



COMMONWEALTH OF PENNSYLVANIA

May 12, 2020

**E-FILED**

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

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

Dear Secretary Chiavetta:

Enclosed please find the Reply Comments, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceeding.

An electronic copy will be served on the parties indicated below.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Erin K. Fure

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Assistant Small Business Advocate  
Attorney ID No. 312245

*Enclosures*

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLY COMMENTS  
OF THE OFFICE OF SMALL BUSINESS ADVOCATE**

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**For: John R. Evans  
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**Date: May 12, 2020**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY COMMENTS OF THE OFFICE OF SMALL BUSINESS ADVOCATE  
TO THE TENTATIVE IMPLEMENTATION ORDER**

**I.     INTRODUCTION**

At the public meeting held March 12, 2020, the Pennsylvania Public Utility Commission (“Commission”) issued a *Tentative Implementation Order* in the above-captioned matter seeking comments from interested stakeholders on the Commission’s proposed required consumption and peak demand reductions for each electric distribution company (“EDC”) as well as guidelines for implementing Phase IV of the energy efficiency and conservation (“EE&C”) program. The *Tentative Implementation Order* directed comments from interested parties to be filed within 30 days of its publication in the *Pennsylvania Bulletin*. On March 28, 2020, the *Tentative Implementation Order* was published accordingly. The Office of Small Business Advocate (“OSBA”) timely submitted comments on April 27, 2020, pursuant to the *Tentative Implementation Order*. Comments were also submitted by various other interested parties. The deadline for submitting reply comments is May 12, 2020. The OSBA submits the following reply comments to certain points raised by other parties.

## II. REPLY COMMENTS

### A. COVID-19 Issues

1. Numerous commenting parties raised concerns regarding the impact of COVID-19 on the implementation of Act 129 Phase IV; some stakeholders suggested delaying the implementation of Phase IV,<sup>1</sup> while other stakeholders suggested proceeding with Phase IV, but allowing for flexibility in light of the issues that may arise as a result of the COVID-19 pandemic.<sup>2</sup>

2. The OSBA agrees that Phase IV should not be implemented without serious consideration of the impact COVID-19 has had and continues to have on the landscape of Pennsylvania's economy. Small businesses are being devastated by the COVID-19 pandemic. Pennsylvania electric utilities have advised the OSBA that percentage load reductions for small business customers are in the double digits, and are likely worsening. How many small businesses can even survive the COVID-19 pandemic remains to be seen.

3. Nevertheless, the OSBA also recognizes several benefits to small commercial and industrial consumers outlined in the *Tentative Implementation Order* for Phase IV, as outlined in the OSBA's comments filed on April 27, 2020.

4. The OSBA does not oppose delay of the implementation of Phase IV, as long as the Commission articulates clear guidance on extending Phase III activities and addresses how and when to impose penalties for Phase III non-compliance. In the OSBA's view, any effort to revamp all of the work performed by the Statewide Evaluator ("SWE") to inform Phase IV in

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<sup>1</sup> See *Comments of Industrial Energy Consumers of Pennsylvania* ("IECPA"), at pp. 2-3; *Comments of the Office of Consumer Advocate* ("OCA"), at pp. 3-6; *Comments of the Pennsylvania Energy Consumer Alliance, Met-Ed Industrial Users Group, Penelec Industrial Consumer Alliance, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors*, at pp. 2-4.

<sup>2</sup> See *PECO Energy Company's Comments on the Commission's March 12, 2020 Tentative Implementation Order*, at pp. 1-2, 7-8; *Comments of the Energy Association of Pennsylvania to Act 129 Phase IV Tentative Implementation Order*, at pp. 2-7; *Comments of PPL Electric Utilities Corporation*, at p. 1.

order to reflect the impact of the COVID-19 process will take at least two years, and regulatory review and evaluation of that work will further lengthen the process. As such, delaying the start of Phase IV until that effort is complete, or even simply allowing Phase III to wind down slowly, will necessarily imply a multi-year hiatus of utility-sponsored EE&C activity. It is unclear to the OSBA that such a shutdown is appropriate and cost-effective, and we thus conclude some extension of Phase III would likely be a better approach. If the Commission chooses to delay the implementation of Phase IV, the OSBA suggests that forming a workgroup to discuss these issues may be prudent.

5. The OSBA also does not oppose the flexibility approach suggested by some commentators, should the Commission choose not to delay implementation of Phase IV. The OSBA agrees that rigidity in light of the unknown full impact of COVID-19 would be detrimental to EDCs and consumers alike. In so doing, however, the OSBA observes that the legislature incorporated economic penalties for any EDC failure to achieve specific quantitative goals for a very good reason. Act 129 includes a combination of budget constraints and hard targets in order to create strong economic incentives for the EDCs to focus on programs that provide the biggest EE&C “bang” for the ratepayer “buck.” If a flexible Phase IV approach is adopted, the OSBA encourages the Commission to include goals and penalties in the individual EDC programs, when those are developed.

**B. Safeguards to Protect Customers Against EDC’s Discriminatory Practices**

6. At page 4 of their comments, the Sustainable Energy Fund of Central Eastern Pennsylvania (“SEF”) argued that the Commission should implement procedures to ensure that small GNI Sector Customers be provided with an equal opportunity to participate in all EDC’s EE&C Plans. The OSBA observes that SEF’s specific concern is part of a larger issue that

affects EE&C programs for small and medium general service customers. The general service customer category is extremely diverse, including, *inter alia*, small businesses, lighting customers, government offices, charities, educational institutions, medical facilities, master-metered multifamily residences, etc. While it would obviously be impossible to monitor each of these sectors separately, the OSBA has consistently argued that EDCs should not incur disproportionate costs for the GNI and/or multi-family groups at the expense of small business customers, or *vice versa*. Thus, the OSBA agrees with SEF that programs for small/medium general service customers should be open to smaller GNI customers, as long as spending for the GNI programs is not disproportionate. The OSBA respectfully recommends that EDCs be required to demonstrate that their non-residential programs are both non-discriminatory (i.e., open to all) and balanced (i.e., not unduly disproportionate to particular customer groups).

**C. Multifamily Housing Programs**

7. Several stakeholders raised issues in their comments that pertain to multifamily housing and for low-income multifamily housing in particular.<sup>3</sup> Because a subset of multifamily dwellings take electric service in the same rate category as small businesses, the OSBA submits the following observations to the Commission.

8. Multifamily residential dwellings are either individually-metered or master-metered. Customers in individually-metered buildings take residential service, while customers

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<sup>3</sup> See *Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania* (“CAUSE-PA”), at pp. 13-14; *Joint Comments of Action Housing, Inc., Community Legal Services of Philadelphia, Inc., Green & Healthy Homes Initiative, Housing Alliance of Pennsylvania, Keystone Energy Efficiency Alliance, National Housing Trust, Natural Resources Defense Council, Pennsylvania Public Utility Project, Regional Housing Legal Services* (Collectively “PA Energy Efficiency for All Coalition or PA-EEFA”), at pp. 12-18; *Comments of the Housing Alliance of Pennsylvania*; *Comments of the Environmental Stakeholders*, at pp. 24-25; *Comments of the Keystone Energy Efficiency Alliance to the Tentative Implementation Order Regarding Phase IV of Energy Efficiency and Conservation Programs under Act 129*, at Section VI.

in master-metered buildings take either residential service or general service. The OSBA's comments apply only to programs targeted to master-metered multifamily dwellings. To the extent the OSBA can determine, the SWE did not segregate its analysis of the multifamily market between individually-metered and master-metered properties, or by type of service.<sup>4</sup> The OSBA believes this oversight is problematic, and a more-detailed analysis would be required before establishing and extending detailed programs targeted at low income residents of master-metered multifamily dwellings. The SWE provides very little information regarding the size of this market.

9. Additionally, low-income programs for master-metered residences served in GS tariffs are considerably more complicated administratively than other low-income programs for various reasons, including (a) it is difficult to establish how a particular utility customer qualifies as low-income, (b) it is difficult to determine whether any savings from the program will flow to the tenants rather than the building owner, and (c) it is necessary to get both tenants and building owners to participate, and it is often difficult to get building owners to respond. Therefore, it makes little sense to try to lump programs for low-income customers living in master-metered multifamily housing buildings together with programs for other low-income residents.

10. Finally, the OSBA does not oppose adopting reasonable programs for master-metered multifamily dwellings, including both low-income and non-low-income, once the market has been separately studied. However, the OSBA believes spending on those programs

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<sup>4</sup> The Phase 3 Residential Baseline study treats all multifamily as a single home type. [http://www.puc.pa.gov/Electric/pdf/Act129/SWE-Phase3\\_Res\\_Baseline\\_Study\\_Rpt021219.pdf](http://www.puc.pa.gov/Electric/pdf/Act129/SWE-Phase3_Res_Baseline_Study_Rpt021219.pdf) See, e.g., Table 10, page 19. The Phase 3 Non-Residential Baseline Study indicates that master-metered non-residential loads are considered in the residential study. [http://www.puc.pa.gov/Electric/pdf/Act129/SWE-Phase3\\_NonRes\\_Baseline\\_Study\\_Rpt021219.pdf](http://www.puc.pa.gov/Electric/pdf/Act129/SWE-Phase3_NonRes_Baseline_Study_Rpt021219.pdf) at page 10. The SWE's EEPDR market potential study similarly lumps all multifamily customers together, although it does segregate low-income from non-low-income. <http://www.puc.pa.gov/pcdocs/1656474.pdf> at page 27-28.



(inclusive of the administrative cost) should not be disproportional to the multi-family load served within the small to medium GS customer classes. The OSBA also encourages the Commission to require that any programs that are tailored to low-income residents who live in master-metered buildings; i.e., programs with very high subsidies/incentives as a percent of incremental cost; (1) to clearly establish how a particular utility customer is qualified as low-income and (2) to clearly establish whether the savings will flow to the tenants or the building owner.

### **III. CONCLUSION**

In view of the foregoing, the OSBA respectfully requests that the Commission issue a Final Implementation Order consistent with the OSBA's initial comments as well as the reply comments above.

Respectfully submitted,

/s/ Erin K. Fure

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Dated: May 12, 2020