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April 27, 2015

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

**Re: Act 129 Energy Efficiency and Conservation Program Phase III
Docket No. M-2014-2424864**

Dear Secretary Chiavetta:

Enclosed for filing please find the comments of the Energy Association of Pennsylvania to the Tentative Implementation Order at the above-referenced docket.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donna M. J. Clark", with a long horizontal flourish extending to the right.

Donna M. J. Clark
Vice President and General Counsel

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Energy Efficiency and Conservation Program

:

Docket No. M-2014-2424864

**Comments of the
Energy Association of Pennsylvania
To Act 129 Phase III Tentative Implementation Order**

I. Introduction

On March 11, 2015, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) entered a Tentative Implementation Order (“Phase III Tentative Implementation Order”) to continue the process of evaluating the costs and benefits of a Phase III Energy Efficiency and Conservation Program that is scheduled to begin on June 1, 2016. The Phase III Tentative Implementation Order set forth proposed additional required incremental reductions in electric energy consumption and peak demand under Act 129 of 2008 and addressed numerous issues which, when resolved, will ultimately determine the design and implementation of individual energy efficiency and conservation plans (“EE&C Plans”) slated to be filed by the large electric distribution companies (“EDCs”) in Pennsylvania in the late fall of 2015.¹ In turn, those EE&C Plans, once approved by the Commission, will provide a roadmap for spending hundreds of millions of dollars each year² to achieve public policy objectives outlined by the General Assembly in the preamble to Act 129.

¹ “Act 129 EE&C Tentative Phase III Planning Timeline.” Energy Efficiency and Conservation Program. *PUC*. 23 April 2015.
http://www.puc.pa.gov/filing_resources/issues_laws_regulations/act_129_information/energy_efficiency_and_conservation_ee_c_program.aspx

² During Phase I, EDCs spent collectively \$803.7 million on implementing their EE&C Plans as well as \$10.8 million on funding the Phase I Statewide Evaluator contract. Estimated costs for each program year, excluding the

The Phase III Tentative Implementation Order provides thirty days for public input from the date published in the *Pennsylvania Bulletin* (i.e., March 28, 2015) and allows an additional fifteen days for reply comments. The Energy Association of Pennsylvania (“EAP” or “Association”) provides comments to the Phase III Tentative Implementation Order in addition to the specific comments filed by its EDC members subject to the provision of Act 129.³

II. Comments

A. Public Interest Supports A Phase III Energy Efficiency and Conservation Program Focused on Reductions in Electric Consumption

EAP believes that current public policy considerations support an approach to Phase III which is straightforward and leverages the lessons learned and collaborative stakeholder processes developed during the Phase I and Phase II Energy Efficiency and Conservation Programs. EAP maintains that a Phase III Program based only on a complex technical analysis undercuts the design flexibility needed by EDCs to comply with the law and limits the opportunity for the development of EE&C Plans which include the more-comprehensive and innovative measures sought by stakeholders.

As detailed below, EAP contends that an examination of the current process employed to establish the parameters for subsequent phases of Act 129 and to decide the specific EDC compliance mandates forces an over reliance on one approach supported by the opinion of a single expert. EAP maintains that the current process employed to set reduction targets undercuts the very notions of due process and reasonableness that the Commission strives to

Statewide Evaluator contract, are approximately \$250 million in the aggregate. *See*, Phase III Tentative Implementation Order at p. 11.

³ 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”).

protect and undervalues the role of agency discretion in setting public policy. Recognizing the time constraints imposed by Act 129, EAP suggests that the final implementation order provide for a Phase III Energy Efficiency and Conservation Program focused on consumption reduction so as to mitigate the numerous variables and assumptions used to support the proposed demand reduction targets.

Under the current process, the Commission seeks public comment to a generic order which sets forth its initial determination to require a Phase III Energy Efficiency and Conservation Program under Act 129 and establishes specific EDC mandated targets for additional reductions in energy consumption and peak demand during Phase III. That initial determination and the proposed specific targets are in large part based on a series of studies conducted by the Act 129 Statewide Evaluator (“SWE”) beginning with an Act 129 Demand Response Study – Final Report initially released in May of 2013 and culminating with the release of the SWE Energy Efficiency and Demand Response Potential studies on February 27, 2015.⁴

The current process used to consider a new Act 129 phase was developed at the conclusion of Phase I. At that point, the Commission and the EDCs, along with all the stakeholders, sought to create a seamless path from Phase I EE&C Plans into the Phase II Energy Efficiency and Conservation Program while meeting the compliance and evaluation deadlines set by the law. The process established, however, does not afford the Commission as fact finder

⁴ The SWE Act 129 Demand Response Study initially released in May 2013 and then subject to input from stakeholders was amended and finally released in November 2013. That Study formed the basis of the Commission decision in February 2014 to move forward and have the SWE undergo studies to determine market potential for demand response in addition to energy efficiency. Corollary to the completion of market potential studies, the SWE finalized Residential and C&I Baseline Studies in 2014. The Demand Response & Energy Efficiency Market Potential Studies were released on February 27, 2015. The Market Potential Studies along with an Addendum entitled *Application of Market Potential Study Results to Phase III* made available to the public in early March form the basis for the proposed mandates contained in the Phase III Tentative Implementation Order. All studies available on the PUC website and collectively number 1000’s of pages including numerous charts and appendices.

with the opportunity to consider expert opinion other than that of the SWE prior to issuing an initial determination on mandates which is comparable in scope and impact to the initial Administrative Law Judge (“ALJ”) determination in a base rate proceeding.

Under Act 129, the stakes are high. EDCs face mandatory penalties⁵ of up to \$20 million for failure to meet the Commission determined targets. 66 Pa. C.S. §2806.1 (f) (2). And, while budgets are capped, the EDCs, in the aggregate, spend and will continue to spend approximately a quarter of a billion dollars in ratepayer funds each year. Setting appropriate and achievable reduction targets prior to the beginning of a new Energy Efficiency and Conservation Program is crucial to the implementation of successful plans that deliver verifiable savings to customers and achieve legislative policy goals.

The Phase III Tentative Implementation Order proposes an identical process to that utilized between the first two phases of Act 129 for EDCs to review and challenge the reduction targets. An evidentiary hearing is available upon petition by the EDC only after the Commission renders a final order in the generic process. As before, the issues which may be raised in the hearing are narrow in scope and the timeframe for the proceeding is necessarily constrained by the fact that Phase III is set to begin on June 1, 2016. *See*, Phase III Tentative Implementation Order at pp. 70 – 72.

On the one hand, presenting expert opinion(s) to counter the Commission’s expert during the generic order process is unwieldy and arguably does not afford the due process protection that the Commission strives to provide.⁶ Attaching an expert report to comments would not

⁵ Commission has previously determined that the legislation affords it with no discretion to consider the best efforts or reasonableness of the EDC when imposing penalties for non-compliance even where the non-compliance is de Minimis.

⁶ EAP does not question that the intent of the current process is to provide due process protections to all parties but asserts that the process is suspect when considering the outcome of noncompliance and the reality that the crucial studies which form the basis of the initial finding were first released to the public on February 27 and consist of hundreds of pages of text along with appendices containing data and mathematical analysis. The adequacy of the

provide any stakeholder, including the EDCs or the Commission as fact finder, with an opportunity to question the expert so as to test the strength or veracity of the new opinion.

At the same time, waiting until an after-the-fact evidentiary proceeding to question the Commission's expert and/or to present a different expert opinion is also problematic. The EDC must convince the fact finder that the target is wrong and that either the underlying studies are flawed or that a different methodology to set the target is more fair and reasonable. Any stakeholder who intervenes, including the statutory advocates, is similarly constrained. And, any evidentiary hearing sought must proceed against the backdrop of a June 1 start date for the next phase, the need for filing and approval of the next EE&C plan, and all the practicalities of working towards a smooth transition from one phase to the next.⁷ The process is even more complicated with respect to Phase III as compared to Phase II where the Commission is proposing both energy efficiency and peak demand reduction mandates supported by complex studies from a single expert numbering hundreds of pages that were released to the public less than two weeks prior to the entry of the Phase III Tentative Implementation Order.

Further, it is worthy of consideration that as compared to the end of Phase I, the Phase II Energy Efficiency and Conservation Program will transition into Phase III while a number of key public policy issues are being debated and/or litigated at the federal level. The resolution of these policy considerations will inevitably elevate the importance to the Commonwealth of maximizing the amount of cost-effective and verifiable energy savings and may reconfigure the PJM market for demand response. Almost all of the stakeholders including the EDCs raised the

timeframe for evaluation by EDCs and their experts as well as the statutory advocates and other stakeholders is further constrained when considering that the Phase III Tentative Implementation Order was issued on March 11 and the first opportunity parties had to ask questions of the SWE on the studies was on April 8, only 19 days before comments are due.

⁷ RFPs for CSPs, finalizing EM&V for Phase II, closing Phase II measures while opening the same measure in Phase III, and launching new measures to name a few.

uncertainties surrounding Proposed Rule 111(d)/EPA's Clean Power Plan and the issues involving the appeal of FERC Order 745 in filing their comments to the Commission's October 23, 2014 Secretarial Letter as circumstances to consider as the parameters and policies for Phase III are developed.

The Commission recognized that the outcome of these issues *may* affect the Phase III Energy Efficiency and Conservation Program but expressed reticence to consider these uncertainties in its Phase III Tentative Order proposals. Instead, the Commission relied on the fact that the direction established for Phase III can be reconsidered at a later date should the uncertainties be resolved and that both interested parties and the EDCs themselves can seek plan changes. *See*, Phase III Tentative Implementation Order at pp. 16-17. EAP believes that considering the extent of the human and financial resources that would be involved in modifications necessary to redirect approved EE&C Plans, it is reasonable and prudent to craft a Phase III Energy Efficiency and Conservation Program dependent on the more certain predictions of achieving cost-effective energy efficiency savings.

EAP urges the Commission to reconsider its reticence and exercise its discretion now as planning for Phase III continues and support a simpler approach that is less dependent on uncertain events, assumptions and market forces beyond the control of EDCs. EAP suggests that the Commission set aside its proposal to mandate new peak demand reduction targets beginning in year two of Phase III.⁸ Although the SWE proposed a program design which suggests cost-effectiveness peak demand reduction is possible in Phase III, it also stressed that numerous

⁸ EAP appreciates that the Commission proposal recognizes the impossibility of achieving a peak demand reduction target by May 31, 2017 as required under Act 129, *see* 66 Pa. C.S. §2806.1 (d) (2), but believes this underscores the convoluted nature of the peak demand reduction proposal and supports a Phase III focused first on consumption reduction which the SWE concluded is a better return on investment in general. *See* Slide 1 of Presentation of Findings – SWE Demand Response Potential Report – April 8, 2015.

assumptions were necessary to determine the potential for and cost-effectiveness of demand reduction in each EDC service territory and to achieve success using the proposed model. For example, the proposed design may result in zero events in a cool summer such as Pennsylvania experienced in 2008, 2009 and 2014, increasing the risk of non-compliance based on the weather, given lower overall loads and fewer event opportunities to achieve the mandate. While the new design may arguably be more cost-effective and less subject to uncertainty than that dictated by the statute in Phase I, it does not alleviate the real risk that variables beyond the control of EDCs will ultimately determine plan success and regulatory compliance.

Based on the totality of the circumstances as set forth above, EAP urges the Commission to exercise its discretion and decide that it is in the public interest to focus primarily on reductions in electric consumption during the Phase III Energy Efficiency and Conservation Program. The Commission could afford EDCs the opportunity to include voluntary cost-effective peak demand reduction measures in their Phase III EE&C Plans by establishing adjustable consumption reduction targets based on the amount of funds allocated to demand reduction.⁹ EAP urges the Commission to consider the constraints imposed by the current process to set targets and the acknowledged policy uncertainties existing at the federal level together with the penalty risk embedded in Act 129 and opt for a Phase III Energy Efficiency and Conservation Program that is less dependent on the numerous uncertain assumptions and variables beyond the control of EDCs.

⁹ EAP suggests that such a flexible approach that provides for peak demand reduction programs without mandated targets would also align with the SWE assessment, acknowledged by the Commission, that energy efficiency measures provide a greater net benefit to ratepayers than savings derived from demand response. *See, supra.* at fn. 8.

B. The Commission Can Exercise its Discretion and Refrain from Mandating Peak Demand Reductions in Phase III

The statutory language of Act 129 established specific targets for reductions in electric consumption and peak demand which were to be achieved by May 31, 2013. 66 Pa. C.S. §2806.1(c) & (d). Failure to meet those targets subjected the EDCs to stiff penalties. 66 Pa. C.S. §2806.1(f)(2). The General Assembly tasked the Commission with determining by November 30, 2013 whether those efforts were cost-effective so as to warrant the adoption of “additional required incremental reductions in consumption”, 66 Pa. C.S. §2806.1 (c)(3), and/or “additional incremental requirements for reduction in peak demand”, 66 Pa. C.S. §2806.1(d)(2).

With respect to reductions in electric consumption, Act 129 provides that the Commission shall evaluate the costs and benefits of the Energy Efficiency and Conservation Program and plans approved under that Program “by November 30, 2013 and every five years thereafter” 66 Pa. C.S. §2806.1(c)(3). In contrast, for peak demand reductions, the statute requires the Commission to compare the costs and benefits achieved in Phase I by November 30, 2013, determine whether the benefits of the plans exceed the costs and, if so, “set additional incremental requirements for reduction in peak demand for the 100 hours of greatest demand or an alternative reduction approved by the Commission” with any additional “reductions in consumption required by the Commission...accomplished no later than May 31 , 2017. 66 Pa. C.S. §2806.1(d)(2).

The General Assembly set distinct tasks for the Commission to accomplish in examining cost-effectiveness at the conclusion of Phase I as it pertains to reductions in electric consumption and peak demand. The statutory language clearly envisions the setting of future targets to reduce electric consumption so long as it proves to be cost effective in Phase I and every five years

thereafter. The language is arguably less than clear as it pertains to mandated reductions in peak demand after May 31, 2017. *Cf.* Final Order Re: Peak Demand Reduction Cost-Effectiveness Determination, Docket M-2012-2289411 and M-2008-2069887 entered on February 20, 2014, pp. 8 -17 wherein the Commission addressed concerns raised by EAP and others that peak demand reductions were not authorized beyond 2013 when such reductions in Phase I proved to be uneconomic. By way of *dicta*, the Commission analyzed the statutory language and found that it may mandate further peak demand reductions under subsection 2806.1 (d)(2) even where the top 100 peak hour methodology employed in Phase I was uneconomic¹⁰ if an alternative reduction was projected to be economically viable. *Id.* at p. 17. The Commission opined that “it must require those demand reduction strategies that make economic sense.” *Id.* at p. 16. The Commission subsequently proposed an alternative model to reduce peak demand in a future phase that the SWE then opined had the attributes of cost-effectiveness. The Commission next directed the SWE to conduct the Demand Response Potential Study which was released in February 2015 and ultimately formed the basis for the proposed peak demand reduction targets in the Phase III Tentative Implementation Order.

There are numerous concerns and uncertainties associated with the assumptions and variables contained in the SWE demand response potential study and no opportunity afforded to either the EDCs or stakeholders to raise, correct or resolve such questions prior to the issuance of this Phase III Tentative Implementation Order. For example, EAP suggests that assumptions used in determining potential resulted in a significant overstatement of the actual EDC peak demand reduction potential and target; that the use of average historical PJM participation in lieu

¹⁰ The Commission ultimately confirmed that Phase II peak demand reduction would not have been economically viable using the top 100 peak hour Phase I methodology following the issuance of the SWE’s Act 129 Demand Response Study – Final Report; Amended November 1, 2013.

of more recent experience skewed the results; and that the assumed future acquisition costs used in the study have not been subject to the rigorous inquiry and scrutiny necessary to ensure the reasonableness or veracity of this key variable.

Based on the Commission's reasoning, the issue that must be resolved at this point is whether the cost-effectiveness or economic viability of the proposed alternative model warrants the mandate of peak demand reduction targets subject to penalties in Phase III. EAP asserts that whether the alternative model would be cost-effective so as to mandate targets subject to penalty has not been adequately vetted or resolved by the SWE Demand Response Potential Study and that the Commission would be justified in exercising its discretion and adopting a strategy similar to the one developed for Phase II which permitted individual EDCs to choose to propose cost-effective peak demand reduction programs in their individual Phase III EE&C Plans.¹¹ *See also, supra.* at p. 7. Such a direction for Phase III would be in full support of the Act 129 legislative goals to control energy costs while promoting energy conservation and would provide the opportunity for demand reduction measures in the context of the litigated EE&C Plan.

C. Proposed Low-Income Carve-outs for Phase III Exceed the Statutory Requirements, Create Inequities Between EDCs and Fail to Account for the Overlap Between Existing Low Income Weatherization Programs Offered Through Utility LIURP and the DCED Weatherization Assistance Program

In its Phase II Implementation Order, Docket No. M-2012-2289411 and M-2008-2069887, entered on August 3, 2012, the Commission expanded the statutory prescription relating to the low-income sector¹² and required that each EDC obtain a minimum 4.5% of its

¹¹ EAP also asserts that, if an EDC were to propose a cost-effective demand response program for Phase III, the consumption reduction target would necessarily have to be adjusted based, in part, on the approved budget devoted to demand reduction programs. *See, e.g.,* Sections IV.B. and IV.C. in Comments filed by PECO.

¹² Act 129 provides for a low-income carve-out in each EDC's EE&C Plan "to include specific energy efficiency measures for households at or below 150% of the federal poverty income guidelines. The number of measures shall be proportionate to those households' share of the total energy usage in the service territory. The electric distribution company shall coordinate measures under this clause with other programs administered by the

consumption reduction requirement from low-income customers during Phase II. *See*, Phase II Implementation Order at pp. 53-54. The Commission based this new Phase II requirement on the reported results and performance of the EDCs during Phase I and on input from the SWE's Market Potential Study completed in anticipation of setting targets for the Phase II Energy Efficiency and Conservation Program. *Id.* at p. 53. The Commission opined that "it has the discretion to make modifications or remove the specific sector carve-out for the low-income sector if no cost-effective savings can be obtained from that sector." *Id.* at p. 55. The Commission further determined that while the specific sector statutory carve-outs were not subject to the \$1 million to \$20 million penalty prescribed under Act 129 for non-compliance, the Commission could hold the EDCs accountable to achieve this newly created mandate under the general penalty provision of the Public Utility Code found at 66 Pa. C.S. §3301(a).

All of the EDCs subject to Act 129 along with EAP raised concerns regarding the new parameters for the low-income carve-out proposed for Phase II during the generic order proceeding. EAP requested that the Commission refrain from creating an additional obligation in light of the higher cost to implement energy efficiency measures in the low-income sector and the availability of existing, successful low-income weatherization assistance programs funded by either utility ratepayer dollars (via the Low Income Usage Reduction Program "LIURP") or federal tax dollars (via the Pa. Department of Community and Economic Development "DCED" Weatherization Assistance Program and DCED administered crisis weatherization under the Low

Commission or another federal or state agency. The expenditure of an electric distribution company under this clause shall be in addition to expenditures made under 52 Pa. Code Ch. 58 (relating to residential low income usage reduction programs)." 66 Pa. C.S. §2806.1(b)(1)(i)(G).

Income Home Energy Assistance Program “LIHEAP”). In general, EAP asserted that this new requirement was not necessary to achieve the policy objectives of Act 129.¹³

For Phase III, the Commission proposes to increase the percentage of electric reduction consumption achieved from the low-income sector from the 4.5% required in Phase II to 5.5%. Additionally, no less than 2% of each EDCs overall electric consumption reduction must be obtained exclusively from direct-installed low income measures. *Id.* at p. 56. This second requirement, new for Phase III, mirrors the types of measures installed in the LIURP and DCED low-income weatherization programs.

The Commission states that direct-install measures for low-income households will exclude savings derived from home energy reports, efficiency kits, upstream lighting and rebates as well as energy efficiency items provided by EDCs at community events. As proposed in the Phase III Tentative Implementation Order, direct-install low-income measures would include measures installed in the home that “provide more of a whole-house and/or weatherization (insulation, air sealing) type of program emphasis.” *Id.* at p. 56. While recognizing that the SWE Energy Efficiency Market Potential Study does not provide direct support for this proposal¹⁴, the Commission “believes” that such measures have higher realization rates and are “a better investment of the low-income program dollars.” *Id.* The Commission concludes that “the low-income sector remains an area that deserves focused attention to achieve cost-effective savings result.” *Id.* at p. 55.

¹³ EAP also argued previously that the Commission lacked authority under Act 129 to modify the statutorily created low-income carve out. That argument was not adopted by the Commission and is not the basis for the current EAP position that the Commission should not further expand its previous modification of the low-income carve out.

¹⁴ The Commission stated that the SWE EE Market Potential Study completed for Phase III “did not determine the amount of cost-effective potential savings that could be derived exclusively from specific low-income programs.” Phase III Tentative Implementation Order at p. 55.

In the context of Act 129, EAP counters that the Commission emphasis is misplaced and this new requirement, which is admittedly not supported by the SWE Market Potential Study¹⁵, creates a program design mandate for measures which are inherently not cost-effective. Act 129 low-income measures are funded 100% with no requirement for the participant to contribute any dollars. The value of low-income carve-out in the overall evaluation of EDC EE&C Plans is not a function of whether the measure itself is cost-effective. The General Assembly provided the carve-out to assure that this customer sector would be able to participate at a level “proportionate to those households’ share of the total energy usage in the service territory.” 66 Pa. C.S. §2806.1(b)(1)(i)(G). EAP maintains that spending more Act 129 dollars to meet this new design requirement would never achieve cost-effective savings results and would, in fact, lead to a disproportionate share of Act 129 dollars being devoted to achieve the 2% direct-install mandate to the detriment of other programs that do deliver cost-effective energy savings as well as the EDCs EE&C Plans.

While the Commission concluded it has the discretion to make this modification, EAP believes that exercising that discretion as proposed is not in accord with the public interest or Act 129 policy objectives which are broadly aimed at providing cost-effective energy efficiency programs to all customer sectors. EAP urges the Commission to reconsider the instant proposal with its necessary commitment of limited Act 129 funds in light of all the dollars devoted to low-income weatherization in the Commonwealth. Additionally, EAP believes that the Commission should consider that this new program design requirement would likely complicate ongoing

¹⁵ The fact that the SWE Energy Efficiency Market Potential Study did not evaluate the significant cost that would be incurred to achieve the 2% direct-install mandate undermines and weakens the overall acquisition cost assumptions for energy efficiency which, in turn, underscores that the level of attainable savings embedded in the proposed consumption reduction targets for Phase III are at best projections.

efforts to coordinate weatherization assistance programs in the Commonwealth¹⁶ and reasonably conclude that additional program design prerequisites do not promote the general public interest in energy efficiency as a tool to increase price stability in the wholesale market. *See also*, 66 Pa. C.S. §2806.1(b)(1)(i)(G). (With respect to the Act 129 low-income carve-out, the statute directs EDCs to “coordinate measures under this clause with other programs administered by the Commission or another federal or state agency.”)

D. Suggested Modification to the Current Expedited Process for Minor EE&C Plan Changes Utilized by EDCs

The Commission proposes a continuation of the expedited review process for minor EE&C Plan changes developed during the Phase I and Phase II Energy Efficiency and Conservation Programs. Phase III Tentative Implementation Order at pp. 93 – 95. EAP supports that proposal and suggests three modifications to further streamline and approve the process for minor plan changes.

First, eliminate the need for a plan modification where a measure has achieved its approved participation level, met its savings goal, or fully utilized its budgeted funding amount. Each EE&C Plan as filed establishes participation levels, expected savings, and a budgeted amount per measure which is vetted and reviewed during the approval process. Requiring the continuation of measures which have met approved expectations during the current process established for minor EE&C Plan changes is a misuse of resources and increases the risk that EDC budgets will be exceeded and program targets will not be achieved. Rather than requiring

¹⁶ The PUC, EAP and a number of its utility members as well as OCA and low-income advocates participate on the DCED Weatherization Advisory Board which is currently examining ways to better coordinate the various weatherization programs available to low-income citizens of the Commonwealth. The identified hurdles to coordination include the many different rules which govern these programs regarding eligibility requirements, funding streams, types of measures installed, installation standards, EM&V and record keeping. Creating yet another design rule such as that proposed here impedes those efforts.

the filing of a minor plan modification, EAP proposes that the EDC notify stakeholders of its intent to eliminate the measure by a date specific and state that its Plan had achieved participation levels, met its savings goal, and/or utilized its budgeted funding.

Second, eliminate the need for filing a minor plan modification where the EDC, with advanced notification to stakeholders, intends to transfer funds from one measure or program to another measure or program within the same customer class when the transfer is for less than 30% of the sector level budget. Request for transfer of funds exceeding 30% of the sector budget would still require the filing of a request for a minor EE&C Plan modification. This change will allow EDCs to quickly move funds to well performing measures or programs without missing potential opportunities to engage customers and achieve savings while developing the minor plan modification request and waiting for resolution.

Lastly, EAP suggests that where measure eligibility requirements change due to either a change in the federal baseline, a change to the Pennsylvania Technical Reference Manual¹⁷, or a change in efficiency level set through an organization such as Energy Star or the Consortium for Energy Efficiency, a minor plan modification filing should not be required. EDCs should be able to timely revise eligibility requirements related to any federal baseline or organizational efficiency level changes without the necessity of filing for a minor plan modification. This ensures that eligibility requirements are tracking federal standards and promotes the efficient use of administrative resources.

EAP believes that these requests are appropriate to implement as Phase III begins to complement the experience gained by EDCs and stakeholders in the initial phases of Act 129 and to recognize the ongoing collaborative nature of Act 129 EE&C Plans. These changes will

¹⁷ EAP and its member EDCs support the Commission proposal that the 2016 TRM be applicable for all of Phase III with leeway to consider a mid-phase update if necessary. Phase III Tentative Implementation Order at pp. 80-81.

provide EDCs with additional flexibility to modify program implementation as they strive to meet Act 129 targets while conserving administrative resources and costs.

E. EAP Supports the Establishment of a Semiannual EDC Reporting Requirement with a Minor Modification to the Proposed Schedule

For Phase III, the Commission proposes the elimination of quarterly reports in favor of semiannual reporting which would also continue the current process relating to the filing of a preliminary and final annual report. Phase III Tentative Implementation Order at pp. 82 – 84. EAP agrees with the Commission that the EDCs along with participating stakeholders “have developed a well-functioning system of providing and receiving feedback from each other to aid in the implementation of successful EE&C Programs.” Order at p. 83. This is evidenced in the numerous stakeholder meetings held by each EDC throughout the year to solicit feedback on existing measures/programs and ideas for new programs.

EAP suggests one change to the schedule set forth on page 84 of the Phase III Tentative Implementation Order: change the due date for the semiannual report from December 31 to January 15. In Phase II, the EDCs had 45 days from the close of the each reporting period to provide the quarterly report, e.g. Q1 ended on August 31 and the report was due on October 15. EAP maintains that a similar time period is necessary to close the books at the end of the suggested semiannual period and to complete the midyear reporting requirement, i.e. semiannual period ends on November 30 and EAP asks that the report be due on January 15.

F. EAP Seeks Modification on Phase III CSP RFP Competitive Bidding Procedures

In its Phase III Tentative Implementation Order, the Commission proposes a change from the Phase II practice relating to Conservation Service Provider (“CSP”) competitive bidding and contract approval procedures. The Commission states that it will “require EDCs to file CSP RFP competitive bidding procedures and to bid all CSP contracts without exception.” Order at p. 95.

The Commission notes that the CSP contracts covered by this changed requirement would include contracts for consultation, design, and administrative and management or advisory services to the EDC as opposed to contracts for services provided directly to a customer such as equipment installers or suppliers. *Id.* The Commission's stated reason for the change is that it found that retention of Phase I CSPs and programs did not necessarily result in cost savings by EDCs in their efforts to reach consumption reduction targets and, in many cases, led to an increase in costs which exceeded the approved program budget. *Id.* at p. 96. The Commission does note that while Act 129 does not provide express authority to modify CSP contracts based on cost considerations it does have general authority to investigate the EDCs for non-compliance of statutory and regulatory requirements. *Id.*

EAP initially comments that the issue of increased costs due to services provided by CSPs seems distinct from the issue of increased costs for programs carried over from one phase to the next. Increased program costs may be attributable to a number of reasons. It may be due to an increase in the cost of the equipment or material provided via the measure, increased cost associated with a different mix of measures or to the need to pay a higher incentive in a subsequent phase to attract participation. EAP does not believe that such alleged increased costs could be addressed by rebidding all CSP contracts or that increases in what is at its core an acquisition cost can be addressed through the proposed renewed competitive bidding process. EAP suggests that those issues of increased cost may be raised and addressed in the plan approval process.

Further, EAP continues to maintain that such wide scale rebidding will unnecessarily increase costs and prove unwieldy as EDCs work to have smooth transitions between Phase II and Phase III. Phase II CSP's have established relationships with dealers, contractors, and other

trade allies. The requirement to wholesale rebid all CSP contracts will most certainly cause programs inefficiencies or program suspension during the rebidding process and when the programs are transitioned to new CSPs, who must then establish their own relationships and ramp-up program services. The concern raised here is stated generally and it is difficult to determine whether any alleged increase in cost was due to higher charges stemming from a higher unit measure cost for services or equipment delivered to a customer OR a higher hourly rate from CSPs or more time spent by CSPs throughout the course of Phase II which likely occurred for a number of reasons.

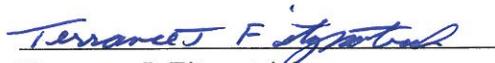
Finally, EAP is unclear as to whether the Commission is requiring competitive bidding in such areas as evaluation, measurement and verification (“EM&V”) services or the tracking systems utilized by EDCs and developed/maintained by third parties. CSPs that have been retained by the EDCs are nationally recognized experts in designing and implementing energy efficiency programs and/or in the area of EM&V and tracking of savings. Those CSPs play a key role as required by the statute to assure EDC compliance with Act 129. 66 Pa. C.S. §2806.1 (b)(1)(i)(c) and (e). Given the risk of hefty penalty for failure to meet Act 129 targets, EAP suggests that EDCs should be provided some deference to decide which CSPs to retain based on the company experience to date.

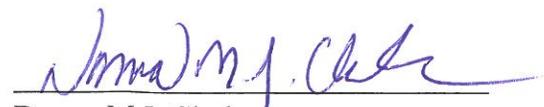
Rather than requiring wholesale rebidding for all CSP contracts without exception, EAP requests that the Commission work with the EDCs to more precisely define and address the concern set forth in the Phase III Tentative Implementation Order. EAP is unaware of any particular incident where CSP costs have unreasonably increased and believes that addressing specific instances rather than implementing generic changes might serve to address the Commission’s concerns more effectively and efficiently.

III. Conclusion

EAP offers these comments along with the individual comments filed by its EDC members subject to Act 129 for the Commission to consider in reaching a final decision with respect to the implementation of the Phase III Energy Efficiency and Conservation Program. The task presented to the Commission, the EDCs, and all the stakeholders of projecting the market potential and fixing targets and rules for the next phase of energy efficiency programs even before the current phase is evaluated is both complex and challenging. EAP believes that this task calls for a prudent exercise of discretion by the Commission taking into account not only the technical analysis provided by the SWE, but the constraints of the process used to date to set future mandates as well as the complexities of meeting targets in an evolving marketplace subject to such uncertainties as the proposed EPA Rule 111(d) or the resolution of the future role of demand response in the PJM marketplace. The suggestions offered above, if adopted, will result in EDC EE&C Plans that continue to provide a solid return on the investment of dollars in energy efficiency plans, build upon the collaborative processes developed by EDCs to assure programs responsive to stakeholder input and meet the policy objectives of the statute.

Respectfully submitted,


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