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May 1, 2020

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

Re: Petition to Amend the Commission's June 19, 2015 Implementation Order, Docket M-2014-2424864

Dear Secretary Chiavetta:

Enclosed for filing at the above-referenced docket, please find the Petition of the Energy Association of Pennsylvania to Amend the Commission's June 19, 2015 Implementation Order.

Service is being provided as indicated below and on the Certificate of Service.

Sincerely,

A handwritten signature in blue ink that reads "Donna M.J. Clark".

Donna M.J. Clark
Vice President & General Counsel

Enclosure

CC: John Herzog, Law Bureau (via email)
Kriss Brown, Law Bureau (via email)
Adam Young, Law Bureau (via email)
Darren Gill, Bureau of Technical Utility Services (via email)
Joseph Sherrick, Bureau of Technical Utility Services (via email)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ENERGY EFFICIENCY AND CONSERVATION PROGRAM : **DOCKET NO. M-2014-2424864**
:

**PETITION OF THE ENERGY ASSOCIATION OF PENNSYLVANIA TO AMEND THE
COMMISSION’S JUNE 19, 2015 IMPLEMENTATION ORDER**

I. INTRODUCTION

The Energy Association of Pennsylvania (“EAP”), acting on behalf of its electric distribution company (“EDC”) members subject to Act 129 of 2008,¹ hereby petitions the Pennsylvania Public Utility Commission (the “Commission”) pursuant to Sections 501(a) and 703(g) of the Public Utility Code, 66 Pa. C.S. §§ 703(g) and 52 Pa. Code § 5.572(d)² for an amendment of the Commission’s June 19, 2015 Energy Efficiency and Conservation (“EE&C”) Implementation Order at Docket No. M-2014-2424864 (the “*Phase III Implementation Order*”).³ Specifically, EAP is requesting that the Commission modify the *Phase III Implementation Order* to measure compliance with peak demand reduction (“DR”) targets based on EDC performance during the second, third and fourth program years of Phase III (June 1, 2017 through May 31,

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”).

² Section 5.572(d) of Chapter 52 of the Pennsylvania Code provides that “[p]etitions for rescission or amendment may be filed at any time according to the requirements of section 703(g) of the act (relating to fixing of hearings).” 52 Pa. Code § 5.572(d).

³ EAP participated in the proceeding at this docket and filed comments and reply comments to the Commission’s Tentative Phase III Implementation Order which preceded issuance of the June 19, 2015 Implementation Order.

2020) and permit EDCs to implement approved DR programs on a voluntary basis for the fifth and final program year (June 1, 2020 through May 31, 2021).

As described in more detail below, EAP members are seeking this amendment because the COVID-19⁴ pandemic has significantly impaired the ability of EDCs to achieve the DR targets established in the *Phase III Implementation Order* during the fifth program year of Phase III. EDCs meet Act 129's DR requirements through a variety of programs, including participation by Pennsylvania businesses to reduce electric demand during peak usage periods. Because of the COVID-19 pandemic, many of the businesses who partner with EDCs to reduce demand are now closed, or operating at a lower capacity, and the dates when more Pennsylvania businesses will reopen and at what operating capacity remains unknown. Further, those businesses that are able to operate at full capacity in the upcoming peak demand summer months of the final year of Phase III (June-September 2020) will likely be unable to curtail load at all or as much as planned before the COVID-19 pandemic as they seek to make up for lost production and earnings.

Because the proposed modification relates to Phase III DR compliance obligations that begin on June 1, 2020, EAP requests expedited consideration of this Petition.

II. BACKGROUND

1. On October 15, 2008, then Governor Edward G. Rendell signed into law Act 129, which, among other things, added Section 2806.1 to the Pennsylvania Public Utility Code. The

⁴ COVID-19 is the name given by the World Health Organization (WHO) on February 11, 2020 for the disease caused by the novel coronavirus SARS-COV-2. It started in Wuhan, China in late 2019 and has since spread worldwide. COVID-19 is an acronym that stands for coronavirus of 2019.

applicable provisions of Act 129 required certain Pennsylvania EDCs to file EE&C plans by July 1, 2009 containing the plan elements specified in Section 2806.1(b) (“EE&C Program”).⁵ 66 Pa. C.S. § 2806.1(b). Additionally, Sections 2806.1(c) and (d) required that EDCs’ EE&C plans be designed: (1) to reduce retail energy consumption by a minimum of 1% by May 31, 2011 and a minimum of 3% by May 31, 2013; and (2) to reduce peak demand, measured by reference to the 100 highest hours of demand, by a minimum of 4.5% no later than May 31, 2013. 66 Pa. C.S. § 2806.1(c) and (d).

2. If an EDC fails to achieve the reductions in consumption required under subsection (c) or (d), it is subject to a civil penalty of not less than \$1 million and not to exceed \$20 million. 66 Pa. C.S. § 2806.1(f)(2).

3. Act 129 further required the Commission, by November 30, 2013, and every five years thereafter, to evaluate the costs and benefits of the EE&C Program. If the benefits of the Program were found to exceed its costs, the Commission was directed to adopt “additional required incremental reductions in consumption” and “additional incremental requirements for reduction in peak demand.” 66 Pa. C.S. §§ 2806.1(c)(3) and (d)(2).

4. On August 3, 2012, the Commission entered its *Phase II Implementation Order*,⁶ adopting EDC-specific targets for reducing energy consumption for the next EE&C Program term (June 1, 2013-May 31, 2016).⁷ The Commission did not establish any Phase II DR requirement at that time because it did not have enough information to determine the cost-

⁵ 66 Pa. C.S. § 2806.1(l) exempts EDCs with fewer than 100,000 customers from this requirement.

⁶ *Energy Efficiency and Conservation Program*, Docket No. M-2012-2289411 (Order entered August 3, 2012) (“*Phase II Implementation Order*”).

⁷ *Phase II Implementation Order*, pp. 23-24.

effectiveness of the Phase I DR programs. The Commission did, however, allow EDCs to voluntarily offer cost-effective DR programs during Phase II.⁸

5. On June 19, 2015, the Commission issued its *Phase III Implementation Order* establishing both consumption reduction and DR targets.⁹ The DR targets established by the Commission were based upon a variety of assumptions about the availability of cost-effective demand reductions and PJM peak load forecasts.¹⁰

6. In recognition of the timing of Phase III implementation and Phase III program years, the Commission did not require EDCs to obtain peak demand reductions in the first year of Phase III (June 1, 2016-May 31, 2017).¹¹ EDCs were, however, permitted to seek Commission approval of a voluntary DR program for that period.¹²

7. For the remaining four years of Phase III (June 1, 2017-May 31, 2021), the Commission established EDC-specific DR targets expressed as a megawatt (“MW”) average annual potential savings for all EDCs subject to Act 129 requirements except Penelec.¹³ To meet the targets, the Commission directed EDCs to develop dispatchable demand response programs that would curtail load, according to the Commission’s specifications, for up to six curtailment events per year. Curtailment events would be called for the first six days that the peak hour of the day-ahead forecast by the PJM Interconnection, L.L.C. regional transmission organization

⁸ *Id.* at 33, 42.

⁹ *Phase III Implementation Order*, p. 35, p. 57.

¹⁰ *Id.* at 16-17 (discussing the potential demand response study prepared by the Statewide Evaluator for Phase III).

¹¹ *Id.* at 24, 35.

¹² *Id.* at 35.

¹³ *Id.* at 35.

(“PJM”) is greater than 96% of the PJM summer peak demand forecast for the months of June through September during each year of the program.¹⁴

8. To comply with its DR target, each EDC must demonstrate that the average MWs obtained during each event called over the four-year period equals or exceeds the average annual potential savings requirement for the EDC.¹⁵

9. In addition to the overall four-year DR target, the Commission established a requirement that EDCs obtain no less than 85% of the target during any one event.¹⁶ Failure to meet this per-event requirement alone does not subject an EDC to the penalties provided under 66 Pa. C.S. § 2806.1(f)(2), but could subject the EDC to the penalties prescribed under Chapter 33 of the Public Utility Code, 66 Pa. C.S. § 3301(a).¹⁷

10. Each EDC has successfully achieved an average annual savings that meets or exceeds its applicable DR target over the course of the thirteen events called during the second, third and fourth years of Phase III (June 1, 2017 through May 31, 2020).¹⁸

¹⁴ *Id.* at 43-44.

¹⁵ *Energy Efficiency and Conservation Program*, Docket No. M-2014-2424864 (August 20, 2015) (“*Phase III Clarification Order*”), p. 7, 14.

¹⁶ *Phase III Implementation Order*, p. 36.

¹⁷ *Phase III Clarification Order*, p. 10.

¹⁸ See, Duquesne Light’s *Semi-Annual Report for the June 1, 2019 through May 31, 2020*, Docket No. M-2015-2515375 at pp. 6-7, Table 2; FE Companies’ *Semi-Annual Reports to the Pennsylvania Public Utility Commission*, Docket No.’s M-2015-2514767, M-2015-2514769, and M-2015-2514772, at pp. 20-21; PECO’s *Phase III Semi-Annual EE&C Report for the June 1, 2019 through May 31, 2020*, Docket No. M-2015-2515691 and *Demand Response Performance Annual Report*, Docket No. M-2015-2515691 at pp. 2-3 and Table 1; and PPL Electric Utilities Corporation’s *Semi-Annual Report for the Period June 1, 2019 through May 31, 2020 and Demand Response Annual Report for the Period June 1, 2019 through November 30, 2019, Program Year Eleven (11)*, Docket No. M-2015-2515642, at pp. 5-6.

III. PROPOSED AMENDMENT TO THE PHASE III IMPLEMENTATION ORDER

A. COVID-19-Related Impacts To Pennsylvania Communities and Businesses Will Impair The Ability Of EDCs To Make Necessary Load Curtailments During Future Events

11. On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency due to the emergence of COVID-19 in the United States and the Commonwealth of Pennsylvania.¹⁹

12. On March 19, 2020, the Governor ordered all non-life-sustaining businesses in Pennsylvania to close their physical locations to slow the spread of COVID-19.²⁰

13. On April 1, 2020, the Governor issued a statewide “stay at home” order,²¹ which has since been amended to extend the stay at home period until May 8, 2020.²²

14. As of April 30, 2020, the Pennsylvania Department of Health has reported 45,763 cases of COVID-19 in the Commonwealth, with a total of 2,292 COVID-19 deaths.²³ COVID-19 cases are now in every county in Pennsylvania.²⁴ In the last five weeks, as more businesses have closed or suspended operations, more than 1.5 million Pennsylvanians have filed unemployment claims.²⁵

¹⁹ See <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf>

²⁰ See <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-TWW-COVID-19-business-closure-order.pdf>.

²¹ See <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200401-GOV-Statewide-Stay-at-Home-Order.pdf>

²² See <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200420-GOV-Stay-at-Home-Order-Amendment.pdf>

²³ Daily COVID-19 Data for Pennsylvania, Pennsylvania Department of Health, <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx>.

²⁴ *Id.*

²⁵ Unemployment Compensation Claim Statistics & COVID-19, Pennsylvania Department of Labor and Industry, available at <https://www.uc.pa.gov/COVID-19/Pages/UC-Claim-Statistics.aspx>.

15. The impact of the COVID-19 pandemic on Pennsylvania communities and businesses is deep, broad, and will continue into the fifth and final year of Phase III. While the full impact cannot be predicted, the current orders closing non-essential businesses in Pennsylvania and other states have already resulted in substantial reductions in demand for electricity, with PJM reporting a decline in weekday demand of between eight and ten percent.²⁶

16. In the months immediately preceding the Phase III DR performance period beginning on June 1, 2020, customer outreach by CSPs has been and will continue to be severely hampered. Pursuant to orders issued by the Commonwealth, program promoters could not meet with customers, attend trade group meetings, or conduct many of the planned and contracted for customer outreach program activities.

17. The COVID-19-related impacts on Pennsylvania businesses will materially impair the ability of EDCs to meet their Phase III DR targets for reasons outside the control of the EDCs. Each EDC, for example, relies upon customers enrolled in the EDC's DR program to curtail load during called events. As a result of the COVID-19 pandemic, some businesses will be unable to make curtailments because they have not yet restarted operations, they are operating at a reduced capacity, or they have gone out of business. Other enrolled businesses may be unable (or no longer willing) to curtail load because they need to make up for production and earnings lost during COVID-19-related closures.

18. If customer participation during curtailment events due to COVID-19 effects on Pennsylvania businesses is insufficient, the EDCs will not achieve the curtailment levels required to meet their DR targets.

²⁶ PJM Coronavirus (COVID-19) Information, available at <https://www.pjm.com/about-pjm/newsroom/info-connection.aspx>.

19. If an EDC fails to meet its Phase III DR target, it will be subject to a penalty of not less than \$1 million, up to a maximum of \$20 million. If an EDC fails to achieve at least 85% of its DR target during each event, it could also be subject to additional civil penalties.

20. The Covid-19 pandemic impacts were not envisioned when the Commission established the DR targets and the EDCs should not be subject to penalties for factors beyond their control.

B. The Commission Should Measure DR Compliance Based On EDC Performance During Years Two Through Four And Make DR Programs Voluntary For The Fifth and Final Year Of Phase III

21. While every EDC's DR program has met or exceeded the applicable DR target during the second, third and fourth program years of Phase III,²⁷ those targets were established in 2015. Any EDC underperformance during the fifth year of Phase III against the targets established in the *Phase III Implementation Order* due to the COVID-19 pandemic has the potential to push an EDC out of compliance and expose the EDC to both statutory and civil penalties.

22. To address the significant penalty risk created by COVID-19-related events wholly outside of the EDCs' control, EAP requests that the Commission amend the Phase III Implementation Order to measure DR compliance based on EDC performance during the second, third and fourth years of Phase III. As in the first year of Phase III, the Commission should permit continued EDC DR program implementation during the fifth year of Phase III on a voluntary basis.

²⁷ See ¶ 10 *supra*.

23. The option to continue DR programs on a voluntary basis through the end of the Phase has a variety of benefits. Those customers who are able to continue to participate in EDC DR programs will continue to receive compensation for their load curtailment activities. In the event a curtailment event is called, all customers will continue to receive the benefits associated with Act 129 demand reduction programs. In addition, conservation service providers (CSPs) who provide demand reduction-related services can continue to be compensated under EDC voluntary programs. Finally, DR programs can continue to provide these benefits without the risk of those programs “going dark” in Phase III and without the risk of millions of dollars of penalties arising from the effects of the COVID-19 pandemic on EDC customers.

24. The Commission has the general power to rescind or modify its own orders pursuant to Section 501(a) of the Public Utility Code, 66 Pa. C.S. § 501(a). *See also*, Section 703(g) of the Public Utility Code, 66 Pa. C.S. § 703(g) which provides, in part, that “[t]he commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it.” 66 Pa. C.S. § 703(g). In order to implement the proposed modification, EAP proposes two revisions to the *Phase III Implementation Order*, as shown below:

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The targets outlined above apply for the ~~other four~~ **second, third and fourth** program years in Phase III. However, this does not preclude an EDC from including in its EE&C Plan **or otherwise making**, a request that the Commission approve a voluntary DR program for the first **and/or fifth** year of Phase III.

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Many parties request clarification regarding how the Commission will be determining compliance with the Phase III DR targets on an annual basis or on an average annual basis. Initially, we note that the DR targets outlined above represent the average number of MW reductions in each hour of an event. The 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~~ **second, third and fourth** years of the Phase.

25. The amendments proposed herein by EAP to language in the Final Implementation Order are specific and narrow in scope and the particular request to the Commission, to permit EDCs to implement previously approved DR programs on a voluntary basis for the fifth and final program year of Phase III which begins on June 1, 2020, is tailored to the highly unusual circumstances and unforeseen risks arising from the impacts of the COVID-19 pandemic. The relief sought will benefit the EDCs, their participating customers and the DR CSPs. *Accord, ARIPPA v. Pennsylvania Public Utility Com'n*, 792 A.2d 636, (Cmwlth. Ct. 2002), *appeal denied*, 815 A.2d 634 - 635 (2003) (Commission has the power to modify prior orders and such changes do not violate due process) and *West Penn Power Co. v. Pennsylvania Public Utility Com'n*, 659 A.2d 1055 (Cmwlth. Ct. 1995) (Statutory relief of rescission or amendment of Commission order should be granted judiciously and only under appropriate circumstances, because such relief may result in disturbance of final orders).

IV. REQUEST FOR EXPEDITED CONSIDERATION

26. The amendments being requested in this Petition relate to DR compliance obligations that begin on June 1, 2020. Although some previously participating businesses have already notified their DR CSP and applicable EDC that they do not plan to participate in DR programs this summer, others are uncertain if and to what extent they will be able to curtail load this summer. This situation is placing undo concerns on both DR program CSPs and the EDCs who are trying to determine how to fulfill their obligations and meet their Phase III DR targets in this highly uncertain and unforeseen environment. In order to avoid this uncertainty for EDCs,

the DR program CSPs, and Pennsylvania businesses enrolled in the EDC DR programs, EAP requests that the Commission consider and rule on the Petition on an expedited basis.

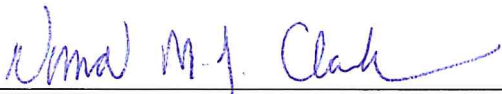
V. NOTICE

27. EAP is serving copies of this filing on the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Commission’s Bureau of Investigation and Enforcement, and the parties in the Phase III EE&C proceedings of each EAP member EDC subject to Act 129.

VI. CONCLUSION

Based upon the foregoing, EAP respectfully requests that the Commission expeditiously grant this Petition and issue an order amending the Phase III Implementation Order which adopts the changes proposed in the instant Petition.

Respectfully submitted,



Terrance J. Fitzpatrick (Pa. No. 35287)
President & CEO
Donna M.J. Clark (Pa. No. 39866)
Vice President & General Counsel
Energy Association of Pennsylvania
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*Counsel for The Energy Association of
Pennsylvania*

May 1, 2020

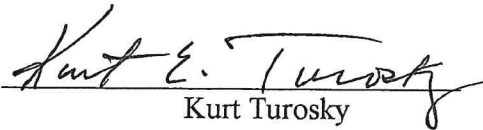
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Re: Petition to Modify Commission June 19, 2015 Implementation Order;
Docket No. M-2019-2424864**

VERIFICATION

Kurt Turosky, Director, Energy Efficiency Compliance & Reporting, FirstEnergy Service Company, hereby states that the facts set forth in the above-referenced Petition with respect to Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company are true and correct to the best of his knowledge, information and belief and that he expects the aforesaid Companies to be able to prove the same at a hearing held in this matter. The statements herein are made subject to the penalties of 18 Pa. C.S. § 4904.

Date: May 1, 2020


Kurt Turosky

VERIFICATION

I, Dave Defide, hereby declare that I am the Senior Manager, Customer Programs for Duquesne Light Company; that, as such, I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Petition relating to Duquesne Light Company are true and correct to the best of my knowledge, information and belief; and that I make this verification subject to the penalties of 18 Pa.C.S. § 4904 pertaining to false statements to authorities.

A handwritten signature in black ink, appearing to read "Dave Defide", with a long horizontal stroke extending to the right.

Date: May 1, 2020

VERIFICATION

I, Dirk S. Chiles, hereby declare that I am the Manager – Energy Efficiency for PPL Electric Utilities Corporation; that, as such, I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Petition relating to PPL Electric Utilities Corporation are true and correct to the best of my knowledge, information and belief; and that I make this verification subject to the penalties of 18 Pa.C.S. § 4904 pertaining to false statements to authorities.

Date: May 1, 2020



VERIFICATION

I, Doreen Masalta, hereby declare that I am the Director of Energy and Marketing Services for PECO Energy Company; that, as such, I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Petition relating to PECO Energy Company are true and correct to the best of my knowledge, information and belief; and that I make this verification subject to the penalties of 18 Pa.C.S. § 4904 pertaining to false statements to authorities.

Date: May 1, 2020

Doreen Masalta.

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

ENERGY EFFICIENCY AND CONSERVATION PROGRAM : **Docket No. M-2014-2424864**

CERTIFICATE OF SERVICE

I hereby certify that I have this date served true and correct copies of Petition of the Energy Association of Pennsylvania to Amend the Commission's June 19, 2015 Implementation Order on the following individuals, in the manner specified, in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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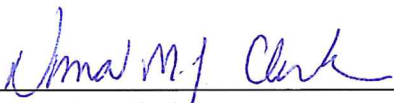
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DATE: May 1, 2020



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