

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Act 129 Energy Efficiency and Conservation Program Phase Two

Docket Numbers: M-2012-2289411 and M-2008-2069887

**JOINT DEMAND RESPONSE COMMENTS ON THE TENTATIVE
IMPLEMENTATION ORDER OF:**

**AK STEEL; CITIZENS FOR PENNSYLVANIA'S FUTURE; CLEAN AIR
COUNCIL; COMVERGE, INC.; CONSERVATION VOTERS OF PA;
ENERNOC, INC.; ENVIRONMENTAL DEFENSE FUND; GROUP
AGAINST SMOG AND POLLUTION; JOHNSON CONTROLS, INC.
AND ENERGYCONNECT; KEYSTONE ENERGY EFFICIENCY
ALLIANCE; NATURAL RESOURCES DEFENSE COUNCIL; PENN
ENVIRONMENT; THE SIERRA CLUB; VIRIDITY ENERGY, INC.;
WAL-MART STORES EAST, LP AND SAM'S EAST, INC.;
ASSOCIATION FOR DEMAND RESPONSE AND SMART GRID; AND
PHILADELPHIA PHYSICIANS FOR SOCIAL RESPONSIBILITY**

Dated: June 25, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Energy Efficiency and Conservation Program)	Docket No. M-2012-228941
)	Docket No. M-2008-2069887
)	

JOINT DEMAND RESPONSE COMMENTS

I. INTRODUCTION AND BACKGROUND

AK Steel; Citizens For Pennsylvania’s Future (“PennFuture”); Clean Air Council, Comverge, Inc.; Conservation Voters of PAEnerNOC, Inc. (“EnerNOC”); Environmental Defense Fund; Group Against Smog and Pollution (“GASP”), Johnson Controls, Inc. and EnergyConnect (collectively, “Johnson Controls”); Keystone Energy Efficiency Alliance (“KEEA”); Natural Resources Defense Council (“NRDC”); PennEnvironment, the Sierra Club; Viridity Energy, Inc. (“Viridity”); Wal-Mart Stores East, LP and Sam’s East, Inc (collectively, “Walmart”); Association for Demand Response and Smart Grid (“ADS”); and Philadelphia Physicians for Social Responsibility (hereinafter, “Joint DR Commenters”), respectfully submit these Joint Demand Response Comments in response to the Commission’s Tentative Implementation Order¹ in the above-referenced dockets. These comments represent a unified position of a diverse and large group of stakeholders interested in the continued implementation of the Commonwealth’s Act 129. For instance, the Joint DR Commenters include Walmart, a large commercial customer heavily invested in demand side management and demand response technologies, as well as Comverge, one of the nation’s largest providers of residential Demand Response (“DR”) products. Also among the Joint DR Commenters are: the Sierra Club, Clean Air

¹ See *Energy Efficiency and Conservation Program*, Docket Nos. M-2012-2289411 and M-2008-2069887, *Tentative Implementation Order* (adopted May 10, 2012) (*hereinafter* “TO.”)

Council, GASP, NRDC, PennEnvironment, and PennFuture; all are advocacy groups focused on preserving the environment and the economy. Johnson Controls is an energy efficiency and demand response provider that is also a large industrial manufacturing ratepayer. EnerNOC, the largest DR provider in the world, is a provider of intelligent energy management applications for the smart grid, focused on providing DR options to commercial, institutional and industrial customers is also a signatory. AK Steel is a large industrial energy user in the Commonwealth. Viridity, whose proprietary VPower™ platform enables customers to participate fully in the wholesale markets for energy, ancillary services, and capacity, is also included among the Joint DR commenters. With this many diverse parties joining to form a unified response to the Commission's tentative conclusions on DR and Act 129's provisions for peak load reductions, the Joint DR Commenters are hopeful that some premature Commission conclusions may be revisited.

DR provides a means to effectuate peak load reduction. The Federal Energy Regulatory Commission ("FERC") defines DR as:

a reduction in the consumption of electric energy by customers from their expected consumption in response to an increase in the price of electric energy or to incentive payments designed to induce lower consumption of electric energy.²

As this definition suggests, the benefits of DR go well beyond reducing peak load, and address other priorities of the Commission. As FERC has stated:

Demand response can provide competitive pressure to reduce wholesale power prices; increases awareness of energy usage; provides for more efficient operation of markets; mitigates market power; enhances reliability; and in combination with certain new technologies, can support

² 18 C.F.R. § 35.28(b)(4) (2009).

the use of renewable energy resources, distributed generation, and advanced metering.³

Energy efficiency and DR are both valuable in reducing electricity costs to customers and in ensuring reliability. However, energy efficiency and DR cannot substitute for one another; each contributes substantially to the Commonwealth's energy and environmental priorities, in different but complementary ways. Energy efficiency measures help to reduce total annual consumption of electricity, but they cannot be counted upon to reduce peak demand. This is because neither the electric distribution company ("EDC" or utility), nor the Independent System Operator ("ISO"), PJM Interconnection, LLC ("PJM"), nor the end-use customer can choose the time when an energy efficiency measure will reduce consumption. In contrast, DR can be dispatched by an EDC or by PJM at the specific times it is needed to reduce peak demand, ease wholesale power prices, mitigate market power, and enhance reliability.

DR programs are also distinguishable from energy efficiency measures in that the programs are dynamic, repeatable, and reactive, as compared to a typical energy efficiency program offering a rebate to encourage a customer to undertake, for example, a lighting retrofit. In other words, energy efficiency programs deliver permanent energy consumption reductions, while DR programs annually allow load reductions in the random hours of top system stress. A principle benefit of DR is the mitigating effect these programs have on energy prices, such as when wholesale energy prices escalate during hot weather periods. Additionally, DR load curtailment results in lower capacity charges in future years. Moreover, demand response programs reach a subset of customers that may not qualify for any of the other Act 129 EE&C programs. Despite

³ FERC: *Wholesale Competition in Regions with Organized Electric Markets*, 125 FERC ¶ 61,071, October 17, 2008 at ¶ 16.

these differences from energy efficiency programs, DR programs do cause consumption (that is energy) reductions for program participants. As discussed more fully below, Pennsylvania law through Act 129 recognizes the important differences between energy efficiency and demand response by including separate provisions providing both energy consumption and peak demand reductions.⁴ Additionally, this Commission as recently as this week has publicly emphasized the importance of peak load reduction by launching its “summer heat wave awareness campaign,” reminding consumers to conserve energy during days with severe heat and humidity.⁵

With this background, the Joint DR Commenters position can be summarized as follows. Act 129 does not prohibit this Commission from continuing peak demand reduction programs absent a cost-benefit analysis. Should the Commission finally resolve that extended or new DR programs may not be considered until the cost-benefit study is evaluated, it should, at minimum, direct the EDCs to set aside funding to implement continued peak load reduction. Finally, if new DR programs are not approved for Phase II, funds otherwise earmarked for DR programs should be used for the Act 129 energy efficiency programs and should be allocated to the Act 129 EE&C programs with the greatest savings potential, based upon Act 129 program activity to date. Irrespective of whether the Commission sets peak load reduction targets now, it should direct EDCs to continue to use existing curtailment capacity created under Phase I DR programs through the useful life of program investment. This will prevent the harmful impact to

⁴ See 66 Pa. C.S. § 2806.1(c)&(d).

⁵ See *PUC Summer Heat Waive Fact Sheet*, available at: http://www.puc.state.pa.us/General/consumer_ed/pdf/Heat_Wave_Flyer05.pdf; *PUC Reminds Consumers to Conserve Energy While Staying Cool* (last visited June 22, 2012) available at: <http://www.fox43.com/news/wpmt-puc-reminds-consumers-to-conserve-energy-while-staying-cool,0,2026119.story> (last visited June 22, 2012).

customers and ratepayers that will occur should the Act 129 DR programs go dark after summer 2012. Finally, the Joint DR Commenters suggest the following modifications to the manner in which the Act 129 DR programs are to be implemented: 1) the Commission should utilize its authority to amend the “top 100 hours” methodology (in the manner described herein) to reduce forecast risk to the EDCs in this proceeding rather than to wait for feedback from the State Wide Evaluator (“SWE”); and 2) the peak load target goals should be set to be met each year rather than one time for each multi-year Act 129 phase.

The Joint DR Commenters’ position as outlined here is consistent with the plain language and legislators’ intent in adopting Act 129. The proposal to extend existing programs by one year would allow the Commission to obtain the results from the State Wide Evaluator’s cost effectiveness report before committing long-term, while still maintaining the momentum required for successful and robust Act 129 DR programs.

II. JOINT DR COMMENTS

In the Tentative Implementation Order, the Commission made the following conclusions regarding the Peak Demand provisions of Act 129, 66 Pa. C.S. § 2806.1(D)(2):

- Because the Commission will not receive information on the cost-effectiveness of demand response programs until the end of 2012, it does not believe that it will have the information to determine whether it is required to impose further peak demand reduction targets . . . as such the Commission proposes not to set any peak demand reduction targets for the proposed Phase II EE&C program period... The Commission believes Act 129 is clear in its direction that the Commission must determine the cost-effectiveness of demand response programs before proposing additional peak demand reduction targets.⁶

⁶ TO at p. 16.

- The Commission does not believe it has the authority, under 66 Pa. C.S. §2806.1(d)(2), to propose any demand response program targets until a determination of cost-effectiveness has been completed...The Commission does not think it is wise to simply extend current curtailment programs without associated targets.⁷
- The Commission expects the SWE to determine whether the current demand response program design utilizing the top 100 hours is the most optimal methodology or if there is a more appropriate and cost-effective peak demand reduction model for the Act 129 EE&C program.⁸

The Joint DR Comments provided here respond to each of the three above conclusions from the Commission Order.

A. Act 129 Does Not Prohibit the Commission from Imposing Peak Demand Reduction Targets Absent a Cost-Effectiveness Report.

Although the Commission tentatively concludes that Act 129 requires the Commission to “determine the cost-effectiveness of demand response programs before proposing additional peak demand reduction targets,”⁹ the Joint DR Commenters take issue with this interpretation of the statute. Section (d) of Act 129, which pertains to demand reduction, states, “If the commission determines that the benefits of the plans¹⁰ exceed the costs, the commission shall set additional incremental requirements for reduction in peak demand....”¹¹ The plain language of the statute only describes the Commission’s duty to implement peak demand reduction if it can be shown that benefits of the initial plan exceed costs.

What Section 2806.1(d)(2) does *not* describe is the Commission’s duties or restrictions in the absence of such a showing. Nothing in the statute prohibits or in any

⁷ *Id* at p. 17.

⁸ *Id* at p. 17-18.

⁹ *Id* at p. 16.

¹⁰ Contrary to the Commission’s conclusions in the TO, this section of Act 129 refers to overall demand reduction plans, not just demand response.

¹¹ 66 Pa. C.S. § 2806.1(d)(2).

way hinders the Commission from imposing peak demand reduction requirements before a cost-effectiveness analysis is complete. Thus, the Joint DR Commenters assert that the relevant statute clearly permits the Commission to take affirmative action on DR programs when it issues its Final Order in this proceeding. Given that the Act does require certain reductions to be made by the year 2017, it would be a grave error to discontinue the peak demand reduction requirements for a three-year period leading up to the 2017 deadline and inconsistent with legislative intent.

The presence of 2017 targets in Section (d) indicates a presumption that Demand Reduction programs will continue through 2017. Indeed, the legislative history shows that the General Assembly passed Act 129 to ensure “reliable ... electric service” and “reduce [] the possibility of electric price instability.”¹² These are the hallmarks of a robust peak demand reduction program, and thus the legislature clearly intended this program to continue. Moreover, there is no language in Act 129 that suggests the Pennsylvania legislature contemplated anything other than a continuous demand reduction program. A three-year period during which the suite of demand reduction programs—specifically mandated by Act 129—go dark would be inconsistent with legislative intent. It is hard to imagine that the legislature would set reduction goals for 2017 and simultaneously make it impossible for the Commission to take action towards those goals.

Moreover, the statute clearly sets forth two separate priorities: consumption reduction and peak load reduction.¹³ Energy efficiency programs deliver permanent energy consumption reductions, while DR programs allow for the reduction of peak

¹² Act 129 General Assembly Declaration, 2008 Pa. Laws 129, 192nd General Assembly (2007-2008).

¹³ See 66 Pa. C.S. § 2806.1(c)&(d).

demand in the random hours of top system stress. Construing the statute to discontinue for a period of time the expressly provided means to achieve the legislative peak load reduction mandate appears inconsistent with the canons of statutory construction.

Thus, the more reasonable interpretation of Section (d) is that it (1) *compels* the Commission to take action when DR programs are found to be cost effective in a study, and (2) *permits* and presupposes that the Commission will continue DR programs in some form in the absence of such a study to prevent undoing the progress the Commission has made towards the 2017 targets.

B. The Commission Can and Should Continue the Act 129 DR Programs in Any Phase II and, in the Alternative, Should Extend Existing DR Programs by One Year

Given that the reading of Act 129 which is most closely aligned with the spirit of the law calls for the continuation of DR programs across the EDCs, the Joint DR Commenters urge the Commission to extend these measures in Phase II in accordance with its statutory authority. The majority of interested parties commenting in this case have argued in support of continuing DR programs without interruption.¹⁴ Should the Commission not wish to change its tentative conclusion on this issue, it should extend the existing programs for a period of one year. This is because, as set forth below, the Commission possesses the authority to extend Act 129 DR programs and there are many policy and practical reasons doing so. The Commission can either: 1) set new peak load

¹⁴ The following comments in response to the March 1, 2012 Act 129 Energy Efficiency and Conservation Secretarial Letter (“Secretarial Letter”) state that the Act 129 DR Programs should continue into Phase II: City of Philadelphia Comments at p. 1; Comverge Comments at pp. 4-7; EnerNOC, Inc. Comments at p. 7; Johnson Controls and EnergyConnect Comments at p. 3; KEEA Comments at p. 7; OPower Comments at p. 7; OCA Comments at 7; PACE Comments at p. 2; PennFuture Comments at p. 4; Sustainable Energy Fund Comments at p. 9; Sierra Club Comments (also on behalf of Clean Air Council, SMOG, PennEnvironment and NRDC) at p. 4; Viridity Comments at p. 3; Walmart Comments at pp. 2-3; and Pennsylvania Weather Task Force Comments at p. 1. Moreover, as noted in the TO at p. 17, many parties responding to Secretarial Letter stated that the DR programs should continue on an interim basis.

reduction targets now or 2) extend the existing programs by one year to allow for the time required to develop alternative cost-effective programs. Either of these options would help to avoid the cost to customers and the Commonwealth of allowing the momentum in the statutorily mandated programs to be lost. Further, allowing already established Act 129 DR programs to go dark would extinguish existing curtailment capacity and would have particularly costly consequences for customers. For the reasons discussed immediately below, the Commission should utilize its statutory authority to continue the deployment of DR programs on a permanent or interim basis.

First, interrupting already-deployed Commission-mandated DR programs will undermine already-established participation and strand most of the deployment costs. DR programs require the installation of metering and communications and direct load control customer equipment. But “stranded” DR costs are not limited to capital costs. DR programs are complex programs and require substantial marketing and customer education costs. Any disruption in program continuity would cause these substantial marketing and education costs to be re-incurred. Should the Act 129 DR curtailment capacity go dark for even one year, all of the load reduction achieved in plan year 2012/2013 will be lost in the subsequent years, despite the capital equipment and customer education that has been deployed to manage load on a long-term basis.

Moreover, there will be even more far-reaching economic consequences, in terms of higher electricity prices because, among other things, the capacity obligation avoided for the next year will return for all future years. In addition, the cessation of program deployment will result in the loss of jobs associated with the management of the DR programs; further loss with respect to the need to rehire and re-institute programs in time

for the Commission to supervise the achievement of the 2017 peak load reduction goals; and the waste of program momentum that has been established among customers. Funding for Act 129 is already built into customer rates. As a result the program could be extended or continued at no incremental cost to customers. A Commission decision now to continue the Act 129 DR programs would circumvent the harsh economic consequences that would result from stranding existing DR curtailment capacity.

A lull in Act 129 DR programs will make further market penetration substantially more difficult. Success for DR programs is created by motivating customer behavior, which changes over time through marketing reinforcement efforts. Given conclusions contained in the TO, customers participating in the Act 129 DR programs will encounter a very disruptive environment because these customers were recruited to participate based on a promise of compensation that would cease to exist. Disappointing customers in this manner will have a detrimental effect on the ability to re-recruit future DR program customer participants.

Suspending the use of existing DR curtailment capacity for even a year's time will artificially slant the required cost-benefit analysis against DR programs. The very nature of these programs is that customers and curtailment service providers ("CSPs") earn back their upfront costs through energy and capacity cost savings in succeeding years. In short, the longer DR programs operate, the more the benefits exceed the costs. Thus, interim cessation of the Act 129 programs runs counter to the legislature's intention to evaluate cost-effectiveness as part of making a determination about expanding the Act's peak load reduction goals.

The Joint DR Commenters feel the necessity of responding to the assertion that the Act 129 DR programs can be permitted to go dark because market-based programs will fill-in for EDC Act 129 programs.¹⁵ As is demonstrated below, the PJM programs cannot be a meaningful stand-in for the Act 129 DR programs. This misperception must be corrected in order for this Commission to issue a Final Order that properly executes Act 129's peak load reduction mandate.

First, Act 129 requires participation by all customer classes – residential and small commercial customers must be considered. The PJM programs do not adequately support small customer participation in DR. More fundamentally, the PJM programs are designed to achieve goals that are in no way related to the goals mandated by Act 129.

The Act 129 DR programs help to overcome the obstacles to market program participation for residential and small commercial customers that exist in the PJM programs. For a variety of reasons, a direct load control (“DLC”) program that features automatic dispatch, such as a residential air conditioning “saver” switch program, is almost without exception the only reasonable option for smaller customers.¹⁶ The economics to individual program participants prevent curtailment service providers (“CSPs”) from seeking to aggregate customers in this group absent incentives like those provided for in Act 129. The limited potential curtailment from any one small customer does not normally justify the costs of marketing, sales, contracting, program management and settlement. The reason these programs continue to grow around the country is

¹⁵ See Industrial Customer Groups Comments, at p. 3; Duquesne Comments at pp. 6-7; PECO Comments at p. 7.

¹⁶ While its true that direct load control is the only viable means for small customer participation in most markets today, enabling technologies are developing today alongside the Smart Grid concept, such as smart appliances, that could increase the options for small customer participation in demand reduction activities.

because of the significant social benefit to all customers on the system. In other words, the benefit to an individual residential customer may not warrant the investment in direct load control equipment on an individual home, however, the societal benefit across the utility or state significantly outweighs the cost of the equipment deployed across an entire program. These utility-sponsored DLC programs enable the aggregation of sufficient DR capacity from many smaller customers that would otherwise not participate in DR, to generate the impacts mandated under Act 129. Clearly, Act 129 has allowed and even encouraged small customer participation in DR.

The PJM market-based programs may support participation by some large customers, however, the program goals are materially different from those mandated by Act 129.

In general, Act 129 DR programs provide for curtailments that are planned for ahead of time with the intent of benefiting each utility's customers and are designed towards meeting the statutory goal of reducing peak demand by a minimum of 4.5% of annual system peak demand in the 100 hours of highest demand. The Act 129 DR programs are part of a concerted effort to give all Pennsylvanians access to lower cost power. These peak load reductions benefit all electric customers in the Commonwealth through lower energy and capacity costs, not just those that participate in the specific programs.

In contrast, PJM's demand response program suite provides opportunities for end-use customers to realize value for reducing their demand for electricity to stabilize the grid during system emergencies or in accordance with the individual customer's economic preferences. PJM's Emergency DR program exists only to protect system

reliability. DR is dispatched under this program only when PJM declares a system emergency – which may or may not coincide with times when load is at its peak. This means that customers are only dispatched a handful of times each year, or sometimes not at all. The dispatch could occur in Illinois, New Jersey or any other PJM region. The dispatch may or may not impact Pennsylvania rate payers in the least bit; there is no guarantee that PJM’s dispatch of DR will reduce weather-normalized demand as required under Section 2806.1(d)(1). Thus, even if customer participation in the PJM Emergency DR program counted towards the Act 129 statutory goals, the PJM Emergency program provides negligible assistance towards meeting Act 129’s goals.

The PJM Economic Load Response program (“PJM ELRP”), a completely voluntary program in which curtailments are offered by CSPs in response to high energy prices, is no substitute for Act 129’s peak load reduction requirement. Customers participating in the PJM ELRP choose the timing of their load curtailments, based upon the wholesale price of energy in its particular zone and the customer’s particular priorities, constraints, and flexibility. As a result, the Commission cannot depend upon the PJM ELRP to satisfy targets for peak load reduction.

More significantly, PJM rules automatically “reconstitute” customer loads when PJM ELRP events fall on one of the five highest load days that PJM used to determine customers’ capacity obligations such that the loads appear as if the PJM ELRP reductions never took place. Thus, the PJM ELRP is specifically not a peak load reduction mechanism and will never reduce the capacity costs for Pennsylvanians in future years.

The same is true of PJM’s Price Responsive Demand program (“PJM PRD”). A customer can participate in PJM PRD only if (1) its PJM PRD Provider can remotely

curtail the customer's load without the need for action by the customer, and (2) the customer has a retail rate structure (or equivalent contractual arrangement) that changes the customer's retail rate at least hourly based on changes in real-time locational marginal price ("LMP"). The participating customer not only receives no PJM energy market payment for curtailing load, but the customer is also rendered ineligible to participate in the energy market at all. Notwithstanding the Commission's "longstanding and strong" support of the PJM PRD,¹⁷ these aspects of the program make it unlikely that the number of Pennsylvania customers choosing to participate in the PJM PRD will be sufficient to serve the Commission's priorities.

Simply put, PJM's DR programs are designed to meet FERC requirements and PJM's needs; they are not designed to achieve the Act 129 peak load reduction goals or the energy related objectives of any of the states in the PJM footprint. The legislators did not intend for the larger programs of ISOs to bear responsibility for delivering legally mandated reductions to the Commonwealth. For these reasons, any reliance on the PJM programs as justification of a planned black-out of the statutorily mandated Act 129 programs is misplaced.

C. At Minimum, the Commission Should Set-Aside Funds for Cost-Effective DR

Joint DR Commenters strongly encourage the Commission to reconsider its findings in the TO on the near-term continuation of the DR programs currently in place to meet Act 129's peak load reduction provisions but submits as follows should the Commission stay its tentative course. The Commission's Secretarial Letter suggested, as an alternative to continuing DR programs, that EDCs be required "to set aside a portion

¹⁷ Letter from Commission to Ed Tatum, Chair, PJM Members Committee, November 17, 2010 available at: (<http://www.pjm.com/about-pjm/who-we-are/pjm-board/~media/about-pjm/who-we-are/public-disclosures/pa-public-utility-commission-letter-regarding-prd.ashx>) (last visited June 24, 2012).

of their next round EE&C Plan budgets to fund demand response programs in the event the Commission determines that there can be cost-effective DR programs for the next round of plans.”¹⁸ The Joint DR Commenters endorse this approach only as a significantly less preferable alternative to continuing existing programs. Under this election, the programs would be put on hold until the Commission directs that they restart, presumably after the SWE’s cost-effectiveness analysis. This approach, reflected in the Commission’s Secretarial Letter, is conservative in demanding proof that a program is cost-effective but is responsive in permitting programs to restart once that threshold has been crossed, instead of waiting three full years to re-start the programs. To put this into effect, the Joint DR Commenters specifically propose that EDCs be directed to reserve that portion of their EE&C program budgets that has gone to DR programs under Phase I. Should the cost-effectiveness criteria not be later met, the DR earmarked funds should be used for the Act 129 energy efficiency programs and should be allocated to the Act 129 EE&C programs with the greatest savings potential, based upon Act 129 program activity to date.

D. Initial Comments to the Secretarial Letter Provide Sufficient Evidence that the Act 129 DR Programs are Likely to Be Determined by the SWE to be Cost-Effective

The Joint DR Commenters have urged the Commission to continue the Act 129 DR programs. Various individual Joint DR Commenters have introduced evidence into the record of the likelihood that the Act 129 DR Programs would pass the cost-effectiveness test described in the statute, indicating that it is likely that the Commission

¹⁸ See Secretarial Letter at p. 4.

will be mandated by statute to determine additional target peak demand reduction goals.¹⁹ The Commission has already determined, by virtue of its approval of the EDCs' peak load reduction plans, that the existing plans are cost effective and therefore will be found to be cost effective, provided the participants perform as expected.

E. The Final Order Should Revise the Top 100 Hours Methodology Employed to Calculate Peak Demand Goal Compliance

The DR program design parameter that appears to be causing the most strain across the Commonwealth is the Act 129 statutory provision that states that the “demand of the retail customers of each electric distribution company shall be reduced by a minimum of 4.5% of annual system peak demand in the 100 hours of highest demand.” The most significant problem with this provision is that it forces the EDCs and/or CSPs to project what the 100 hours of highest demand will be. Clearly, the only way to meet that constraint is to call curtailments in excess of 100 hours. The Statute clearly authorizes the Commission to modify this requirement going forward, as it requires the Commission to “set additional incremental requirements for reduction in peak demand for the 100 hours of greatest demand or an alternative reduction approved by the Commission.” The Joint DR Commenters are united in urging the Commission to exercise this flexibility and instead use an alternative methodology that preserves the intent and benefits of the prior criteria but relieves the EDCs of the risk associated with inaccurately forecasting the top 100 load hours.

The Joint DR Commenters are in agreement that a methodology that calls for curtailments when consumption in an EDC territory is forecasted to reach a certain percentage of its forecasted peak demand for a day is an appropriate alternative to the 100

¹⁹ Joint DR Commenters notes that some of signatories herein may also be supplementing these comments with separate filings addressing this issue.

hour methodology. For example, if PJM had forecasted a summer system peak for an EDC at 1,000 MW, then the EDC would issue curtailments when the day-ahead forecast reached a certain percentage (for the sake of illustration, 90%). EDCs would then curtail in those hours when demand is forecast to exceed 900 MW.

Multiple individual members of the Joint DR Commenters, in initial filings, directed the Commission's attention to a Con Edison's Commercial System Relief Program ("CSRP") as an example. The CSRP was approved as an on-going program and is open in New York City 1) to participants who can curtail load, or bring on certain on-site generation to reduce their demand, by a minimum of 50 kW individually, or 2) CSPs who aggregate greater than 100 kW of demand reduction. Participants and CSPs must be able to make these curtailments with a minimum of 21 hours notice before a planned event. Under the CSRP, a planned event is defined as a day-ahead forecasted load level that is at least 96 percent of the Company's forecasted summer system peak.²⁰

In summary, this discussion highlights that the use of an objective trigger that avoids the need to forecast the top 100 hours can be entirely consistent with a viable peak load reduction program, such as what was visualized under Act 129. By adopting a peak hour reduction goal methodology similar to what Con Edison has developed in New York, the Commission could easily address concerns raised by EDCs related to the continuation of the peak load reduction aspects of Act 129.

²⁰ Under the CSRP, the following incentives are offered when the following conditions are met. Participants receive monthly reservation payments to participate in the program. The summer period for CSRP typically runs from May 1 through October 31. Program participants are notified at least 21 hours before the peak load shaving event is scheduled to begin, and are expected to reduce load based upon their pledged amount of demand reduction. The call window is five hours and is dependent upon whether the network is daytime or nighttime peaking. The daytime peaking networks are called from 12pm-5pm and the nighttime peaking networks are called from 5pm-10pm. In addition to the reservation payment, participants receive an energy payment that is equal to \$0.50 per kW reduced during each event hour. *See EnerNOC Comments* at p. 19.

F. The Final Order Should Direct that Setting Future Peak Load Reduction Goals on an Annual Basis is More Consistent with the Nature of Demand Response Programs

The Joint Demand Response Commenters collectively emphasize their support for the suggestion in previously filed comments to set future peak load reduction goals on an annual, rather than phase-period, basis.²¹ Currently interested DR stakeholders are contending in this very proceeding with the practical problem that cost/benefit data is not yet available even though such data is perceived to be “required” for the Commission to make policy determinations regarding Act 129 DR programs in the near-term. A forward-looking approach to begin to ameliorate this predicament is to set future peak load reduction goals to be met on an annual basis, rather than setting one goal for each phase which is the historic practice. Such an approach would begin to accommodate the lag needed to have the necessary evaluation of program performance ready for the next phase. Moreover, annual goals can be set out in smaller increments thus giving utilities time to modify programs mid-stream, if one or another program element is found to be ineffective. Finally, annual goals facilitate smoother planning and program development by utilities.

III. CONCLUSION

The Joint DR Commenters again thank the Commission for this opportunity to respond to the Commission’s Tentative Order. In sum, Act 129 does not prohibit the Commission from continuing peak demand reduction programs absent a cost-benefit analysis. Should the Commission finally resolve that extended or new DR programs may not be considered until the cost-benefit study is evaluated, it should direct the EDCs to set aside funding to implement continued peak load reduction. Finally, if new DR programs

²¹ See EnerNOC comments at p. 16.

are not approved for Phase II, funds otherwise earmarked for DR programs should be used for Act 129 energy efficiency programs and should be allocated to the Act 129 EE&C programs with the greatest savings potential, based upon Act 129 program activity to date. Irrespective of whether the Commission sets peak load reduction targets now, it should direct EDCs to continue to use existing curtailment capacity created under Phase I DR programs through the useful life of program investment. This will prevent the harmful impacts to customers and ratepayers that will occur should the DR programs go dark after summer 2012. Finally, the Joint DR Commenters suggest the following modifications to the manner in which the Act 129 DR programs are to be implemented: 1) the Commission should utilize its authority to amend the “top 100 hours” methodology (in the manner described herein) to reduce forecast risk to the EDCs in this proceeding; and 2) the peak load target goals should be set to be met each year rather than one time for each multi-year phase.

Respectfully submitted,

JOINT DEMAND RESPONSE COMMENTERS

Dated: June 25, 2012

[SIGNATURE PAGE FOLLOWS]

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