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September 11, 2009

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

Re:

Metropolitan Edison Company (Met-Ed) EE&C Plan- Docket No. M-2009-2092222
Pennsylvania Electric Company (Penelec) EE&C Plan - Docket No. M-2009-2112952
Pennsylvania Power Company (Penn Power) EE&C Plan - Docket No. M-2009-2112956

Dear Secretary McNulty:

Enclosed for filing please find the Main Brief of Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec") and Pennsylvania Power Company ("Penn Power"), in the above-referenced proceeding. This Brief was filed electronically today. Copies have been served in accordance with the attached Certificate of Service.

If you have questions, please do not hesitate to contact me.

Sincerely,

STEVENS & LEE



Renardo L. Hicks

Enclosures

cc: ALJ David Salapa
Certificate of Service

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A PROFESSIONAL CORPORATION

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Metropolitan Edison Company Energy Efficiency and Conservation Plan	:	Docket No. M-2009-2092222
Pennsylvania Electric Company Energy Efficiency and Conservation Plan	:	Docket No. M-2009-2112952
Pennsylvania Power Company Energy Efficiency and Conservation Plan	:	Docket No. M-2009-2112956

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Dated: September 11, 2009

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Pennsylvania Electric Company and
Pennsylvania Power Company

I. INTRODUCTION

On July 8, 2009, Administrative Law Judge David A. Salapa (“ALJ”) issued a Prehearing Conference Order in which he established the procedural schedule for this proceeding. Pursuant to that Order, Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), and Pennsylvania Power Company (“Penn Power”) (collectively, the “Companies”) submit their Main Brief in this matter.

As is more fully discussed below, the Companies, on July 1, 2009, each submitted Energy Efficiency and Conservation (“EE&C”) plans (“Plans” or “EE&C Plans”) consistent with the Commission’s January 15, 2009 Implementation Order.¹ These Plans set forth a portfolio of energy efficiency and peak demand reduction programs and measures designed to achieve the statutory energy and demand reductions mandated in Act 129 of 2008 (“Act 129”).² The Companies have coordinated their EE&C development efforts so as to achieve cost efficiencies through a consistent set of programs that will be offered to customers served by the respective Companies. Each of the Plans outlines 19 programs and 113 measures developed to achieve the required reductions in energy consumption and peak demand in accordance with Act 129. Each Plan includes a proposed Energy Efficiency and Conservation Charge Rider (“Tariff Rider”) to be utilized to recover the costs associated with the Companies’ EE&C Plans.³

No party in this proceeding has alleged that the 19 programs and 113 measures proposed by each of the Companies will not achieve the required reductions in energy consumption and peak demand; nor did any party challenge the cost recovery mechanism proposed in the Plans.

¹ Energy Efficiency and Conservation Program, Docket No. M-2008-2069887 (Implementation Order, entered January 16, 2009.)

² 66 Pa. C.S. §2806.1

Indeed, based upon the evidence and information contained in the Companies' July 1, 2009 EE&C Plans, the written testimony of the Companies' witnesses, and the on-the record proceedings, the Companies respectfully ask the Commission to find that the Companies' EE&C Plans (i) are in compliance with the requirements set forth in Act 129 and the Commission's Implementation Order; (ii) are in the public interest and will benefit customers by providing them with genuine opportunities to reduce electricity consumption; and (iii) provide the Companies with the opportunity to achieve or exceed their energy reduction and demand targets; and (iv) provide the Companies with a reasonable opportunity to recover all just and reasonable costs incurred by the Companies to develop, implement and manage their Plans. Consequently, except for several concessions made by the Companies, which will be discussed below, the EE&C Plans of Met-Ed, Penelec and Penn Power should be approved as filed.

II. PROCEDURAL HISTORY

As noted above, on July 1, 2009, the Companies submitted their EE&C Plans pursuant to Act 129 and the Commission's Implementation Order, along with a Joint Petition for Consolidation of Proceedings and Approval of such plans. In addition to the Plans and Petition, the following supporting testimony was filed by the Companies:

- Met-Ed/Penelec/Penn Power Statement No. 1: Direct Testimony of John E. Paganie;
- Met-Ed/Penelec/Penn Power Statement No. 2: Direct Testimony of George L. Fitzpatrick; and
- Met-Ed/Penelec/Penn Power Statement No. 3: Direct Testimony of Raymond I. Parrish.

³ See, Met-Ed/Penelec/Penn Power Exhibits RIP-1 through 4 attached to Statement No. 3 and RIP-5 attached to Statement No. 3-R of the Testimony of Raymond I. Parrish.

On July 31, 2009, pursuant to the Commission's Order setting forth the nature of the Total Resource Cost ("TRC") Test to be used to analyze the costs and benefits of the EE&C plans,⁴ the Companies submitted modifications to each of the Plans, revising the TRC calculations so as to be consistent with Commission directives set forth in said order. The Plans, along with the July 31, 2009 supplemental modifications, are the subject of this proceeding.

A. Litigation Schedule

On July 1, 2009, the Companies submitted their Plans, along with supporting direct testimony. On July 8, 2009, Administrative Law Judge David A. Salapa ("ALJ") issued a Prehearing Conference Order, which established a litigation schedule. On Saturday, July 25, 2009 the Commission filed Notice in the *Pennsylvania Bulletin* of the filing of the Companies' EE&C Plans. The July 8, 2009 Prehearing Conference Order also established a July 29, 2009 deadline for the timely filing of petitions to intervene.

Between July 7, 2009 and July 29, 2009, the following parties petitioned for intervention in this proceeding: (1) The Office of Consumer Advocate ("OCA"); (2) The Commission's Office of Trial Staff; (3) UGI Utilities, Inc.-Gas Division, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc. (collectively "UGI")⁵; (4) The Pennsylvania Department of Environmental Protection ("DEP"); (5) Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), and Penn Power Users Group ("PPUG") (collectively "the Industrials"); (6) The Office of Small Business Advocate ("OSBA"); (7) Association of Community Organizations for Reform Now ("ACORN"); (8) Direct Energy Business, LLC ("Direct"); (9) Field Diagnostic Services, Inc. ("Field Diagnostic"); (10) Comperio Energy d/b/a

⁴ Docket No. M-2009-2108601 (Order entered June 23, 2009).

⁵ UGI only intervened in the Met-Ed and Penelec portion of this proceeding.

ClearChoice (“Clear Choice”); and (11) Representative Camille George (“Representative George”). Between July 30, 2009 and August 3, 2009, the following additional parties petitioned for intervention: (a) Peoples Natural Gas Company d/b/a Dominion Peoples (“Dominion”); (b) National Fuel Gas Distribution Corporation (NFG); (c) EnerNOC, Inc. (“EnerNOC”); and (d) Constellation New Energy, Inc. (“Constellation”). And on August 12, 2009, Columbia Gas of Pennsylvania, Inc. (“Columbia”) filed its petition to intervene.

On July 20, 2009, the Companies opposed intervention by UGI on the grounds that the issue it raised (fuel switching/fuel substitution) was not within the scope of this proceeding.⁶

On August 3, 2009 the Companies opposed the petitions of Dominion, NFG, EnerNOC and Constellation on the basis that these parties’ petitions to intervene were not timely filed and that the petitions did not set forth good cause for the late filing. The Companies further objected to the petitions of Dominion and NFG for the same reason set forth in their objection to UGI’s intervention – that the raising of the issue of fuel switching/fuel substitution was beyond the scope of this proceeding.⁷ On August 14, 2009, the Companies objected to Columbia’s petition for intervention on the same grounds as those set forth in the Companies August 3, 2009 Answer.

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On July 29, 2009 ALJ Salapa conducted a prehearing conference. In attendance was counsel for OCA, OSBA, OTS, DEP, the Industrials, UGI, and ACORN. In a July 30, 2009 Second Prehearing Order, the ALJ granted the interventions of OTS, OSBA, OCA, DEP, the

⁶ See, Answer of Met-Ed/Penelec/Penn Power Opposing the Petition to Intervene of UGI Utilities Inc, et al, Docket Nos. M-2009-2092222, M-2009-2112952 and M-2009-2112956 , July 20, 2009 at p. 9

⁷⁷ See, Answer of Met-Ed/Penelec/Penn Power Opposing the Petition to Intervene of NFG, Docket Nos. M-2009-2092222, M-2009-2112952 and M-2009-2112956, August 5, 2009; Answer of Met-Ed/Penelec/Penn Power Opposing the Petition to Intervene of Dominion, Docket Nos. M-2009-2092222, M-2009-2112952 and M-2009-2112956, July 20, 2009.

Industrials, Field Diagnostic, ACORN, and Direct. The ALJ also consolidated the Companies cases, finding that the involved common questions of law and fact.⁹

On July 31, 2009, the ALJ issued an Order granting the Intervention of UGI; although discovery was limited to requests which are not “outside the scope of the plans and their development.”¹⁰ By Order on August 7, 2009, intervention was also granted to Representative George, ClearChoice, Dominion, NFG, EnerNOC and Constellation. Columbia’s request for intervention was denied in an August 18, 2009 Initial Decision. Between July 30, 2009 and August 4, 2009, public input hearings were held in Mars, Hollidaysburg and Wyomissing.

In accordance with the procedural schedule, OCA, OTS, OSBA, DEP, UGI/NFG/Dominion (collectively, “NGDCs”), ACORN, Field Diagnostic, and Clear Choice distributed direct written testimony on August 7, 2009. On this same date, OCA, OTS, DEP, the Industrials, and EnerNoc also submitted Comments. On August 31, 2009, the Companies distributed the Rebuttal Testimony of George L. Fitzpatrick and Raymond I. Parrish as well as the Supplemental Testimony of George L. Fitzpatrick. The Supplemental Testimony of Mr. Fitzpatrick described three minor revisions to the Plans.

The evidentiary hearing was held in Harrisburg on August 31, 2009. At the hearing, all testimony previously distributed by the parties was admitted into the evidentiary record, along with several exhibits to which various witnesses testified under cross-examination. Additionally, Charles V. Fullem, FirstEnergy Pennsylvania Director of Rates and Regulatory Affairs,

⁸ See, Answer of Met-Ed/Penelec/Penn Power Opposing the Petition to Intervene of Columbia, Docket Nos. M-2009-2092222, M-2009-2112952 and M-2009-2112956, August 14, 2009.

⁹ Prehearing Order #2, July 30, 2009 at p. 1.

¹⁰ Order Granting Petitions to Intervene, July 31, 2009 at 10.

provided oral rebuttal testimony on behalf of the Companies, with all parties having an opportunity to cross examine the witness.

III. DESCRIPTION OF THE COMPANIES' PLANS

Act 129 requires an EDC with at least 100,000 customers to adopt and implement a plan, approved by the Commission, to reduce energy demand and consumption within its service territory. Pursuant to Act 129, an EDC's plan must be designed to achieve the following specific reductions in energy consumption and peak demand:

- Reduce electric consumption by at least 1% by May 31, 2011;¹¹
- Reduce electric consumption by at least 3% by May 31, 2013;¹² and
- Reduce demand by a minimum of 4.5% of the EDC's annual system peak demand for the 100 hours of highest demand by May 31, 2013.¹³

A. Company Targets and Plan Results

As EDCs with at least 100,000 customers, each of the Companies is subject to the above requirements. The targets and plan results is discussed below.

B. Plan Development Process and General Overview

In developing the proposed EE&C programs and measures, the Companies received significant input from various interested parties and stakeholders in Pennsylvania. Stakeholder meetings were held in Harrisburg on April 7, 2009, May 12, 2009 and June 16, 2009. Based on this input, research on out of state programs, and other information, the Companies evaluated/screened numerous programs and measures, concluding that the custom-designed suite of programs included in each Companies' Plan will achieve the energy and demand reduction

¹¹ 66 Pa. C.S. §2806.1(c)(1);

¹² 66 Pa. C.S. §2806.1(c)(2)

¹³ 66 Pa. C.S. §2806.1(d)(1)

requirements set forth in Act 129 in a cost-effective manner. The Companies sought through competitive bid outside expertise in the design of their Plans. A contract was awarded to Black & Veatch Corporation (“Black & Veatch”), a Conservation Service Provider (“CSP”) listed on the Commission’s Registry of Approved CSPs¹⁴ who provided such expertise, assisting the Companies with the development of both their overall Plans, as well as the specific programs and measures included in each Plan. The Companies utilized the template prescribed by the Commission when preparing and filing their EE&C Plans.

Each of the Companies’ Plan is designed to comply with all Commission requirements as well as all Act 129 requirements, including (i) a variety of program measures for all customer classes; (ii) programs specifically designed to achieve a minimum of 10% of consumption and demand reductions from units of federal, state and local government; and (iii) programs specifically designed to achieve specific levels of savings for low income customers. Further, the Companies have coordinated certain efforts across the service territories of each of the Companies in order to achieve cost efficiencies and offer uniform programs to customers of all three Companies. These efforts have resulted in a comprehensive set of measures that have been grouped into programs that will enable each of the Companies to separately achieve the goals and comply with the requirements established under Act 129 – all within the statutorily mandated spending limitations.

The EE&C Plans are based upon the requirements and guidance of the TRC Test, as modified by the Commission’s June 18, 2009 Order. On July 31, 2009, the Companies

¹⁴ See, www.puc.state.pa.us; *Implementation of Act 129 of 2008 Phase 2 – Registry of Conservation Service Providers*, Docket No. M-2008-2074154, Final Order entered February 5, 2009.

supplemented their Plans by incorporating the total retail transmission and distribution rate into their TRC tests, as required by said Order.¹⁵

In order to determine the percentage consumption reductions required to be achieved by the Companies under Act 129, the Companies provided forecasting and historical peak load information to the Commission. The energy consumption forecasts were approved by the Commission on March 30, 2009, resulting in the targets discussed below.

The Companies Plans contemplate three separate stages. In Stage 1, the Companies will conduct an awareness and education campaign. This will be followed by Stage 2 which is an energy audit phase. And, in Stage 3, a suite of programs and measures designed to achieve the energy savings projected in the Plans will be implemented. These programs will include fixed rebates, incentives, performance contracts, and the leveraging of existing loan programs. The specific program designs address each of the four major market segments: residential (including low income), small non-residential, large non-residential and government.

The Plans also include budgets showing total planned expenditures by program and customer class for each of the Companies,¹⁶ as well as a proposed tariff rider cost recovery mechanism as contemplated in 66 Pa. C.S. § 1307 that is designed to ensure full and current recovery of all reasonable and prudent costs incurred in the development, implementation and management of each Plan.¹⁷ The cost recovery mechanism proposed by each of the Companies will ensure that approved measures are financed by the customer class that receives the direct energy and conservation benefit of the measures.

¹⁵ See, *Supplements to the EE&C Plans filed by Met-Ed, Penelec and Penn Power on July 1, 2009*, dated July 31, 2009.

¹⁶ See, PUC Table 5; Met-Ed/Penelec/Penn Power Statement No. 2, pages 6-13; Met-Ed/Penelec/Penn Power Statement No. 2-R, pages 4-5.

C. Program Portfolio

Each of the Companies sets forth a comprehensive EE&C Plan that includes Residential, Commercial & Industrial, and Governmental & Institutional programs designed to meet the statutory EE&C requirements set forth in Act 129. The proposed programs are described in detail in Tables 4a through 4c in each of the Companies' Plans and are summarized below:

1. Residential Programs

Home Energy Audits

Households will be able to identify energy saving opportunities through either an on-line or a professional walk through audit. Those who complete either audit will receive free CFLs and other measures. The on-line audit is free to participating customers and the participating customers will be offered free CFLs and, for those with electric water heating, two faucet aerators. Walkthrough audits, at a subsidized cost to the participating customer of \$50, include installation of CFLs and other basic energy saving measures.

Residential Appliance Turn-In Program

This program provides a small incentive to households for turning in older inefficient appliances that are in working order. There are no costs to participating customers for this program. Incentives per unit are: Refrigerators \$50; Freezers \$50; and, Room Air Conditioners \$50.

Residential HVAC

This program provides incentives for contractor-installed HVAC systems in existing or new residential buildings. Incentives range from \$250 for ENERGY STAR qualified Central AC systems at 15 SEER to \$325 for qualified heat pumps at 15 SEER.

Residential Energy Efficiency Products Program

This program provides incentives to participating customers and support to retailers that sell energy efficient products. In addition, the program will provide Community education and workshops. Rebates and incentives range from \$1 for a CFL light up to \$500 for a solar water heater. High efficiency and heat pump water heaters are included in this program.

Residential New Construction

This program encourages builders to achieve highly energy efficient homes through the implementation of contractor-installed HVAC, solar, or other eligible systems in existing or new residential buildings. Participating customers receive a rebate based on calculation of the overall home's energy savings over standard options, and can participate in the prescriptive rebates offered under the other residential rebate programs.

¹⁷ See, Met-Ed/Penelec/Penn Power Statement No. 3, pages 1 Met-Ed/Penelec/Penn Power Statement No.3-R, pages 7 -8.

Residential Whole Building

This program provides comprehensive diagnostic assessments followed by direct installation of selected low cost measures plus various incentives. Customers can tap into both rebates and loans. Comprehensive on-site audits including blower door tests are at a subsidized cost to the participating customer of \$100. The program also provides discounted pricing for eligible measures ranging from free kitchen and bathroom faucet aerators to \$300 toward the cost for duct sealing. Participating customers are encouraged to participate in the Keystone Home Loan Program for the balance of project¹⁸ costs as needed.

Multi-Family – Tenants

This program permits tenants in buildings covered under the Pennsylvania Housing Finance Authority (PHFA) program to participate in lighting retrofits. Tenants will receive CFLs to replace incandescent bulbs in their units. Building owners will receive incentives toward common area lighting.

Residential Direct Load Control

This program provides load cycling controls for Residential Central Air Conditioning (“CAC”), as well as controls for electric water heaters and Pool Pumps for customers receiving CAC controls. The program also provides installation of load control equipment, an enrollment incentive of \$50 and a participation incentive of \$10/month for each summer month for each control installed. If participating customers also control either the water heater or pool pump the participation incentive increases to \$15/month.

Low-Income Residential

This program provides additional electric energy savings measures to the existing WARM program. Current WARM participants will receive additional CFLs and smart power strips. Low usage customers that don't qualify for the WARM program will be provided CFLs, aerators and energy educational materials.

2. Commercial & Industrial Programs¹⁹

¹⁸ A *project* is an activity or course of action involving one or multiple energy efficiency measures, at a single facility or site. A *program* is a generic offering (e.g. service and/or incentive) available to a group of projects with similar characteristics and installed in similar applications. Individual programs include those that involve encouraging and/or incenting the installation of equipment or practices associated with energy efficient retrofit, new-construction or solar energy projects. The *portfolio* consists of all the programs in the residential, commercial/industrial small, commercial/industrial large, and governmental/non-profit sectors. Residential sector programs include low-income, single-family and some agricultural and/or multi-family housing projects. Commercial/Industrial Small sector programs include small commercial, industrial, some agricultural or multi-family housing, and public sector facility projects. Commercial/Industrial Large sector programs include large commercial, industrial, agricultural, and public sector facility projects. Governmental/Non-Profit includes Federal, State, Municipal, and Local Governments; as well as school districts, institutions of higher learning, and non-profit entities.

¹⁹ In addition to the programs summarized in this section, a Multi-Family Building Program, which was described in Witness Fitzpatrick's Supplemental Testimony (Met-Ed/Penelec/Penn Power Statement No. 2-S) in Exhibit GLF-3,

Energy Audit and Technology Assessment Program

This program provides a simple walk-through audit for small business with non-complex loads, and a more comprehensive assessment for medium to large non-residential customers. The program will be conducted with a fixed fee for small businesses and a per square foot fee for larger buildings. Customers receive a basic energy audit. Audits will be advertised and used as an entry to other commercial programs.

C/I Equipment Program

This program provides for the implementation of cost effective, high efficiency standard and non-standard measures. The program provides incentives for a portion of the incremental technology costs of high efficiency units. In addition, it will provide technical support, rebates, and support access to project financing.

Industrial Motors and Variable Speed Drives

This program is designed to encourage the company's commercial and industrial customers to purchase energy efficient (EE) motors and install variable speed drives on motors for eligible applications. Incentives will be available to customers and through motors distributors. The motor upgrade program's individual incentives per motor range from \$20 to \$400. The variable-speed drive incentive is \$30 per horsepower of the motor being used.

C/I Demand Response Program

This program is designed to address the 100 highest peak load hours in the year, as required under Act 129. Through PJM and other Demand Markets First Energy will provide payments to Curtailment Service Providers that aggregate companies that reduce load during peak times.

C/I Performance Contracting

Large commercial and industrial (including governmental facilities) customers may elect to secure DSM/EE services through an Energy Services Company that will identify opportunities, implement retrofits and be paid through the savings generated by the project over time. The companies will identify qualified Energy Services Companies and will pay a portion of the project costs based on measures installed, and associated kWh and kW savings delivered that also support savings goals.

3. Governmental & Institutional Programs

Federal Facilities Program

This program provides for the implementation of cost effective, high efficiency standard and non-standard measures for federal buildings. For federal facilities that qualify, smaller incentives are offered, due to the fact that most of the costs will be paid for under the Federal Energy Management Program.

and inadvertently omitted from the Companies' Plans, should be added to the programs being offered to the Commercial/Industrial Small Sector. This addition will be reflected in the Companies' revised plans that will be filed on September 21, 2009.

Municipal Street Lighting

This program supports conversion of mercury vapor street lights to High Pressure Sodium technology. The program subsidizes the first cost of streetlight conversions normally charged to customers through distribution rates.

Municipal Lighting

This program retrofits traffic and pedestrian signals with LEDs. The program provides a rebate of up to \$45 for three light signal retrofits (i.e. Green 8" - \$25; Red 8" - \$20) and a rebate of \$25 for a pedestrian signal.

Local and County Government Audits

This program provides local and county buildings, including schools, with a more comprehensive assessment. Participating customers receive an energy audit. Audits will be offered free of charge and used as a marketing tool for other commercial programs. These Audits will increase the participation percentage of Government customers.

Local County and State Government, Institutional, Non-Profit and Schools

This program tailors the rebates offered to small and large C/I under the C/I programs by targeted outreach and offer the same rebate amounts as are provided under the C/I programs.

D. Cost Recovery

The Companies are proposing to implement an Energy Efficiency and Conservation Charge ("EEC-C") Rider for each Company. Copies of the EEC-C Rider for Met-Ed, Penelec and Penn Power are attached to the Direct Testimony of Mr. Raymond I. Parrish, Met-Ed/Penelec/Penn Power Statement No. 3, as Met-Ed/Penelec/Penn Power Exhibits RIP-1 through RIP-3 respectively. Met-Ed/ Penelec/Penn Power Exhibits RIP-4 sets forth the specific calculation of the rates included in each EEC-C Rider. Page 1 of each rider sets forth the EEC-C rates while the remaining pages of each rider set forth the formula and description for developing the EEC-C rates and the reconciliation of revenues billed under the EEC-C rider to actual to actual costs as they are incurred.²⁰

²⁰ Met-Ed/Penelec/Penn Power Statement 3, p.3

As shown in Met-Ed/Penelec/Penn Power Exhibit RIP-5, the companies have designed EEC-C rates to collect the following annual amounts, excluding Pennsylvania Gross Receipt Tax: Met-Ed \$27,758,392 (Met-Ed/Penelec/Penn Power Exhibit RIP-5, page 1, column 4, line 6); Penelec \$25,646,222 (Met-Ed/Penelec/Penn Power Exhibit RIP-5, page 2, column 4, line 6); and Penn Power \$7,434,183 (Met-Ed/Penelec/Penn Power Exhibit RIP-5, page 3, column 4, line 6)

The total costs of the Companies' EE&C Plans for the 43-month period It is anticipated that the Plan will be approved by the end of October, thus allowing the Companies to launch programs in early November, 2009, that will run until May 31, 2013. to be recovered will not exceed 2% of the Company's total annual revenue as of December 31, 2006 on a comparable 438-month basis, excluding: 1) expenditures for Low Income Usage Reduction Programs pursuant to 52 Pa. Code § 58; 2) expenditures included in the Companies' Consumer Education Program Cost Recovery Riders pursuant to Docket Nos. M-2008-2032261, M-2008-2032262, and M-2008-2032263; 3) costs associated with funding the state wide evaluator Although the Companies' EEC-C Riders are designed to recover these costs, the Companies propose that these costs not be included in the final determination of the Companies' Act 129 two percent limitation on the program costs related to the Companies' EE&C Plans. ; and, 4) any other appropriate costs that may be incurred in the future but are unknown today.²¹

IV. SUMMARY OF ARGUMENT

As part of its direct case, the Companies submit that no party in this proceeding has alleged that the 19 programs and 113 measures proposed by the Companies will not achieve the required reductions in energy consumption and peak demand within the budget allowed by Act

²¹ Met-Ed/Penelec/Penn Power Statement No. 3, pp 3 – 5.

129. While some parties propose additional programs and/or measures, and others propose modifications to existing programs and/or measures proposed by the Companies, the record evidence in this proceeding does not include a single claim that the Companies' proposed programs and measures will fail to achieve the Companies' statutorily mandated targets within the Act 129 budget limits and TRC requirements; nor does any party challenge the cost recovery mechanism proposed by the Companies. Indeed, the evidentiary record supports a finding that the Companies' EE&C Plans as proposed are 1) consistent with Act 129 and the Commission's Implementation Order; 2) in the public interest; 3) benefit customers by providing them with genuine opportunities to reduce electricity consumption; 4) provide the Companies with an opportunity to achieve the energy and demand reduction requirements set forth in Act 129; and 5) provide the Companies with a reasonable opportunity to recover all just and reasonable costs incurred by the Companies for the development, implementation and management of the Plans. The record also demonstrates that the Companies' proposed EE&C Plans:

- Include 19 programs and 113 EE&C measures equitably divided among all customer classes pursuant to 66 Pa. C.S. §2806.1(a) (5).
- Include a well-reasoned and balanced set of measures that are tailored to usage and the potential for savings and energy reductions for each customer class.
- Are cost effective, in accordance with the TRC test, and will provide a diverse cross-section of alternatives and reasonable mix of programs that will benefit consumers of all rate classes as required by 66 Pa. C.S. §2806.1(b)(1)(i)(I).
- Will enable the Companies to meet or exceed the targeted consumption and peak demand reductions required by Act 129. These consumption and demand reduction goals will be

achieved based on the use of the Technical Reference Manual and other metric resources to measure the effect of various EE&C measures.

- Reflect estimated costs of the proposed EE&C measures that are within the 2% limit imposed by Act 129 which are reasonably allocated and recovered from the customer classes receiving the direct benefit of such measures.
- Include estimated costs of the proposed EE&C Plans which are prudent and reasonable.

Further, while certain parties may have suggested that certain programs be added to the Companies' Plans, nowhere in the record did any of these parties demonstrate that such modifications to the Plans would pass the TRC test or otherwise result in benefits or final results greater than those achieved through the Companies' Plans as proposed.²² Accordingly, based on the evidence of record, the Companies' Plans should be approved as filed, especially since it will be the Companies, and not the intervenors, who may be subject to penalties should the Plan ultimately approved not achieve results sufficient to comply with Act 129.

In addition to the arguments pertaining to the Companies' direct case as described above, the Companies also set forth several arguments related to suggested changes made by various intervening parties, including:

- The amounts billed to customers through the EEC-C should be included as a separate line item on a customer's bill.
- The statewide evaluator contract costs assessed to the Companies should be recovered through the EEC-C Riders without being subject to the 2% spending limitation set forth in Act 129.

²² While the NGDCs alleged that several suggested programs passed the TRC test, as explained *infra*, the TRC calculations were flawed and when done properly, failed the TRC test.

- Met-Ed and Penelec's proposed process related to the RPM auction is lawful and reasonable and is not anti-competitive.
- The *total* results of any EE&C program partially funded through Act 129 should be included for purposes of determining compliance with Act 129 requirements.

And finally, the Companies have conceded two points: (i) agreeing with OCA that certain residential direct load control costs should not have been included in the Plans' current budget; and (ii) agreeing with OSBA and OTS that Plan costs could be amortized over 48 months, instead of the 43 months initially proposed by the Companies. Both of these modifications will be reflected in the Companies' Revised Plans that will be submitted on September 21, 2009.

V. ARGUMENT

Act 129 requires all Pennsylvania EDCs with more than 100,000 customers to submit EE&C plans that meet the requirements as codified in the Pennsylvania Public Utility Code at Sections 2806.1 and 2806.2, 66 Pa. C.S. §§ 2806.1 and 2806.2. In addition to the specific requirements of Act 129, the Commission's January 16, 2009 Implementation Order indicated that no plan would be approved without including the following information:

1. A detailed plan addressing each of the requirements in 66 Pa. C.S. § 2806.1(b) (1) (i).
2. Sufficient supporting documentation and verified statements or testimony, or both.
3. Approved contract(s) with one or more CSPs
4. Description of the work and measures being performed by CSPs and by the EDC along with a justification for the allocation.
5. A budget showing total planned expenditures by program and customer class.

6. Tariffs and a Section 1307 cost recovery mechanism.
7. The Commission approved consumption forecast for the period of June 1, 2009 through May 31, 2010.
8. A weather adjustment calculation that meets the requirements outlined in Section H of the Implementation Order.
9. The Commission approved average of the EDC's 100 highest peak hours during the period of June 1, 2007 through September 30, 2007.
10. A description of the EDC's method for monitoring and verifying plan results.²³

As demonstrated below, each of the Companies' Plans complies with all of the above requirements.

A. ACT 129 CONSERVATION AND DEMAND REQUIREMENTS

1. Overall Conservation Requirements

The Commission should find that the FirstEnergy Companies have met each of the above requirements.

- i. A Detailed Plan: As more fully discussed in Section V(b) below, and as evidenced by their content, each of the Companies' Plans include the requisite information in sufficient detail, addressing each of the requirements in 66 Pa. C.S. § 2806.1(b) (1) (i).
- ii. Supporting Documentation: The Companies have provided more than sufficient documentation and supporting materials that accompanied each of the Companies' Plans, consistent with the template provided by the Commission. The documents accompanying the July 1, 2009 filing include 8 Appendices containing 28 Tables. Additionally, Met-Ed/Penelec/Penn Power' s testimony entered into the record of this proceeding include Statement No. 1, Statements Nos. 2, and 2-R and 2-S as well as Exhibits GLF 1 through 5; and, Statement Nos. 3 and 3-R, including Exhibits RIP 1 through RIP 5.
- iii. CSP Contracts: The Companies provided the approved contract with CSP Black & Veatch in Appendix C to each of the Plans. The Confidential

²³ Energy Efficiency and Conservation Program Implementation Order, Docket No. M-2008-2069887, January 15, 2009, pages 11-12.

Proposal portion of this contract was filed “under seal” with the Commission.

- iv. A Description of the Work and Measures: This information, along with a justification for the allocation and the incentives provided by each of the Companies, are included on Tables 4a through 4c of each Plan and are discussed in detail in Section 3 of each Plan.
- v. Budget: A budget showing total planned expenditures by program and customer class is included in tables 6a through 6c in each Plan.
- vi. Tariffs/Riders: The Companies’ proposed Tariffs are contained in Appendix H in each Plan. The 1307f recovery mechanism proposed by the FirstEnergy Companies is described in Met-Ed/Penelec/Penn Power Statements 3 and 3-R (Parish), including, Exhibits RIP 1 through RIP 5.
- vii. Approved Forecasts: The Commission approved consumption forecast for the period of June 1, 2009 through May 31, 2010 for each of the Companies is contained in Appendix B of each Plan.
- viii. Section H Weatherization Information: The Companies have applied a weather adjustment calculation that meets the requirements outlined in Section H of the Commission’s Implementation Order in the application of the TRC test, which utilized the TRM, which was already weather adjusted.
- ix. Peak Demand: The Commission approved average of the EDC’s 100 highest peak hours during the period of June 1, 2007 through September 30, 2007 is included in Appendix B of each Plan.
- x. M&V: A description of the Companies’ method for monitoring and verifying Plan results is included in Section 5 of each Plan.

a. 2011 Energy Efficiency Requirements

Because there are numerous variables that can affect the results of any program – many of which are beyond the control of the Companies – the Companies designed their Plans to over-comply with the statutory benchmark reductions that have already been approved by the Commission in its March 30, 2009 Order. Further, in order to achieve the 2013 demand reduction targets, the Companies will implement an early deployment of certain lighting

programs, including a CFL program that creates significant reductions both in energy and demand at a relatively low cost. The Companies determined that the implementation of the lighting program in 2011, while creating excess energy savings during that reporting period, is a cost effective way to achieve demand reduction mandates in 2013. And, as demonstrated below, the excess energy savings in 2011 levelizes by 2013.

Based on each Companies' operational characteristics, Met-Ed must achieve energy reductions in 2011 of 148,650 MWH; Penelec, 143,993 MWH; and Penn Power, 47,729 MWH.²⁴ As currently designed, Met-Ed's Plan projects consumption savings of 172,394 MWH, or 118% of the target. Penelec's Plan projects consumption savings of 173,094 MWH, or 119% of the target, while Penn Power's Plan projects consumption savings of 56,422 MWH, or 117% of the target.²⁵

b. 2013 Energy Efficiency Requirements

In order to achieve the 2013 statutory targets of 3% reductions in energy consumption, Met-Ed must achieve a reduction of 445,951 MWH; Penelec, 431,979 MWH; and Penn Power, 143,188 MWH.²⁶ As with the 2011 targets, each of the Companies' Plans is projected to exceed its 3.0 % consumption savings target. Met-Ed's Plan projects consumption savings of 447,737 MWH, or 102% of the target. Penelec's Plan projects consumption savings of 447,100 MWH, or 102% of the target, while Penn Power's Plan projects consumption savings of 145,693 MWH, or 101% of the target.²⁷

²⁴ See, *Direct Testimony of George Fitzpatrick, Statement 2.0, at p. 7.*

²⁵ Id. at p. 8.

²⁶ Id at p. 7.

²⁷ Id at p. 8.

2. Overall Demand Reduction Requirements

In order to achieve the 4.5% peak demand reductions by May 31, 2013, Met-Ed must achieve a 119 MWH reduction; Penelec, a 108 MWH reduction; and Penn Power, a 44 MWH reduction. Each of the Companies' Plans is projected to exceed these targets. As currently designed, Met-Ed's Plan projects a demand reduction of 120 MWH, or 101% of the target. Penelec's Plan projects a demand reduction of 110 MWH, or 102% of the target, while Penn Power's Plan projects a demand reduction of 45 MWH, or 103% of the target.²⁸

3. Requirements for a Variety of Plans Equitably Distributed

As indicated in Section V(A)(1) above, the Plan must also address all Act 129 requirements, which include the following:

A Variety of Measures: Section 2806.1(a) (5) of Act 129 requires that each EE&C plan contain a "variety of energy efficiency and conservation measures [as well as] provide the measures equitably to all classes of customers."²⁹ In the Implementation Order, the Commission established a minimum standard of at least one energy efficiency and one demand response program for each customer class, and stated its expectation that each EDC will provide a reasonable mix of energy efficiency and demand response programs for all customers.³⁰

The Companies' EE&C Plans clearly meet these requirements. The Plans provide energy efficiency, conservation and demand reduction programs to each of its residential, commercial, and industrial customer classes, including programs targeted to government, educational, and non-profit entities, and low-income households. The Plans include six programs to serve C&I customers:

²⁸ Id at p. 8.

²⁹ 66 Pa.C.S.A. § 2806.1(a)(5)

1. Energy Audit and Technical Assessment Program
2. C/I Equipment Program
3. Industrial Motors and Variable Speed Drives
4. Commercial Industrial Demand Response Program
5. C/I Performance Contracting
6. Multi-family.³¹

The Companies propose nine programs to serve residential and low-income customers:

1. Residential Home Energy Audits
2. Residential Appliance Turn-In
3. Residential Energy Efficient HVAC & Solar
4. Residential Energy Efficient Products
5. Residential New Construction
6. Residential Whole Building Comprehensive
7. Low Income Residential
8. Multi-Family Tenants
9. Residential Direct Load Control³²

The Plans also envision that governmental sector customers will be eligible for most of the C&I programs. In addition, there are separate programs for governmental and institutional customers. These programs include local and county government energy audits and federal facilities programs designed to identify energy savings opportunities and to accelerate action by the various local, state and federal agencies. The proposed programs also provide for the implementation of cost effective, high efficiency standard and non-standard measures through a CSP for the Governmental/Non-Profit sector.³³

4. 10% Government/Non-Profit Requirement

Section 2806.1(b) (i) (B) of Act 129 requires that a minimum of 10% of the required reductions in consumption be obtained from units of federal, state and local government, including municipalities, school districts, institutions of higher education and nonprofit entities.

³⁰ See *Implementation Order*, at p. 23

³¹ See, *Direct Testimony of John Paganie, Statement 1.0, at p. 13.*

³² *Id.*

Each of the Companies' Plans exceeds the 10% government/Non-profit consumption reduction targets. Table 4 of each Plan sets forth the projected percentages of consumption savings that are expected to be obtained from government and Non-profit entities. For Met-Ed and Penelec 12.4% of the consumption savings are to be obtained from government and Non-profit entities, while Penn Power's Plan is designed to achieve 12.1% of the consumption savings from this same group.³⁴ No party challenged these projections.

5. Low Income Program Requirements

Section 2806.1(i) (G) of Act 129 requires that each EDC's EE&C plan include specific energy efficiency measures for households at or below 150% of the federal poverty income guidelines, with the number of measures proportionate to those households share of the total energy usage in the EDC's territory. In addition, each EDC must coordinate measures for low income customers with other programs administered by the Commission or another federal or state agency, and the expenditures for these measures must be in addition to expenditures already made by the EDC under 52 Pa. Code § 58 (relating to residential low-income usage reduction programs, or "LIURP"). As demonstrated in Exhibit GLF-4 and GLF-5, which were included in the rebuttal testimony of George L. Fitzpatrick of Black & Veatch (Met-Ed/Penelec/Penn Power Statement No. 2-R), the low income results included in each of the Companies' Plans have been properly calculated.³⁵

In sum, as demonstrated above, each of the Companies' Plans meets all of the requirements of both Act 129 and the Commission's Implementation Order. Accordingly, except

³³ Id, at 15.

³⁴ See Table 4 and Exhibit G to each Plan

³⁵ Met-Ed/Penelec/Penn Power Statement 2-R, p.2.

for the two modifications previously discussed to which the Companies have agreed, each Plan should be approved by this Commission as filed.

6. Issues Relating to Individual Conservation and Demand Reduction Programs

a. Residential Low Income

While the OCA generally recommended approval of each of the Companies' Plans³⁶, OCA seems to question the Companies' low income results included in each Plan.³⁷

Mr. Fitzpatrick demonstrated that the Companies' EE&C Plans comply with the requirements of Act 129. Exhibit GLF- 4 entitled "Low Income MWH Savings Calculation for Companies' PA Act 129 Plans - Using the Companies' Estimates of Low Income MWH Sales", shows a number of programs in which Low Income customers are expected to participate over the duration of the Act 129 Plans' implementation period. Exhibit GLF- 4 identifies at least nine such programs, including Residential Home Audits, School Children Education, Refrigerator/Freezer, Programmable Thermostat, Four CFL Bulb programs and an LED Lighting program. None of these programs require any contribution from customers and none come within the scope of the WARM program. The combined results of these programs exceed the MWH savings targets prescribed by Act 129 and the Commission *regardless* of whether the WARM-related savings are included. Under the Companies' Plans, Exhibit GLF- 4 illustrates that with low income usage as a percentage of total 2006 usage, Met-Ed would have a target reduction of 3.2% and achieve reductions of 4.3% with WARM savings and 3.7% without WARM savings; Penelec would have a target of 4.0% and achieve a reduction of 6.5% with

³⁶ See OCA Statement No. 1, Direct Testimony of David Hill, at p. 3.

³⁷ Id at pp. 27-28.

WARM savings and 5.5% without WARM savings; and, Penn Power would have a target of 3.5% and achieve 5.7% with WARM savings and 4.7% without WARM savings.³⁸

Additionally, Exhibit GLF-5 entitled “Low Income MWH Savings Calculation for Companies’ PA Act 129 Plans - Using Census Based Estimates of Low Income MWH Sales,” provides information similar to that set forth on Exhibit GLF- 4, except that it has census-derived low income customer counts in place of low income customer counts from the Companies’ billing records. This exhibit also provides a listing of Low Income customer-eligible programs, the relevant low income measures, and expected total MWH savings. Under Exhibit GLF -5, Met-Ed would have a target reduction of 5.5% and achieve reductions of 7.4% with WARM savings and 6.7% without WARM savings; Penelec would have a target of 7.2% and achieve a reduction of 11%; with WARM savings and 10.8% without WARM savings; and, Penn Power would have a target of 7.1% and achieve 9.6% with WARM savings and 8.6% without WARM savings.

While the Companies do not agree with the assertion that the Companies’ calculations of the results of low income programs are incorrect because the Companies did not adopt a different methodology, the entire issue is irrelevant to this proceeding. Regardless of which of the above calculation methodologies is adopted, the result is the same. The Companies Plan complies with Act 129’s low income mandates.

The OCA also commented regarding the proposed budgets for the residential direct load control program, specifically averring that the Companies incorrectly included costs in their budgets that “will not be incurred during the Plan period.”³⁹ Mr. Fitzpatrick concurred with this

³⁸ Met-Ed/Penelec/Penn Power Exhibit GLF-4, attached to Statement 2-R.

³⁹ See, OCA Comments at p. 9.

observation. He noted that the Companies' reasoning for this approach was to ensure that this program would have the operations and maintenance ("O&M") funding to remain in effect for its full 10-year measure life after its 2010 introduction. This insured an accurate estimation of the Residential Load Control Program's Total Resource Cost. Mr. Fitzpatrick states in his Rebuttal testimony that "the Companies concur that these O&M dollars beyond the implementation timeframe of Act 129 should not be included in budgets projected to be spent within the timeframe specified by Act 129 and the Commission will have to decide if and how to fund the program's O&M costs beyond May, 2013 to keep the Residential DLC Program in operation after that time."⁴⁰ Mr. Fitzpatrick further notes that "if this premise is approved by the Commission, then the Companies would support using the identified funds to expand other programs in the Companies' plans."⁴¹ Although Witness Fitzpatrick agreed with the principle of limiting funding to costs incurred within the plan period, as advanced by the OCA, he disagreed with the OCA's calculation of costs that might be redirected within the EE&C Plans. As Mr. Fitzpatrick noted, "the OCA's calculation of the costs by the Companies did not take into account the present value effect of the O&M cost streams. The correct O&M cost values are \$13.4 million for Met-Ed, \$12.4 million for Penelec and \$1 million for Penn Power."⁴² The Companies anticipate that the results of this concession as determined by Mr. Fitzpatrick will be incorporated into the Companies' revised Plans that will be filed on September 21, 2009.

- b. **Commercial – There is no discussion for this section of the outline.**
- c. **Industrial – There is no discussion for this section of the outline.**

⁴⁰ Met-Ed/Penelec/Penn Power Statement No. 2-R at pp. 4-5.

⁴¹ Id at p. 5.

⁴² Id.

7. **Proposals for Improvement of EDC Plan**

a. Residential

i Stakeholders Meetings

The OCA also recommended that the Companies formalize their commitment to an ongoing stakeholder process, which in principle is agreeable to the Companies. However, as Witness Fitzpatrick proposes in his Rebuttal testimony, the Companies believe that such meetings should be held quarterly and be limited to the Companies and the parties to these proceedings.⁴³ As intervenors in this proceeding, all parties have demonstrated to the satisfaction of the ALJ that they meet the requirements of 52 Pa. Code Section 5.72(a) which requires that they have a right or an interest in this matter that will be directly affected by these proceedings and which is not adequately represented by other parties in this proceeding. By limiting participation to only those participants to this proceeding, there is reasonable assurance that confidential information exchanged in future stakeholder meetings will continue to be protected under the Commission's Protective Order in this proceeding and that the parties who elect to participate in that process will have demonstrated a commitment to work through the issues. Accordingly, should the Commission determine that a formal Stakeholder process is preferred, the Companies urge that it be limited to the parties to this proceeding and that the meetings be held quarterly to review the progress of the Plans.

b. Commercial

i. Field Diagnostic Proposal

While commending the Companies for including incentives to replace inefficient HVAC units, Field Diagnostic recommended that the Companies adopt a more tailored approach toward

HVAC for Commercial and Industrial Customers.⁴⁴ But Field Diagnostic’s testimony does not provide any actionable input in the near term regarding the commercial industrial HVAC programs. At present, the Companies have included small commercial HVAC tune-up programs in their Plans and are satisfied with that measure. Witness Fitzpatrick confirms in his rebuttal testimony that “Black & Veatch recommended the programs and measures that, when taken in combination, produced the lowest estimated cost with the highest possible probability of attaining the goals established by Act 129.”⁴⁵ He further testified that “Any specific changes to the programs as filed would, in [his] judgment, result in the increased total cost of the program or reduce the likelihood of success.”⁴⁶ Field Diagnostic provided no evidence to refute Mr. Fitzpatrick’s findings. Accordingly, the Commission should approve the Plans’ HVAC programs as filed.

ii. DEP Proposal - Whole Building Approach

DEP argues that financial assistance for a state-wide “Whole Building” program should be promoted for the Government Sector within the Companies’ EE&C Plans.⁴⁷ In response, Witness Fitzpatrick notes that the Companies’ Plans as filed “include a ‘whole building approach.’”⁴⁸ The Companies have proposed a C/I Performance Contracting Program that is available to Government and Institutional and Non-Profit facilities. Also, the Companies’ Plans include payment for building audits for federal, state and local Institutional and Non-Profit facilities. The C/I Performance Contracting Plan – or channel coupled with the building audit

⁴³ Id.

⁴⁴ See Direct Testimony of Todd Rossi, Field Diagnostics Statement No. 1 at p.22.

⁴⁵ Met-Ed/Penelec/Penn Power Statement No. 2-R at p. 6.

⁴⁶ Id.

⁴⁷ See Direct Testimony of Maureen Guttman, DEP Statement 1.0

⁴⁸ Met-Ed/Penelec/Penn Power Statement No. 2-R at p. 16.

and the Companies' C/I Equipment Program – gives this sector the flexibility to take a whole building approach if so desired, thus achieving DEP's goal.

Witness Fitzpatrick further noted that:

Given the fact that each company is responsible for meeting the near term targets of Act 129 within the budgets prescribed, it was clear to Black & Veatch that a statewide "Whole Building" approach could not be the only offering available to government buildings. While the "whole building" approach may produce more lifetime savings out of a building, it comes at a higher upfront cost, that in my experience reduces the penetration rates attained when compared with the programs we are recommending. Therefore, it would have used up more budget and provided less savings toward the 2011 and 2013 targets established by Act 129. In my opinion, lighting only retrofits and a menu of prescriptive rebate programs proposed by the Companies are more likely to result in meeting the Act 129 goals within the established budget and also should be welcomed by the DEP as a way to obtain more funding for its Act 1 efforts. Should DEP decide to embrace such opportunities, I would suggest two things:

1. The DEP should use all measures to be installed when calculating individual project TRCs.
2. The DEP should employ the strong evaluation, measurement and verification ("EM&V") protocols it suggests in tracking savings from both the Companies and Department of Energy funded measures.

Should DEP have greater overall success in this sector over the first 12-18 months, the Companies and stakeholders could review such results for a possible mid-course correction.⁴⁹

DEP offered no evidence to refute Mr. Fitzpatrick's findings, nor did they present any evidence to demonstrate how its suggested modifications would affect the overall results of each of the Companies' Plans. In light of this, as well as Mr. Fitzpatrick's testimony above, the Commission should allow the Companies to proceed as proposed to deploy and evaluate their own programs, including the "whole building" aspects of such programs, in order to meet their Act 129 goals within established budgets.

⁴⁹ Id. at pp. 16-17. (Emphasis added.)

iii. DEP Proposal - Environmental Impact and Increased Consumption

DEP also avers that measures that result in negative environmental impacts or increased energy consumption should not be approved. DEP, however, presented no evidence to indicate that any of the measures included in the Companies' Plans have such results. Moreover, as Mr. Fitzpatrick points out, the Companies have already employed significant DEP precepts in the selection and design of the programs, including:

- 1) Proper disposal of appliances;
- 2) Avoiding an increase in electricity consumption by incentivizing the purchase of an additional appliance; and
- 3) Avoiding promotion of fuel switching.⁵⁰

In light of the foregoing, no further action is required by the Commission to address this concern.

iv. DEP Proposal - Smart Meters & Time of Use Rates

In its direct testimony, DEP also advocates for the expedited deployment of smart meters and time of use rates. As noted by Witness Fitzpatrick, this concern is simply misplaced.⁵¹ Pursuant to Act 129, the Commission has already initiated a separate proceeding to address the deployment of Smart Meters in Pennsylvania.⁵² In accordance with Act 129 and the Commission's Smart Metering Implementation Order, the Companies have recently filed a Smart Meter Technology Procurement and Installation Plan to address their plans for deploying smart

⁵⁰ Id. at p. 17.

⁵¹ Id at p. 18.

⁵² *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Implementation Order entered June 24, 2009).

meters within their service territories.⁵³ While DEP may be interested in the Companies' plans for the deployment of smart meters, the instant case is simply the wrong proceeding in which to explore these concerns. Moreover, the Companies' EE&C Plans satisfy all Act 129 requirements and meet the appropriate tests without having to rely on the deployment of smart meters. Accordingly, the Commission should reject DEP's suggestions related to Smart Metering and time of use rates in this proceeding, and address them if and when DEP raises them in the appropriate docket.

c. Industrial – There is no discussion for this section of the outline.

B. COST ISSUES

1. Plan Cost Issues

Act 129 and the Commission's Implementation Order provide that the cost for an EDC plan each year shall not exceed 2% of the EDC's total annual revenue as of December 31, 2006.⁵⁴ Total annual revenues under Act 129 are defined as "[a]mounts paid to the electric distribution company for generation, transmission, distribution and surcharges by retail customers."⁵⁵

The total annual revenues as of December 31, 2006, for each of the Companies are as follows:

	Total Annual Revenue – 12/31/06
Met-Ed	\$1,243,344,716

⁵³ Joint *Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2092655, filed August 14, 2009.

⁵⁴ 66 Pa. C.S. §2806.1

⁵⁵ 66 Pa.C.S. § 2806.1(m).

Penelec	\$1,148,737,096
Penn Power	\$332,989,436

The total annual amount of EE&C costs permitted to be recovered by the Companies based on the 2% limitation set forth in Act 129, and excluding expenditures for Low Income Usage Reduction Programs under 52 Pa. Code § 58, are provided as follows:

	2% of Total Annual Revenue – 12/31/06
Met-Ed	\$24,866,894
Penelec	\$22,974,742
Penn Power	\$6,659,789

The total costs of the Companies' EE&C Plans for the 43-month period⁵⁶ to be recovered will not exceed 2% of the Company's total annual revenue as of December 31, 2006 on a comparable 43-month basis, excluding: 1) expenditures for Low Income Usage Reduction Programs pursuant to 52 Pa. Code § 58; 2) expenditures included in the Companies' Consumer Education Program Cost Recovery Riders pursuant to Docket Nos. M-2008-2032261, M-2008-2032262, and M-2008-2032263; 3) costs associated with funding the state wide evaluator⁵⁷; and, 4) any other appropriate costs that may be incurred in the future but are unknown today.⁵⁸

As discussed in Section V(A)(6) above, the OCA challenged the proposed budgets for the residential direct load control program included in the Companies' Plans, arguing that the

⁵⁶ It is anticipated that the Plan will be approved by the end of October, thus allowing the Companies to launch programs in early November, 2009, that will run until May 31, 2013.

⁵⁷ Although the Companies' EEC-C Riders are designed to recover these costs, proposes that these costs not be included in the final determination of the Companies' Act 129 two percent limitation on the program costs related to the Companies' Energy Efficiency and Conservation Plans.

Companies incorrectly included costs in their budgets for Residential DLC that “will not be incurred during the Plan period.”⁵⁹ As already discussed, the Companies have agreed to modify the budget accordingly and will reflect the modifications in their revised plans that will be filed on September 21, 2009, albeit at the budget levels determined by Mr. Fitzpatrick, rather than OCA.

2. Cost Effectiveness/Cost-Benefit Issues

Each Companies’ EE&C Plan is based on the requirements and guidance set forth in the TRC Test Manual. As set forth in each Plan (Met-Ed Plan pages 98-99, Penelec pages 104-105, and Penn Power pages 103-104; and Tables 7A-7E of each Plan), each of the Companies Plans are cost-effective based on the TRC test. No party challenged these test results.

a. Projects with funding from Pennsylvania’s Act 1 and the ARRA

The DEP incorrectly asserts that projects funded through Act 1 or the American Recovery & Reinvestment Act (“ARRA”) cannot be used to demonstrate compliance with Act 129. This issue has been addressed and rejected in the Commission’s Order approving and adopting the Total Resource Cost (“TRC”) Test entered on June 23, 2009.⁶⁰ In that Order, the Commission stated: that

EDCs will be able to fully include a measure’s benefits in the TRC test if *any portion* of the measure is attributable to Act 129. For purposes of TRC testing, if the end use customer is a recipient of an incentive/rebate from an Act 129 program, even if the customer is a recipient of an Act 1 incentive or rebate for the same equipment or service, we conclude that *the entire savings* of that equipment or service can also be claimed by the EDC for TRC testing purposes.⁶¹ [Emphasis added.]

⁵⁸ Met-Ed/Penelec/Penn Power Statement No. 3, pp 3 – 5.

⁵⁹ See, OCA Comments at p. 9.

⁶⁰ *Implementation of Act 129 of 2008, Total Resource Cost (TRC) Test*, Docket No. M-2009-2108601 (Order entered June 23, 2009).

⁶¹ *Id* at p. 25.

The same conclusion must apply if the customer receives federal stimulus funding or other funds from an entity other than the Companies (i.e., ARRA funding).

DEP asserts in its direct testimony that "...if FirstEnergy takes credit for ARRA efforts, this creates a conflict that violates our commitments to DOE"⁶² Apart from this broad assertion, DEP has provided no record evidence to support its "commitment to DOE" or how an EDC's claim of savings might violate such "commitment." Conversely, during hearings in this matter, counsel for the Companies introduced documents which suggest that one of the Commonwealth's core commitments to DOE is to work cooperatively with utilities in the distribution of ARRA funds. Moreover, on cross-examination concerning the Commonwealth's applications to the Department of Energy for ARRA funding, DEP witness Guttman stated: "I think the substantive information that is being sought relative to that commitment is probably found in this document, yes."⁶³

During Cross Examination of DEP Witness Guttman, FE Cross Examination Exhibit Nos. 1, 2, 3 and 4 were entered into the record:

- FE Cross Examination Exhibit 1 – The Commonwealth's Application to the Department of Energy for the Energy Conservation Block Grant Program under ARRA.⁶⁴
- FE Cross Examination Exhibit 2 – The Commonwealth's Application to the Department of Energy for State Energy Program funding under ARRA.⁶⁵

⁶² DEP Statement 1 at p.8, lines 11-14.

⁶³ Tr. at 260.

⁶⁴ Tr. At p. 255.

⁶⁵ Tr. At 255-256.

- FE Cross Examination Exhibit 3 – “The Guidelines provided by the Department of Energy for applicants to design their programs and make application”⁶⁶ which correlates to the Energy Conservation Block Grant Program under ARRA.
- FE Cross Examination Exhibit 4 – The Guidelines provided by the Department of Energy for applicants to design their programs and make application which correlates to State Energy Program funding under ARRA.⁶⁷

A review of the FE Cross Examination Exhibits 3 and 4, the “guidelines” for ARRA funding applications, reveals that the Guidelines for these programs specifically authorize the use of ARRA funds *to supplement other funds* made available to customers.

FE Cross Examination Exhibit 3, under the section labeled “FUNDING RESTRICTIONS” and the heading of “LIMITATIONS ON THE USE OF FUNDS” states: “In accordance with EISA Sec. 548(b), EECBG [energy efficiency conservation block grant] funds shall supplement (and not supplant) other Federal funding under the State Energy Program or the Weatherization Assistance Program.”⁶⁸ There are no funding restrictions or commitments regarding state funding referenced in this document. Similarly, FE Cross Examination Exhibit 4 provides, under a discussion of required attachments to the application, that an applicant must include: “A commitment that SEP [State Energy Program] funding will be used to create new programs or expand existing programs, including ratepayer funded programs, *and not supplant or replace* existing state, ratepayer *or other funding*.”⁶⁹ (Emphasis added.) Based upon these clear statements contained in the Guidelines provided by DEP under which it has sought ARRA

⁶⁶ Testimony of DEP witness Guttman, Tr. at p. 256.

⁶⁷ Id.

⁶⁸ FE Cross Examination Exhibit 3 at p. 23.

⁶⁹ FE Cross Examination Exhibit 4 at p. 10

funding, there is no “conflict” created by Companies providing Act 129 funding to customers who also receive ARRA funds.

Moreover, FE Cross Examination Exhibit 2 -- the Commonwealth’s actual application for ARRA funding under the SEP -- reveals that the Commonwealth’s actual “commitments” to the DOE will not be affected if the end user customer is a recipient of an incentive/rebate from an Act 129 program, even if the customer is a recipient of an ARRA incentive or rebate for the same equipment or service and that the entire savings of that equipment or service is claimed by the EDC for TRC testing purposes. FE Cross Examination Exhibit 2 was introduced into the record of this proceeding as provided in discovery.⁷⁰ Ten pages from the end of the document, under the heading of “Governor’s Assurance file”, the Commonwealth’s application provides “Assurances” and describes “Actions” taken by the Commonwealth in furtherance of such assurances. The following relevant “Assurance” and “Action” provision are included in FE Cross Examination Exhibit 2 (the Commonwealth’s SEP Application for ARRA funding):

“Assurance: The applicable State regulatory authority will seek to implement, in appropriate proceedings for each electric and gas utility, under its rate-making authority a general policy that ensures that utility financial incentives are aligned with helping their customers use energy more efficiently and that provide timely cost recovery and a timely earnings opportunity for utilities associated with cost-effective measurable and verifiable efficiency savings, in a way that sustains or enhances utility customers’ incentives to use energy more efficiently.

“Actions: Pa’s Governor has written to our independent utility regulator, the Pennsylvania Public Utility Commission, asking that they ensure that utility financial incentives are aligned with those companies’ pursuit of their customer’s interests regarding energy efficiency. In response, the Commission approved an Order dated April 16, 2009 and at Docket No. I-2009-2099881 opening an investigation to determine the policies and actions that it must undertake in order to “ensure compliance with the requirements of Section 410(a) of the American Recovery and Reinvestment Act of 2009.” The Commission’s Order directs that

⁷⁰ Tr. at 256.

comments be filed by June 15, 2009, with reply comments due July 15, 2009. Commission staff is directed to prepare a recommendation for action.”⁷¹

The above “Assurance” evidences a commitment of the Commonwealth to work with the

Commission to “ensure that utility financial incentives are aligned with helping customers use energy more efficiently” and the above “Actions” demonstrate that the Commission has also committed to “ensure compliance with the requirements of Section 410(a) of the American Recovery reinvestment Act of 2009.” Section 410(a) reiterates the precise language in the above “Assurance” and provides that “The Secretary shall make grants under this section in excess of the base allocation established for a State under regulations...”⁷² While neither the Commonwealth’s Assurance or the language of the American Recovery reinvestment Act of 2009 supports DEP’s alleged concern that an EDC’s claim of savings from a customer who also receives ARRA funding would violate any “commitment” of the Commonwealth to the DOE, both reinforce the premise that ARRA funding is intended to supplement other funds for energy projects.

Moreover, the Commonwealth’s Application for ARRA funding, contained in FE Cross Examination Exhibit 3, confirms that at the time of its application for funding from the federal government, Pennsylvania intended to provide grant funding to expand support for Act 129 programs, stating:

“Pennsylvania will provide grant funding to expand support for wind and solar energy as well as biodigester projects.

“Existing Programs:

- B. “Act 129 of 2008 – Electric utilities are developing mandated energy efficiency and conservation programs that must achieve goals related to both energy efficiency (3% reduction in electricity consumption by 2013) and demand side

⁷¹ FE Cross Examination Exhibit 2 at p. 36.

⁷² See, The American Recovery and Reinvestment Act of 2009, Section 410(a); See also, 42 U.S.C. 6321 – 6327.

(4.5% reduction in peak electricity load by 2013). Annual funding levels may reach about \$250 million beginning in 2010.”⁷³

Based upon the Commonwealth’s specific reference to funding the expansion of Act 129 programs in its application to the DOE for ARRA funding, and the absence of any reference in these applications to any restrictions upon claiming energy savings, this Commission should find that for purposes of TRC testing, if the end user customer is a recipient of an incentive/rebate from an Act 129 program, even if the customer is a recipient of an ARRA incentive or rebate for the same equipment or service, the entire savings of that equipment or service can be claimed by the EDC. As Witness Fitzpatrick observed, if the Commission changed course by accepting DEP’s position on this issue, it is quite likely that the Companies would not be able to meet the prescribed savings targets in Act 129.⁷⁴

3. Cost Allocation Issues

Section 2806.1(a)(11) of Act 129 requires Plan measures to be financed by the same customer class that will receive the direct energy and conservation benefits. As evidenced in tables 6A through 6C of the Companies’ plans, each Company’s Plan clearly meets this requirement. Moreover, no party has disputed whether Plan measures financed by a particular customer class will directly benefit that class of customers. Accordingly, the Commission should find that the Companies’ Plans comply with Section 2806.1(a)(11) of Act 129.

a. Allocation Among Customer Classes

OSBA Witness Knecht, in Direct Testimony at pages 5 through 7, and the Industrial Group witness in Direct Testimony at pages 11 through 15, have both raised concerns regarding the Companies’ proposed allocation of Energy Efficiency and Conservation Plan costs among

⁷³ FE Cross Examination Exhibit 2 at p. 39.

⁷⁴ Met-Ed/Penelec/Penn Power Statement No. 2-R at p. 16.

classes. These concerns are misplaced, as discussed by the Companies' witness, Raymond I. Parrish, in his Rebuttal Testimony. The initial proposed cost assignments by customer classes presented by the Companies in the filings are reasonable, and are based on the measures proposed therein. The Companies will file 66 Pa. C.S. § 1307(e) reconciliation statements annually detailing revenues and expenditures to date by customer class. These customer class specific reconciliation statements will address the cumulative over or under-collections and will provide further information as to any revisions to the budget forecast for the remainder of the program period by customer class. These reconciliation statements will provide the basis to re-forecast customer rate class expenditures over the remainder of the period in which the Companies' EE&C Plans are in effect and, if necessary, provide the basis for any interim EEC-C rate adjustments by rate class to more closely align revenues to costs through the entire 43 month period. The statutory annual 1307(e) hearings will provide all interested stakeholder parties an opportunity to address their concerns with any revisions to customer class allocations proposed by the Companies during that proceeding. It is premature to address the issue at this time.

4. Cost Recovery Issues

Section 2806.1(b)(1)(i)(H) of Act 129 requires that each EDC's EE&C Plan contain a proposed automatic adjustment clause cost-recovery tariff mechanism to ensure full and current recovery of all prudent and reasonable Plan costs, including administrative costs. Met-Ed/Penelec/Penn Power Exhibits RIP-1 through RIP-3 present respectively, the Met-Ed, Penelec, and Penn Power Energy Efficiency and Conservation Charge Riders ("EEC-C Riders") developed for that purpose. Page 1 of each rider sets forth the Energy Efficiency and Conservation Charge ("EEC-C") rates, and pages 2 through 4 set forth the formula and description for developing the EEC-C rates and the reconciliation of revenues billed under the

EEC Riders to actual costs as they are incurred. The EEC-C rates are expressed as a price per kilowatt-hour (“kWh”) and will be billed on that basis. The EEC-C rates will be calculated and stated separately for the residential, commercial and industrial customer classes. The rate schedules that comprise the residential, commercial, and industrial customer classes are identified on page 1 of each Company’s rider.

As shown in Met-Ed/Penelec/Penn Power Exhibit RIP-5, the Companies have designed EEC-C rates to collect the following annual amounts, excluding Pennsylvania Gross Receipt Tax: Met-Ed \$27,758,392 (Met-Ed/Penelec/Penn Power Exhibit RIP-5, page 1, column 4, line 6); Penelec \$25,646,222 (Met-Ed/Penelec/Penn Power Exhibit RIP-5, page 2, column 4, line 6); and Penn Power \$7,434,183 (Met-Ed/Penelec/Penn Power Exhibit RIP-5, page 3, column 4, line 6) .

a. Revenue Adjustment Factor

In response to the comments from OSBA Witness Knecht (page 2) and OTS Witness Morrissey (page 8) that the Companies incorrectly interpreted the two percent cost recovery limitation to 43 months of 2006 revenues as opposed to 48 months of 2006 revenues, the Companies have applied a “Revenue Adjustment Factor” to effectively compress the recovery of 48 months of revenue under the two percent Act 129 limitation over 43 months (November 1 2009 through May 31, 2013). Additionally, in response to OSBA Witness Knecht’s (pages 7 through 8) concern that the Companies’ 43-month levelized EEC-C rates are based on actual 2006 historical kilowatt-hours, the Companies’ have adjusted the previously proposed EEC-C rates to utilize projected 2010 kWh usage for the respective customer classes. These changes are reflected in Met-Ed/Penn Power/Penelec Exhibit RIP-5 that accompanies the Rebuttal Testimony

of Raymond Parrish, Statement 3-R, and will be incorporated into the Companies revised plans that will be filed on September 21, 2009.

b. Separate Line Item on Customer Bills

OCA Witness Hill has proposed that the amounts billed through the EEC-C be included with other distribution charges included on customers' bills.⁷⁵ In comparison, OSBA Witness Knecht and the Industrial Group propose that the EEC-C amounts be shown as a separate line on customers' bills.⁷⁶ The Companies agree with the Industrial Group and OSBA Witness Knecht on this point, for several reasons. First, a separate line item will provide transparency thus allowing customers to better understand the various charges that comprise their monthly bill. Second, this approach is consistent with the Companies' proposed implementation of recent cost recovery rider charges such as Met-Ed's and Penelec's Transmission Service Charge and Consumer Education Charge riders that are applicable to multiple customer rate schedules. And third, specific identification of these EEC-C amounts on customers' bills should make customers more aware of the availability of the Companies' energy efficiency and conservation programs which should, in turn, result in higher participation rates.⁷⁷ Accordingly, the Companies request that the Commission authorize the Companies to show amounts billed to customers through the EEC-C as a separate line item on customer bills.

c. Commission Statewide Evaluator

OCA Witness Hill (page 39), OSBA Witness Knecht (page 9), OTS Witness Morrissey (pages 23 through 25), and the Industrial Group (page 26) have each expressed opinions that the

⁷⁵ See Direct Testimony of David Hill, OCA Statement 1.0, at pp 37 and 40

⁷⁶ See Direct Testimony of Robert Knecht, OSBA Statement 1.0, at p 10, and Answer and Comment of the Industrials, at pp.37-38

⁷⁷ See Rebuttal Testimony of Raymond Parrish, Statement 3-R

Commission's statewide evaluator contract costs assessed to Met-Ed, Penelec and Penn Power should be included as Energy Efficiency and Conservation Plan costs in the final determination of the Companies' Act 129 two percent limitation on the recovery of Energy Efficiency and Conservation Plan costs. The Companies disagree. As stated in the Direct Testimony of Raymond Parrish, although the Companies' EEC-C Riders are designed to recover these costs, these costs should not be included in the final determination of the Companies' Act 129 two percent limitation on the program costs pertaining to the Companies' EE&C Plans. In establishing the cost cap, 66 Pa. C.S. § 2806.1 (g) identified this limitation on costs as being the "total cost of any plan required under this section." These Commission statewide evaluator contract costs are not part of the Companies' Energy Efficiency and Conservation Plans.⁷⁸ While 66 Pa. C.S. § 2806.1 (h) states that the Commission "shall recover from electric distribution companies the costs of implementing the program established under this section" no mention is made that these costs are subject to the two percent limitation. Further, reasonable estimates of these costs are not available. It is the Companies' current understanding that the majority of these costs will be allocated to each EDC on a time and material basis. Without knowing the exact magnitude of these costs, or having the ability to manage these costs, the Companies should not be required to include them as part of their Plan costs that are subject to the two percent cost limitation. Consequently, in connection with its approval of their EE&C Plans, the Companies ask the Commission to clarify that the statewide evaluator costs assessed to Met-Ed, Penelec and Penn Power should be recovered through the EEC-C Riders but be excluded from the calculation of the statutory two percent limitation on costs incurred by the Companies in the development, implementation and management of the Plans.

⁷⁸ Id. at p. 3.

d. Interest on Administrative Start-up Costs

The Companies have proposed to collect interest on administrative start-up costs through the EEC-C Rider.⁷⁹ OCA Witness Hill (page 39) opposes this proposal. Additionally, OTS Witness Morrissey (pages 21 through 22) is opposed to the compounding of interest on these costs as proposed by the Companies. However, as discussed by the Companies' witness, Raymond I. Parrish, in his Rebuttal Testimony, the accrual of interest as proposed by the Companies on the incremental initial startup costs incurred through October 31, 2009 is appropriate given that these costs are being incurred by the Companies prior to the date on which they can start recovery under their respective EEC-C Riders.⁸⁰ The Companies' proposed methodology for interest computation as stated in Met-Ed/Penelec/Penn Power Exhibits RIP-1 through RIP-3 is consistent with the cost recovery of startup costs for other §1307(e) mechanisms proposed by the Companies in other proceedings agreed to by parties before the Commission. The Companies request that the Commission approve their proposal to collect interest on administrative start-up costs through the EEC-C Rider.

e. OTS' Proposal for Asymmetrical Interest is Misplaced

OSBA Witness Knecht (page 9) questions the appropriateness of the Companies' seven-month recovery of start-up costs, arguing that these costs should possibly be amortized over a 43-month period or that rates should be adjusted after this seven-month period. The OSBA is incorrect, for the reasons discussed in Mr. Parrish's Rebuttal Testimony. The Companies chose a seven-month recovery to coincide with the initial reconciliation period (seven months ending May 31, 2010) when the Companies' other costs would be lower during the implementation

⁷⁹ Id. at p. 6.

⁸⁰ Id.

ramp-up phase of the Energy Efficiency and Conservation Plans. The amortization of these start-up costs will end as current EE&C Plan costs ramp-up. Consequently, there is no need to change the EEC-C rates after this seven-month period, as is suggested by OSBA Witness Knecht, since the ramp-up of current costs will replace the amortized start-up costs, thus providing a more leveled recovery of costs, which should help customers better manage their monthly bills.⁸¹

OTS Witness Morrissey (pages 12 through 18) recommends the calculation of interest on the monthly over or under-collection of expenses collected under the Companies' proposed EEC-C Riders using asymmetrical interest rates. However, Ms. Morrissey's proposed methodology to calculate interest is not required under existing relevant Pennsylvania statutes, Commission regulations or Orders. A specific requirement for interest on monthly over or under-collection of costs is found in 66 Pa. C.S. § 1307(f); although, this section is not applicable to the EDCs or the instant proceeding. As that section clearly indicates, it is only applicable to natural gas distribution companies ("NGCs") with operating revenues in excess of \$40,000,000 using a cost recovery mechanism under § 1307(f). Consequently, both Act 129 and 66 Pa. C.S. § 1307 are silent on this issue as it pertains to EDCs. While OTS Witness Morrissey relies on § 1307(f) as a foundation for her proposed asymmetrical application of interest to over and under-collections, it is clear that this provision only applies to NGCs, not EDCs. Therefore, her reference to this statute is misplaced in this instance.

Similarly, OTS Witness Morrissey's references to 52 Pa. Code § 54.187 are equally misplaced. While this provision requires the use of asymmetrical interest rates for the computation of interest on over or under-collection of costs, the application of such a

⁸¹ Id at pp. 5-6.

methodology is specific to an EDC's default service rate design. In the final Rulemaking Order at Docket No. L-00040169, the Commission stated that the use of different interest rates for under and over-collection of default service costs "will serve as a disincentive to price manipulation behavior, and an incentive to acquire energy at prevailing market prices."⁸² The EEC-C Riders have nothing to do with default service costs and potential price manipulation. Therefore, no such "disincentive" is necessary in this instance. Met-Ed, Penelec, and Penn Power maintain that due to the ramp-up of program costs under the Companies' Energy Efficiency and Conservation Plans as well as the Companies' objective to maintain 43-months of levelized EEC-C rates billed to customers, it is not appropriate to require the computation of interest on the monthly over or under-recovery of EEC-C Rider costs, and certainly such a calculation should not be made using asymmetrical interest rates.⁸³

f. OTS Concerns Regarding Double Recovery are Misplaced

OTS Witness Morrissey (pages 22 and 23) expresses concern about possible double recovery of costs for capital assets funded through EEC-C revenues requesting that "any and all capital acquisitions obtained through the EEC-C rate revenue funding, in whole or in part, should be excluded from rate base and depreciation expense claims for base rate operations." This concern is misplaced, as discussed by Mr. Parrish in his Rebuttal Testimony. There will be no double recovery of costs. The Companies have confirmed that all EE&C Plan costs and revenues included in the Companies' EEC-C Riders will be excluded from distribution base rate treatment and subject to Commission review and audit.⁸⁴ Further, to the extent that the

⁸² *Rulemaking Re Electric Distribution Companies' Obligation to Service Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa. C.S. § 2807(e)(2)*, Docket No. L-00040167 (Order entered May 10, 2007).

⁸³ Met-Ed/Penelec/Penn Power Statement No. 3-R at p. 6.

⁸⁴ *Id.* at pp. 6-7.

Companies are reimbursed through the EEC-C Riders for Company-owned property, it will be treated as a contribution-in-aid-of-construction resulting in a net-of-tax reduction in the amounts capitalized for those assets.⁸⁵ As a result, these costs will be excluded from rate base in determining future distribution base rate case revenue requirements. Therefore, there is no double counting and OTS's claims to the contrary should be rejected.

g. OTS Proposal for an Annual Adjustment of Rates Beyond the Plan Period is Incorrect

OTS Witness Morrissey appears to agree with the Companies' proposal for the use of 43-month levelized EEC-C rates, but also opines that the Commission should order annual rate adjustments for recovery of costs beyond the May 31, 2013 — the date on which the Companies' initial Energy Efficiency and Conservation Plans presented in these proceedings conclude. As discussed by Mr. Parrish in his Rebuttal Testimony, the Companies disagree with an annual rate adjustment requirement. The Companies' Plans involve new initiatives resulting from recently enacted legislation. All parties are just now starting the review, approval, and implementation process. In light of this, the Commission should defer the resolution of this issue until more information and further experience on the amount and recovery of these new costs is gathered over the initial 4 years of these Plans.

h. Industrial Group Proposal for Different Recovery of Industrial Costs is Incorrect

The Industrial Group, at pages 30 through 35 of their Comments offers the opinion that the recovery of the industrial customer class' Energy Efficiency and Conservation costs via a kilowatt-hour ("kWh") charge is inappropriate? The Companies believe that since a significant

⁸⁵ Id.

portion of the Energy Efficiency and Conservation Plan measures focus on the goal to reduce *energy* consumption, recovery on a kWh basis from all customer classes is more appropriate.⁸⁶

i ClearChoice's Allegation of Double Recovery is Incorrect

ClearChoice Witness Pengidore, at page 8 of her Direct testimony, appears to believe that Met-Ed and Penelec will recover their proposed PJM demand response programs twice; first through existing rates and again through their proposed EEC-C rates. But Ms. Pengidore is wrong. There appears to be some confusion on Witness Pengidore's part regarding the costs associated with Met-Ed's and Penelec's PJM Peak Demand Program under their respective EE&C Plans and the costs Met-Ed and Penelec currently pay to PJM for the Economic Load Response Program incurred by the Companies as the load serving entity. Met-Ed and Penelec propose that these payments to PJM, which are not currently recovered in rates, be recovered through the EEC_{Exp4} component of their respective EEC-C Riders. These costs will only be incurred by Met-Ed and Penelec as the load serving entity for all provider of last resort customers through December 30, 2010 and thereafter for default service customers for whom Met-Ed and Penelec retain that responsibility and who also participate in this PJM program. Regardless of whether Met-Ed or Penelec act as the curtailment service provider, or a third-party service provider provides the service, PJM bills the load serving entity for the amount paid to the curtailment service provider. Retail customers pay those costs only when they are reflected in existing retail rates. It is appropriate to include in the EEC-C rates the costs paid to PJM for services provided by the curtailment service provider since they are not otherwise reflected in Met-Ed's and Penelec's retail rates.

⁸⁶ Met-Ed/Penelec/Penn Power Statement No. 3-R at p. 8.

C. CSP ISSUES⁸⁷

The Companies' Plans propose the selection of CSPs to secure and manage demand response programs.⁸⁸ Clear Choice and EnerNOC each raise several concerns related to this proposal, none of which are valid.

1. ClearChoice's Allegations of Unfair Competition are Unfounded

ClearChoice alleges that if Met-Ed and Penelec implement the proposed demand response plan, where these companies serve as the Conservation Service Provider ("CSP"), it will impede the development of a robust competitive market for demand reduction.⁸⁹

ClearChoice offers two reasons why the Met-Ed and Penelec demand response programs will negatively impact competition: 1) the CSP's share of the revenue covers its overhead, risk associated with non-performance, and a return on risk capital, while an EDC pays out in excess of 100 percent of the proceeds coming from PJM; and 2) As a small, privately owned CSP, ClearChoice will not be able to meet the Companies' credit requirements or have the financial backing of a ratepayer funded utility.⁹⁰ [

ClearChoice is incorrect, as discussed in Mr. Parrish's Rebuttal Testimony. Both Met-Ed's and Penelec's Plans clearly state that Met-Ed and Penelec, acting as a CSP within the PJM program, will fill the gap between the total MWs needed for compliance with Act 129, less the amount expected from the Voluntary Load Reduction Program, less the amount committed by CSP's registration under the "Commercial Industrial Demand Response Program

⁸⁷ While the Companies also use the acronym "CSP" for "Conservation Service Providers", when used in the context of PJM activities, the acronym refers to "Curtailment Service Providers."

⁸⁸ See Met-Ed EE&C Plan, at pages 87-89, Penelec EE&C Plan, at pages 87-89, and Penn Power EE&C Plan at pages 81-83.

⁸⁹ ClearChoice Statement No. 1, p. 7.

⁹⁰ Id..

– CSP Mandatory” program.⁹¹ Witness Parrish testified that Met-Ed and Penelec are offered as an alternative to the development of a competitive CSP demand program, essentially as a contingency plan, to ensure that Met-Ed and Penelec are able to secure the level of demand reduction needed, in the event that the “Commercial Industrial Demand Response Program-CSP Mandatory” program does not result in the MWs needed.⁹² If the CSPs do not contract with Met-Ed or Penelec for the required load necessary to be in compliance with Act 129, then Met-Ed and Penelec must have an alternative to fill in the gap in the demand response goals. This alternative will not affect the competitive nature of the CSP’s demand response market.

Met-Ed and Penelec’s proposals represent Demand Response programs that are competitively neutral and non-discriminatory. Met-Ed and Penelec will provide the same information and the same program structures to all CSPs. As noted in the Met-Ed and Penelec EE&C Plans, qualifying CSPs will have the option to register available MWs during an open registration period on a first-come, first-served basis, and each CSP will have the same performance requirements to which they must adhere. Met-Ed and Penelec are not providing any preferential treatment to any specific CSP. Met-Ed’s and Penelec’s initial proposals to act as CSPs indicated that the Companies would not pay out to customers in excess of 100% of what Met-Ed and Penelec would receive from PJM. These programs proposed that Met-Ed and Penelec would pay the customer an amount equal to payments made by PJM to the company (acting as CSP) as part of the RPM auction and the Economic Load Response Program. Thus, Met-Ed and Penelec intended to pay the customers 100% of the dollars available from PJM for performance consistent with the PJM programs requirements. Met-Ed and Penelec proposals

⁹¹ Met-Ed/Penelec/Penn Power Statement No. 2-R at pp. 9-10.

⁹² Id.

would also make available payments to customers and CSPs for performance consistent with the Commission's Act 129 requirements. Because Met-Ed and Penelec will incur some administrative and credit requirements as pointed out by ClearChoice Witness Pengidore, in order to cover those costs, Met-Ed and Penelec currently propose to reduce the payments made to customers to 85% of the amount received from PJM as part of the RPM auction.⁹³ Met-Ed and Penelec did not seek competitive bids from CSPs to determine the price paid under the demand response program. Because Met-Ed and Penelec have a fixed amount of funding available to pay for commercial demand response programs, it was necessary to cap the amount payable to CSPs and customers, otherwise the Companies will lose control over the amount that could be paid out through Act 129 funding.⁹⁴

2. ClearChoice's Proposal to Limit CSP Participation is Unfounded

ClearChoice has recommended that no CSP should have more than 50% of the demand reduction required under the Plans.⁹⁵ As discussed by Witness Parrish in his Rebuttal Testimony, Met-Ed and Penelec disagree with this recommendation. Met-Ed and Penelec are obligated to meet the requirements of Act 129. The ClearChoice proposal to limit the potential MWs that a given CSP could contract for with each of the Companies increases the risk that they would not be able to meet their reduction goals and likely increase the cost of the program.⁹⁶ Witness Parrish observed that any time a limit is placed on the amount of a product or service that is provided (or the supply), without changing the demand for that service, simple economic

⁹³ Met-Ed/Penelec/Penn Power Statement No. 2-R at pp. 10-11.

⁹⁴ Id.

⁹⁵ ClearChoice Statement No 1, p. 11..

⁹⁶ Met-Ed/Penelec/Penn Power Statement No. 2-R at p. 12.

theory suggests the overall price will go up for the product secured.⁹⁷ Met-Ed and Penelec have both indicated that they will contract with at least two CSPs should the registration process result in an oversubscription.⁹⁸

3. First-Come, First-Served

Concerns have been raised regarding the Companies' proposed "first-come, first-served" approach for securing load reduction, indicating that some CSPs would prefer an "RFP approach".⁹⁹ As discussed by Mr. Parrish in his Rebuttal Testimony, Met-Ed and Penelec will issue a notice to all PJM registered CSPs requesting the number of MWs that could be provided in the 2011/2012 and 2012/2013 planning years.¹⁰⁰ Met-Ed and Penelec plan to implement a first-come, first-served process using date stamped responses dated no earlier than three days after the date on which the notice was mailed to all PJM registered CSPs. To the extent that the registered MWs with the same date stamp exceed the MWs required, Met-Ed and Penelec will offer such registrants a pro-rata share of the MWs so offered and date stamped on the same day. Such an approach is reasonable and provides all CSPs with an equal opportunity to obtain a portion of the Companies' load reduction requirements.

4. CSPs vs. EGSs

EnerNOC also argues that the use of CSPs rather than electric generation suppliers, would increase the likelihood of a successful C/I Demand Reduction program in Penn Power's service territory. In light of the fact that Penn Power is currently a member of MISO, which does not currently recognize the concept of a CSP, EnerNoc's suggestion is impossible to pursue

⁹⁷ Id.

⁹⁸ Id.

⁹⁹ Id.

¹⁰⁰ Id.

at this time. FirstEnergy recently filed with the Federal Energy Regulatory Commission asking that certain control areas, including Penn Power, be moved to PJM. In the event that Penn Power is moved into PJM, Penn Power will consider modifying its demand response program to mirror those of Met-Ed and Penelec.¹⁰¹

D. IMPLEMENTATION AND EVALUATION ISSUES

a. Implementation Issues

The Companies' proposed management and implementation strategies are addressed in Section 4 of the Plans. No party has challenged this portion of the Company Plans and therefore the proposed implementation plan should be approved by the Commission.

b. QA Issues

The Companies' proposed quality assurance strategies are addressed in Section 6 of the Plans. Again, no party has challenged this portion of the Plans and the Companies have proposed no amendments. Therefore the Commission should approve this portion of the Plans as filed.

c. Monitoring and Reporting Issues

The Companies' proposed reporting and tracking systems are addressed in Section 6 of the Plans and are addressed in Section (d) below.

d. Evaluation Issues

The Companies' proposed evaluation, measurement, and verification procedures are addressed in Section 6 of the Plans. DEP expresses concern in its direct testimony regarding the Evaluation, Measurement and Verification ("EM&V") of EE&C Plan performance. DEP

¹⁰¹ Id at p. 13.

witness Guttman testified that the Companies' EM&V Plan performance should be "rigorous, continual, and open."¹⁰² The Companies do not disagree. Witness Fitzpatrick explains in his Rebuttal testimony that the Companies in their filings have adhered to the Commission's TRM whenever available for a measure and intend to employ EM&V protocols that will continually and accurately collect and catalog program results. Mr. Fitzpatrick stated: "The openness of the EM&V process has been assured in two ways:

- 1) The Commission has hired a statewide evaluation contractor that will presumably work closely with both the EDC's and engaged stakeholders over the 48-month implementation period.
- 2) The Companies have indicated that they intend to continue the stakeholder meetings that were started during the period in which our EE&C plans were developed. At these anticipated quarterly meetings, individual program progress will be reviewed, stakeholders and representatives of the Companies will discuss ideas for adjusting in-place programs, and new program ideas may be offered, should both the Companies and the stakeholders agree that overall plan "mid-course corrections" are warranted."¹⁰³

Consequently, this Commission should find that the Companies have adequately addressed concerns regarding EM&V.

E. OTHER ISSUES

a. NGDC's Fuel Switching Proposals

1. The Commission Has Already Rejected Fuel Switching

¹⁰² See Direct Testimony of Maureen Guttman, DEP Statement 1.0

¹⁰³ Met-Ed/Penelec/Penn Power Statement No. 2-R at p. 19.

Unlike some other EDCs, Met-Ed, Penelec and Penn Power have not proposed any “fuel switching” initiatives in the instant EE&C plans. This Commission is also aware that National Gas Distribution¹⁰⁴ Companies (“NGDCs”) have actively participated in the Commission’s implementation process and advocated for the inclusion of “fuel switching” (sometimes referred to as “fuel substitution”) in EDC Plans and the final Commission evaluation process for review and approval of such Plans under Act 129. The Companies oppose this proposal. Further, the NGDC intervenors have not alleged, or provided any evidence to demonstrate, that the Companies will be unable to meet their required reductions in energy consumption and peak demand without the inclusion of fuel switching programs.

UGI has previously filed three sets of comments with this Commission in which it has advocated for inclusion of fuel switching in EDC EE&C plans; first in its Comments to Additional Questions related to the Commission’s draft Implementation Order filed by UGI on December 8, 2008;¹⁰⁵ second, in its comments on the “Commission’s Technical Reference Manual (“TRM”);¹⁰⁶ and third, in its Reply Comments to the Commission’s draft Implementation Order filed on December 18, 2008.¹⁰⁷

The Commission’s implementation process culminated with its January 16, 2009 EE&C Program Implementation Order. The Implementation Order sets forth a detailed list of items that were required to be included in each EDC’s EE&C Plan and the criteria that would be used to evaluate the EDC’s proposals to achieve the required consumption reductions. Contrary to UGI’s assertion in paragraph 7(a) of its Petition, the Implementation Order contains no mention

¹⁰⁴ In this proceeding, UGI, NFG and Dominion are customer intervenors,

¹⁰⁵ See UGI Comments filed December 8, 2008, attached hereto as Exhibit 1.

¹⁰⁶ See UGI Reply Comments filed December 19, 2008, attached hereto as Exhibit 2

whatsoever of “fuel switching” or “fuel substitution”, as one of the issues to be analyzed when evaluating the EE&C plans. Consequently, this Commission has already rejected the “fuel substitution” suggestions made by UGI in its comments and reply comments referenced above.

The Commission’s Implementation Order further indicates that the Commission will utilize the TRM for the EE&C Program evaluation process requirements. On June 1, 2009, the Commission entered its TRM Order, outlining the standards by which energy savings associated with various energy efficiency and conservation measure are to be determined under the Plans. This Order *directly and unequivocally rejected UGI’s request* to alter the TRM to include “fuel switching” in the updated TRM, the Commission stated as follows:

The Commission recognizes that fuel switching is a complicated topic that will require additional time and effort to fully address. As the TRM will provide vital guidance to EDCs in developing their EE&C plans, which are due to be filed by July 1, 2009, there is not enough time to convene a working group to address all the related issues, fuel switching will not be included in this TRM. The Commission will convene a fuel switching working group in the near future to identify, research and address issues related to fuel switching. Depending on the outcome of this working group, fuel switching may be incorporated into a future version of the TRM.¹⁰⁸

The Commission’s express exclusion of “fuel switching” from the TRM and postponement of discussion of such matters until a future “fuel switching working group” is convened should preclude the NGDCs from proposing such issues in connection with the July 1, 2009 EE&C filings of EDCs, particularly in proceedings such as this where the Companies have not proposed any fuel switching programs in its EE&C Plans.

2. The Commission Should Not Expose the Companies to Potential Anti-Competitive Liability

¹⁰⁷ See UGI Comments filed March 12, 2009 in Docket No. M-00051865, attached hereto as Exhibit 3

¹⁰⁸ June 1, 2009 Order at 9.

The Commission correctly noted that fuel switching is a “complicated subject.”¹⁰⁹ Genuine issues of potential liability certainly contribute to its complexity. The Companies currently compete with fuel oil providers and NGDCs for customers within their service territories. In essence, the NGDC's fuel switching proposals would mandate that the Companies' customers provide incentives for customers to switch from electric service appliances to appliances that use exclusively gas. These types of fuel switching incentives could expose the Companies to antitrust and anti-competition challenges.¹¹⁰

Whether or not successful, the Companies will be required to pay to defend themselves in response to such claims and may not be able to claim immunity under the state action immunity doctrine. In *Yeager*, Pennsylvania Power & Light Co. (“PP&L”) was sued by a group of fuel oil providers because PP&L was offering incentives to developers to install exclusively electric appliances. Such offers by a monopolistic utility were claimed as anti-competitive. While in *Yeager*, the court decided that PP&L was immune from antitrust liability because its plan was *approved and supervised* by the Commission, it is not certain that the same result would occur in this proceeding. The limits to such immunity are well established:

"A state law or regulatory scheme cannot be the basis for antitrust immunity unless, first the State has articulated a clear and affirmative policy to allow the anticompetitive conduct, and second, the State provides active supervision of anticompetitive conduct undertaken by private actors."¹¹¹

In this Act 129 proceeding, where the Companies have proposed sufficient programs and measures to meet their target obligations without fuel switching, and where these open issues of potential liability have neither been addressed nor resolved, this Commission should refrain from

¹⁰⁹ *Id.*

¹¹⁰ *Yeager v. PP&L*, 22 F.3d 1260 (3d Cir. 1994).

addressing the fuel switching proposals offered by the NGDCs and, instead follow its own directive to address the matter in a separate proceeding.

3. Fuel Switching is Not an Energy Efficiency Program

"Fuel switching" or "fuel substitution" is not specifically listed as an "energy efficiency and conservation measure" under Act 129. As directed by this Commission and the Act, the Companies' EE&C Plans include energy and conservation measures to reduce energy consumption within their service territory. Section 2806.1(k)(2) of Act 129 states:

"Energy efficiency and conservation measures shall include solar or solar photovoltaic panels, energy efficient windows and doors, energy efficient lighting, including exit sign retrofit, high bay fluorescent retrofit and pedestrian and traffic signal conversion, geothermal heating, insulation, air sealing, reflective roof coatings, energy efficient heating and cooling equipment or systems and energy efficient appliances and other technologies, practices or measures approved by the commission."

Nowhere in this list of energy efficiency and conservation measures is "natural gas or propane fuel-switching" included.

As set forth above, the Commission's Implementation Order and TRM Order make it clear that analysis of alleged "fuel switching" savings has no part to play in the evaluation of the July 1, 2009 EE&C Plans submitted by the Companies under Act 129. Moreover, this Commission should conclude, as DEP has in its testimony¹¹², that causing EDC customers to pay for having other customers switch from electric service to gas and/or propane service is simply not an energy efficiency and conservation measure under Act 129.

In stating that "fuel substitution should be a significant part of [Met-Ed's] plan", the NGDCs real objectives are transparent. As a competitor of Met-Ed for heating customers, the

¹¹¹ *Ticor Title Insurance Co. v. FTC*, 112 S.Ct. at 2169, 2175.

¹¹² See Direct Testimony of Maureen Guttman, DEP Statement 1.0 at p. 24.

NGDCs distribute natural gas and propane to customers within the Companies' service territories. Clearly, the NGDCs have a competitive interest in trying to force the Companies to include fuel switching proposals as part of the EE&C Plans. Ironically, to do so would effectively cause the Companies' customers to pay to assist others with reducing electric consumption by replacing electric service with increased gas and/or propane consumption. This Commission should conclude that this result is not in the public interest and is not within the "energy efficiency and conservation measures" contemplated in Act 129.

Apart from its competitive interests, the NGDCs have no genuine interest in this proceeding beyond that of the general public. Moreover, those interests are more than adequately represented by the statutory advocates in this proceeding.

4. The NGDC Proposals Failed to Pass the Commission's TRC Test

In response to the claims of the NGDC intervenors that their proposed programs pass the Commission's TRC test, the Companies' witness, Charles V. Fullem, through oral rebuttal testimony provided at the hearings, explained why this assertion by the NGDCs is wrong.¹¹³ Mr. Fullem testified that the Companies ran the same TRC test that they used for all measures on the three programs recommended by NGDC witness Raab. Mr. Fullem testified that under the Companies' administration of the Commission's TRC test, all of the programs proposed by NGDC witness Raab failed. In response to questions concerning the Companies' test of the Residential Space Heating Conservation program of NGDC witness Raab, Mr. Fullem concluded that this program produced a TRC score of .86, when anything less than 1 is a failure.¹¹⁴ Similarly, Mr. Fullem testified that the Residential Water Heating Conservation program of

¹¹³ See, Tr. at pp. 280 – 283.

¹¹⁴ Id. at 280 – 281.

NGDC witness Raab failed the TRC test with a score of .99 and the Commercial Combined Heat and Power program failed the TRC test with a score of .79.¹¹⁵

In essence, the NGDC TRC results are overstated. First, in order to make a valid comparison with all of the other programs, the NGDC inflation rate used for natural gas must be increased from zero to 2.69%, to be consistent with what was used for electricity. Second to better reflect actual costs that would be incurred under any program, the cost of natural gas should reflect burner tip prices consistent with the inclusion of transmission and distribution costs for electricity. Based on data published by Pa Commissions' Bureau of Fixed Utility Services, the burner tip price for UGI are approximately \$ 1.49 per therm or \$14.90 per mmbtu for residential and based on publicly available data \$1.287 per therm or \$12.87 per mmbtu for commercial, rather than the cost of the commodity only used by NGDC, which was approximate \$9.50. When the TRC test is run using all of the same factors, with the two modifications discussed above, the programs proposed by NGDC fail the TRC test. Further, Witness Fullem confirmed that the 2.69% inflation rate used for natural gas in the Company TRC test of the NGDC proposals was the same number that was used by the Companies for electricity in their test of the 113 EE&C measures in the Companies' proposed EE&C plan, and was utilized by Mr. Raab for electricity in his analysis of the programs.¹¹⁶ NGDC witness Raab also subsequently confirmed in FE Cross Examination Exhibit 5 that the value he used for the cost of gas was \$9.50.¹¹⁷

The above findings of the DSM Evaluation Tool utilized for all of the measures in the Companies' plans demonstrate that the NGDC Residential Space Heating Conversion Program,

¹¹⁵ Id. at 281-283.

¹¹⁶ Id. At 283

the NGDC Residential Water Heating Conversion Program and NGDC Combined Heat and Power Program are not cost-effective, based on the Commission-adopted TRC test.

It is also important to note that Act 129 provides that EDCs – not NGDCs - “shall” be assessed a penalty of \$1 million to \$20 million for failure to achieve consumption and peak demand reduction targets and these penalties are not recoverable from ratepayers.¹¹⁸ The point here is that this Commission should permit the parties who must bear the significant burden and serious consequences of their selection and administration to choose the programs and measures for themselves which best suit their needs.

5. Requiring the Inclusion of Fuel Switching Would be Contrary to the ARRA

Any Commission directive to include fuel switching in the EE&C plans would violate the clear directives set forth in Section 410(a) of the ARRA. Section 410(a) requires that the Governor of a State must commit to the Secretary of Energy that the “applicable State regulatory authority will seek to implement, in appropriate proceedings for each electric and gas utility....a general policy that ensures that utility financial incentives are aligned with helping their customers use energy more efficiently and that provide timely cost recovery and a timely earnings opportunity for utilities associated with cost effective measurable and verifiable efficiency savings, in a way that sustains or enhances utility customers’ incentives to use energy more efficiently.” (emphasis added)

The NGDCs arguing that fuel switching should be recognized as an energy efficiency measure are attempting to use Act 129 as leverage to force competing energy providers to facilitate their own success in utility competition for residential, commercial and industrial

¹¹⁷ See, FE Cross Examination Exhibit 5.

¹¹⁸ Id.

heating customers. The NGDCs are simply trying to get electric customers to pay for having other customers switch from electricity to gas and /or propane. The result would be lost revenues for the Companies that are not allowed to be recovered under Act 129.

Directing the inclusion of fuel switching in the Companies' EE&C Plans would run afoul of Section 410(a) of the ARRA and would be contrary to its requirement that utility financial incentives must be aligned with helping customers use energy more efficiently. Fuel switching would result in lost or decreased revenues to the Companies for which timely recovery is prohibited under Act 129. The inability to recover these lost revenues is inconsistent with Section 410(a) of the ARRA. Therefore, any requirement to promote initiatives that would result in additional lost revenues for an EDC that are unrecoverable would violate the State's aforementioned duty under the ARRA.

For all of the reasons outlined above, this Commission should reject the NGDC proposals concerning "fuel switching" and approve the Companies' EE&C Plans as proposed.

VI. CONCLUSION

Based upon the July 1, 2009 EE&C Plan filings, the Testimony submitted by the Companies, and the evidence submitted at the evidentiary hearing, this Commission should find that the Companies' EE&C plans are consistent with Act 129 and the Commission's Implementation Order, are in the public interest, and should benefit customers by providing them with cost effective opportunities to reduce electricity consumption and peak demand. Because no party in this proceeding has alleged that the 19 programs and 113 measures proposed by the Companies will not achieve the required reductions in energy consumption and peak demand, this Commission need not require the Companies to create any additional plans or measures to achieve the targeted reductions.

The Companies' EE&C plans include the following positive aspects:

- The Companies' EE&C plans include a variety of EE&C measures and will provide the measures equitably to all customer classes pursuant to 66 Pa. C.S. §2806.1(a)(5).
- The plans include a well-reasoned and balanced test of measures that are tailored to usage and to the potential for savings and reductions for each customer class.
- The plans are cost effective, in accordance with the Total Resource Cost test, and will provide a diverse cross-section of alternatives and reasonable mix of programs that should benefit consumers of all rate classes as required by 66 Pa. C.S. §2806.1(b)(1)(i)(I).
- The plans proposed herein are expected to enable the Companies to meet or exceed the required Act 129 consumption and peak demand reductions based on the Technical Reference Manual and other metric resources to measure the effect of various EE&C measures.
- The estimated costs of the proposed EE&C measures are prudent and reasonable, are being reasonably allocated, and will be recovered from the customer class receiving the direct benefit of such measures.

For all of the reasons set forth above in this Brief, the Commission should enter an Order approving the EE&C Plans of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company and incorporating the proposed Ordering Paragraphs set forth herein.

VII. PROPOSED ORDERING PARAGRAPHS

1. The EE&C Plans of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company (“ Companies”) satisfy the requirements of Act 129, 66 Pa.C.S. § 2806.1 and the January 16, 2009 Energy Efficiency and Conservation Program Implementation Order at Docket No. M-2008-2069887 and the May 2, 2009 Reconsideration Order of the Commission and are hereby approved.

2. The 19 programs and 113 measures in the EE&C Plans of the Companies are hereby approved.

3. The cost recovery mechanism proposed by the Companies is hereby approved.

4. The EEC Rider proposed by the Companies is hereby approved.

5. The Companies shall file appropriate tariff supplements in accordance with the EE&C Plans and this Order, to be effective on November 1, 2009.

6. The Companies’ request to apply the cost cap on a 43 month levelized basis is hereby approved.

7. The Companies’ EE&C Plans, as filed, shall be adjusted to permit the use of the correct O&M cost values of \$13.4 million for Met-Ed, \$12.4 million for Penelec and \$1 million for Penn Power, costs attributed to Residential DLC beyond the plan period, to be reallocated to other residential programs within the EE&C Plans.

8. The Companies request to recover statewide evaluator contract costs assessed to Met-Ed, Penelec and Penn Power through the EEC-C Riders and exclude those costs from the Companies’ Act 129 two percent limitation is approved.

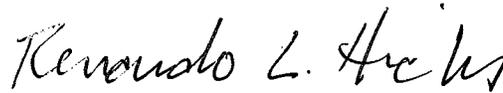
9. The Companies shall be permitted to recover interest on start-up administrative costs as described in its EE&C plan and testimony in this proceeding.

10. The Companies are hereby authorized to enter into contracts with CSPs as necessary to accomplish the programs and measures outlined in their EE&C Plans.

11. The Companies' are hereby authorized to fully include a measure's benefits in the TRC test if any portion of the measure is attributable to Act 129, even if the customer is a recipient of an ARRA or Act 1 incentive or rebate for the same equipment or service, we conclude that the entire savings of that equipment or service can also be claimed by the Companies for TRC testing purposes.

12. The proceedings at Docket Nos. M-2009-2092222, M-2009-2112952 an M-2009-2112956 are herby marked closed.

Respectfully submitted,



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Dated: September 11, 2009

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Metropolitan Edison Company Energy and Conservation Plan	:	
	:	Docket No. M-2009-2092222
	:	
Pennsylvania Electric Company and Conservation Plan	:	
	:	Docket No. M-2009-2112952
	:	
Pennsylvania Power Company and Conservation Plan	:	
	:	Docket No. M-2009-2112956

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Brief in the manner indicated below upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 and 1.55.

By Hand Delivery and Electronic Mail:

ADMINISTRATIVE LAW JUDGE DAVID SALAPA
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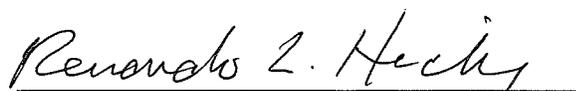
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