



May 12, 2020

Via Electronic Filing

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

Re: *Petition of the Industrial Energy Consumers of Pennsylvania to Suspend  
Implementation of the Act 129 Phase IV Requirements and for Other Relief*  
(Docket No. P-2020-3019562)

Dear Secretary Chiavetta,

Enclosed for filing in the above-referenced proceeding, please find the Answer of the Energy Efficiency Advocates. Should you have any questions, please contact me at [dmcDougall@earthjustice.org](mailto:dmcDougall@earthjustice.org). As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with a copy of this document. Thank you.

Sincerely,

/s/ Devin McDougall

Staff Attorney

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of the Industrial Energy	:	
Consumers of Pennsylvania to Suspend	:	
Implementation of the Act 129 Phase IV	:	Docket No. P-2020-3019562
Requirements and for Other Relief	:	

**ANSWER OF THE  
ENERGY EFFICIENCY ADVOCATES  
TO THE PETITION OF THE  
INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA**

Pursuant to 52 Pa. Code § 5.61, Sierra Club, Natural Resources Defense Council (“NRDC”), Citizens for Pennsylvania’s Future (“PennFuture”), Clean Air Council (the “Council”), and the Building Performance Association (“BPA”) (hereinafter “Energy Efficiency Advocates”) respectfully submit this Answer in response to the *Petition of the Industrial Energy Consumers of Pennsylvania to Suspend Implementation of the Act 129 Phase IV Requirements and for Other Relief* (“Petition”) that was filed by the Industrial Energy Consumers of Pennsylvania (“IECPA”) with the Pennsylvania Public Utility Commission (the “Commission”) on April 22, 2020.

**I. Introduction and Background**

The Energy Efficiency Advocates oppose IECPA’s Petition and support the continued implementation of Act 129’s energy efficiency programs as a critical mechanism for (1) ensuring that efficiency services are available to Pennsylvanians as many struggle with higher energy burdens and most spend more time at home, and for (2) generating the jobs necessary to lay the foundation for economic recovery. In the current crisis, the Commonwealth cannot afford to

discard such a time-tested, cost-effective savings and jobs program. On the contrary, it is needed more than ever.

Act 129’s decade-long track record of success demonstrates the pivotal role of energy efficiency in driving growth in the Commonwealth. Since the initiation of Phase I of Act 129’s implementation in 2009, Act 129 has delivered significant savings for Pennsylvania ratepayers year after year, as demonstrated by the following chart:

Figure 1. Pennsylvania Ratepayer Savings Achieved By Act 129

Phase	Years	Pennsylvania Ratepayer Savings Achieved By Act 129
I	June 1, 2009 - May 31, 2013	\$4,192,389,000 <sup>1</sup>
II	June 1, 2013 - May 31, 2016	\$2,197,271,000 <sup>2</sup>
III	June 1, 2016 - June 1, 2021	\$1,785,950,000 (to date) <sup>3</sup>

Simply put, as Figure 1 indicates, Act 129 has proven itself, through all of the economic cycles of the last decade, including the Great Recession in 2009, to be a consistent engine of utility bill savings for Pennsylvanians.

Act 129 has also fueled the growth of energy efficiency jobs in Pennsylvania, which represent a thriving sector of Pennsylvania’s economy. In 2018, the most recent year for which figures are available, there were 71,433 energy efficiency jobs in Pennsylvania,<sup>4</sup> up from 53,175 in 2015.<sup>5</sup> As the Building Performance Association noted in its letter to the Commission, attached hereto as Exhibit A, “In a post-COVID economic environment, the so-called ‘non-

<sup>1</sup> Act 129 Statewide Evaluator, First Annual Report - Phase I: June 1 2009–May 31, 2013, at 16 (Mar. 4, 2013).

<sup>2</sup> Act 129 Statewide Evaluator, *Phase II Final Report*, at 31 (Feb. 28, 2017).

<sup>3</sup> SWE Annual Report: Act 129 Program Year 8, at XI (Feb. 28, 2018); SWE Annual Report: Act 129 Program Year 9, at 12 (Feb. 28, 2019); SWE Annual Report: Act 129 Program Year 10, at 12 (Feb. 19, 2020) (“Annual Report Year 10”).

<sup>4</sup> 2020 U.S. Energy & Employment Report, at 277 (PA-1), <https://static1.squarespace.com/static/5a98cf80ec4eb7c5cd928c61/t/5e78198f28dc473dd3225f04/1584929183186/U/SEER-Energy-Employment-by-State-2020.pdf>.

<sup>5</sup> Energy Efficiency Jobs in America, at 12 (Dec. 2016), [https://www.e2.org/wp-content/uploads/2016/12/EnergyEfficiencyJobsInAmerica\\_FINAL.pdf](https://www.e2.org/wp-content/uploads/2016/12/EnergyEfficiencyJobsInAmerica_FINAL.pdf).

energy benefits’ of job creation and additional spending money in the local economy can drive Pennsylvania’s economic recovery by creating new jobs and aiding existing workforces, boosting economic activity in key labor-intensive sectors, and delivering benefits for all Pennsylvania.”<sup>6</sup>

As the Commission has recognized, the Commonwealth is currently experiencing a disaster emergency caused by the COVID-19 pandemic.<sup>7</sup> On March 6, 2020, the Governor of Pennsylvania issued a Proclamation of Disaster Emergency, declaring “the existence of a disaster emergency throughout the Commonwealth.”<sup>8</sup> On March 20, 2020, the Commission issued an Emergency Order (“Emergency Order” or “Order”) providing for (1) the “Suspension of Regulatory and Statutory Deadlines” and (2) the “Modification of Filing and Service Requirements.”<sup>9</sup>

With respect to deadlines, the Emergency Order provides that all “statutory and regulatory deadlines” may be extended during the pendency of the Proclamation of the Disaster Emergency (and may be extended by an additional thirty days following termination of Proclamation of the Disaster Emergency).<sup>10</sup> Deadline extensions shall not exceed 90 days “except upon expedited certification of the question by the Chief Administrative Law Judge or Bureau Director to the Commission.”<sup>11</sup> The Emergency Order also provided for service and filing of documents by electronic means during the pendency of the Proclamation of Disaster

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<sup>6</sup> Exhibit A, 5.

<sup>7</sup> Emergency Order at 1, Commission Docket No. M-2020-3019262: *Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements* (Mar. 20, 2020) (“Emergency Order”).

<sup>8</sup> Proclamation of Disaster Emergency at 2, Commonwealth of Pennsylvania – Office of the Governor (Mar. 6, 2020) (“Proclamation”).

<sup>9</sup> Emergency Order at 1.

<sup>10</sup> *Id.* at 4.

<sup>11</sup> *Id.*

Emergency.<sup>12</sup> The Emergency Order does not authorize regulatory or procedural alterations other than deadline extensions and the shift to exclusively electronic service and filing.

On April 22, 2020, IECPA filed its Petition, which cited the Emergency Order and requested that planning and development work for Phase IV of Act 129 be halted for 270 days, and that the implementation of Phase III of Act 129 be suspended during the same time period.<sup>13</sup> IECPA's Petition does not provide the names of any of its members, but it does assert that its members are "energy-intensive industrial consumers" that are "some of the largest consumers of utility services" in Pennsylvania.<sup>14</sup> Such large industrial consumers have, for many years, expressed opposition to paying their share for Act 129's energy efficiency programs, despite the above-discussed benefits of Act 129 for all Pennsylvanians.<sup>15</sup>

## **II. Statement of Interests**

Pursuant to the requirements contained in 52 Pa. Code § 5.61(e), each of the Environmental Stakeholders asserts that it has standing to intervene and to file an Answer in this proceeding. Eligibility to intervene in Commission proceedings is governed by Section 5.72, which provides in relevant part that "[a] petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought." 52 Pa. Code. § 5.72(a).

Section 5.72 further provides that the right or interest may be one "which may be directly affected and which is not adequately represented by existing participants, and as to which the

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<sup>12</sup> *Id.*

<sup>13</sup> Petition at 14–15, Commission Docket Nos. M-2020-3015228 and M-2020-3019262 (Apr. 22, 2020).

<sup>14</sup> *Id.* at 1.

<sup>15</sup> See Comments of the 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, at 12, Commission Docket No. M-2020-3015228 (Apr. 27, 2020); Testimony of Thomas Schuster on behalf of the Sierra Club to the members of the Senate Committee on Consumer Protection and Professional Licensure (Oct. 26, 2015), attached hereto as Exhibit B.

petitioner may be bound by the action of the Commission in the proceeding.” 52 Pa. Code. § 5.72(a)(2). While Section 5.72 speaks of the rights of a “person” to intervene, the Commonwealth Court has consistently stated that “an association may have standing as a representative of its members ... as long as an organization ‘has at least one member who has or will suffer a direct, immediate, and substantial injury to interest as a result of the challenged action, [the organization] has standing.’”<sup>16</sup>

Sierra Club is a non-profit environmental organization whose mission is to explore, enjoy, and protect the environment and to practice and promote the responsible use of the Earth’s resources and ecosystems. The Sierra Club currently has over 31,000 members in Pennsylvania, most of whom receive electricity service from one of the electric distribution companies (“EDCs”) required to offer efficiency services under Act 129. These members have a strong interest in both the success of energy efficiency programs and in protecting themselves, their communities, and their ambient environment from the effects of fossil fuel generation.

NRDC is a non-profit environmental organization with more than 1.4 million members and online activists, including nearly 90,000 in Pennsylvania, most of whom receive electricity service from one of the EDCs required to offer efficiency services under Act 129. Since its founding in 1970, their lawyers, scientists, and other environmental specialists have worked to protect the world’s natural resources, its public health, and the environment. NRDC’s top institutional priority is building the clean energy future—a priority that can be advanced by ramping up investments in energy efficiency via strengthened programs such as those administered under Act 129.

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<sup>16</sup> *Energy Conservation Council of Pennsylvania v. Pub. Util. Comm’n*, 995 A.2d 465, 476 (Pa. Cmwlth. 2010) (alteration in original) (citing *Tripps Park v. Pennsylvania Public Utility Commission*, 52 Pa. Cmwlth. 317, 415 A.2d 967, 970 (1980)); *Parents United for Better Sch., Inc. v. Sch. Dist. of Philadelphia Bd. of Educ.*, 166 Pa. Cmwlth. 462, 466, 646 A.2d 689, 691 (1994).

PennFuture is a membership-based non-profit advocacy organization focused on energy and environmental issues that impact Pennsylvanians. PennFuture currently has over 700 members in Pennsylvania, most of whom receive electricity service from one of the EDCs required to offer efficiency services under Act 129. PennFuture works to create a just future where nature, communities, and the economy thrive. PennFuture enforces environmental laws and advocate for the transformation of public policy, public opinion, and the marketplace to restore and protect the environment, safeguard public health, and reduce the consequences of climate change within Pennsylvania and beyond.

Clean Air Council is a member-supported environmental organization serving the Mid-Atlantic Region. The Council currently has approximately 30,000 members in Pennsylvania, most of whom receive electricity service from one of the EDCs required to offer efficiency services under Act 129. The Council is dedicated to protecting and defending everyone's right to breathe clean air. The Council works through a broad array of related sustainability and public health initiatives, using public education, community action, government oversight, and enforcement of environmental laws.

The Building Performance Association is a 501(c)(6) non-profit trade association focused on the home and building performance industry - delivering improved energy efficiency, health, safety, and environmental outcomes. BPA supports home performance contractors, state and regional organizations, weatherization agencies and training centers, manufacturers and local non-profits focused on residential and commercial energy efficiency. BPA's 9,751 members and affiliates provide the "nuts and bolts" of efficiency upgrades to homes and buildings across Pennsylvania and the United States. We are proud of the high-quality services that BPA's 593 Pennsylvania-based member and affiliates deliver and the skilled jobs that they create in

communities across the Commonwealth. We see firsthand every day that our Pennsylvania customers value the energy efficiency programs that add new insulation in homes, upgrade lighting in schools, and install new equipment in manufacturing facilities and help residents and businesses save money on their utility bills. BPA also helps to train and certify Pennsylvania's skilled home performance workforce. For example, on September 30<sup>th</sup> to October 1<sup>st</sup>, 2019, BPA hosted 427 home performance contractors, industry representatives and stakeholders at the Pennsylvania Home Performance Conference & Trade Show in State College, Pennsylvania. BPA's main headquarters office is located in Moon Township, Pennsylvania.

### **III. Answer**

#### **A. The Petition Should Be Rejected Because it is Factually Unsupported and Fails to Carry Its Burden of Proof.**

All petitions to the Commission must, in addition to describing the relief requested, “state clearly and concisely” the “facts and law relied upon” by the petitioner.<sup>17</sup> This is because the relevant statute provides that the petitioner, as the “proponent of a rule or order,” has “the burden of proof.”<sup>18</sup> As the Supreme Court of Pennsylvania has explained, “[t]he term ‘burden of proof’ ... imports the duty of ultimately establishing any given proposition” and marks “the peculiar duty of him who has the risk of any given proposition on which parties are at issue—who will lose the case if he does not make this proposition out, when all has been said and done.”<sup>19</sup>

Since IECPA's Petition appeals to the Commission to provide relief under the Commission's Emergency Order, IECPA has the burden of providing facts that show that the

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<sup>17</sup> 52 Pa. Code § 5.41.

<sup>18</sup> 66 Pa. Stat. and Cons. Stat. Ann. § 332(a); *See also W. Penn Power Co. v. Pennsylvania Pub. Util. Comm'n*, No. 1548 C.D. 2018, 2019 WL 4858352, at \*3 (Pa. Commw. Ct. Oct. 2, 2019).

<sup>19</sup> *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 50, 70 A.2d 854, 856 (1950).

measures it requests will help ameliorate, and not worsen, the emergency conditions affecting all Pennsylvanians. As a threshold issue, the failure of IECPA’s Petition to carry that burden means that it must be rejected.<sup>20</sup>

1. IECPA’s Proposed Suspension of Phase IV is Factually Unsupported.

In the Commission’s Tentative Implementation Order (“Tentative Order”) on Phase IV, dated March 12, 2020, the Commission reported the findings of the statewide evaluator that Phase IV would generate \$1.2 billion in savings during the period from 2021-2026.<sup>21</sup> The statewide evaluator also found that Phase IV would be highly cost-effective, with a return on investment of 62%.<sup>22</sup>

According to the “Phase IV Planning Timeline” in the Tentative Order, the primary upcoming deadlines are that (1) the Commission plans to issue a Final Implementation Order on June 18, 2020, (2) EDCs must file compliance plans by November 30, 2020, (3) the Commission plans to rule on EDC compliance plans by March 2021, and (4) that Phase IV begins on June 1, 2021.<sup>23</sup>

IECPA requests that “the Commission suspend or delay the planned Act 129 Phase IV requirements” for a period of 270 days,<sup>24</sup> but provides no factual evidence that halting the above-described next steps in the Phase IV Planning Timeline will in any way ameliorate the present emergency IECPA describes in general terms the difficult economic conditions currently being experienced in the Commonwealth, such as heightened unemployment and reduced household

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<sup>20</sup> As discussed *infra* at Point III.B, IECPA’s requested measures are also unlawful, arbitrary, and capricious, which provide independent reasons why IECPA’s Petition must be rejected.

<sup>21</sup> Tentative Implementation Order at 11, Commission Docket M-2020-3015228 (Mar. 12, 2020) (“Tentative Order”).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 43.

<sup>24</sup> Petition at 3–4.

incomes.<sup>25</sup> However, IECPA does not explain how halting the ongoing project of Phase IV planning that is being carried on by Commission staff, EDC employees, and consultants – taking away work from those workers – will help improve the Commonwealth’s economy. Nor does IECPA explain why any material effects of the economic issues it cites cannot be addressed during the Commission’s established planning process.

IECPA notes that the proposed energy efficiency targets reflected in the Tentative Order do not reflect the changes in electricity demand wrought by the pandemic.<sup>26</sup> This is correct, however just because aggregate electricity demand is lower presently does not mean that energy efficiency measures will have significantly less net benefits over the life of the measure. Indeed, residential demand for electricity may well increase as ratepayers spend more time at home, making the benefits of energy efficiency even more necessary to keep bills down. A continued Phase IV planning process could allow for progress towards achieving savings and protecting jobs right away, and provide for the adjustment of targets over time if it turned out that facts warranted such adjustments. Yet IECPA asks for a preemptive suspension of all Phase IV activity for almost a year, without supplying any factual basis to indicate why such a course is to be preferred to an approach that progress to made with adjustments as needed.

IECPA also notes that the Governor has issued a statewide “stay at home” order and that many businesses have closed their offices, but does not explain how this would prevent Commission staff, EDC employees, and consultants from continuing to work on Phase IV planning remotely as they are able. Indeed, IECPA ignores the fact that the Emergency Order itself describes how the Commission has put in place “work from home” procedures for

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<sup>25</sup> *Id.* at 2–3.

<sup>26</sup> *Id.* at 12.

Commission staff.<sup>27</sup> IECPA simply provides no facts supporting the need for an immediate 270-day freeze of all work on Phase IV planning.

The Office of Consumer Advocate (“OCA”) submitted an Answer to the IECPA Petition which suggests that instead of continuing with the development of Phase IV, the Commission extend Phase III, without reducing funding, and work to maximize savings achieved through Phase III programs until such time as Phase IV planning may be resumed.<sup>28</sup> As noted above, the Energy Efficiency Advocates believe that there is no reason to suspend Phase IV development. However, should the Commission choose to do so, OCA’s proposal of continuing Phase III on a fully-funded basis until Phase IV development is resumed is a more reasonable alternative than IECPA’s proposal of simply suspending Phase IV planning for a 270-day period.

2. IECPA’s Proposed Cuts to Phase III are Likewise Factually Unsupported.

Phase III of Act 129, which runs from 2016 to 2021, currently in the implementation stage, with EDCs actively implementing energy efficiency programs in order to meet kilowatt-hour and peak demand reduction targets.<sup>29</sup> As of the most recent annual report, covering 2019, each of the seven EDCs subject to Act 129 is making substantial progress towards its goals, with one EDC having already exceeded its Phase III target two years early.<sup>30</sup> As reflected in Figure 1, which shows Act 129’s decade-long record of providing hundreds of millions of dollars in annual savings,<sup>31</sup> Phase III has also delivered significant savings to Pennsylvania ratepayers, with \$695,114,000 in savings in 2019 alone.<sup>32</sup>

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<sup>27</sup> Emergency Order at 1.

<sup>28</sup> Answer of the OCA to the Petition at 1–2 (May 7, 2020) (“OCA Answer”).

<sup>29</sup> Implementation Order at 10, Commission Docket No. M 2014-2424864 (June 11, 2015).

<sup>30</sup> Annual Report Year 10 at 6.

<sup>31</sup> See *supra* at Point I.

<sup>32</sup> Annual Report Year 10 at 12.

Nonetheless, IECPA requests that Phase III implementation be cut and that the collection of Phase III surcharges on utility bills be cut by 50%, for 270 days.<sup>33</sup> IECPA asserts that its members, large industrial companies, will experience a short-term benefit from such a cut because it will reduce their utility bills.<sup>34</sup> But IECPA fails to acknowledge that Act 129 has a decade-long record of achieving over high annual investment returns, and – more importantly – fails to show that cutting investment in Act 129 would benefit Pennsylvanians generally.

The Commission is tasked with stewarding the implementation of Act 129 in the public interest of all Pennsylvanians. IECPA’s “eat the seed corn” proposal of cutting Act 129 investment at a time when it is critical to be laying the foundation for economy-wide recovery is manifestly unwise. While suspending Phase IV of Act 129 may benefit some of IECPA’s members, IECPA provides no facts to carry its burden of showing that such a risky step would be warranted or would benefit ordinary Pennsylvanians.

This is why the OCA has opposed cutting the surcharges.<sup>35</sup> As OCA concluded, the proposed reduction “does not have a sound foundation,” as “[e]nergy efficiency and demand response measures may help customers reduce their overall energy usage, and thereby their energy bills as they struggle to find ways to contain costs in these difficult economic times.”<sup>36</sup> As OCA notes, “continuing with cost-effective energy efficiency and demand response that can be safely and cost-effectively delivered could be more beneficial to customers in both the short term and the long term” than cutting the surcharges.<sup>37</sup>

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<sup>33</sup> Petition at 14–15.

<sup>34</sup> *Id.* at 10.

<sup>35</sup> OCA Answer at 3.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

IECPA solicits the support of the EDCs –who, under IECPA’s proposal, would have meet the same targets with half the funding – by proposing that all penalties for EDC failures to meet their targets for Phase III be waived. This request is also baseless. As noted above, all seven EDCs subject to Act 129 are well on their way to meeting their targets, and one EDC (Penn Power) has already exceeded its target.<sup>38</sup> The EDCs are not required to reach their targets until May 30, 2021, over a year from now, and it is only after that date that a penalty for nonperformance could be assessed. If any individual EDC were to find itself unable to meet its target, and thus at risk of a penalty, that EDC could petition the Commission for a waiver and supply the facts needed to assess such a request for waiver.

IECPA provides no factual basis to discard the narrowly tailored approach currently available under Commission procedures and substitute in a sweeping waiver of all Phase III penalties for all EDCs, and it appears that the only effect of preemptively waiving all penalties, over a year in advance, would be to disincentivize EDCs from doing the best they can to meet their targets.

Notably, the Office of the Consumer Advocate also opposes the preemptive waiver of Phase III penalties. Observing that EDCs have made significant progress towards their Phase III targets already, OCA found that it would be “premature” to waive penalties.<sup>39</sup> Instead, OCA recommends that Phase III programs should continue to be delivered, with adjustments as needed in light of current conditions, and that the issue of penalty waivers should be considered only once the results of EDC implementation efforts are known.<sup>40</sup>

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<sup>38</sup> Annual Report Year 10 at 6. Penn Power (106%); Penelec (93%); West Penn (91%); Met-Ed (89%); Duquesne (84%); PPL (78%); PECO (52%).

<sup>39</sup> OCA Answer at 3.

<sup>40</sup> OCA Answer at 3–4.

## **B. The Petition Should Be Rejected Because Its Proposals are Unlawful, Unauthorized, and Arbitrary**

As discussed above, IECPA's Petition should be rejected, as a threshold matter, due to its failure to carry its factual burden of proof. However, the Petition's proposals are also unlawful, unauthorized, and arbitrary, which provides an independent basis for the Petition's dismissal. IECPA relies on the Emergency Order as the basis for the granting of its Petition, but the Emergency Order does not authorize the measures requested by IECPA.<sup>41</sup> The Emergency Order includes only two types of measures: (1) implementation of mandatory electronic service for documents and (2) authorization of the extension of particular deadlines under certain circumstances.<sup>42</sup>

Yet IECPA's proposals do not concern electronic service issues and go far beyond a simple request for the extension of deadlines, and as such are unlawful and unauthorized under the Emergency Order. With respect to Phase IV, IECPA does not identify a particular deadline in the Phase IV planning process and ask that it be extended. Instead, IECPA requests that the entire planning process be suspended for 270 days. Such a wholesale shutdown of a regulatory program is not within the scope of the individual deadline extensions countenanced by the Emergency Order.

It is also worth noting that IECPA itself is not subject to any deadline in connection with Phase IV. The Emergency Order specifically references the need to provide flexibility for members of the "regulated community" who are subject to deadlines related to the "administration of the Public Utility Code."<sup>43</sup> IECPA is not a regulated entity under Act 129 – EDCs are. Although IECPA seeks to interpose itself and call for a halt to the work of others,

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<sup>41</sup> Petition at 1.

<sup>42</sup> Emergency Order at 4–5.

<sup>43</sup> *Id.* at 2.

such as Commission staff and EDC employees, IECPA may not be the best informed party to understand which particular deadlines need to be extended and for how long.

IECPA's proposals to cut Phase III surcharges and waive Phase III penalties are similarly unauthorized and outside the scope of the Emergency Order. IECPA does not even attempt to explain how ordering a 50% reduction in Phase III surcharges counts as extending a deadline. However, IECPA does mount a defense, albeit an unconvincing one, for why waiving penalties should be considered authorized under the Emergency Order. IECPA claims that because EDCs must meet their targets by the deadline of the end of Phase III, or face penalties, "these penalties are, by nature, deadlines that EDCs must meet."<sup>44</sup>

This contention is incoherent and should be rejected. From a regulatory perspective, the imposition of a deadline and the imposition of specific monetary penalties for nonperformance by a deadline are separate design elements, each of which can be calibrated separately and independently. The Commission's Emergency Order authorized the extension of deadlines, not the waiver of penalties. Construing every penalty as also a kind of deadline would wildly expand the scope of what is authorized under the Emergency Order. IECPA's strained reading should be rejected.

Finally, in addition to being unlawful because they are unauthorized, IECPA's proposals are also unlawful because they are arbitrary. As noted above, IECPA has supplied no factual basis for carrying its burden of proof that its proposals will help, rather than hurt, all Pennsylvanians during this difficult time. Through an administrative law lens, this is also a problem because while there is a substantial body of record evidence, built up over many years, demonstrating the cost-effective benefits of Act 129, IECPA proposes that implementation of

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<sup>44</sup> Petition at 12.

Act 129 be discarded, precipitously, without a body of record evidence that could support a reasoned decision to do so. In the absence of such a record, IECPA's proposal is arbitrary, and not just and reasonable.<sup>45</sup>

IECPA's proposals are also arbitrary on their merits. IECPA proposes that the Phase IV planning process be halted due to changes in the economy, but does not provide any reasons why the planning process cannot be used to evaluate and address those changes.<sup>46</sup> IECPA proposes a 50% cut in Phase III surcharges, but does not explain how it arrived at this figure or why such cuts would be broadly beneficial; picking a number out of the air in such a fashion is plainly arbitrary.<sup>47</sup> Finally, IECPA asserts that Phase III penalties that would potentially be applicable to EDCs *over a year from now* must be waived immediately,<sup>48</sup> but does not explain the urgency of doing so where all EDCs are on track to meet their targets, one EDC has already met its target, and individual EDCs could petition for penalty waivers if and when they are needed.

#### **IV. Conclusion**

It is rarely the case, in a crisis, that the most prudent course of action is inaction; IECPA's Petition proves that point. Act 129 is one of the most successful regulatory programs in the Commonwealth in terms of year-after-year success in delivering millions of dollars in savings to ordinary Pennsylvanians. Those savings are needed now more than ever. Far from a solution to the current crisis, IECPA's risky and factually-unsupported proposal to suspend Act 129 is a threat to Pennsylvania's recovery from the crisis and should therefore be rejected.

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<sup>45</sup> *Octoraro Water Co. v. Pennsylvania Pub. Utilities Comm'n*, 38 Pa. Cmwlth. 83, 87, 391 A.2d 1129, 1131 (1978) ("In the absence of any supporting finding of fact or reasoning, we must hold this figure unsupported by the evidence and hence arbitrary.").

<sup>46</sup> Petition at 6.

<sup>47</sup> *Id.* at 14.

<sup>48</sup> *Id.* at 15.

Dated: May 12, 2020

/s/ Devin McDougall

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## **VERIFICATION**

I hereby verify that the facts contained in the foregoing pleading are true and accurate to the best of my knowledge and that I am duly authorized to make this verification, and that I expect to be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to penalties of 10 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Dated: May 12, 2020

*/s/ Tom Schuster*  
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**CERTIFICATE OF SERVICE**

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

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Dated: May 12, 2020

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**EXHIBIT A**



May 11, 2020

Pennsylvania Public Utility Commission  
Attn: Secretary Rosemary Chiavetta  
Commonwealth Keystone Building, Second Floor  
400 North Street  
Harrisburg, Pennsylvania 17120

Re: Act 129 Energy Efficiency and Conservation Program Implementation Phase IV  
Docket No. M-2020-30152282021  
Suspension of Regulatory and Statutory Deadlines; Modifications to Filing and  
Service Requirements; Docket No. M-2020-3019262

Dear Secretary Rosemary Chiavetta:

The Building Performance Association appreciates this opportunity to file comments in opposition to the Petition of the Industrial Energy Consumers of Pennsylvania (IECPA Petition) at Docket Numbers M-2020-30152282021 & M-2020-3019262. For the reasons set forth below, and for the reasons set forth in the Answer of the Energy Efficiency Advocates with which BPA has joined, the IECPA Petition should be denied because it fails to set forth sufficient evidence and a legal justification for the extraordinary relief sought.

### **Background on the Building Performance Association**

The Building Performance Association (BPA) is a membership-driven 501(c)(6) industry association focused on the home and building performance industry - delivering improved energy efficiency, health, safety, and environmental outcomes. BPA supports home performance contractors, state and regional organizations, weatherization agencies and training centers, manufacturers and local non-profits focused on residential and commercial energy efficiency. BPA was formed through the re-alignment of Efficiency First, Home Energy Magazine and the Home Performance Coalition and works closely with the Building Performance Institute, Inc. (BPI).

BPA's 9,751 members and affiliates provide the "nuts and bolts" of efficiency upgrades to homes and buildings across Pennsylvania and the United States. We are proud of the high-quality services that BPA's 593 Pennsylvania based members and affiliates deliver and the skilled jobs that they create in communities across the Commonwealth. We see firsthand every

day that our Pennsylvania customers value the energy efficiency programs that add new insulation in homes, upgrade lighting in schools, and install new equipment in manufacturing facilities and help residents and businesses save money on their utility bills.

BPA also helps to train and certify Pennsylvania's skilled home performance workforce. For example, on September 30<sup>th</sup> to October 1<sup>st</sup> 2019, BPA hosted 427 home performance contractors, industry representatives and stakeholders at the [Pennsylvania Home Performance Conference & Trade Show](#) in State College, Pennsylvania. BPA's main headquarters office is in Moon Township, Pennsylvania.

### **Pennsylvania's Skilled Energy Efficiency Workforce Remains Prepared to Meet Act 129's Realistic and Achievable Phase III and Phase IV Goals**

According to [Energy Efficiency Jobs in America](#), the energy efficiency industry supports over 68,820 energy efficiency workers in Pennsylvania, most of whom comprise part of a highly skilled workforce. BPA believes that Pennsylvania has an enormous potential for long term future growth in energy efficiency jobs given the age of its housing stock and its highly skilled energy efficiency workforce. BPA's members and Pennsylvania trained workforce remain prepared to fulfill the goals of Phases III and IV of Act 129 in the coming years. In fact, notwithstanding the obstacles presented by the COVID crisis, Pennsylvania's highly skilled energy efficiency workforce remains focused on preparing to get back to work as soon as it is safe to do so.

Pennsylvania ranks 41<sup>st</sup> in per capita employment among states in energy efficiency according to [Energy Efficiency Jobs in America](#). That low ranking is consistent with the Commonwealth's moderate approach towards funding and support for energy efficiency programs. With a relatively low 2% cap on spending for energy efficiency programs under Act 129, and a voluntary approach towards natural gas energy efficiency programs, Pennsylvania's per capita employment rate in energy efficiency jobs is approximately one half of the per capita employment rate in neighboring Maryland. Although the IECPA Petition describes the Commonwealth's program design on energy efficiency as a "proactive and aggressive" (Petition at page 6), BPA believes that compared to many other states, and some of its neighbors, Pennsylvania's approach under Act 129 is a moderate one. The energy efficiency savings targets and goals developed under the Act 129 planning process over many years are both reasonable and achievable.

### **The IECPA Petition's Proposed Remedy Should Be Rejected and the Commission Should Determine Instead How Best to Maximize the Delivery of Program Services and Training During the COVID Crisis**

The IECPA Petition incorrectly assumes that there are no energy efficiency services that are being provided to customers, or can be provided, in the current COVID conditions. That assumption is not accurate. More importantly, the Petition misses the point that there are

existing mechanisms to amend Phase III and Phase IV goals and timelines before the Commission. The focus of the existing proceedings and activities before the Commission, regulatory agencies and the utilities should instead be placed on what energy efficiency services can be funded during the COVID crisis and how those services might best accelerate the achievement of the energy, cost savings and environmental goals of Act 129 in the long term.

BPA and its allies have been working with states to move forward with work during the COVID crisis. While energy efficiency providers in Pennsylvania have extremely limited on-site work opportunities right now, BPA has been very active in conversations with state agencies and regulators in New York, Connecticut, Rhode Island and Massachusetts on how best to keep energy efficiency work moving forward during the COVID crisis. Potentially reimbursable activities under those state programs include:

1. Customer service for existing customers (appointment rescheduling);
2. Emergency response for existing customers;
3. Technical and program support for online training provided to staff - critical to maintain/support the staff capabilities (including COVID safety);
4. Continued marketing for new customers post-COVID;
5. Remote Energy Assessments or Virtual Pre-Assessments that identify short term measures that can be implemented now and opportunities for future on site investments; and
6. Scheduling services in advance for post-COVID work so that energy efficiency services can be quickly delivered to consumers.

Connecticut and New York have already provided guidance letters on interim measures and procedures for the provision and reimbursement of energy efficiency services during the COVID crisis.<sup>1</sup> Many of BPA's members and businesses in Pennsylvania are ensuring that they can continue to provide critical services (whether reimbursable or not), retain trained staff and be prepared to ramp up activities as soon as work stoppages are lifted. The IECPA Petition's arguments seem to assume that Phase III never happened, Phase IV will not be necessary, and that the only logical option for the Commission to consider is how fast and for how long should all Commonwealth energy efficiency programs, funding and activities be shut down.

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<sup>1</sup> SEE, MARCH 27, 2020 - DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION, INITIAL ACTION ITEMS: COVID-19 CONTINGENCY PLANNING IN THE 2019-2021 CONSERVATION AND LOAD MANAGEMENT PLAN AT: [HTTP://WWW.DPUC.STATE.CT.US/DEEPENERGY.NSF/C6C6D525F7CDD1168525797D0047C5BF/1BEA440B8DD68314852585380071A0EF?OPENDOCUMENT](http://www.dpuc.state.ct.us/DEEPENERGY.NSF/C6C6D525F7CDD1168525797D0047C5BF/1BEA440B8DD68314852585380071A0EF?OPENDOCUMENT).

SEE, APRIL 23, 2020, COVID-19 RESPONSE LETTER FROM PUBLIC SERVICE COMMISSION CHAIR RHODES AND NYSERDA PRESIDENT ALICIA BARTON at: <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={0B3496B9-3E0A-48EC-B624-77D40C001B5B}>.

BPA believes that the focus of this proceeding should instead be on how best to achieve Act 129's goals during the COVID crisis and beyond. Pennsylvania's highly trained energy efficiency workforce stands ready to implement those Act 129 program goals and is willing to work with utilities, state agencies and the Commission to maximize the delivery of program services and training now during the COVID crisis, and accelerate work on Act 129 goals once the COVID crisis allows on site work to get safely underway.

### **The IECPA Petition Fails to Meet Its Burden Of Supplying Evidence to Support The Extraordinary Remedy Sought**

In what might be best understood as a series of complaints about the existence of Act 129 in the first place, the IECPA Petition strings together a series of general observations about the COVID pandemic, submits no direct evidence of specific harms to its members (or their identities) as a result of the COVID crisis, and provides no description of the relief its members may have already sought or obtained from other government sources. Instead, without laying any foundation of evidence or data, the IECPA Petition jumps to the relief that it seeks – a 270-day suspension of energy efficiency services and the reduction of statutory fees collected for clean energy programs. The IECPA Petition fails to submit any data or information on how it selected this 270-day suspension period, and its relationship to the alleged harms to its members (which are unsupported in the record). As a result, the remedy sought cannot be said to be tailored to the alleged harms to any specific member or group of members.

The IECPA Petition suggests equal treatment for all ratepayers in its remedy request. But the IECPA represents larger commercial and industrial customers who are likely faced with disparate impacts from the Commonwealth's work-from-home rules. Not all industries are closed. Those that are will have reduced utility bills, and some have workers producing revenue from home and others do not. By comparison, residential customers, particularly many lower-wage workers, are in the opposite position. They will have increased bills from families staying at home 24/7 and lower incomes due to widespread unemployment. The Commonwealth's ratepayers deserve a more comprehensive and thorough review of COVID impacts and potential amendments to Phase III plans and Phase IV planning under Act 129. The IECPA Petition fails to meet its burden of supporting the remedy sought with the evidence required.

### **Continued Phase III Funding Will Provide Multiple Benefits**

BPA believes an accelerated plan to "catch up" on the number of homes that will be retrofitted under Phase III of Act 129 through 2021 (and Phase IV beyond that) factoring in construction time losses due to COVID is the preferred approach. While delivery of services and expenditures will decrease during the COVID -19 slow down, it is not now at zero, and after restrictions are lifted, it will need to ramp up higher than previously scheduled to meet Pennsylvania's long-term energy, cost savings and environmental goals. That will certainly require the funds that are collected during the slowdown to be used. A short-term suspension now of the collection of

funding mandated by Act 129 will almost certainly result in project delays once post COVID project implementation gets underway.

More important, the rapid redeployment of energy efficiency programs post-COVID will provide many economic stimulus benefits to Pennsylvania. BPA has seen in states across the country that properly designed and implemented energy efficiency programs to be the lowest cost, most predictable and most immediate method to manage energy demand, create local jobs, provide opportunities for small business energy efficiency entrepreneurs while also providing health and comfort benefits to consumers and help lower customer utility bills in the long term.

In a post-Covid economic environment, the so-called “non-energy benefits” of job creation and additional spending money in the local economy can help drive Pennsylvania’s economic recovery by creating new jobs and aiding existing workforces, boosting economic activity in key labor-intensive sectors, and delivering benefits for all Pennsylvania. Energy efficiency programs, for example, offer many win-win opportunities because they involve labor-intensive projects that can start quickly and draw upon local supply chains such as construction and manufacturing while also saving money for customers, improving the economic competitiveness of businesses, and reducing pollutants and chemicals that cause respiratory illnesses.

This post-COVID potential of Act 129 spending is not just a theory. The recent past in Pennsylvania shows that the clean energy sector is a proven catalyst for quick job growth in the aftermath of a recession. No part of the 2009 American Recovery and Reinvestment Act (“ARRA”) was more successful at stimulating the economy following the Great Recession than the \$90 billion in federal investments in clean energy. ARRA helped create nearly one million clean energy jobs and resulted in the weatherization of more than one million homes by expanding energy efficiency, getting electricians, HVAC technicians, and other construction workers, as well as manufacturers of building supplies and Energy Star appliances, back to work. This was particularly true in Pennsylvania, where many current BPA members got their initial start during the ARRA recovery period. The IECPA Petition ignores the demonstrated job creation benefits of energy efficiency program delivery.

### **The IECPA Petitioners Should Present Their Evidence During the Act 129 Comment Process**

The IECPA Petitioners ignore the fact that there are processes already in place to amend Phase III and Phase IV programs, targets, schedules and goals. Instead, the Petitioners have attempted to skip those existing proceedings and bootstrap its members’ COVID related hardships to the Pennsylvania population at large in calling for complete 270-day shutdown of energy efficiency programs. This is too blunt of an instrument to remedy the alleged harms caused to its members.

At a minimum, the IECPA Petitioners should be required to demonstrate the harm imposed specifically on its members, the greater need for the relief sought in this Petition rather than other potential government sources of relief available to (or already obtained by) its members and also demonstrate why the harm caused requires the complete suspension of Act 129. For all the Commission knows, the IECPA Petitioners may have already sought financial relief offered through recent federal statutes designed to offset economic hardships caused by the COVID crisis. Although receipt of such federal funding would not preclude the IECPA Petitioners from seeking relief before the Commission, disclosure of the existence and amount of COVID related federal funding (or federal tax reductions) already received, would certainly better inform the Commission of the nature of the IECPA Petitioners hardships that allegedly require the extraordinary relief sought here.

### **BPA Concurs With the Advice of the Pennsylvania Office of Consumer Advocate That the Commission Should “Do No Harm” When Addressing Act 129 Implementation Issues**

One critical theme contained in the Comments submitted by the Office of Consumer Advocate is that the Commission should be careful to “do no harm” when deciding on whether and how to alter Phase III and Phase IV plans to implement Act 129 in the context of the COVID crisis. BPA agrees that implementation of the goals set forth in Act 129 should move forward with an eye towards cost-effective delivery of energy efficiency and demand response services that are most beneficial to customers in both the short and long term. The IECPA Petitioners have proposed what appears to be a drastic measure cut that may provide short term rate relief to its members but would do more harm to program implementation and related benefits to all customers in the medium and long term. The Office of Consumer Advocate states at page 3:

While rate relief at this time may be beneficial to customers, continuing with cost-effective energy efficiency and demand response that can be safely and cost-effectively delivered could be more beneficial to customers in both the short term and the long term. Energy efficiency and demand response measures may help customers reduce their overall energy usage, and thereby their energy bills as they struggle to find ways to contain costs in these difficult economic times. In addition, being able to maintain funding may allow programs to ramp up more quickly when circumstances permit. The OCA would further note that the 50% reduction does not have a sound foundation and may not account for projects that are in progress and will be able to be completed or rebates that may have been committed but not yet paid out.

BPA concurs with this thematic suggestion of the Office of Consumer Advocate and requests that the Commission consider first that it “do no harm” to Act 129 implementation strategies when fashioning responses to the COVID crisis.

### **Conclusion**

BPA appreciates this opportunity to file comments in opposition to the Petition of the Industrial Energy Consumers of Pennsylvania (IECPA Petition). We also join in with the thoughtful comments filed separately by the Energy Efficiency Advocates.

We agree with the Energy Efficiency Advocates and other commenting parties that a more comprehensive review of how to protect ratepayers, specifically mass market residential and small business customers, during and after the COVID public health crisis is appropriate.

A more comprehensive review is currently available through the Phase III and Phase IV planning processes and would be a more appropriate method to balance the immediate needs of Pennsylvania ratepayers in the face of the COVID crisis and the goals and legal requirements of Act 129. The approach sought through the IECPA Petition is neither comprehensive nor balanced.

Respectfully Submitted,



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## **EXHIBIT B**



Written Testimony of Thomas Schuster

On behalf of the Sierra Club

To the members of the Senate Committee on Consumer Protection and Professional Licensure

10/26/2015

**RE: SB 805, Amending Act 129 to allow industrial and large commercial customers to opt-out**

## **I. Introduction**

The Sierra Club is the oldest and largest non-profit environmental advocacy organization in the United States, with approximately 24,000 members in Pennsylvania. Among our goals is to promote energy efficiency due to its many public benefits, including decreased air and water pollution, but also significant cost savings. In recent years we have actively participated in multiple proceedings at the Public Utility Commission (PUC) concerning the implementation of Act 129. We are pleased with the results this program has delivered to date. We oppose SB 805, because it would either: 1) reduce the statewide energy savings we are able to realize under Act 129, or 2) increase Act 129 program fees paid by all other customer classes to achieve the same level of benefits.

## **II. Benefits of Act 129**

### *a. Cost savings for participants and non-participants*

Act 129 is the Commonwealth's Energy Saving Law. The more energy efficiency measures are deployed in Pennsylvania, the more businesses and residential ratepayers will save on their electricity costs. This is because throughout the United States, the cost of saving a kilowatt-hour (kWh) of electric energy has proven far lower than the cost of generating that same kWh. Most utilities and states are finding that the levelized cost of saving energy, defined as the total cost of a program divided by the lifetime energy savings associated with the program, is in the range of 3 cents/kWh or less. By comparison, a survey of levelized costs of generation showed 7-9 cents per kWh for energy from a new gas combined cycle plant, and 11-14 cents per kWh for a new technology coal plant.<sup>1</sup> Plainly, energy efficiency is the lowest cost resource for utilities to match supply and demand for electricity, and this reality is borne out by Pennsylvania's experience with Act 129. Phase I of Act 129 was a resounding success. The Electric Distribution Company (EDC) efficiency programs in Phase I saved a total of 5.4 million MWh per year, and delivering \$2.40 in savings for every \$1 spent.<sup>2</sup>

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<sup>1</sup> Optimal Energy Integrated Energy Resources "Pennsylvania 2012-2018 Energy Efficiency Goals" (December 19, 2011), at 2, available at [http://www.pennfuture.org/UserFiles/File/FactSheets/Report\\_Act129goals\\_20111220.pdf](http://www.pennfuture.org/UserFiles/File/FactSheets/Report_Act129goals_20111220.pdf)

<sup>2</sup> Act 129 Final Annual Report for Phase I, at p16.

The savings from energy efficiency programs take two forms. Program participants save directly as the efficiency measures they install or incorporate into their buildings reduces their consumption and therefore their energy bills. The savings reported above for Act 129 only count these direct savings. In addition, all customers, even those who do not participate in efficiency programs, benefit from wholesale energy price suppression. When system-wide demand for electricity is reduced, fewer generating resources must operate. The most expensive generators are displaced first, which can lower the marginal price of electricity significantly. Reduced demand also lowers the amount of capacity that must be acquired by the grid operator, and thus the price paid for that capacity. A recent study commissioned by the Ohio Manufacturer's Association found that in that state, the savings from reduced energy prices and capacity payments was nearly equal to the cost of program delivery over a three-year period.<sup>3</sup> Since the efficiency measures installed during that time will continue to deliver savings well beyond the study timeframe, the system benefits will exceed the costs. This means that even ratepayers who pay for efficiency programs in Ohio but do not participate in them will experience net savings. We are not aware of a similar study conducted in Pennsylvania, so while the numbers will be different in this state, the concept still applies.

*b. Job creation and economic development*

Investments in energy efficiency create jobs in two ways. First, there are the direct and indirect jobs created by the efficiency investments themselves. These jobs tend to be in manufacturing, trades, and construction, fields which create more jobs per dollar invested than energy production.<sup>4</sup> Second, when households and businesses spend less on energy bills, they have more money to spend on other things. Since spending on energy has a very low economic multiplier effect, redirecting this spending to other sectors results in greater job creation.<sup>5</sup>

*c. Reliability benefits*

In addition to the economic benefits, efficiency increases grid reliability. Investments in efficiency measures result in long term reductions in peak demand. This leads to higher reserve margins in generation and less transmission congestion, both of which make the power grid less likely to fail. The need for more efficiency was quite apparent during the record cold temperatures in 2014, which caused corresponding record winter power demand. Electric customers were asked to conserve, and demand response resources (another product of Act 129 investments) were called upon. With the exception of storm damage to the distribution system, major outages were avoided. The cold weather events could have caused more problems had Act 129 programs not already deployed measures to reduce statewide peak demand by nearly 1400 MW,<sup>6</sup> the equivalent of a large power plant. Further efficiency and demand response investments would eliminate such close calls in the future.

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<sup>3</sup> Neubauer et al, 2013. Ohio's Energy Efficiency Resource Standard: Impacts on the Ohio Wholesale Electricity Market and Benefits to the State. ACEEE Report #E138.

<sup>4</sup> <http://aceee.org/files/pdf/fact-sheet/ee-job-creation.pdf>

<sup>5</sup> Ibid

<sup>6</sup> [http://www.puc.pa.gov/electric/pdf/Act129/SWE\\_PY4-Q3\\_Report.pdf](http://www.puc.pa.gov/electric/pdf/Act129/SWE_PY4-Q3_Report.pdf) at p2

Efficiency and demand response can also obviate the need for costly transmission upgrades. For example, the planned PATH and MAPP transmission lines that were proposed to carry electricity from the Ohio Valley region to the east coast were canceled by PJM in 2012. In a statement, PJM attributed the cancellation largely to reduced load growth and demand response.<sup>7</sup>

*d. Pollution prevention and public health*

Energy efficiency reduces air and water pollution associated with electricity generation from fossil fuels, and by extension improves public health and reduces health-related costs. Every year in Pennsylvania, over 1400 people suffer heart attacks and over 850 people die prematurely from exposure to air pollution from power plants, which ranks us first among the states in total mortality, and third in per capita mortality.<sup>8</sup> Two of every three Pennsylvania residents live in areas that exceed federal standards for smog pollution, and fully 25% of this pollution comes from power plants.<sup>9</sup> Reducing electricity consumption not only controls this pollution, it causes the most expensive plants to operate less, and these plants tend to be the least efficient and most polluting.

### **III. Negative Impacts of Large Customer Opt-out Provisions**

The most cost-effective efficiency programs are those implemented in the industrial sector.<sup>10</sup> If these customers were to opt-out of Act 129, meaning they would no longer pay into the program nor take advantage of utility efficiency programs, it would be detrimental to Pennsylvanians as a whole. Large customer opt-out would result in electric customers from other rate classes unfairly subsidizing the customers who choose to opt out. This is because every ratepayer benefits from the price suppression and reliability benefits discussed in Section II (not to mention the environmental and public health benefits), but some customers would be allowed to not contribute financially to the programs that are responsible for creating those benefits. Meanwhile, everyone who is paying the rider for efficiency programs would be negatively impacted in one of two ways. The overall efficiency targets could be left intact, which would mean that non-industrial customers would have to pay higher efficiency riders to achieve the same level of savings and system-wide benefits. Alternatively, the savings targets could be reduced, in which case non-industrial customers would pay the same rider to achieve a lower level of system benefit.

It is most likely that the latter scenario would play out if industrial and large commercial customers were allowed to opt out of Act 129. Utility budgets for efficiency programs would be reduced, and therefore their required targets for energy savings would be reduced commensurately. This would result in higher wholesale electricity rates for everyone, increased pollution as the least

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<sup>7</sup> <http://www.statejournal.com/story/19240138/pjm-statement-on-finding-path-mapp-lines-no-longer-needed>

<sup>8</sup> Clean Air Task Force, 2010, Death and Disease from Power Plants.

[http://www.catf.us/fossil/problems/power\\_plants/](http://www.catf.us/fossil/problems/power_plants/)

<sup>9</sup> National Emissions Inventory 2011, US Census Bureau 2012

<sup>10</sup> Chittum, Anna and Seth Nowak. 2012. Money Well Spent: 2010 Industrial Energy Efficiency Program Spending. ACEEE Report No. IE121.

efficient power plants would then operate more frequently, and reduced reliability as demand would be higher on the extreme weather days when our power grid is most taxed.

Furthermore, reducing the amount of energy savings possible under Act 129 would undermine one of the best tools we have at our disposal for meeting the carbon pollution reduction requirements of the federal Clean Power Plan. Our internal analysis indicates that just the continuation of Act 129 savings rates through 2030 will satisfy 14% of Pennsylvania's requirement under the Clean Power Plan. If these savings are allowed to falter, the carbon pollution reductions will have to be realized some other way, which is almost certain to be more costly than the forgone efficiency investments.

#### **IV. Alternative Approaches to Address Large Customers' Concerns**

There are two common arguments made by industrial customers that wish to opt out of EDC efficiency programs. First, they argue that they are already efficient and therefore do not need further efficiency investments. Second, they argue that the EDC programs being offered do not meet their specific needs.

The first argument is addressed by the Statewide Evaluator's (SWE) 2015 market potential study for Pennsylvania, which found that industrial customers could economically reduce their electricity consumption by 19.2% over a 10 year period.<sup>11</sup> This was actually higher than the 14.6% available efficiency potential for industrial customers that the SWE identified over 10 years in its 2012 study.<sup>12</sup> This clearly demonstrates that industrial customers as a whole in Pennsylvania not only have significant efficiency improvements available to them, these opportunities are actually growing as technologies advance. This potential likely exists because many industrial customers have very short requirements for return on investment, and many efficiency improvements, while very cost effective, do not meet this strict threshold. With utility incentives for efficiency, many more of these efficiency projects would pass the test.

The second argument may be valid in some cases where EDC efficiency programs for large customers are poorly designed, or where some customers have very unique circumstances. In these cases, there are better solutions than an industrial opt-out provision. EDCs could design better programs by engaging industrial stakeholders in a more meaningful way, and that will appeal more broadly. EDCs can also offer customizable programs that can be designed in coordination with a specific industrial customer, which can be very cost effective since the projects tend to be large and result in much more targeted improvements.

An industrial "self-direct" option could also address the second argument. Participating customers would continue to pay the energy efficiency rider, but the majority of the payments (perhaps 90 percent) would be reserved for the customer to make energy efficiency investments in their own facilities. Any unused portion of the 90 percent would be pooled and offered to other customers on a competitive basis. The remaining portion (10 percent) would be used by the EDC for administration of the program and verification of savings. The American Council for an Energy Efficient Economy (ACEEE)

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<sup>11</sup> Energy Efficiency Potential Study for Pennsylvania. February 2015. <http://www.puc.pa.gov/pcdocs/1345079.pdf>, at page 49

<sup>12</sup> [http://www.puc.pa.gov/electric/pdf/Act129/Act129-PA\\_Market\\_Potential\\_Study051012.pdf](http://www.puc.pa.gov/electric/pdf/Act129/Act129-PA_Market_Potential_Study051012.pdf), at p85.

has done extensive analysis of this type of program,<sup>13</sup> and could serve as a resource if there is interest in developing a self-direct option in Pennsylvania. We would consider supporting a self-direct option as an alternative to the opt-out policy, if such a program were designed to be fair and deliver similar energy savings as currently anticipated under Act 129.

## **V. Conclusion**

Energy efficiency is the lowest cost resource available to meet our energy needs, and produces many ancillary benefits, such as job creation, increased grid reliability, and reduced pollution. When efficiency is properly viewed as a resource in the same way that generation and transmission are resources, it seems very strange indeed to exempt a particular class of customer from paying for that least-cost resource. Act 129 has been very successful in making Pennsylvania more efficient and therefore healthier and more economically competitive. We should not do anything to weaken this policy. On the contrary, we should be looking for ways to implement even more cost effective energy efficiency.

Respectfully Submitted,



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<sup>13</sup> <http://aceee.org/sector/state-policy/toolkit/industrial-self-direct>