

May 12, 2020

VIA EFILE

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

**Re: Petition of Industrial Energy Consumers of Pennsylvania
to Suspend Implementation of Act 129 Phase IV;
Docket No. P-2020-3019562 and M-2020-3015228**

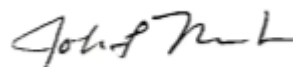
Dear Secretary Chiavetta:

Enclosed please find the Joint Petition for Intervention and Joint Answer of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company in response to the Petition of the Industrial Energy Consumers of Pennsylvania to Suspend Implementation of Act 129 Phase IV.

This document is filed electronically at the above docket and is being served electronically upon parties of interest shown on the Certificate of Service.

Please contact the undersigned if you have questions concerning this filing.

Very truly yours,



John L. Munsch

JLM:dml

Enclosure

cc: Chief Administrative Law Judge Charles E. Rainey, Jr.
Kathryn G. Sophy, Director, Office of Special Assistants
Renardo Hicks, Chief Counsel, Law Bureau
Robert F. Young, Deputy Chief Counsel, Law Bureau
Paul Diskin, Director, Bureau of Technical Utility Services
Darren Gill, Deputy Director, Bureau of Technical Utility Services
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Industrial Energy Consumers : **Docket No. P-2020-3019562**
Pennsylvania to Suspend Implementation : **Docket No. M-2020-3015228**
of Act 129 Phase IV :

CERTIFICATE OF SERVICE

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

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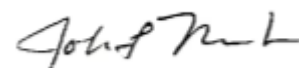
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Dated: May 12, 2020



John L. Munsch

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA TO SUSPEND IMPLEMENTATION OF ACT 129 PHASE IV REQUIREMENTS :
: **DOCKET NO. P-2020-3019562**
: **DOCKET NO M-2020-3015228**
:
:

**JOINT PETITION TO INTERVENE AND JOINT ANSWER
OF METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY,
PENNSYLVANIA POWER COMPANY AND WEST
PENN POWER COMPANY TO THE
PETITION OF INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA**

Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company (“West Penn Power”) (collectively, the “Companies”) submit a Joint Petition to Intervene and Joint Answer to the above-captioned Petition for Declaratory Order (“Petition”) filed with the Pennsylvania Public Utility Commission (“Commission”) by the Industrial Energy Consumers of Pennsylvania (“IECPA”). The Companies’ Joint Petition to Intervene and Joint Answer is filed pursuant to Section 5.61 of the Commission’s Rules and Regulations, 52 Pa. Code § 5.61.

In its Petition IECPA requests that the Commission suspend the implementation and requirements of Phase IV of the energy efficiency and conservation (“EE&C”) process due to economic uncertainties posed by the COVID-19 pandemic. Specifically, IECPA requests that the Commission: (1) extend Phase III for at least 270 days and postpone the commencement of Phase IV until the end of IECPA’s proposed postponement of Phase III; (2) reduce the collection of Phase

III surcharges by at least 50 percent, subject to later reconciliation and collection; and (3) suspend or temporarily waive the penalties for electrical distribution companies (“EDCs”) mandated by Act 129 for the duration of the extension of the Phase III programs.

The Companies respond as follows to IECPA’s requests:

I. INTRODUCTION AND BACKGROUND

1. Met-Ed provides electric distribution service to approximately 570,000 customers in a certificated service territory encompassing all or portions of thirteen counties in southeastern Pennsylvania. Penelec provides electric distribution service to approximately 587,000 customers in a certificated service territory encompassing all or portions of thirty-one counties in northern and central Pennsylvania. Penn Power provides electric distribution service to approximately 166,000 customers in a certificated service territory encompassing all or portions of six counties in western Pennsylvania. West Penn Power provides electric distribution service to approximately 726,000 customers in a certificated service territory encompassing all or portions of twenty-three counties in southwestern and central Pennsylvania.

2. The Companies are each a “public utility” and an EDC as those terms are defined in the Pennsylvania Public Utility Code (“Code”).¹ The Companies are subsidiaries of FirstEnergy Corp.

3. The Companies maintain Commission-approved EE&C programs throughout their respective service territories as mandated by Act 129 of 2008, 66 Pa. C.S. § 2806.1 (“Act 129”). The EE&C programs would be negatively affected by the proposals suggested in the IECPA Petition and, thus, the Companies have a substantial interest in this proceeding that is not adequately represented by other parties.

¹ See 66 Pa. C.S. §§ 102 and 2803.

4. The names and addresses of the Companies' attorneys authorized to receive all notices and communications regarding this filing are as follows:

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5. Act 129 mandated that the Commonwealth's largest EDCs develop EE&C programs. Act 129 further required the Commission to evaluate the costs and benefits of: 1) the Phase I energy consumption program; and 2) the Phase I peak demand reduction program by November 30, 2013. The Commission determined in its Phase II Implementation Order that additional reductions in consumption were cost-effective and prescribed targets to be met by May 31, 2016,² however, the Commission did not have enough information to determine the cost-effectiveness of peak demand reduction programs and only permitted EDCs to voluntarily offer cost-effective demand reduction programs.³ The Commission determined in its Phase III Implementation Order that additional reductions in the consumption and peak demand were cost-effective and, therefore, prescribed reductions in consumption and peak demand targets to be met

² See *Energy Efficiency and Conservation Program Implementation Order*, Docket Nos. M-2012-2289411 and M-2008-2069887 (Order entered Aug. 2, 2014).

³ *Id.* at 32, 33, 42 and 43.

by May 31, 2021.⁴ In accordance with Act 129’s directives, the Commission initiated several activities to determine whether additional incremental consumption and peak demand reduction targets for Phase IV, for a period of time after May 31, 2021, should be adopted and, if so, at what levels. The Commission tasked the Phase III Statewide Evaluator (“SWE”) with performing an energy efficiency and peak demand reduction (“EEPDR”) potential study, as well as a dispatchable demand response (“DDR”) potential study to determine the cost-effective consumption and peak demand reduction potential in Pennsylvania. The SWE submitted its final *Pennsylvania Act 129 Phase IV Energy Efficiency and Peak Demand Reduction Market Potential Study* and *Pennsylvania Act 129 Phase IV Demand Response Potential Study* to the Commission on February 28, 2020.⁵ The EEPDR and DDR Potential Studies were released publicly via Secretarial Letter served March 2, 2020.⁶

On March 12, 2020, the Commission entered a Tentative Implementation Order (“Tentative Order”) outlining its proposed requirements for Phase IV EE&C Programs beginning June 1, 2021.⁷

6. The Companies filed their Joint Comments concerning the Tentative Order on April 27, 2020, and their Joint Reply Comments on May 12, 2020 at Commission Docket No. M-2020-3015228. The Companies incorporate by reference herein the Companies’ comments filed at Commission Docket No. M-2020-3015228.

⁴ See *Phase III Final Implementation Order*, Docket No. M-2014-2424864, p. 12 (Order entered June 19, 2015).

⁵ See *Pennsylvania Act 129 - Phase IV Energy Efficiency and Peak Demand Reduction Market Potential Study Report*, submitted by Optimal Energy, Inc., *et. al.*, February 28, 2020; *Pennsylvania Act 129 - Phase IV Demand Response Potential Study*, submitted by Demand Side Analytics, Inc., *et. al.*, February 2020.

⁶ See *Release of the Act 129 Statewide Evaluator Energy Efficiency and Peak Demand Reduction Market Potential and Demand Response Potential Studies and Stakeholder Meeting Announcement* Secretarial Letter, Docket No. M-2020-3015229, (issued March 2, 2020).

⁷ *Energy Efficiency and Conservation Program*, Docket No. M-2020-3015228 (Order entered March 12, 2020).

A. The Commission should not extend the term of the Phase III EE&C Programs.

7. In its petition, IECPA seeks to extend the term of Phase III for period of at least 270 days. IECPA states that its request is based on the Emergency Orders issued by Pennsylvania Governor Wolf and the separate Emergency Order issued by the Commission in response to the COVID-19 pandemic. Specifically, on March 6, 2020, Governor Wolf issued a Proclamation of Disaster Emergency due to the emergence of COVID-19 in the United States and the Commonwealth of Pennsylvania.⁸ On March 19, 2020, the Governor ordered all non-life-sustaining businesses in Pennsylvania to close their physical locations to slow the spread of COVID-19.⁹ On April 1, 2020, the Governor issued a statewide “stay at home” order,¹⁰ which has since been amended to allow a measured approach for Pennsylvanians to return to work with limited reopening of businesses in 24 counties, effective May 7 through June 4, 2020.¹¹ The Commission’s Emergency Order was issued March 20, 2020 at Docket No. M-20203019262 (“Commission Emergency Order”). The Commission Emergency Order authorized the suspension, extension, waiver or change of any regulatory, statutory or procedural deadlines not to exceed 90 days except upon the certification of the question by the Chief Administrative Law Judge or Bureau Director to the Commission.¹² Based on these Orders and economic uncertainties

⁸ *Order of the Governor of the Commonwealth of Pennsylvania Proclaiming Disaster Emergency*; effective March 6, 2020. <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf>

⁹ *Order of the Governor of the Commonwealth of Pennsylvania Regarding the Closure of all Businesses that are not Life-Sustaining*; effective March 19, 2020. <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-TWW-COVID-19-business-closure-order.pdf>

¹⁰ *Order of the Governor of the Commonwealth Pennsylvania for Individuals to Stay at Home*; effective April 1, 2020 until April 30, 2020. <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200401-GOV-Statewide-Stay-at-Home-Order.pdf>

¹¹ *Amendment to the Order of the Governor of the Commonwealth of Pennsylvania for Individuals to Stay at Home*; effective May 7, 2020 until June 4, 2020. <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200420-GOV-Stay-at-Home-Order-Amendment.pdf>

¹² *Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*; Docket No. M-2020-3019262 (Emergency Order dated March 20, 2020).

relating to the COVID-19 pandemic IECPA seeks to extend Phase III for a period of at least 270 days.

8. IECPA's requested 270-day delay would extend Phase III for nine months and push the beginning of Phase IV nine months farther away until at least March of 2022. As such, the delay request of IECPA far exceeds the limited, relatively short period that the Emergency Orders would remain in effect and may extend the delay through the time that the COVID-19 pandemic has been reduced, mitigated or resolved. Consequently, the Companies submit that, even based on its premise of the Emergency Orders, the IECPA request to extend Phase III and delay Phase IV is an overreach and not substantiated.

9. The Companies emphasize that extending Phase III and postponing Phase IV would be a complex and burdensome exercise. EDCs, the Commission and parties, and ultimately the public, have expended significant effort and costs into Phase IV planning to date, including the Market Baseline Study, Market Potential Studies, Technical Reference Manual, Total Resource Cost Test, and the Tentative Implementation Order.

10. An extension of Phase III would pose unique challenges and considerations. Phase III EE&C targets, requirements and funding could require revision, as could EE&C program plans to address the extension. There would also be incremental administrative activities and costs associated with amending existing contracts or procuring services with conservation service providers to support implementation of the Phase III programs beyond May 31, 2021. Additionally, a delay to the start of Phase IV could necessitate duplication of effort and incur incremental costs. Such a delay could require that all the studies and planning activities that supported the tentative Phase IV design to be re-examined and updated.

11. There is neither any precedent nor a timeframe to understand all the impacts of the COVID-19 pandemic. IECPA's requested 270-day delay is arbitrary and will only introduce highly speculative assumptions into the planning process for Phase IV.

12. The Petition recently submitted by the Energy Association of Pennsylvania ("Energy Association") on its behalf and on behalf of its member EDCs¹³ requested that the demand targets for the final year of Phase III be voluntary. Additionally, in the Comments by the Energy Association and the Comments and Reply Comments of the Companies to the Tentative Order, the Energy Association and the Companies recommended that the Commission include a provision and process in its Final Phase IV Order to allow amendment to the Phase IV EDC targets and requirements to ensure penalties are not applied to the extent that factors beyond the utilities control are the basis for under-performance. These recommendations mitigate the concerns of all parties suggesting that Phase III be extended or Phase IV be delayed as a result of COVID-19 uncertainties, while leveraging all of the effort, time and funding to date for Phase IV planning activities and avoiding the significant additional and unnecessary effort, time and funding that could be required to extend Phase III or delay Phase IV. Further, this provision or process change would protect against any future events or factors that could detrimentally affect an EDCs ability to attain the Phase IV targets, something extending the current Phase and delaying Phase IV would not accomplish. Thus, these recommendations make the Petition by IECPA to extend Phase III and delay Phase IV unnecessary. The Companies oppose any delay to the start of Phase IV and encourage the Commission to implement Phase IV on June 1, 2021.

¹³ Petition of the Energy Association of Pennsylvania to Modify the Commission's June 19, 2015 Implementation Order; Docket No. M-2014-2424864, filed May 1, 2020.

B. IECPA’s proposal to reduce the EE&C Surcharge by 50% would contravene the cost-recovery provision of Act 129.

13. Any discussion of cost recovery of Act 129 programs should necessarily begin with the cost-recovery provision of Act 129 itself. The cost-recovery provision provides that EDCs shall be assured “full and current” recovery of prudent and reasonable costs of their EE&C plans.¹⁴ To the extent that any suggestion or proposal inhibits full and current recovery, such a proposal would violate Act 129.

14. As explained below, reducing all EE&C surcharges by 50% for well over a year would not provide the Companies full and current cost recovery. The current EE&C surcharges in effect through May 31, 2020 are designed to recover budgeted expenditures from June 1, 2019 through May 31, 2020. In addition, the Companies include annual reconciliations of actual revenues and actual expenditures for the period April 1, 2018 through March 31, 2019, with the cumulative over collection or under collection incorporated into the in-effect EE&C surcharges. For the forthcoming EE&C plan year, beginning June 1, 2020, the Companies include a reconciliation of actual revenues and expenditures through March 31, 2020, providing reductions in the EE&C surcharge rates if the Companies over collected revenues. The rate changes to be effective June 1, 2020 have already been filed with the Commission. If the Companies reduce the EE&C surcharges by 50% as IECPA suggests, there would be very large under collections, causing the Companies to increase their EE&C surcharges significantly, effective June 1, 2021, to recover their costs. The under collections would continue to expand as the 50% reduction in the June 1, 2021 rates include the recovery of the under collections through March 31, 2021. Because the

¹⁴ An electric distribution company shall recover on a full and current basis from customers, through a reconcilable adjustment clause under section 1307, all reasonable and prudent costs incurred in the provision or management of a plan provided under this section. This paragraph shall apply to all electric distribution companies, including electric distribution companies subject to generation or other rate caps. 66 Pa. C.S. § 2806.1(k)(1).

reductions would be in effect through February of 2022 (assuming an additional 270 days in Phase III), the under collections would not be fully recovered until May 31, 2023. At that point, the EE&C surcharges would be distorted, with very large increases affecting customers and causing negative customer reactions and financial instability to the Phase III EE&C programs.

15. A further impact of extending Phase III by 270 days is that the Companies would have Commission-approved EE&C budgeted program expenditures only through May 31, 2021 because there would not be approved EE&C program budgets for the 270-day extension of Phase III. Furthermore, the modification of the EE&C surcharges as suggested by IECPA would cause financial disincentives to the Companies for reasonable and prudent management of their EE&C programs.

C. The Companies recommend that demand reduction targets for Year 5 of Phase III be made voluntary rather than mandatory; that the Commission direct the implementation of Phase IV beginning June 2021; and that the Phase IV Implementation Order recognize potential for changes in Phase IV targets.

16. IECPA suggests in its Petition that the Commission should “suspend or waive all penalties applicable to an EDC’s failure to meet specified energy or peak demand reductions for the duration of Phase III Programs.”¹⁵ The Companies agree that the imposition of penalties for an EDC’s failure to attain targets would be unreasonable given the unprecedented and unforeseeable circumstances of the COVID-19 pandemic. Neither the EDCs, the Commission, nor the General Assembly could have contemplated the extraordinary circumstances experienced as a result of the COVID pandemic that may render targets unachievable in the last year of Phase III. Nevertheless, the potential penalties imposed by Act 129 are legislatively mandated, which

¹⁵ IECPA Petition, p.11.

the Commission may not have authority to modify.¹⁶ The more reasonable and achievable course to resolve this concern would be for the Commission to modify the targets it has established for the final year of Phase III.

17. In this respect the Companies note that each of the Companies have successfully achieved the energy efficiency consumption reductions for Phase III. The demand reductions for the final year are another matter, however. It is expected that the COVID-19 related impacts on Pennsylvania businesses may impair the ability of the Companies to meet their demand targets for the final year. The reasons for the impairment are the unpredictable nature of the economic impacts of the pandemic mitigation response: some businesses may have not restarted or resumed full operations or may be out of business, while others may be unwilling to curtail load as they may be making up for lost production.

18. Facing such uncertainty related to their ability to meet the currently stated demand targets, the Companies again recommend the approach presented in the Energy Association's Petition. In its Petition, the Energy Association requests that the Commission modify the Phase III Implementation Order to measure demand compliance based on EDC performance during the second, third and fourth years of Phase III. As occurred in the first year of Phase III, the Commission should permit continued EDC demand program implementation during the final year of Phase III on a voluntary basis.

19. As stated in the Energy Association's Petition, the approach of continuing demand programming on a voluntary basis through the end of Phase III would benefit all stakeholders, including customers, conservation service providers, and EDCs. Customers would continue to

¹⁶ *Energy Efficiency and Conservation Implementation Order*, Docket No. M-2008-2069887, p. 29 (entered January 16, 2009); *Phase III Implementation Order*, Docket No. M-2014-2424486, p. 129 (entered June 19, 2015).

receive the benefits associated with Act 129 demand reduction programs. Conservation service providers providing demand-reduction services would continue to be compensated under EDC voluntary programs. Finally, EDCs can provide continuity of demand programs without the risk of severe penalties arising from the unforeseen ramifications of the COVID-19 pandemic.

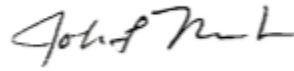
20. Finally, with respect to the implementation of Phase IV, the Companies suggest that, considering the unprecedented and unpredictable nature of the economic and health situation, the Commission should recognize that the EDCs may request the Commission to modify Phase IV targets or requirements if they are not achievable. The Companies suggest that an additional process should be recognized for Phase IV whereby the Commission could revise targets due to a “force majeure” event, such as events outside the reasonable control of EDCs, such as the COVID-19 pandemic, whereby energy or demand reduction targets or other requirements are no longer practical. Such a procedure could be similar to the process established in the Alternative Energy Portfolio Standards Act¹⁷ and Commission regulations promulgated thereunder,¹⁸ whereby EDCs could initiate process for a Commission determination that targets are no longer achievable. Such a process would be appropriate given that EDC targets and requirements are set for a full five-year period that may entail uncertainties outside the expectation of any party.

¹⁷ 73 P.S. §§ 1648.1, *et seq.*

¹⁸ 52 Pa. Code § 75.66.

WHEREFORE, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company request that the Pennsylvania Public Utility Commission approve their Petition for Intervention and, further, deny the Petition of the Industrial Energy Consumers of Pennsylvania to Suspend Implementation of Act 129 Phase IV.

Respectfully submitted,



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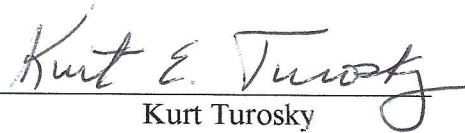
Dated: May 12, 2020

**Re: Petition of Industrial Energy Consumers of Pennsylvania to Suspend
Implementation of Act 129 Phase IV
Docket Nos. M-2020-3019262; P-2020-3019562**

VERIFICATION

Kurt Turosky, Director, Energy Efficiency Compliance & Reporting, FirstEnergy Service Company, hereby states that the facts set forth in the Petition to Intervene and Answer in the above-captioned matter with respect to Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company are true and correct to the best of his knowledge, information and belief and that he expects the aforesaid Companies to be able to prove the same at a hearing held in this matter. The statements herein are made subject to the penalties of 18 Pa. C.S. § 4904.

Date: May 12, 2020


Kurt Turosky