

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Petition to Amend Commission's June 19,
2015 Act 129 Phase III Implementation Order

Public Meeting May 21, 2020
3018867-LAW
Docket No. M-2014-2424864

**JOINT MOTION OF CHAIRMAN GLADYS BROWN DUTRIEUILLE AND
COMMISSIONER JOHN F. COLEMAN, JR.**

Before us for consideration is the Petition of the Energy Association of Pennsylvania (EAP) filed pursuant to Sections 501(a) and 703(g) of the Public Utility Code, 66 Pa. C.S. §§ 501(a), 703(g), and 52 Pa. Code § 5.572(d) for an amendment of the Commission's June 19, 2015 Energy Efficiency and Conservation (EE&C) Program Implementation Order at the above-captioned docket.¹ EAP requests that the Commission modify the *Phase III Implementation Order* to measure compliance with peak demand reduction (DR) targets based on electric distribution company (EDC) performance during the second, third, and fourth program years of Phase III (June 1, 2017 through May 31, 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). The EAP sought expedited consideration of this Petition.

This Petition was filed on May 1 by the EAP on behalf of its member companies, and was served on all parties to the Phase III Act 129 proceedings of those same electric distribution companies.

The EAP seeks modification of the Phase III Implementation Order, and requests that we amend it by eliminating the obligation to obtain peak demand reductions during the fifth program year, and instead measure compliance based on the second, third and fourth years of Phase III. The EAP states that the COVID-19 pandemic, Pennsylvania's mandated closure of non-essential businesses, and the subsequent effects on Pennsylvania's economy has substantially reduced electric demand, will be a significant obstacle to EDCs' achievement of mandated targets, and accordingly increase the risk that they will be subject to significant compliance penalties.

In support of its Petition, the EAP cites to the substantial number of unemployment claims made in Pennsylvania, and significant reported weekday declines

¹ *Energy Efficiency and Conservation Program*, Docket No. M-2014-2424864 (Implementation Order entered June 19, 2015) (*Phase III Implementation Order*).

in peak demand by PJM Interconnection, LLC.² We take judicial notice of the most current PJM data and Pennsylvania unemployment compensation claims, which stand at 1,889,657 as of May 15, 2020 according to the Pennsylvania Department of Labor and Industry. As another sign of significant economic contraction, we also take notice of Pennsylvania's reported General Fund revenue collections as of May 1, 2020, which were \$2.2 billion less than anticipated for the month of April 2020. While the Department of Revenue believes most of this missing revenue is due to delayed payment, it believes that approximately \$395 million of the shortfall was due to reduced economic activity in April.³ Additionally, all of Pennsylvania's counties remain under either "Phase Red" or "Phase Yellow", both of which entail significant restrictions on economic activity.

The Office of Consumer Advocate (OCA) and the Pennsylvania Energy Consumer Alliance, comprised of the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Philadelphia Area Industrial Energy Users Group, the PP&L Industrial Customer Alliance, and the West Penn Power Industrial Intervenors (collectively, "Industrial Customers") filed answers to EAP's Petition. Advanced Energy Management Alliance (AEMA) filed reply comments. In its Answer, the Industrial Customers recommend that the Commission grant EAP's Petition under three conditions:

- 1) The Commission clarify that customers who had commitments to do DR under Act 129 programs are not penalized during the remainder of Phase III;
- 2) The Commission order an immediate reduction of the projected 2020 cost for the EE&C DR program by at least 50% to 75%, to be reflected in revised EE&C surcharges, beginning June 1, 2020; and
- 3) The Commission require the EDCs to closely monitor actual and projected EE&C expenditures for all measures during the June 1, 2020 to May 31, 2021 program year for Phase III and to implement interim adjustments to the EE&C surcharges if the actual conditions vary from the assumptions used to establish the June 1, 2020 rates.

The AEMA likewise supports the requested relief in the EAP Petition, which makes programs voluntary this summer and allows for continuity, while supporting the overall objectives of Phase III peak shaving programs. In addition to approving the EAP request, AEMA requests the Commission direct utilities to modify their contracts with Conservation Service Providers ("CSP") to align CSP obligations with the revised obligations of the utilities. Moreover, AEMA requests that an amended Implementation

² In PJM's latest update from May 11, it reports that the average, weather adjusted decline in weekday peaks since March 24 is 10%, with a range from 6.5% to 15.2%. Total energy usage is down by 7.9% on average since March 24. PJM Pandemic Coordination Page.

³ <https://www.media.pa.gov/Pages/Revenue-Details.aspx?newsid=315>

Order include direction to utilities and applicable CSPs to modify their contracts with CSPs and CSP subcontractors respectively to eliminate penalty provisions for 2020 or otherwise align these provisions consistent with any utility incentives that are established through an amendment.

Finally, the OCA concurs with EAP's requested relief as it provides a reasonably balanced means to addressing the current crisis. The OCA particularly supports EAP's request that the EDCs be permitted to proceed with voluntary demand response programs in Program Year 5.

When reviewing a petition to revise or amend a previous Order the Commission is guided by the *Duick* standard. A petition under Section 703(g) may "properly raise any matter designed to convince the commission that it should exercise its discretion . . . to rescind or amend a prior order in whole or in part," at the same time "[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them."⁴ We believe that the standard set forth in *Duick* has been met insofar as the extraordinary circumstances involving COVID-19 provide new and novel arguments which compel reconsideration of the Phase III Implementation Order final year DR targets. We also find that the under the present circumstances and consistent with our prior actions, that the EAP Petition warrants expedited consideration.⁵

Further, we find the relief sought via this instant Petition is reasonable and in the public interest. It is clear that to date, electricity usage and business operations have been altered substantially. To that end, reclassifying the DR targets for the final year of Phase III provides an appropriate balance of 1) offering customers and DR service providers access to the Act 129 DR programs, 2) insulating utilities from unmanageable risk, and 3) preventing the DR programs from completely 'going dark' for the upcoming summer. The relief sought here is reasonable because of the pandemic effects on electricity and businesses and the timeframe applicable to the Petition. Here, EAP seeks the unique and specific remedy to reclassify the DR program criteria for June 2020 through September 2020 – a period that is immediately impending and only lasts four months. As such, we find it prudent to approve the EAP's Petition.

We do not believe we should adopt the Industrial Customers and AEMA conditions at this time. The EDCs will need to review, revise and propose amendments

⁴ *Duick v. Pennsylvania Gas and Water Company*, Docket No. C-R0597001 *et al.*, 56 Pa. P.U.C. 553 (Order entered December 17, 1982)

⁵ *Re Suspension of Regulatory and Statutory Deadlines; Modification of Filing and Service Requirements*, M-2020-3019262 (Emergency Order entered March 20, 2020).

to their existing Phase III plans as a result of the disposition of this Petition. EDCs should carefully consider the effect of granting this Petition on customer DR obligations and CSP contracts and make appropriate and necessary modifications. EDCs should also carefully evaluate the opportunities for cost-effective, voluntary DR reductions for the final year of Phase III, and take into consideration the impact of the COVID-19 pandemic on their customers and their utility service. To the extent any EDC experiences DR program expense reductions due to approval of the EAP Petition, those changes will naturally be reflected in EDCs cost-recovery mechanisms. Accordingly, EDCs should file any necessary plan amendments as soon as reasonably possible, consistent with Commission procedures for seeking modifications of Act 129 plans.

We note that approval of the EAP Petition should not be interpreted as an opportunity for EDCs to abolish DR this summer. We encourage EDCs to continue offering Act 129 DR products and services this summer to the extent customer participation is still accessible.

Finally, our disposition on this instant EAP Petition is based on the unique facts and circumstances established by the EAP Petition and the relief sought therein. Approval of this Petition should not be construed as prejudicial to any other subject matter related proceedings currently pending or in the future.

THEREFORE, we move that:

1. The Energy Association of Pennsylvania's Petition to Amend our Phase III Implementation Order of June 19, 2015 is granted, consistent with this Joint Motion.
2. The Law Bureau prepare an Order consistent with this Motion.



GLADYS BROWN DUTRIEUILLE
CHAIRMAN



JOHN F. COLEMAN, JR.
COMMISSIONER

Date: May 21, 2020