

April 27, 2020

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

VIA ELECTRONIC FILING

Re: Energy Efficiency and Conservation Program; Docket No. M-2020-3015228

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Comments of the Industrial Energy Consumers of Pennsylvania, in the above-referenced matter.

This document was filed electronically with the Commission on this date. All parties are being served a copy of this document in accordance with the enclosed Certificate of Service.

Please contact me if you have any questions concerning this filing.

Sincerely,

SPILMAN THOMAS & BATTLE, PLLC

By 

Derrick Price Williamson
Barry A. Naum

BAN/sds
Enclosures

c: Joseph Sherrick, Bureau of Technical Utility Services (via E-mail)
Adam Young, Law Bureau (via E-mail)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Energy Efficiency and Conservation Program : **Docket No. M-2020-3015228**
:

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the following parties to this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by participant).

VIA E-MAIL

Richard Kanaskie, Esquire
Allison Kaster, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265
rkanaskie@pa.gov
akaster@pa.gov

Tanya McCloskey, Esquire
Darryl Lawrence, Esquire
Christy Appleby, Esquire
Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101
tmccloskey@paoca.org
dlawrence@paoca.org
cappleby@paoca.org

John R. Evans, Esquire
Steven C. Gray, Esquire
Sharon E. Webb, Esquire
Office of Small Business Advocate
300 North Second Street
Suite 202
Harrisburg, PA 17101
jorevan@pa.gov
sgray@pa.gov
swebb@pa.gov

Tishekia E. Williams, Esquire
Michael Zimmerman, Esquire
Emily Farah, Esquire
Duquesne Light Company
411 Seventh Avenue
Pittsburgh, PA 15219
twilliams@duqlight.com
mzimmerman@duqlight.com
efarah@duqlight.com

Michael W. Gang, Esquire
Anthony D. Kanagy, Esquire
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
mgang@postschell.com
akanagy@postschell.com

Tori L. Giesler, Esquire
Teresa K. Harrold, Esquire
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
tgiesler@firstenergycorp.com
tharrold@firstenergycorp.com

John L. Munsch, Esquire
FirstEnergy Service Company
800 Cabin Hill Drive
Greensburg, PA 15601
jmunsch@firstenergycorp.com


Anthony E. Gay, Esquire
Jack R. Garfinkle, Esquire
W. Craig Williams, Esquire
PECO Energy Company
2301 Market Street
Philadelphia, PA 19103
anthony.gay@exeloncorp.com
jack.garfinkle@exeloncorp.com
craig.williams@exeloncorp.com

Kenneth M. Kulak, Esquire
Brooke E. McGlinn, Esquire
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
ken.kulak@morganlewis.com
brooke.mcglinn@morganlewis.com

Kimberly A. Klock, Esquire
Michael J. Shafer, Esquire
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
kklock@pplweb.com
mjshafer@pplweb.com

Michael W. Hassell, Esquire
Lindsay A. Berkstresser, Esquire
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
mhassell@postschell.com
lberkstresser@postschell.com

Russell Zerbo, Esquire
Clean Air Coalition
1330 S Melville St.
Philadelphia, PA 19143
rzerbo@cleanair.org


Barry A. Naum

Dated: April 27, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Energy Efficiency and Conservation Program : **Docket No. M-2020-3015228**
:

**COMMENTS OF
INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA**

On March 28, 2020, the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Tentative Implementation Order in the above-referenced docket was published in the *Pennsylvania Bulletin*. The Tentative Implementation Order requested that interested parties submit Comments on the Commission's within 30 days of its publication in the *Pennsylvania Bulletin*, or by April 27, 2020.

The Industrial Energy Consumers of Pennsylvania ("IECPA")¹ is an association of energy-intensive industrial consumers of electricity taking service from regulated utilities in Pennsylvania, including 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 Corporation ("PPL"); and West Penn Power Company ("West Penn"). IECPA offers these Comments in response to the Tentative

¹ For the purpose of this matter, IECPA's membership consists of: Air Products & Chemicals, Inc.; AK Steel Corporation; ArcelorMittal USA LLC; Arconic, Inc.; Benton Foundry, Inc.; Carpenter Technology Corporation; Domtar Paper Company, LLC; East Penn Manufacturing Company; Keystone Cement; Knouse Foods Cooperative, Inc.; Marathon Petroleum Corporation; Praxair, Inc.; Proctor & Gamble Paper Products Company; and United States Gypsum Company.

Implementation Order in the above-referenced matter on issues of particular importance to its members. The fact that IECPA does not address each and every matter raised by the Tentative Implementation Order should not be construed as either support or opposition to those issues as stated in the Tentative Implementation Order, and IECPA reserves the right to respond to other Comments as they pertain to any element of the order.

A. The Commission Should Delay or Suspend the Phase IV Energy Efficiency and Conservation ("EE&C") Requirements.

On April 22, 2020, IECPA filed with the Commission in this docket and in Docket No. M-2020-3019262 a Petition for Suspension of the Phase IV Implementation and Other Relief ("Petition") on the basis of the unknown and uncertain economic conditions that will result from the present novel-coronavirus and COVID-19 pandemic. The Commission subsequently assigned that Petition its own docket at Docket No. P-2020-3019562. IECPA incorporates that Petition by reference, and the arguments contained therein, and accordingly recommends that the implementation of Phase IV requirements be suspended for a 270-day period in order to permit Pennsylvania electric distribution companies ("EDCs"), their customers, and the Pennsylvania public to begin meaningful recovery from the current pandemic, as much as is possible, before additional EE&C-related programs and expenditures are put in place.

Under the present circumstances, and as explained in the above-referenced Petition, IECPA believes that the underlying data informing the Commission's Tentative Implementation Order may no longer be relevant, accurate, or reliable. As such, IECPA further submits that any Comments addressing the Tentative Implementation Order would suffer from the same lack of reliability in relation to prior energy consumption and peak demand for EDCs and their customers or future projections of the same, and would be equally inaccurate at this time. That said, in the event that the Commission determines that it must move forward with the implementation of the

Phase IV programs at this time, but maintaining this important caveat with respect to overall relevance, IECPA offers the following additional Comments on the Commission's Tentative Implementation Order.

B. IECPA Supports EE&C Surcharges Based on Generally Acceptable Cost-of-Service Principles, but Recommends that the Commission Further Limit the Amount of Administrative Costs that Can be Recovered Through Rates and Clarify that Administrative Costs Should be Allocated on a Per Customer Basis.

As a fundamental principle, IECPA has believed from the beginning of Act 129 implementation that the Commission should implement an opt-out for the largest industrial and manufacturing customers in the Commonwealth, in consideration of the enormous investment that many of these large commercial and industrial ("C&I") customers have made of their own volition in pursuit of energy and peak demand savings, the commensurate benefit that these investments have provided to EDCs and the Pennsylvania public in the form of reduced statewide energy consumption, and the limited ability of these customers to benefit from the Act 129 EE&C programs that they fund -- and have funded -- at significant expense. To that end, the absence of an opt-out for such customers has placed them at a significant and inequitable competitive disadvantage to similarly-situated large C&I ratepayers in neighboring states (such as Kentucky, West Virginia, and Virginia, as well as other nearby states such as New York and New Jersey who offer elements of self-direct options for large C&I customers) who are able to take advantage of such options. This in turn presents economic harm to Pennsylvania by creating a disincentive for greater industrial and manufacturing investment within the Commonwealth. Furthermore, the inherent inequity of not providing an opt-out to large C&I customers who have invested independently in energy efficiency and peak demand reductions, and who are therefore limited in their ability to participate in EDC-funded programs, requires these large C&I customers to

continue to pay for the energy efficiency and demand reduction measures that benefit other customers, some of whom may be their direct competitors.

All of that said, to the extent that EE&C surcharges remain applicable to all large C&I customers, IECPA continues to support such charges being computed on a direct cost-causation basis to the fullest extent that is possible. The Tentative Implementation Order describes the proper allocation of the Phase IV program costs, specifying that "[t]hose costs that demonstrably and exclusively relate to measures or programs that have been dedicated to a specific customer class should be assigned solely to that class," and further stating that "[t]hose costs that relate to measures or programs that are applicable to more than one class, or that can be shown to provide system-wide benefits, should be allocated using reasonable and generally acceptable cost of service principles as are commonly utilized in base rate proceedings." Tentative Implementation Order, p. 72. Pursuant to the Act 129 provisions, the Tentative Implementation Order thus also maintains the requirement that all approved Phase IV measures "are financed by the customer class that receives the direct energy and conservation benefit of the measures." *Id.* at 63 (citing 66 Pa. C.S. § 2806.1(a)(11)). IECPA continues to support those mandates; however, of concern to IECPA is the amount of allowable "administrative costs" that the Commission proposes for inclusion in cost recovery.

Specifically, the Tentative Implementation Order provides that EDCs will be required to submit a plan that "shows at least 50% of all spending allocated to incentives and less than 50% of all spending allocated to non-incentive cost categories." *Id.* at 65. Understanding that this is intended to require the majority of EE&C revenues to be used toward the benefit of reduced energy consumption and peak demand, the overall amount of non-incentive, or "administrative," costs that can be included in Phase IV plans is problematic, particularly for those customers referenced above

who will be contributing substantial revenues to EDCs' programs with very limited opportunities to directly benefit from those payments. On a statewide basis, using the \$1.2 billion Phase IV budget referenced in the Tentative Implementation Order, ratepayers could be required to pay nearly \$600 million in administrative costs alone over the five years of the Phase IV programs. While this is obviously the extreme scenario, and is based on the statewide evaluator's ("SWE") *Pennsylvania Act 129 Phase IV Energy Efficiency and Peak Demand Reduction Market Potential Study* and *Pennsylvania Act 129 Phase IV Demand Response Potential Study* ("EEPDR"), the potential cost in overhead for these programs is enormous.

IECPA is concerned that allowing such a large proportion of administrative costs does not create the necessary incentive for EDCs to invest in truly cost-effective programs and promotes unnecessary and excessive spending that will not ultimately benefit consumers or the Pennsylvania public. Furthermore, to the extent such administrative costs may be allocated to customers on a per kWh or peak demand basis under the existing EE&C surcharges, such allocation improperly weights such costs toward larger consumers, even though the costs by definition are not related to any potential for energy or peak demand reduction savings.

Accordingly, IECPA respectfully requests that the Commission modify the Tentative Implementation Order to further limit the amount of overall investment in Phase IV programs that can be allocated to non-incentive or administrative cost categories and to specifically clarify, given the amount of administrative costs that may be included in each EDC's Phase IV plan, that these costs are to be expressly allocated on a per customer basis to the extent EDCs do not already do so.

C. IECPA Supports the Continued Evaluation and Assessment of the Cost-Effectiveness of EE&C Plans on a Rate Class Basis.

In the Tentative Implementation Order, the Commission proposed that "each EDC's EE&C Plan include at least one comprehensive program for residential and at least one comprehensive program for non-residential customer classes," but also provided the caveat that "while cost-effectiveness is always a priority, an individual program does not have to be cost-effective in order to be implemented, provided the EE&C Plan as a whole is cost-effective." Id. at 15.

IECPA is concerned that permitting individual programs within an EE&C Plan that do not satisfy a cost-effectiveness requirement may incentivize EDCs to make costly investments in measures that do not provide benefits to rate classes commensurate with those costs; however, IECPA acknowledges that the Commission addressed this issue in its Final Order in the 2021 Total Resource Cost (TRC) Test proceeding at Docket No. M-2019-3006868 ("TRC Final Order"), concluding that "[i]t is important for EDCs to be able to offer comprehensive programs that address a suite of energy needs within a participating facility" and that "[s]creening cost-effectiveness at the measure level could lead to adverse outcomes where EDCs are forced to limit the scope of efficiency projects within homes and businesses based on assumptions about avoided costs and incremental measure costs that each carry a degree of uncertainty." TRC Final Order, pp. 16-17. In the TRC Final Order, however, the Commission also noted that it agreed with the industrial parties' position "that consideration of cost effectiveness by customer class is important" and that "cross-subsidies are an adverse outcome that EDC EE&C plans should consider." Id. at 17. The Commission ultimately concluded that though "determination of cost effectiveness for Phase IV ... will remain at the EE portfolio and DR portfolio level," EDCs "will be required to continue to estimate and report program-level TRC test ratios in their EE&C plans and in each final annual report." Id.

In the Tentative Implementation Order, the Commission specified that "EDCs and their evaluation contractors shall follow the directives of the 2021 TRC Test Final Order when developing EE&C plans for Phase IV of Act 129 and for reporting TRC Test results in Phase IV final annual reports." Tentative Implementation Order, p. 52. IECPA presumes that this instruction includes the aforementioned requirement for EDCs to report program-level cost efficiency test ratios going forward, but notes this element in order to emphasize that need, particularly in relation to the Commission's acknowledgment that such customer class considerations are critical.

D. IECPA Supports the Use of Proceeds from Peak Demand Reductions Bid into the PJM Forward Capacity Market to Offset Customer Payment to EDCs, but These Proceeds Should be Allocated to the Benefit of Individual Customers Who Provide the Peak Demand Reductions.

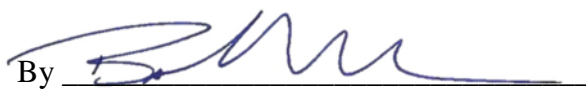
The Tentative Implementation Order discusses the Commission's proposed treatment of EDCs' Phase IV peak demand savings in terms of bidding those reductions into PJM's Forward Capacity Market ("FCM"), concluding that for Phase IV the EDCs should "nominate at least a portion of the expected peak demand reductions of their EE&C Plan" and that "proceeds from these resources that clear the PJM FCM be used to reduce Act 129 surcharges and collections for customer classes from which the savings were acquired, via the reconciliation for over-under collections process[.]" Tentative Implementation Order, p. 75. The Tentative Implementation Order also anticipates potential suggestions that these proceeds should instead be used "to increase EE&C plan budgets," but explained that using the proceeds to offset customer EE&C payments "will place downward pressure on free riders, which is a common concern among stakeholders in the non-residential sector." Id.

IECPA appreciates and generally supports the Commission's discernment on this issue. If customers within a given class contribute peak demand reductions that are subsequently nominated

into the PJM FCM, producing proceeds to EDCs, then those proceeds absolutely must be used to reduce the EE&C charges for those customers. Importantly, however, and in furtherance of avoiding free-ridership, these proceeds should be allocated and returned, in the form of reduced EE&C charges, to the individual customers who provide the peak demand reductions that clear the PJM FCM. These customers, and not simply the class as a whole to which they belong, are the direct cause of these PJM proceeds and should receive the direct benefit of such payments.

Regardless, under no circumstances should those proceeds be used to expand EE&C programs and budgets at additional cost to those very customers who caused those reductions and made those PJM FCM proceeds possible. The budgets available to each EDC are set by the Act 129 statute, as determined by the legislature. These budgets are extensive and should not be expanded, particularly by any means that eliminate cost benefits to customers that have resulted from their peak demand mitigation efforts and instead imposes on those same customers even greater costs.

Respectfully submitted,

By 
Derrick Price Williamson (I.D. No. 69274)
Barry A. Naum (I.D. No. 204869)
SPILMAN, THOMAS & BATTLE, PLLC
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
Phone: (717) 795-2740
Fax: (717) 795-2743
dwilliamson@spilmanlaw.com
bnaum@spilmanlaw.com

Counsel to Industrial Energy Consumers of Pennsylvania

Dated: April 27, 2020