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July 6, 2015

Rosemary Chiavetta, Esq., Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

**RE: PETITION OF THE ENERGY ASSOCIATION OF PENNSYLVANIA FOR
CLARIFICATION OF FINAL ACT 129 PHASE III IMPLEMENTATION
ORDER AT DOCKET NO. M-2014-2424864**

Dear Secretary Chiavetta:

Enclosed for filing please find the Energy Association of Pennsylvania's Petition in the above-referenced Docket Number seeking **Clarification of Final Act 129 Phase III Implementation Order**. A copy of the Petition has been served pursuant to the included Certificate of Service.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donna M. J. Clark", written in a cursive style.

Donna M. J. Clark
Vice President and General Counsel

Enclosure

cc: Kriss Brown, Esq. (by Email)
EDCs Subject to Act 129

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Energy Efficiency and Conservation Program

Petition of the Energy Association of Pennsylvania for Clarification of Final Implementation Order : **Docket No. M-2014-2424864**

PETITION OF THE ENERGY ASSOCIATION OF PENNSYLVANIA FOR CLARIFICATION OF FINAL ACT 129 PHASE III IMPLEMENTATION ORDER ENTERED ON JUNE 19, 2015

The Energy Association of Pennsylvania (“EAP”), acting on behalf of its electric distribution company members (“EDCs”) subject to Act 129 of 2008,¹ hereby petitions the Pennsylvania Public Utility Commission (“PUC” or “Commission”) pursuant to 52 Pa. Code §§ 5.41 and 5.572 for clarification of the Commission’s Order in *Energy Efficiency and Conservation Program* Implementation Order entered at Docket No. M-201402424864 (“Final Implementation Order”) on June 19, 2015. Through the instant Petition, EAP is not seeking an evidentiary hearing to challenge or to delay the energy consumption and peak demand reduction requirements proposed by the Commission. EAP simply seeks clarification regarding language in the Final Implementation Order that is contradictory and asks the Commission to resolve said contradictions. In support of this petition, EAP states the following:

1. On June 19, 2015, the Commission entered the Final Implementation Order that sets forth the guidelines of the Energy Efficiency and Conservation (“EE&C”) Program for the period of June 1, 2016 through May 31, 2021 (“Phase III”) pursuant to 66 Pa. C.S. § 2806.1(a). Final Implementation Order at p. 10. In the Final Implementation Order, the Commission further

¹ EAP members subject to Act 129 include Duquesne Light Company (“Duquesne”); Metropolitan Edison Company (“Met-Ed”); PECO Energy Company (“PECO”); Pennsylvania Electric Company (“Penelec”); Pennsylvania Power Company (“Penn Power”); PPL Electric Utilities (“PPL”) and West Penn Power Company (“West Penn Power”).

tentatively adopted additional incremental reductions in electric consumption and peak demand for Phase III. *Id.* at p. 4.

2. EAP, as well as its member EDCs subject to Act 129, filed comments and reply comments to the *Energy Efficiency and Conservation Program Tentative Implementation Order* at Docket No. M-2014-2424864 entered on March 11, 2015 which preceded entry of the instant Final Implementation Order.

3. The Final Implementation Order addresses numerous issues that are central to the design, approval and implementation of the Act 129 Energy Efficiency and Conservation Plans (“Act 129 EE&C Plans”) which the EDCs subject to Act 129 will file later this year. The Final Implementation Order also provides guidance concerning how the Commission will ultimately determine compliance under Act 129 of 2008 with respect to whether EDCs have achieved the additional incremental reductions in electric consumption and peak demand ultimately established for Phase III.

4. In considering a petition for clarification, the Commission applies the same standard used for a petition for reconsideration. *See, e.g. Application of PPL Electric Utilities Corporation*, Docket Nos. A-2009-2082652 *et al.*, entered on April 23, 2010 and *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553 (1982).

5. EAP seeks clarification in a number of instances where there are separate statements in the Final Implementation Order on the same issue that are contradictory. These statements create uncertainty with respect to either the design criteria for the Phase III Act 129 EE&C Plans or the methodology/standards that the Commission will use to determine compliance under the statute. EAP believes that filing a Petition for Clarification is the most direct means to address the language discrepancies identified in the Final Implementation Order and is not challenging or

seeking to revise the energy consumption and peak demand reduction determinations contained in the Final Implementation Order.

6. Specifically, concerning the standard for demand reduction compliance, the Final Implementation Order contains two contradictory statements. On page 36, the Final Implementation Order states that “[t]he Commission will determine compliance with the peak demand reduction requirements outlined above **based on an average of the MW reductions obtained from each event called over the last four years of the Phase**” whereas on page 44, it reads, “Compliance will be determined **based on the average MW performance across all event hours in a given program year.**”

7. EAP believes that the language on page 44 providing “in a given program year” is inconsistent with Commission intent set forth on page 36 indicating that compliance will be based on the average of the MW reductions obtained from each event called over the last four years of the Phase. EAP requests that the phrase “in a given program year” on page 44 be deleted from the Final Implementation Order so as to resolve the inconsistency between these two statements.

8. In the Final Implementation Order, the Commission further outlined a new directive² regarding peak demand reduction, stating on page 36 that “while the compliance target tied to the penalties outlined in the Act is a single, average event requirement, we direct the EDCs **to obtain no less than 85% of the target in any one event**” (“85% directive”). EAP believes that this statement is at odds with footnote 47 on page 41 concerning demand reduction program design

² The Tentative Implementation Order did not propose the 85% directive. The Commission offers this requirement in the Final Implementation Order “to ensure that the Act 129 DR programs are incorporated into PJM annual forecasts, while providing a reasonably achievable minimum requirement for the EDCs”. Final Implementation Order at p. 43. EAP appreciates the Commission’s efforts to balance these concerns and provides information in paragraphs 10 infra. to address the underlying concerns which appear to have given rise to this additional directive.

criteria which states that “EDCs can include in their plans DR measures that allow for variation in the individual customers called and the length of time an individual customer participates in an event, **provided that the total average MW reduction over the four hours of an event equals or exceeds the EDC’s peak demand reduction requirement.**” The language in footnote 47 addresses a single event but does not reference the 85% directive.

9. With respect to the new 85% directive, EAP asks the Commission to clarify the discrepancy between the statements outlined above and to clarify that failure to meet this new directive does not subject the EDCs to the statutory penalty found at 66 Pa. C.S. § 2806.1(f). EAP recommends the following edits for consideration: (a) amend the final phrase of footnote 47 to read “provided that the total average MW reduction over all events equals or exceeds the EDC’s peak demand reduction requirement”; (b) clarify that the directive is for EDCs to design their Phase III EE&C Plans to obtain no less than 85% of the DR target in any one event; and, (c) add a sentence providing that the 85% directive will neither be considered in the context of determining compliance under Act 129 nor subject to the penalties prescribed under subsection 2806.1(f) of Act 129, 66 Pa. C.S. §2806.1(f).

10. EAP understands the Commission’s desire to have a minimum performance threshold as a means to ensure that the Act 129 demand reduction programs are “incorporated into PJM annual forecasts”. EAP is concerned that the additional 85% directive as currently stated will increase the EDC cost of compliance for the overall peak demand reduction target, particularly given the uncertainty of customer participation from hour to hour or from event to event. EAP believes the requirement for EDCs to target up to six events each year when the PJM day-ahead forecast for the PJM RTO is greater than 96% of the PJM RTO summer peak demand forecast, given the uncertainty of how many events will be called each year or in Phase III, will require

EDCs to achieve significant reductions in every event in order to ensure meeting the compliance target. Nevertheless, EAP offers the requested changes to clarify how the EDCs can meet the 85% directive and believes that the clarifications satisfactorily address the Commission's concerns.

11. Concerning demand reduction program design, the Commission revised its initial proposal prohibiting participation by a customer in both the Act 129 and PJM demand reduction programs and set forth a design in the Final Implementation Order that allows for dual participation. The Commission addressed stakeholder concerns regarding dual participation by the "imposition of a 50% discount on Act 129 DR incentives for dual enrolled accounts in Act 129 and PJM ELRP" and further provided "customers who do not dual enroll are still fully entitled to receive 100% of the Act 129 DR incentives designed by the EDCs." Final Implementation Order at p. 43. EAP believes that the description of the discount on page 43 conflicts with program design criteria language on page 44 which reads "[t]he EDCs, in their plans, must demonstrate that **the cost to acquire MWs from customers** who participate in PJM's ELRP is no more than half **the cost to acquire MWs from customers** in the same rate class that are not participating in PJM's ELRP." *Id.* at p. 44.

12. EAP seeks two clarifications relating to the manner in which the 50% discounted incentive is determined: (a) clarify that the reference to "discount" focuses on incentive costs **per kW** rather than the total budget of the incentives for either the "dual enrolled" or "Act 129 only" MW; and (b) clarify that the total discount for dual enrolled accounts is not prescribed to be 50% but is a discounted incentive of "no more than half" the incentive per kW paid to customers in the same rate class who do not participate in PJM's ELRP. In addition, the references at page 44 to the "cost to acquire" is different from the incentive concept inasmuch as

that term encompasses more than just the incentive cost. EAP recommends that the language at page 44 that states “the cost to acquire MWs from customers” should be stated as “the incentive cost per kW for customers” at both places bolded in paragraph 11 above.

13. EAP also seeks clarification with respect to the DR program design outlined on page 44 of the Final Implementation Order where there is contradictory language. Specifically, the criteria now provides that “Curtailment events shall be called for the first six days that **the peak hour of** PJM’s day-ahead forecast for the PJM RTO is greater than 96% of the PJM RTO summer peak demand forecast for the months of June through September each year of the program” and subsequently states that “Each curtailment event shall be called such that it will occur during the day’s forecasted **peak hours** above the 96% of PJM’s RTO summer peak demand forecast.” EAP believes that this language is inconsistent and that the intent is to call an event when there are 4 consecutive hours that exceed the 96% threshold so as to support a reduction in critical peak loads. If the day-ahead forecast projects only a few hours in excess of the 96% threshold, particularly where there may be a gap of more than 4 hours between each forecasted peak hour, there will be uncertainty as to whether or when to call an event, increased likelihood of a “snap back” load recovery following the event creating a higher peak, and uncertainty regarding whether the forecast will actually capture PJM peak load hours. EAP suggests the elimination of the phrase “**the peak hour of**” in the initial statement to clarify that the design criteria requires that at least 4 consecutive hours exceed the 96% threshold.

WHEREFORE, the Energy Association of Pennsylvania respectfully requests the Commission grant its Petition for Clarification by the issuance of an appropriate Order clarifying

the discrepancies identified above in the manner set forth herein and provide such other relief as the Commission deems necessary and proper.

A handwritten signature in blue ink, appearing to read "Donna M.J. Clark", is written over a horizontal line.

Donna M.J. Clark
Vice President and General Counsel
Energy Association of Pennsylvania
800 N Third Street, Suite 205
Harrisburg, PA 17102-2025
Atty. ID # 39866

Date: July 6, 2015

Certificate of Service

I hereby certify that I have served a copy of the foregoing **“Petition for Clarification of Final Act 129 Phase III Implementation Order”** on the persons listed below, by means of first-class mail:

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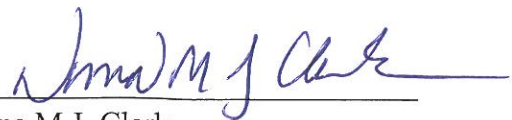
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