



November 12, 2019

VIA E-File

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, Filing Room
Harrisburg, PA 17120

RE: 2021 Total Resource Cost (TRC) Test, Docket No. M-2019-3006868

Dear Secretary Chiavetta,

Please find the **Joint Reply Comments of the Green and Healthy Homes Initiative, Housing Alliance of Pennsylvania, Keystone Energy Efficiency Alliance, Natural Resources Defense Council, National Housing Trust, Pennsylvania Utility Law Project, and Regional Housing Legal Services** (collectively, the Pennsylvania Energy Efficiency for All Coalition (PA-EEFA)), which are submitted for filing in the above noted proceeding.

Please contact me with any questions.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Elizabeth R. Marx".

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

2021 Total Resource Cost (TRC) Test :

Docket No. M-2019-3006868

**JOINT REPLY COMMENTS OF
GREEN AND HEALTHY HOMES INITIATIVE
HOUSING ALLIANCE OF PENNSYLVANIA
KEYSTONE ENERGY EFFICIENCY ALLIANCE
NATURAL RESOURCES DEFENSE COUNCIL
NATIONAL HOUSING TRUST
PENNSYLVANIA UTILITY LAW PROJECT
AND
REGIONAL HOUSING LEGAL SERVICES
Collectively, PA ENERGY EFFICIENCY FOR ALL COALITION (PA-EEFA)**

November 12, 2019

I. INTRODUCTION

On September 19, 2019, the Pennsylvania Public Utility Commission (Commission) issued a Tentative Order containing “proposed guidance for implementing the Pennsylvania Total Resource Cost (TRC) Test for use in planning for and during a potential Phase IV of Act 129.”¹

In response to the Commission’s Tentative Order, the above-named organizations, collectively Pennsylvania Energy Efficiency for All Coalition (PA-EEFA),² filed comments on November 1, 2019. Nine other parties also filed timely comments on that day.³ One party – Advanced Energy Management Alliance – filed untimely comments on November 6, 2019 without seeking leave to file late comments. On that same day, another group of parties – consisting of the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Philadelphia Area Industrial Users Group, the PP&L Industrial Customer Alliance, the West Penn Power Industrial Intervenors, and the Pennsylvania Energy Consumer Alliance (collectively “the Industrials”) – filed a Petition for Permission to submit Late-Filed Comments and appended their proposed comments thereto. In anticipation of the Commission granting the Industrials’ Petition and accepting their late-filed comments, PA-EEFA submits these limited Reply Comments concerning the Industrials’ contention that the TRC test should be evaluated for each measure and class rather than at the total plan level.⁴ The fact that PA-EEFA is not commenting on other

¹ Tentative Order, cover.

² PA-EEFA is a partnership of Pennsylvania and national organizations that share a common goal of ensuring that low-income individuals have access to energy efficiency services to reduce their energy consumption. PA-EEFA, as a collective, is principally concerned with expanding access to energy efficiency and weatherization in multi-family housing for economically vulnerable households. The organizations that comprise PA-EEFA recognize the significant overlap between those interests and the robust, effective implementation of Act 129 in current and any future phases that the Commission may elect to implement.

³ The following additional parties filed timely comments on November 1, 2019: PECO, PennFuture *et al.* (consisting of PennFuture, the Pennsylvania Chapter of the Sierra Club, the Clean Air Council, the Philadelphia Solar Energy Association, NRDC, and the Building Performance Association), Duquesne Light, the Energy Association of Pennsylvania, the Office of Consumer Advocate, the FirstEnergy Companies (MetEd, Penelec, PennPower, and West Penn Power), PPL, and the Keystone Energy Efficiency Alliance.

⁴ Comments of the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Philadelphia Area Industrial Users Group, the PP&L Industrial Customer Alliance, the West Penn Power Industrial Intervenors, and the Pennsylvania Energy Consumer Alliance (hereinafter “Industrials’ Comments”), Docket M-2019-3006868 at 5.

aspects of the Industrials’ comments, or the comments of any other party, should not be construed as agreement by PA-EEFA as to the positions advanced by these other parties. None of the comments filed by other parties in this proceeding have changed the positions PA-EEFA advanced in our initial comments, and we stand firmly on the positions and recommendations contained therein.

II. The Commission should reject the Industrials’ position that the TRC Test should be evaluated for each measure and class, rather than at the total plan level.

As articulated in our initial comments, PA-EEFA supports the Commission’s proposal to “continue applying the TRC Test at the plan level”⁵ because, as the Commission states, “testing at the plan level gives new programs and technologies adequate opportunity to establish whether they are able to contribute to the EE and DR goals of Act 129.”⁶ This is the position that the Commission has taken throughout each of the first three phases of Act 129, and the Industrials provide no compelling legal or policy reason to change this long-standing position.

The Industrials argue that the Public Utility Code “requires the Commission to evaluate *each measure* to determine whether it is achieving the required reductions in consumption in a cost-effective manner.”⁷ In support, the Industrials cite the requirements of Act 129, specifically 66 Pa. C.S. § 2806.1(b)(2), which states:

The commission shall direct an electric distribution company to modify or terminate any part of a plan approved under this section if, after an adequate period for implementation, the commission determines that an energy efficiency or conservation measure included in the plan will not achieve the required reductions in consumption *in a cost-effective manner under subsections (c) and (d)*.

66 Pa. C.S. § 2806.1(b)(2) (emphasis added). The Industrials argue that “[g]iven the evolution of

⁵ Tentative Order at 9.

⁶ Tentative Order at 8-9.

⁷ Industrials’ Comments at 6 (emphasis added).

the energy efficiency efforts since Phase I, the TRC evaluation should also change” and that “[i]t is not in the public interest to continue measures that do not meet the TRC cost-effectiveness standard.”⁸ Regarding low income programs, the Industrials do not support the inclusion of any measures for low income consumers in Phase IV if the measures, individually, have a TRC lower than 1.0.⁹

The Commission should reject the Industrials’ argument, as it is legally inaccurate and would effectively eliminate any opportunity for low income households to participate in Act 129 programs.

The Industrials’ legal argument is premised on the language of section 2806.1(b)(2), but they interpret this section too narrowly and in isolation of the rest of the statute. Section 2806.1(b)(2) does not require – in the abstract – that *every* measure included in an electric distribution company’s (EDC) plan be cost-effective, as measured by the TRC test. Rather, the provision requires only that the Commission evaluate whether measures *contribute* to the overall required consumption reductions in Sections 2806.1(c) and (d). If the measures do not contribute to the requisite reductions “after an adequate period for implementation”, then Section 2806.1(b)(2) requires the Commission to terminate or modify the individual measures. Sections 2806.1(c) and (d), in turn, each require that the “**plans**” adopted under section (b) reduce consumption.¹⁰ These sections do not require that each measure which contributes to the compliance of the overall plan be cost effective.

The Commission’s long-standing position on this matter, as articulated in its Tentative Order, meets both the statutory requirements and advances important public policy objectives. The

⁸ Industrials’ Comments at 6.

⁹ Industrials’ Comments at 8.

¹⁰ 66 Pa. C.S. § 2806.1(c) and (d) (emphasis added).

Commission indicated:

EDCs are required to develop and implement a portfolio of programs with benefits that are greater than the costs. TRC testing at the plan level gives new programs and technologies adequate opportunity to establish whether they are able to contribute to the EE and DR goals of Act 129.

As in prior phases, the Commission proposes to continue applying the TRC Test at the plan level and will continue to reserve the right to reject any program with a low TRC test ratio.¹¹

In taking this approach, the Commission recognizes the requirements under 2806.1(b)(2) that it must evaluate whether the measures that make up a plan *contribute* to the plan-level reductions that are required under sections 2801(c) and (d), and reserves the right to reject any program with low TRC test ratios if those programs do not contribute to the overall required reductions. However, as a whole, the Commission has correctly concluded that the determination of cost-effectiveness – and compliance with the TRC – occurs at the EE&C plan level.¹² This approach appropriately balances the need for measure and program level innovation while requiring that, as a whole, the plan is cost-effective consistent with the approved TRC test. The Commission should reject the Industrials' argument to the contrary.

The Industrials' preference for a rigid rule requiring every measure and program to separately have a TRC ratio of 1.0 or greater would also effectively nullify the specific requirements in Act 129 mandating each EDC plan to have measures available for low income households:

The plan shall 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 commission or another Federal or State agency. The expenditures 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).

¹¹ Tentative Order at 8-9.

¹² Id. at 8.

66 Pa. C. S. § 2806.1(b)(1)(i)(G).

Given the unique barriers to energy efficiency that low income households face, it is challenging and unusual for robust energy efficiency programs for low income households to meet a TRC ratio of 1.0 or greater. This is appropriately reflected in the Commission’s interpretation of the statutory requirements regarding cost-effectiveness, and is consistent with other jurisdictions’ approach to low income cost-effectiveness. For example, Maryland’s Public Service Commission stated that:

[R]equiring that the limited-income sub-portfolio “pass” cost-effectiveness screening may do our ratepayers a...disservice by too greatly limiting these critical program offerings. Therefore...while cost-effectiveness screening of the limited-income sub-portfolio shall be required in the same manner as with respect to the other EmPOWER sub-portfolios, the results of the limited-income sub-portfolio screening shall serve as a point of comparison to other jurisdictions and past programmatic performance rather than as the basis for precluding certain limited-income program offerings.¹³

Research demonstrates that low income households have an overwhelming energy burden that makes it difficult to pay for other basic necessities such as housing, food, and medicine; threatens stable and continued employment and education; has substantial and long-term impacts on mental and physical health; and creates serious risks to the household and the larger community.¹⁴ According to the US Energy Information Administration, roughly 1 in 5 households report that they reduce or forego other critical necessities like food and medicine to afford their home energy costs, and more than 1 in 10 report keeping their home at an unsafe or unhealthy temperature.¹⁵ Even with financial assistance, low income households are still unable to afford the

¹³ Maryland Public Service Commission, Order No. 87082, July 16, 2015, at 10. Available at: <https://www.psc.state.md.us/> (search: ML 171275)

¹⁴ US EIA, Residential Energy Consumption Survey (2015), <https://www.eia.gov/consumption/residential/reports/2015/energybills/>; see also NEADA, 2018 National Energy Assistance Survey, at 17, 20 (Dec. 2018), <http://neada.org/wp-content/uploads/2015/03/liheapsurvey2018.pdf> (hereinafter NEADA Survey).

¹⁵ US EIA, Residential Energy Consumption Survey (2015), <https://www.eia.gov/consumption/residential/reports/2015/energybills/>.

cost of energy: According to a 2018 survey conducted by the National Energy Assistance Directors' Association, 72% of LIHEAP recipients reported that they forego other necessities to afford energy, and 26% reported keeping their home at unsafe or unhealthy temperatures.¹⁶ Indeed, as recent research and data has continually showed, families with low income simply cannot afford the cost of energy services – *let alone energy efficiency upgrades*. The reality is that it simply costs more money to provide appropriately tailored energy efficiency measures to low income households because there are more intensive program costs and the housing stock in which these households live necessitates deeper measures to produce savings. Any EDC program designed to serve low income customers must be able to accommodate these additional costs or else low income households will, quite simply, not be able to participate.

By ensuring that each EDC's plan is cost effective at the EE&C plan level, and by reserving the ability to reject any measure or program that does not contribute to the overall consumption reduction requirements of section 2806.1(c) and (d), the Commission strikes the correct balance in that it both meets all of its statutory objectives and serves important public policy objectives – fostering innovation and ensuring that low income consumers have realistic access to energy efficiency programming. Such an approach is in the public interest because it will allow low income customers to benefit from the implementation of energy efficiency programs that are specifically designed to overcome the barriers that these customers face, and will at the same time ensure that funds collected to support the plan as a whole are spent in a cost effective manner. The Industrials' position should be rejected.

¹⁶ NEADA Survey at 17, 20.

III. CONCLUSION

For the reasons stated more fully above, PA-EEFA urges the Commission to reject the Industrials' position that the TRC should be assessed at the measure level, and reaffirm its position long held position that EDCs are required to develop and implement a portfolio of programs with benefits that are greater than the costs, but that the determination of cost-effectiveness occurs only at the EE&C plan level.

Respectfully Submitted,

Pennsylvania Energy Efficiency for All
Coalition (PA-EEFA)

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Dated: November 12, 2019

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