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May 12, 2020

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

VIA ELECTRONIC FILING

RE: Energy Efficiency and Conservation Program; M-2020-3015228

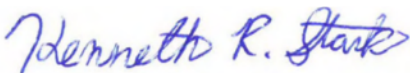
Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") are the Reply Comments of the Pennsylvania Energy Consumer Alliance ("PECA"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customers"), in the above-referenced proceeding.

Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By 
Kenneth R. Stark

Counsel to 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
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c: Joseph Sherrick, Bureau of Technical Utility Services (via E-Mail)
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY 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**

I. INTRODUCTION

On March 12, 2020, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) issued its Tentative Implementation Order outlining the Commission’s proposals to address the issues set forth at Section 2806.1(a)¹ of Act 129 of 2008 (“Act 129”) for establishing Phase IV of the Energy Efficiency and Conservation (“EE&C”) Program.² The Tentative Implementation Order proposes to establish additional incremental reductions in electric consumption and peak demand for Pennsylvania’s seven largest electric distribution companies (“EDCs”). The Commission’s proposals incorporate the findings of the Act 129 Statewide Evaluator (“SWE”) Energy Efficiency (“EE”) and Peak Demand Reduction (“PDR”) Market Potential Study Report (“SWE Report”) and the Demand Response (“DR”) Potential Study (“SWE DR Report”), which were released to the public on March 2, 2020. While the Commission had to cancel the Act 129 stakeholder meeting regarding the SWE’s studies that was scheduled for

¹ 66 Pa. C.S. § 2806.1(a).

² *Energy Efficiency and Conservation Program*, Docket No. M-2020-3015228, Tentative Implementation Order (Mar. 12, 2020) (“Tentative Implementation Order”).

March 25, 2020, due to the COVID-19 pandemic,³ the Commission retained the time period for initial and reply comments to the Tentative Implementation Order.

The Pennsylvania Energy Consumer Alliance (“PECA”), Met-Ed Industrial Users Group (“MEIUG”), Penelec Industrial Customer Alliance (“PICA”), Philadelphia Area Industrial Energy Users Group (“PAIEUG”), PP&L Industrial Customer Alliance (“PPLICA”), and West Penn Power Industrial Intervenors (“WPPII”) (collectively, “Industrial Customers”) submit these Reply Comments to certain initial comments filed in this proceeding.

On April 27, 2020, stakeholders and interested parties, including the Industrial Customers, filed initial comments in response to the Tentative Implementation Order’s proposed Phase IV Act 129 requirements. Many parties in their comments raised concerns regarding the impact of the COVID-19 pandemic on Phases III and IV of the Commission’s Act 129 Program.⁴ For example,

³ *Cancellation Notice for the Act 129 Statewide Evaluator Energy Efficiency and Peak Demand Reduction Market Potential & Demand Response Potential Studies Stakeholder Meeting*, Docket No. M-2020-3015229 (issued Mar. 20, 2020).

⁴ Comments of Industrial Energy Consumers of Pennsylvania (“IECPA”), Docket M-2020-3015228 (filed Apr. 27, 2020) (“IECPA Comments”); Comments of the Office of Consumer Advocate (“OCA”), Docket M-2020-3015228 (filed Apr. 27, 2020) (“OCA Comments”); Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), Docket M-2020-3015228 (filed Apr. 27, 2020) (“CAUSE-PA Comments”); Comments of Advanced Energy Management Alliance (“AEMA”) for the Pennsylvania Public Utility Commission on the Tentative Implementation Order for Phase IV Act 129, Docket M-2020-3015228 (filed Apr. 27, 2020) (“AEMA Comments”); Comments of Enel North America Inc., Docket M-2020-3015228 (filed Apr. 27, 2020) (“Enel Comments”); Comments of Oracle Utilities, Docket M-2020-3015228 (filed Apr. 27, 2020) (“Oracle Comments”); Comments of the Energy Association of Pennsylvania (“EAP”) to Act 129 Phase IV Tentative Implementation Order, Docket M-2020-3015228 (filed Apr. 27, 2020) (“EAP Comments”); Comments of the Keystone Energy Efficiency Alliance (“KEEA”) to the Tentative Implementation Order Regarding Phase IV of Energy Efficiency and Conservation Programs Under Act 129, Docket M-2020-3015228 (filed Apr. 27, 2020) (“KEEA Comments”); Joint Comments of Action Housing, Inc. et al. (Collectively, PA Energy Efficiency for All Coalition “PA-EEFA”), Docket M-2020-3015228 (filed Apr. 27, 2020) (“PA-EEFA Comments”); Comments from Ceres on the Tentative Implementation Order on Phase IV of the Energy Efficiency and Conservation Programs Under Act 129, Docket M-2020-3015228 (filed Apr. 28, 2020) (“Ceres Comments”); PECO Energy Company’s Comments on the Commission’s March 12, 2020 Tentative Implementation Order, Docket M-2020-3015228 (filed Apr. 27, 2020) (“PECO Comments”); Comments of the Industrial Customers, Docket M-2020-3015228 (filed Apr. 27, 2020) (“Industrial Customers’ Comments” or “Initial Comments”); Comments of the Duquesne Light Company, Docket M-2020-3015228 (filed Apr. 27, 2020) (“Duquesne Comments”); Comments of Metropolitan Edison Company et al., to the Tentative Implementation Order, Docket M-2020-3015228 (filed Apr. 27, 2020) (“FirstEnergy Companies’ Comments”); Comments of PPL Electric Utilities Corporation, Docket M-2020-3015228 (filed Apr. 27, 2020) (“PPL Comments”).

the Office of Consumer Advocate (“OCA”) encouraged the Commission to delay or suspend implementation of Act 129 Phase IV due to the economic circumstances and shifts in power demand and energy consumption stemming from the COVID-19 pandemic.⁵ In requesting to delay implementation of Phase IV, the OCA explained that many of the assumptions underlying the SWE’s Energy Efficiency and Peak Demand Study were based on 2018 baseline data that are “no longer relevant or valid under today’s circumstances.”⁶ Similarly, the PECO Energy Company (“PECO”) explained that, due to COVID-19, certain assumptions in the SWE’s studies “may no longer be reasonable.”⁷

Because COVID-19 has detrimentally impacted the nation’s economy and the economic well-being of businesses and consumers throughout Pennsylvania, the Industrial Customers’ Reply Comments respond to certain initial comments that suggest the need to continue Phase IV as planned. Herein, the Industrial Customers rebut those comments and reiterate support for comments that argue and demonstrate the need for the Commission to delay the implementation of Phase IV by at least one year, if not longer. Because the cost of electricity (including regulatory costs such as EE&C surcharges) is a substantial portion of the operating budgets of the members of the Industrial Customers, implementing Phase IV under the proposed schedule would add further unnecessary economic hardship to customers, industries, and employees experiencing very challenging times.

As set forth more fully in the Industrial Customers’ Initial Comments, if the Commission proceeds with Phase IV, the Industrial Customers request that Large Commercial and Industrial

⁵ See *Act 129 Energy Efficiency and Conservation Program Implementation Phase IV*, Docket No. M-2020-3015228, OCA Comments at 1-5 (filed Apr. 27, 2020), Industrial Customers’ Comments at 6-12 (filed Apr. 27, 2020), IECPA Comments at 1-3 (requesting suspension of Phase IV).

⁶ OCA Comments at 2.

⁷ PECO Comments, at 1-2, Docket No. M-2020-3015228 (filed Apr. 27, 2020).

(“C&I”) customer classes not be included in a Phase IV because the Tentative Implementation Order is not supported by substantial evidence demonstrating it is just and reasonable to include Large C&I customers in Phase IV.⁸ Critically, neither the Commission nor any stakeholders in their initial comments have demonstrated that participation by any Large C&I customers in Phase IV provides benefits commensurate with program costs, especially in this current economic climate. In the event, however, that the Commission proceeds with Phase IV and requires participation by Large C&I Customers, the Industrial Customers are providing substantive Reply Comments to certain initial comments addressing the Tentative Implementation Order proposals. Importantly, these Reply Comments should not be construed as an endorsement of the continuation of the EE&C Plans for Large C&I customers.⁹

II. REPLY COMMENTS

A. **Because No Party Has Demonstrated that COVID-19’s Impact on the Economy and Power Demand Is Immaterial, Proceeding with Phase IV Based on the SWE’s Studies and the Findings in the Tentative Implementation Order Is Not Just and Reasonable Nor in the Public Interest.**

While the Industrial Customers,¹⁰ the Industrial Energy Consumers of Pennsylvania (“IECPA”),¹¹ and the OCA advocated for the suspension of Phase IV,¹² other stakeholders filed comments assuming that Phase IV would continue, regardless of the change in circumstances necessitated by COVID-19.¹³ Some commenters recognized the impact of COVID-19, but

⁸ Industrial Customers’ Comments at 2-4, 6, 12-16.

⁹ The Industrial Customers are not responding to every single issue raised in initial comments in this proceeding. Not responding to an issue should not be construed as agreement to the outcome advanced by the commenter raising the issue.

¹⁰ See Industrial Customers’ Comments at 2-4.

¹¹ See IECPA Comments at 2-3.

¹² See OCA Comments at 2-6.

¹³ See, e.g., Comments of the Housing Alliance of Pennsylvania at 1-2.

expressly asked for the continuation of Phase IV.¹⁴ Critically, the commenters seeking to continue Act 129 in Phase IV on the schedule proposed by the Commission (prior to the Governor’s declaration of Disaster Emergency and issuance of stay home orders) fail to acknowledge or explain how the SWE’s studies and proposals in the Tentative Implementation Order can remain valid following the changed economic circumstances and changed demand and consumption patterns.¹⁵ In its Initial Comments, the Industrial Customers elaborated on these changed circumstances to demonstrate that, because the economic and energy markets face unprecedented uncertainty, the Commission cannot reasonably rely on the SWE’s studies using historic sales and demand/consumption patterns and other pre-COVID-19 economic data.¹⁶

Critically, when the peak of the pandemic recedes, economic recovery will not occur with the flip of a switch. Instead, the economy will recover more gradually over time, like turning on the lights with a dimmer. The degree and pace by which the dimmer may illuminate the room remains unknown and will vary greatly by industry, economic sector and subsector, and geographic region. Because COVID-19 has caused “fundamental damage” to some of the nation’s largest industries without the prospect of a “sharp rebound” in the economy, it will take a while to rebuild and stabilize.¹⁷ Importantly, the stakeholders supporting the implementation of Phase IV fail to address these issues as part of their Initial Comments. Because these issues play an

¹⁴ See CAUSE-PA Comments, at 3-5; see KEEA Comments, at Introduction and Section I; see PA-EEFA Comments, at 4-5, 21; see AEMA Comments at 1.

¹⁵ See generally CAUSE-PA, KEEA, and PA-EEFA Comments.

¹⁶ See Industrial Customers’ Comments at 4-6.

¹⁷ David Harrison, *Coronavirus Prompts Biggest U.S. Manufacturing Pullback Since Last Recession*, THE WALL STREET JOURNAL, May 1, 2020, https://www.wsj.com/articles/u-s-factory-sector-contracted-in-april-11588343731?emailToken=5d735b62a9e6fe394b496d1cd80e84e4Xl/8LzDoDohNdPjF1aeyOxr0rLn/sW4zcGwQA_G272Bb1qtMZl33Ms+THWkHKqW8v+HELziorfy0dpaRJ5X5W2xsdk9/bOLLfhq/1XakSxeU%3D&reflink=article_email_share (last accessed May 12, 2020) (quoting Tim Fiore) (hereinafter “WSJ May 1 2020 Manufacturing Article”).

important role in the application of Act 129, the Commission should not seek to finalize Phase IV at this time. Rather, the Commission should focus its Act 129 efforts on responding to the petitions seeking relief with respect to Phase III.¹⁸

B. Should the Commission Proceed with Phase IV and Require Large C&I Participation in Phase IV, Industrial Customers Provide the Following Responses to Certain Initial Comments.

As addressed in its Initial Comments, the Industrial Customers submit that the costs of Phase IV participation by Large C&I customers have not been demonstrated to be commensurate with program benefits. The Industrial Customers will respond to select issues raised by other stakeholders in their initial comments to the Commission’s Tentative Implementation Order.

1. While Lessons May Be Learned From Experience Implementing Phase I of Act 129 Following the 2008 Recession, the Commission Must Account for Severely Changed Economic Conditions and Power Demand Patterns When Implementing Phase IV.

The Keystone Energy Efficiency Alliance (“KEEA”) contends that lessons learned from implementing Phase I after the Great Recession in 2008 may be applied to today’s environment.¹⁹ KEEA further contends that prior successes in Act 129 phases justify continuation of Phase IV on the schedule proposed by the Commission.²⁰ While the Commission and stakeholders may learn lessons from prior Act 129 phases, the Commission should be careful to avoid placing too much stock in declaring those phases as clear successes, especially for end-use customers. Critically, the prior phases failed to include a true-up of the Total Resource Cost (“TRC”) using actual market prices. The \$4 billion in benefits that KEEA claims that electric customers received in Phase I of

¹⁸ See IECPA Petition to Suspend Implementation of Act 129 Phase IV Requirements and Request for Other Relief, at 6-10, P-2020-3019562 (filed Apr. 22, 2020); see EAP Petition to Amend the Commission’s June 19, 2015 Implementation Order, Docket No. M-2014-2424864 at 2, 6-10 (filed May 1, 2020).

¹⁹ KEEA Comments at Section I.

²⁰ KEEA Comments at *id.*

Act 129²¹ reflect market price assumptions that predated the Great Recession of 2008. When that recession occurred, market prices dropped. That price drop reduced the value of the energy efficiency projects for the particular consumers involved. Therefore, it is misleading for KEEA and EE proponents to tout Phase I as a huge success (and delivering substantial benefits to customers) based on the pre-recession market prices. In order to ascertain actual benefits, customers must examine actual value – not hypothetical value – especially when conditions change so dramatically.

Similar to the 2008-2009 timeframe, we are currently experiencing economic recession/stagnation and a sharp decline in economic demand and power demand/consumption, with ongoing market uncertainty and economic forecasts due to COVID-19. The critical lesson that must be learned from Phase I is the need to challenge the pre-COVID-19 market data, analysis, and assumptions that underlie the SWE's studies, the 2021 TRC Test Final Order,²² and proposals in the Tentative Implementation Order. Conditions have changed dramatically. In its comments, KEEA has not demonstrated that it is prudent to continue EE activities in a Phase IV, especially when doing so would be based on pre-COVID-19 economic and electricity demand/consumption data. Throughout its comments, KEEA relies on pre-COVID-19 data and findings to justify continuation of Phase IV. However, nowhere in its comments does KEEA explain why or how relying on the pre-COVID-19 data is justified and still enables the Commission to establish a just and reasonable nexus between the costs of the program and any ensuing benefits of the program.

²¹ See KEEA Comments at Section I (citing Phase I Final Report at 16). KEEA highlights \$4 billion in benefits, but overlooks the costs to consumers.

²² See 2021 Total Resource Cost (TRC) Test, M-2019-3006868 (Final Order entered Dec. 19, 2019) (hereinafter "2021 TRC Test Final Order").

Accordingly, prior to finalizing Phase IV, the Commission must re-examine the pre-COVID-19 data underlying the SWE's studies, the 2021 TRC Test Final Order, and the Tentative Implementation Order.

2. The Plain Language of Act 129 Does Not Provide the Commission with the Authority to Update EDC Budgets for EE&C Plans.

KEEA asks the Commission to update the costs and budgets for EE&C plans to account for “inflation and other significant changes” since the budgets were first calculated in 2009.²³ As to the limitations on the costs of any EDC's plan, Act 129 is clear and provides:

The total cost of any plan required under this section shall not exceed 2% of the electric distribution company's total annual revenue as of December 31, 2006.²⁴

Therefore, under a straightforward, literal reading of the statute, the cost of an EDC's plan cannot exceed 2% of the EDC's total annual revenue as of December 31, 2006. The Commission does not have the discretion or authority to adjust and update the EDC budgets for their EE&C plans.

Under the rules of statutory construction, the object of interpreting and construing statutes is “to ascertain and effectuate the intention of the General Assembly.”²⁵ Furthermore, when the plain language of the statute is clear and free from ambiguity, the letter of the law must not be “disregarded under the pretext of pursuing its spirit.”²⁶ In reviewing a recent statutory construction dispute involving the Public Utility Code, the Commonwealth Court affirmed that the plain language of the statute is the “best indication of legislative intent.”²⁷

²³ KEEA Comments, Section II.

²⁴ 66 Pa. C.S. § 2806.1(g).

²⁵ 1 Pa. C.S. § 1921(a); *In re Bd. of Comm'rs of Cheltenham Twp.*, 211 A.3d 845, 853 (Pa. 2019).

²⁶ 1 Pa. C.S. § 1921(b); *In re Grand Jury Investigation No. 18*, 224 A.3d 326, 332, (Pa. 2020); *see also A Special Touch v. Commonwealth*, 2020 Pa. LEXIS 2210, *30 (Pa. 2020).

²⁷ *McCloskey v. Pa. PUC*, 225 A.3d 192, 203 (Pa. Cmwlth. Ct. 2020) (citing *Slippery Rock Area Sch. Dist. v. Pa. Cyber Charter Sch.*, 31 A.3d 657, 663 (Pa. 2011)).

In light of the rules of statutory construction, which have been codified by the Statutory Construction Act, 1 Pa. C.S. §§ 1501-1991, and affirmed by the Pennsylvania Supreme Court, the PUC does not have authority to update EDC budgets for EE&C plans to account for inflation. The cost of the plan is clearly based on 2006 revenue levels under the statute. If the General Assembly wished to account for inflation or other changes that occur with progress of time, it could have accounted for those changes when passing Act 129 in 2008. The General Assembly could have also updated Act 129. It has not, and so the Commission does not have the authority to adjust the EDC budget levels.

To the extent the Commission considers adjusting items and costs that comprise the EDCs' Act 129 budgets based on EDC revenues, the Commission should consider removing the generation revenue component for shopping customers, like it did for Duquesne during the original determination of the budgets.²⁸ Under Act 129, total annual revenues is defined as “[a]mounts paid to the electric distribution company for generation, transmission, distribution and surcharges by retail customers.”²⁹ Duquesne had expressed concerns that the cost limitations in Act 129 could make compliance difficult for Duquesne or any EDC where rate caps (from electric restructuring) had been removed and significant retail electric competition had already occurred in the EDC's service territory.³⁰ Therefore, Duquesne asked for PUC approval to revise its 2006 total annual revenue to reflect its Provider of Last Resort (“POLR”) revenues as if there had been no shopping in its territory (so that more generation and transmission revenues could be included in its Act 129 budget).³¹ In the Phase I Implementation Order, the Commission found that EDC 2006 total annual

²⁸ See *Energy Efficiency and Conservation Program*, at 34-36, Docket No. M-2008-2069887 (Order entered Jan. 16, 2009) (hereinafter “Phase I Implementation Order”).

²⁹ 66 Pa. C.S. § 2806.1(m).

³⁰ Phase I Implementation Order at 34-35.

³¹ *Id.* at 35.

revenues for Duquesne include generation and transmission revenues paid to an EGS through an EDC's combined bill.³² The Commission concluded that Act 129 is competitively neutral, and should not disadvantage EDCs that had active retail electric markets (which Duquesne had in 2006).³³ Presently, all EDC territories have active retail electric markets; therefore, to the extent the Commission seeks to adjust EDC revenues, it should account for current levels of retail shopping in all EDC territories.

Furthermore, the budgets for many of the EDCs include not only generation but also revenues that were being collected in 2006 for stranded costs associated with electricity restructuring in the form of customer surcharges.³⁴ Act 129's definition of EDC total annual revenue includes amounts paid for "surcharges by retail customers."³⁵ In 2006, all of the major EDCs except Duquesne were still collecting large amounts of stranded costs under the Competition Act from customers.³⁶ Those stranded cost surcharges were fully paid and eliminated around 2010-2011 timeframe. Additionally, most of the customers were continuing to purchase default supply from the major EDCs that were collecting the stranded costs; as a result, the budgets for the annual plans are inflated. Accordingly, if the Commission were to make any adjustments to the EDCs' EE&C budgets, such as adjusting those budgets for inflation or other significant changes, it would be highly inappropriate to still include revenues from surcharges for stranded costs.

³² Phase I Implementation Order at 35.

³³ *Id.*

³⁴ See Phase I Implementation Order at 36. Stranded costs represent the difference between the amount of revenue that could have been recovered in the market when utilities were fully regulated vertically integrated monopolies and those revenues that would be recoverable after restructuring/deregulation. For a discussion on stranded costs, see *Lloyd v. Pa. PUC*, 904 A.2d 1010 (Pa. Cmwlth. 2006); see also *Metro Edison Co. v. Pa. PUC*, 22 A.3d 353 (Pa. Cmwlth. 2011). For a discussion on restructuring, see *ARIPPA v. Pa. PUC*, 792 A.2d 636 (Pa. Cmwlth. 2002).

³⁵ 66 Pa. C.S. § 2806.1(m).

³⁶ See 66 Pa. C.S. §§ 2801 *et seq.*

3. Act 129 Provides a Cap on EE&C Program Expenditures and Not a Mandatory Requirement That EE&C Plans Expend Exactly 2% of EDC 2006 Revenue Levels.

KEEA argues that the Commission should require EDCs to continue using 100% of the EE&C plan budgets after savings targets are met and recommends that the PUC require EDCs to submit plans to invest all excess budget into supplementary EE programs.³⁷ Once again, KEEA is asking the Commission to legislate and change the statute. Act 129 provides a clear cap of 2% of the EE&C plan based on costs that shall not exceed 2006 EDC revenue levels. Act 129 does not mandate nor encourage absolute and complete expenditure of EDC budgeted amounts. Any additional spending may benefit EE providers and customers who receive funding for projects. However, additional spending does not benefit all customers as a whole, and the Commission has continuously declined to include a quantifiable price suppression effect in the TRC Test.³⁸ Furthermore, customers should not pay beyond what is just and reasonable to meet the goals that are established by the Commission.³⁹

Similarly, CAUSE-PA asks the Commission to allow EDCs to carry over excess Phase III budgets into Phase IV.⁴⁰ In the Tentative Implementation Order, the Commission stated it was not sound policy to keep spending Phase III budgets on Phase IV when those monies from the leftover Phase III budgets could be refunded back to the appropriate customer classes.⁴¹ The Industrial Customers agree, and the Commission's policy determination rings ever more critical today as

³⁷ KEEA Comments at Section III.

³⁸ See 2021 TRC Test Final Order, Docket No. M-2019-3006868, at 52-55 (explaining that expending Act 129 funds on price suppression research “would not be a prudent use of ratepayer funds as the findings of such an analysis – no matter how rigorous – would be speculative at best and require numerous assumptions about future market structures and the complex interactions between supply and demand resources in competitive markets.”).

³⁹ See 66 Pa. C.S. § 1301(a) (“Every rate made, demanded, or received by any public utility . . . shall be just and reasonable.”).

⁴⁰ CAUSE-PA Comments at 24.

⁴¹ Tentative Implementation Order at 69.

consumers from all rate classes are experiencing financial hardship. Refunding those monies to consumers can help consumers pay their bills, maintain their operations, and maintain their employee complement or avoid further furloughs and layoffs.

4. Customer Refunds Provide Greater Benefits to Customers Than Investment of Excess Budgets in Further EE Measures.

KEEA also argues that investment of excess budgets in further EE measures will produce “greater benefit than customer refunds.”⁴² However, KEEA’s argument rings hollow. Refunds provide guaranteed tangible benefits directly to customers and ensures customers enjoy the discretion and flexibility to allocate those monies toward the best use. Customers from all rate classes – residential to small business to Large C&I – are experiencing financial hardship due to the COVID-19 pandemic and ensuing economic crisis. As discussed above, customers can utilize those refunds to help pay other bills and expenses. Small and large businesses can utilize those refunds to help sustain operations during the pandemic and also help sustain their current employee complement to avoid furloughs and layoffs.⁴³ In other words, the use of a refund can provide a concrete benefit to customers during this economic crisis, as compared to the less quantifiable, more indirect, and more delayed “benefits” resulting from EE programs.

Furthermore, KEEA’s approach to evaluating benefits is based on the SWE’s studies and calculations for Phase IV, which now lack validity given that they were conducted prior to the changed demand, consumption, and economic circumstances due to COVID-19. KEEA has not demonstrated that further EE investments of excess EDC budgets is just and reasonable, cost-

⁴² KEEA Comments at Section III.

⁴³ Unfortunately, as the pandemic persists, layoffs and furloughs are becoming permanent. See Shawn Donnan and Joe Deaux, *Layoffs Start Turning From Temporary to Permanent Across America*, BLOOMBERG BUSINESSWEEK, May 6, 2020, https://www.bloomberg.com/news/articles/2020-05-06/temporary-coronavirus-layoffs-are-turning-permanent-around-u-s?utm_campaign=news&utm_medium=bd&utm_source=applenews (last accessed May 12, 2020).

effective, or otherwise in the public interest. Importantly, Act 129 requires the Commission to terminate an EDC plan that is not cost-effective, *i.e.*, with a TRC value of less than 1.0.⁴⁴ The TRC test is met when the benefit to cost ratio is 1.0 or greater. Act 129 requires the Commission to establish standards to ensure that each plan includes a variety of measures and that each plan will provide the measures equitably to all customer classes.⁴⁵ Therefore, the Commission should order the EDCs to provide customer refunds associated with any excess budgets after the EDCs have reached compliance.

5. If the EDCs Bid Energy Efficiency Capacity Into PJM Demand Response Programs, Then the Revenues for C&I PJM DR Program Participation Should Be Used to Offset Program Costs, Not to Fund Any Pilot Programs.

KEEA argues that any excess EE&C EDC program budgets should be used for supplementary programs or pilot programs for activities such as market transformation, financing, or education.⁴⁶ KEEA does oppose requiring EDCs to bid EE capacity from commercial and industrial (“C&I”) projects into the PJM market.⁴⁷ Given the uncertainty, potential cost increases, and legal challenges in PJM’s capacity market, the Industrial Customers in their Initial Comments requested that the Commission not require or encourage EDCs to bid any portions of peak demand reductions achieved by their Act 129 EE portfolio in PJM capacity market auctions. Therefore, the Industrial Customer submit that if the Commission were to require EDCs to still bid EE into

⁴⁴ See 66 Pa. C.S. § 2806.1(a)(3) (requiring a cost-benefit analysis in accordance with a TRC approved by the Commission), § 2806.1(b)(2) (directing the Commission to terminate or modify “any part” of an EDC’s plan if it is not cost-effective), § 2806.1(c)(3) (requiring the Commission to evaluate program costs and benefits in accordance with the TRC test), § 2806.1(m) (definition of total resource cost test).

⁴⁵ 66 Pa. C.S. § 2806.1(a)(5); *see* Phase I Implementation Order at p. 22. For the initial discussion of the TRC Test, see pages 14- 16 of the Phase I Implementation Order.

⁴⁶ KEEA Comments at Section III.

⁴⁷ KEEA Comments at Section VII.

PJM DR programs, the revenues realized by those C&I projects should be used to offset program costs for C&I customers, not to fund pilot programs.

6. Because An EDC Would Not Bear Any Risks If Authorized or Encouraged to Bid into the PJM DR Market, The Commission Should Not Authorize Any Share of Any DR Market Revenues to the EDC.

In their comments, the FirstEnergy Companies (“FirstEnergy”) express support for the Commission’s proposal to require bidding of peak demand from EE resources into the PJM capacity market. FirstEnergy also asks the Commission to adopt a revenue sharing mechanism to encourage and optimize PJM participation and to allow the EDCs to share in the proceeds of any revenues derived from PJM participation for qualified EE resources.⁴⁸ Critically, FirstEnergy does not provide any rationale or authority by which the Commission should allow utilities to enjoy those revenues. Further, FirstEnergy does not provide any details as to how the revenue sharing mechanism would operate or how costs would be allocated between the EDCs and customers and under what circumstances.

Act 129 costs are a passthrough. In bidding EE capacity in the DR market, an EDC does not bear any risk that justifies any financial reward or return to the EDC. An EDC already enjoys the recovery of prudently incurred costs and the payment for administering the EE&C program. FirstEnergy has failed to demonstrate how allowance of a profit is permissible under Act 129 much less how such profit would be just and reasonable under Section 1303 of the Public Utility Code, 66 Pa. C.S. § 1301. Therefore, to the extent the Commission requires or encourages participation in the PJM DR Market, FirstEnergy’s request for a revenue sharing mechanism between the customers and EDCs should be rejected outright.

⁴⁸ FirstEnergy Companies’ Comments at 4.

7. Participating Customers that Fail to Perform Should Bear the Costs of Deficiency Charges for PJM DR Programs.

In its comments, PECO explains that it does not support mandatory bidding of Act 129 resources in the PJM capacity market and instead contends that EDCs should be permitted to bid if appropriate.⁴⁹ If the Commission requires such bidding, then PECO asks the Commission to determine that deficiency charges collected from customers do not count toward an EDC's Phase IV spending cap.⁵⁰ As result of PECO's request, the costs of deficiency charges for some customers could be shifted and allocated to other customers. To the extent the PUC proceeds with an Act 129 DR program, the program should be designed to ensure that the non-performing customer(s) pay those penalties for deficiency charges, as it would be inequitable, unjust, and unreasonable for other customers to bear those deficiency charges.⁵¹ PECO has not demonstrated that it would be just and reasonable to shift the costs of the deficiency charges to other customers.

8. The Commission's Proposal to Require an EE&C Plan to Allocate at Least 50% of All Spending to Incentives is Reasonable.

In its comments, PECO objects to the Commission's proposal in the Tentative Implementation Order to propose that EDCs submit an EE&C plan with at least 50% of all spending allocated to incentives and less than 50% of all spending allocated to non-incentive cost categories.⁵²

In the Tentative Implementation Order, the Commission emphasized the importance of ensuring that the EDCs provide a careful estimate of their program costs relating to all EE&C

⁴⁹ PECO Comments at 12.

⁵⁰ *Id.*

⁵¹ In its comments, OCA opines that capacity deficiency charges would be a cost of the program and thus be subject to the 2% revenue cap. OCA Comments at 20-21. However, OCA has not demonstrated or explained why the capacity deficiency penalties would need to be considered program costs if those charges can be assessed to the non-performing party.

⁵² PECO Comments at 11 (citing Tentative Implementation Order at 65).

programs and measures in their EE&C plan, and that all costs must be demonstrated to be reasonable and prudent.⁵³ The Commission also explained that the 2021 TRC Test Final Order provided instructions for EDCs to categorize program costs as incentives versus administration.⁵⁴ As explained in the 2021 TRC Test Final Order, administration costs include program design, program management, technical assistance, marketing, program delivery, and evaluation.⁵⁵ For Phase IV, the Commission proposed that kit and directly installed equipment costs be treated as incremental measure costs (“IMCs”) and incentives.⁵⁶

The Commission’s proposal to require the EE&C plan to allocate at least 50% of all spending to incentives is reasonable and well-founded because it would ensure that a locked-in portion of EE&C program expenditures flows back to consumers. Program administration and overhead, while a necessary component of EE&C plans, can constitute a significant portion of the costs paid by customers into the programs. Administration costs expended by the EDC or Curtailment Service Provider (“CSP”) are not returned to customers. Furthermore, education, marketing, and similar costs must be appropriately tracked and categorized as “non-incentive” by definition to meet the goal of ensuring that a fair portion of the program dollars are directly provided to actual customers.⁵⁷ Therefore, the Commission’s proposal to require the EDC’s EE&C plan to allocate at least 50% of all spending to incentives is just and reasonable.

⁵³ Tentative Implementation Order at 65.

⁵⁴ *Id.* (citing 2021 TRC Test Final Order at 73-75, 77-78).

⁵⁵ 2021 TRC Test Final Order at 73.

⁵⁶ *Id.* at 74. IMCs and incentives to program participants are a transfer payment intended to offset the of efficient equipment. *Id.* at 77.

⁵⁷ 2021 TRC Test Final Order at 73.

9. Given the Wide Disagreement on Approaches to Demand Reduction and Demand Response Programs, the Commission Should Convene a Technical Conference on Programs for Reductions in Peak Demand.

A wide disagreement exists among the initial comments regarding the Commission’s proposed peak demand reduction targets, means to measures those targets, and programs for achieving peak demand reductions. For example, the Advanced Energy Management Alliance (“AEMA”) argues that demand response is more effective than energy efficiency at reducing peak demand.⁵⁸ Instead of abandoning the state dispatchable demand response (“DR”) program, AEMA recommends maintaining a similar DR program design to Phase III because the DR program would be highly cost-effective in Phase IV due to Large C&I participation.⁵⁹ However, AEMA has not demonstrated that participation by Large C&I is cost-effective, especially given that AEMA relies on pre-COVID-19 data and findings.⁶⁰

AEMA ignores the PUC’s preference for lasting peak demand reductions achieved by EE measures over DR measures and disagrees with the Commission’s determination not to include a DR component in Phase IV.⁶¹ Relying on the SWE’s findings, the Commission found that a DR component in Phase IV is not as cost-effective as EE and would not likely be utilized by large customers who already participate in PJM’s emergency load management programs.⁶² Although AEMA endorsed aspects of the SWE’s studies, AEMA flatly disagrees with the SWE’s finding (as adopted by the Commission in the Tentative Implementation Order) that a Phase IV design

⁵⁸ AEMA Comments at 6.

⁵⁹ See AEMA Comments at 7.

⁶⁰ See AEMA Comments at 8-12 (arguing that Large C&I DR Phase IV under the current design will be highly cost-effective based on the SWE’s pre-COVID-19 studies).

⁶¹ See Tentative Implementation Order at 34.

⁶² See Tentative Implementation Order at 34-35.

without dispatchable DR would achieve \$35 million more net benefits to the Commonwealth than a Phase IV design with dispatchable DR.⁶³

Some EDCs express concern with the proposed peak demand reduction targets. PECO claims that the Commission's peak demand reduction target overstates the market potential for PECO's service territory.⁶⁴ Similarly, PPL expressed numerous concerns with the reasonableness of its peak demand reduction target.⁶⁵ Of significant concern with regard to the policy goal of offering a diverse segment of efficiency programs for all customers, PPL indicates that its lack of experience and ability achieving meaningful peak demand reduction from Residential or Small C&I customers would place the burden of its Phase IV peak demand reduction target primarily on Large C&I customers.⁶⁶

Incorporating DR into Phase IV is a complex issue that is influenced by PJM rules, customer behavior, and other factors. Delaying Phase IV will give the Commission time to hold a stakeholder conference and/or technical conference so that parties can fully discuss the appropriate DR programs in light of the impact of COVID-19 on power demand and peak demand patterns. The need for such a technical conference further supports postponing implementation of Phase IV. Presently, the Commission does not have a sufficient record by which it can support any determination based on substantial evidence to either proceed or not proceed with a dispatchable DR program in Phase IV.

⁶³ See Tentative Implementation Order at 32.

⁶⁴ PECO Comments at 10.

⁶⁵ PPL Comments at 11-17.

⁶⁶ See PPL Comments at 12.

III. CONCLUSION

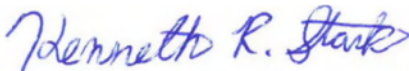
Since the Commission issued the Implementation Order for Phase IV, the economic climate has changed significantly and will continue fluctuating for the foreseeable future due to COVID-19. Across the country and in this Commonwealth, commercial and industrial businesses have been forced to shutter their operations and furlough employees due to stay home orders. Millions of employees have been furloughed and/or laid off. Decreased operations in the commercial and industrial sectors have led to nationwide decreases in power demand and consumption. The pandemic could cause nationwide and global recessions, resulting in flat-to-negative power demand and lasting damage to the economy of the United States and the Commonwealth of Pennsylvania. The Commission should, therefore, exercise its discretion to postpone the implementation of Phase IV for at least one year in order to provide some respite to all Pennsylvania customers in the face of an already tumultuous business environment. The Commission should focus its efforts on safely completing Phase III and by returning any excess budgets from Phase III to customers.

If the Commission proceeds with Phase IV, the Industrial Customers respectfully ask the Commission not to mandate participation in Phase IV for the Large C&I customer classes.

WHEREFORE, 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 respectfully request that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Reply Comments.

Respectfully submitted,

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