the filing of EE&C plans. The RFP for the SWE contract referenced in the Tentative Order was not formulated until the early fall of 2009 after the EDCs had filed EE&C plans. The requirement that EDCs would be responsible for conducting and funding baseline studies in connection with the contract requirement that the SWE complete a "Statewide Market Potential Study for additional energy and load reductions after May 31, 2013" was not known at the time EDCs were developing EE&C plans

The proposed (and unrealistic) completion date of December 1, 2011 is another problem. It is currently June, which provides less than six months for the entire process to be designed, bid, conducted, completed, and verified; and, EDCs have not yet received definition from the SWE on the scope of the studies. Without identification of the study's scope, customer sectors, and measures/end-uses to be surveyed, EDCs are unable to begin the study, let alone determine if a December 2011 completion date is possible.

EAP additionally requests clarification from the Commission on issues surrounding the specificity of the baseline study and whether, as an alternative, results can be determined from currently available data (such as published research data from Pennsylvania or other relevant states) or must the data solely be obtained from the EDC-specific surveys or site visits (which are both costly and time-consuming).

EAP reiterates that the baseline research studies and associated costs were not contemplated and therefore could not reasonably be budgeted into the EDCs' EE&C plans by July 1, 2009. EAP suggests that the costs of the baseline studies necessary to complete the market potential study may be covered in part under the current SWE contract and, to the extent funding is not available under the SWE contract, those costs may be determined to be in addition to dollars budgeted to implement plans and should be recovered in the same manner as fees for the SWE contract are recovered, i.e. outside of the 2% cap. While some of the larger EAP member EDCs may have funding reserves to adequately cover the costs of the baseline studies, those EDCs with the lowest rates in 2006 need virtually every available dollar to support the delivery of mandated savings and demand reductions. Including these extra costs within the 2% cap at this date, after the fact, was not contemplated and is simply not feasible for all EDCs.

2. **Frequency of Cost-Effectiveness Evaluations and Reporting Results and Timing of TRC Reports(*e.g.*, When to Freeze Data and Inputs)**

EAP has no comments to offer at this time.

**Conclusion**

The Energy Association appreciates the opportunity to submit comments in this proceeding.

Respectfully Submitted,

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