


COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048  
800-684-6560

 @pa\_oca

 /pennoca

FAX (717) 783-7152  
consumer@paoca.org

May 12, 2020

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

Re: Act 129 Energy Efficiency and Conservation  
Program Implementation Phase IV  
Docket No. M-2020-3015228

Dear Secretary Chiavetta:

Attached for electronic filing are the Reply Comments of the Office of Consumer Advocate to the Tentative Implementation Order in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Darryl A. Lawrence  
Darryl A. Lawrence  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 93682  
E-Mail: [DLawrence@paoca.org](mailto:DLawrence@paoca.org)

Enclosures:

cc: Joseph Sherrick, Bureau of Technical Utility Services (**email only**)  
Adam Young, Law Bureau (**email only**)  
Certificate of Service

\*288124

CERTIFICATE OF SERVICE

Re: Act 129 Energy Efficiency and Conservation : Docket No. M-2020-3015228  
Program Implementation Phase IV :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Reply Comments to the Tentative Implementation Order, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 12<sup>th</sup> day of May 2020.

**SERVICE BY E-MAIL ONLY**

Richard A. Kanaskie, Esquire  
Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

John R. Evans, Esquire  
Office of Small Business Advocate  
555 Walnut Street  
1<sup>st</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923

Derrick Price Williamson, Esquire  
Barry A. Naum, Esquire  
Spilman Thomas & Battle PLLC  
Industrial Energy Consumers of PA  
1100 Bent Creek Blvd.  
Suite 101  
Mechanicsburg, PA 17050

/s/ Darryl A. Lawrence  
Darryl A. Lawrence  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 93682  
E-Mail: [DLawrence@paoca.org](mailto:DLawrence@paoca.org)

Christy M. Appleby  
Assistant Consumer Advocate  
PA Attorney I.D. # 85824  
E-Mail: [CAAppleby@paoca.org](mailto:CAAppleby@paoca.org)

Counsel for:  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152  
Dated: May 12, 2020  
\*288125

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Act 129 Energy Efficiency and Conservation : Docket No. M-2020-3015228  
Program Implementation Phase IV :

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REPLY COMMENTS OF THE  
OFFICE OF CONSUMER ADVOCATE

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Darryl A. Lawrence  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 93682  
E-Mail: [DLawrence@paoca.org](mailto:DLawrence@paoca.org)

Christy M. Appleby  
Assistant Consumer Advocate  
PA Attorney I.D. # 85824  
E-Mail: [CApplby@paoca.org](mailto:CApplby@paoca.org)

Counsel for:  
Tanya J. McCloskey  
Acting Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152  
Dated: May 12, 2020

## **Table of Contents**

I. INTRODUCTION .....	1
II. REPLY COMMENTS .....	2
A. The Impacts Of COVID-19 On Phase IV Implementation.....	2
B. EEPDR And DDR Market Potential Study Assumptions. ....	3
C. Cost-Effectiveness At The Measure Level. ....	4
D. Cost Recovery Issues. ....	5
E. Dispatchable Demand Response. ....	6
F. Savings Targets For Low Income Customers. ....	7
G. Reporting Requirements. ....	8
H. Bidding Into The PJM Forward Capacity Market.....	9
I. Opt-Out Request For Industrial Customer Class.....	10
III. CONCLUSION .....	11

## I. INTRODUCTION

On April 29, 2020, Comments were filed to the Commission's Tentative Implementation Order regarding Phase IV of the Act 129 Energy Efficiency and Demand Response Programs (Act 129 Plans or EE&C Plans). 66 Pa.C.S. Section 2806.1 *et seq.* In addition to the Comments filed by the Office of Consumer Advocate (OCA), the OCA found 26 other stakeholders or stakeholder groups (collectively, stakeholders) filed Comments to the Tentative Implementation Order (T.O.) raising a wide range of issues. The OCA reviewed Comments filed by the following stakeholders: Advanced Energy Management Alliance (AEMA); Alltogethernowpa (Brent Groce); Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA); Clean Air Board of Central Pennsylvania (Clean Air Board); Commission on Economic Opportunity (CEO); CPower (CPower); Duquesne Light Company (Duquesne Light); EarthJustice, National Resources Defense Council, Citizens for Pennsylvania's Future, Clean Air Council, Philadelphia Climate Works, POWER, 350 Philadelphia (collectively, Environmental Stakeholders); Ecobee (Ecobee); Enel North America, Inc. (Enel); Energy Association of Pennsylvania (EAP); FirstEnergy Companies (FirstEnergy); Housing Alliance of Pennsylvania (Housing Alliance); Industrial Energy Consumers of Pennsylvania (IECPA); Pennsylvania Energy Consumer Alliance, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors (collectively Industrial Customers); Keystone Energy Efficiency Alliance (KEEA); Andrew Melman (Melman); Office of Small Business Advocate (OSBA); Oracle Corporation (Oracle); PECO Energy Company (PECO); PPL Electric Utilities Corporation (PPL); Pennsylvania Energy Efficiency for All Coalition (PA-EEFA); Pennsylvania Weatherization Task Force (PA

Weatherization Task Force); The Sustainable Energy Fund of Central Eastern Pennsylvania (SEF); Kenneth Zenkevich (Zenkevich); and Russell Zerbo (Zerbo).

The breadth of the comments, as well as the thoughtfulness of the Comments, was significant. The OCA will be unable to reply to each point raised by the many stakeholders. In these Reply Comments, the OCA will address some key points. The OCA's failure to reply to a specific point raised by another stakeholder or stakeholder group should not be interpreted as agreement with that position. The OCA reserves its rights to respond to issues during the development of the Phase IV EE&C Plans.

## II. REPLY COMMENTS

### A. The Impacts Of COVID-19 On Phase IV Implementation.

Almost every stakeholder filing comments identified impacts that the COVID-19 pandemic will have on efforts for the completion of Phase III and the development of Phase IV. There was nearly unanimous agreement amongst those stakeholders commenting on this issue that any Phase IV targets established based on the Market Potential Studies conducted before the COVID-19 pandemic may not be valid or relevant. See, e.g., EAP Comments at 2-3; PECO Comments at 12; PPL Comments at 5; IECPA Comments at 2; Industrial Customer Comments at 14; OCA Comments at 5-7. The stakeholders have suggested different approaches to this problem, ranging from delays for the implementation of Phase IV to establishing a further process to seek relief from any targets that may be established based on the EEPDR Market Potential Study. *Cf.*, IECPA Comments at 2; OCA Comments at 1 to EAP Comments at 4-7. While it is undeniable in the OCA's view that the impact of COVID-19 on both Phase III and Phase IV must be addressed, the OCA submits that this should be done in a manner that does not waste scarce and valuable resources. To that end, the OCA supports a delay in the implementation of Phase IV as set forth

in the OCA's Comments. OCA Comments at 5-7. The OCA appreciates the position of the utility stakeholders that are recommending an additional process in the future for adjusting targets and other requirements that may be set now based on the EEPDR Market Potential Study, but such additional process would consume additional time and resources that may be in short supply for many of the stakeholders for the foreseeable future.

Based on the Comments received, the OCA urges the Commission to delay the implementation of Phase IV until such time as the impacts of COVID-19 can be fully and properly addressed. The OCA set forth its recommendations in this regard in its Comments at pages 5-7.

B. EEPDR And DDR Market Potential Study Assumptions.

Numerous stakeholders identified concerns with the EEPDR Study and the DDR Study, aside from the COVID-19 impacts. *See, e.g.*, Duquesne Comments at 3-7; FirstEnergy Comments at 13-14; KEEA Comments at 6-7; SEF Comments at 3; CAUSE-PA Comments at 8, PPL Comments at 5-10. Both PPL and EAP also noted the fact that the Commission was unable to convene a stakeholder meeting due to COVID-19, leaving many outstanding questions. The stakeholders identified a wide range of concerns with the EEPDR and DDR Market Potential Studies that require resolution.

As the OCA discussed in its Comments, the OCA agrees with the stakeholders that the EEPDR Potential Study, upon which the consumption reduction targets and peak demand reduction targets are based, requires further analysis before it can be used as a basis for establishing Phase IV program parameters. The OCA supports more thorough review of the EEPDR Potential Study before setting consumption reduction targets or making final decisions regarding the inclusion of a demand response component to Phase IV. In regard to the impacts of COVID-19, as discussed in the OCA's Comments Section II, the EEPDR Study should be revisited, or at a

minimum additional sensitivity analyses should be run, to address the impacts of COVID-19. See, OCA Comments at 5-7. It is first necessary, however, to resolve the numerous issues raised by the stakeholders regarding the EEPDR Study before performing any revisions or sensitivities related to COVID-19.

C. Cost-Effectiveness At The Measure Level.

In their Comments, the Industrial Customers recommended that the savings targets should be based on achieving a TRC of 1.0 at the measure level. Industrial Customers Comments at 18. In the Tentative Implementation Order, the Commission proposed to continue its prior practice of requiring a TRC above 1.0 at the portfolio level, but allowing measures that may have a TRC below 1.0 in the comprehensive portfolio. T.O. at 15. The OCA agrees with the Commission and continues to support the approach that allows some measures to have a TRC below 1.0 if the portfolio has a TRC above 1.0.

As the Commission sets forth in the T.O., the Commission is encouraging comprehensive programs as such programs are more beneficial to customers. T.O. at 15. The Commission noted that while cost-effectiveness is always a priority, an individual program does not have to be cost-effective in order to be implemented as long as the EE&C Plan as a whole is cost-effective. T.O. at 15. The Commission has used this test in all of the Phases.

The OCA submits that the Commission should maintain its approach to comprehensive programs. Cost-effectiveness should not be assessed at the measure level alone. Comprehensive programs provide a mix of measures designed to meet varying needs of customers, allow for broad participation from a wider demographic, and provide deeper and sometimes longer lasting savings. In addition, a comprehensive program assessed at the portfolio level allows pilot measures to be tested and developed.



Continuing to assess cost effectiveness at the portfolio level will not be harmful to consumers as the Commission reserves the ability provided by statute to terminate a measure. Specifically, if the Commission determines that a measure included in a plan will not allow the EDC to achieve the required consumption reductions in a cost-effective manner, the Commission may terminate the use of that measure. T.O. at 45. With this safeguard, the OCA submits that the Commission's existing approach to allow measures that have a TRC below 1.0 while the portfolio has a TRC above 1.0 should be continued.

D. Cost Recovery Issues.

Several stakeholders addressed cost recovery and the allocation of costs for Phase IV. *See, e.g.,* IECPA Comments at 4-5; CAUSE-PA Comments at 26-27. IECPA recommends that administrative costs be allocated to the customer classes on a per customer basis rather than on a per kilowatt-hour basis or peak demand basis as is currently done. IECPA Comments at 5. The OCA submits that allocating administrative costs on a per customer basis is not consistent with cost causation principles. The Act 129 costs are caused by efforts to provide energy and peak demand savings and should be allocated on that basis.

As the Commission's T.O. provides, EE&C costs should be allocated using reasonable and generally acceptable cost-of-service principles. T.O. at 72. The Commission states that once the EDC has developed an estimate of the total EE&C costs, the EDC should allocate those costs to each of its customer classes that will benefit from the measures or programs to which the costs relate. Administrative costs are to also be allocated following reasonable and generally acceptable cost-of-service principles. In that the programs relate to energy savings and peak demand reductions, allocating the administrative costs in this manner is fully in accord with cost-of-service

principles. As such, IECPA's suggestion to allocate administrative costs on a per customer basis should be rejected.

CAUSE-PA recommends that CAP customers and confirmed low income customers be excluded from the EE&C Riders. CAUSE-PA Comments at 26-27. As the Commission points out in its Tentative Order, although there is great concern for the difficulties experienced by low income customers in paying their energy bills, the Act does not provide for such exclusion and it would be difficult to determine a way to make such an exclusion. T.O. at 72. The OCA would also note that "confirmed low income" customers are only a subset of all low income customers in an EDC's service territory. From the information available to most EDCs, it is not possible to identify all low income customers. Those low income customers not identified by the EDC would then have to absorb additional costs.

The OCA agrees with the Commission that we should design programs to reach as many low income customers as possible and encourage participation by low income customers in the EE&C programs. T.O at 72-73.

E. Dispatchable Demand Response.

Several stakeholders supported the exclusion of the Dispatchable Demand Response as set forth in the DDR Potential Study for Phase IV. See, Industrial Customers Comments at 16; OSBA Comments at 3; PECO Comments at 9. PECO appears to assume that the Commission's Order allows for the voluntary continuation of demand response programs but the OCA would request that the Commission make this clear. The OCA supports the voluntary continuation of demand response programs without a requirement to bid the demand reductions into the PJM PSA mechanism. See, OCA Comments at 14-18.

Several stakeholders supported the continuation of the current demand response program design for Phase IV, as did the OCA. See, AEMA Comments at 5-7; Enel Comments at 3-7. See also, Brent Groce Comments at 1; Clean Air Board Comments at 1; Zerbo Comments at 1; Zenkevich Comments at 1. As Advanced Energy Management Alliance and Enel North America point out, the commercial sector was excluded from demand response under the DDR Potential Study even though it can be extremely cost-effective. AEMA Comments at 2-3; Enel Comments at 2. Advanced Energy Management Alliance shows that on a cost basis, peak demand savings achieved through demand response programs can be obtained at a “fraction of the cost.” AEMA Comments at 12. These stakeholders also point out that dual participation of commercial demand response in Act 129 and PJM is not likely to result in double compensation as historically, the Act 129 events and the PJM emergency events have not occurred at the same time.

Advanced Energy Management Alliance also conducted an analysis that showed that continuation of the Phase III demand response programs would result in \$53 million of net benefit. AEMA Comments at 12. The OCA’s expert had conducted a similar type of analysis also showing significant net benefits from the continuation of Phase III demand response programs. OCA Comments at 17-18.

The OCA supports the continuation of Phase III demand response programs. At a minimum, EDCs that have invested in demand response should be allowed to continue the programs without a requirement to bid into the PJM PSA mechanism so as to not lose the value of those investments.

F. Savings Targets For Low Income Customers.

Several stakeholders commented that the low income carve out of 5.8% of savings and 12.7% of the budget was not explained and is too low. See, PA-EEFA Comments at 12; CEO

Comments at 2; PA Weatherization Task Force Comments at 2; CAUSE-PA Comments at 9; Environmental Stakeholders at 23-24. As these stakeholders note, the 5.8% of overall savings target is lower on a kilowatt-hour basis than the Phase III target since the overall Phase IV savings target is lower. Id. The OCA shares these concerns. As the OCA also pointed out in its Comments, it appears as if the acquisition costs in the EEPDR Market Potential Study may be high, thus impacting the level of achievable savings, including the low income savings. The OCA also noted that the minimum low income savings target was established by PECO's low income potential, which is projected to have the highest acquisition cost. See, T.O. at 16. By contrast, the EEPDR Market Potential Study identified Penn Power as having the highest low income potential of 9.4% of its consumption reduction target, almost double that of PECO. See, T.O. at 16.

The OCA agrees with the recommendations to revisit and increase the level of low income savings that should be achieved by the Phase IV EE&C Plan.

G. Reporting Requirements.

Numerous stakeholders provided recommendations to improve the reports provided to the Commission. Some of the recommendations include:

- Streamlining reports to include fewer tables that present consolidated information that assists with development and review. Review reporting formats in other jurisdictions. (EAP Comments at 12)
- Create consistent, standardize reporting for multifamily solutions in annual reports, including reporting the number of buildings and units served separately. (Housing Alliance Comments at 4-5; PA-EEFA Comments at 22)
- Report on solutions to public housing, when possible, including number of units and buildings, as well as the name of the building. (Housing Alliance Comments at 4-5)
- CSP costs for each EE&C measure should be reported and stated separately from any compensation provided to the customers of the CSP service. Payments to CSPs outside of compensation for customer work should be publicly available and classified as administrative costs. (Industrial Customers Comments at 26-27)

- Further delineate administrative costs to allow for comparative analysis and to ascertain if the expenses are just and reasonable. Delivery and installation of measures should be tracked separately from costs associated with back-office administrative and program support tasks. (CAUSE-PA Comments at 19-20)
- Require details on how much of the non-residential load in each rate class is accounted for by GNI customers and how much of non-residential EE&C spending for each rate class is dedicated to GNI participants. (OSBA Comments at 4-5)
- Improve low-income program data collection and standardize its reporting (CAUSE-PA Comments at 19).

The OCA submits that these suggestions and other reporting improvements should be considered. Standardization of the data collection and reporting will assist in making appropriate comparisons of the programs as well as assist the Commission in its oversight function. The Commission should consider convening a working group to further improve and standardize the reporting on Act 129 Programs.

#### H. Bidding Into The PJM Forward Capacity Market.

In its Comments, the OCA expressed its reservations about the Commission's proposal to require EDCs to bid a portion of the peak demand savings from energy efficiency measures into PJM's forward capacity market (FCM). OCA Comments at 20-21. Several stakeholders raised numerous concerns with the Commission's proposal. See, e.g., CPOWER Comments at 1-2; KEEA Comments at 17-18; Duquesne Light Comments at 11-12; Industrial Customers Comments at 20-23; PECO Comments at 12. The OCA submits that the Comments present sufficient reason for the Commission to eliminate any requirement for bidding into the PJM forward capacity market as part of Phase IV. The OCA would further note that as the Industrial Customers point out, the uncertainty and potential cost increases with bidding into the PJM capacity market, particularly

under the recent Order by the Federal Energy Regulatory Commission (FERC) and the expanded PJM Minimum Offer Price Rule (MOPR), argue against any mandatory bidding.

FirstEnergy has proposed that if the Commission requires bidding into the PJM forward capacity market, the EDC should be allowed to share in any proceeds that result. FirstEnergy Comments at 12. FirstEnergy does not address sharing in any penalties that may result. As the Commission made clear in the T.O., it was not going to entertain any alternative rates or ratemaking mechanisms in this docket. T.O. at 68. The Commission correctly notes that any incentive mechanisms must be addressed in the context of a base rate case. T.O. at 68. The OCA would also note that the surcharge mechanism under Section 2806.1(k)(1) does not include such incentive costs. FirstEnergy's proposal should be rejected.

I. Opt-Out Request For Industrial Customer Class.

IECPA and the Industrial Customers propose that an opt-out be implemented for the largest commercial and manufacturing customers. IECPA Comments at 3; Industrial Customers Comments at 2. The OCA would question whether such an opt-out is permitted under Act 129. Even if it were permitted, an opt-out would raise significant questions about the need for adjustments to the budgets as well as adjustment to the savings targets. As the OCA understands the EEPDR Market Potential Study, the targets are based on achievable savings across all customer classes. To eliminate one customer class, or the majority of customers in one class, would greatly impact the savings that can be achieved. In addition, an opt-out by some customers from paying the surcharge would shift cost burdens to other customers and other customer classes. If any opt-out is found to be legal and is contemplated, it would require a re-examination of the budget levels, the savings targets and the program design.

### III. CONCLUSION

The Office of Consumer Advocate appreciates the many thoughtful Comments that have been presented regarding the Commission's Tentative Implementation Order regarding Phase IV of the Act 129 Energy Efficiency and Demand Response Programs. The OCA looks forward to continuing to work with all stakeholders in designing effective programs that benefit all consumers.

Respectfully Submitted,

/s/ Darryl A. Lawrence

Darryl A. Lawrence  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 93682  
E-Mail: [DLawrence@paoca.org](mailto:DLawrence@paoca.org)

Counsel for:  
Tanya J. McCloskey  
Acting Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152  
Dated: May 12, 2020  
\*288018