BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY COMMENTS OF
KEYSTONE ENERGY EFFICIENY ALLIANCE

INTRODUCTION

On March 12, 2020, the Pennsylvania Public Utility Commission ("Commission") issued a Tentative Implementation Order for Phase IV of Act 129 Energy Efficiency and Conservation Program. Notice of the Order was posted in the Pennsylvania Bulletin on March 28, 2020, and Comments were due within 30 days of publication. The Keystone Energy Efficiency Alliance ("KEEA") filed comments on April 27, 2020. KEEA submits these Reply Comments in response to specific points raised by other parties in the proceeding. The omission of a response to any given points should not be construed as support for those points.

A. Utilization of Act 129 Statutory Budgets

As KEEA stated in our Comments to the Phase IV Implementation Order, the Commission can maximize the benefits of Act 129 by requiring electric distribution companies ("EDCs") to invest their entire statutory budgets into energy efficiency programs.[1] Accordingly, we oppose the Pennsylvania Energy Consumers Alliance et al.'s ("PECA's") proposal that the Commission prevent EDCs from spending their entire budgets on energy efficiency.[2] Reducing investment in energy efficiency will be harmful to many stakeholders, particularly considering the impacts of the COVID-19 pandemic.

[1] KEEA at 6.
[2] PECA at 27-28.

Large commercial and industrial (C&I) customers receive significant benefits from Act 129 energy efficiency programs that would be jeopardized by a 50 percent budget cut. For illustration purposes (knowing that sales forecasts may be inaccurate) the Commission's Statewide Evaluator ("SWE") finds that Large C&I customers can receive $1.2 billion of benefits at a cost of $766 million in Phase IV.[3] Many large customers signed a letter to the Commission outlining the benefits of Act 129 and urging the continuation of energy efficiency and conservation programs.[4]

Indeed, the disruption caused by COVID-19 has demonstrated the need for energy efficiency to keep energy costs down as economic capacity and revenues are reduced for many industries. For instance, many commercial buildings continue to see high levels of energy use, even though occupancy is likely lower due to stay-at-home orders.[5] This demonstrates the need for additional investment in and utilization of energy efficiency and conservation technologies, such as advanced building controls, to reduce energy consumption in buildings that are not being used or are not in full use.

Residential customers would be particularly harmed by a reduction in Act 129 budgets. Residential customers are spending more time in their homes, using more energy, and experiencing a higher energy burden – the proportion of household income dedicated to energy costs – than usual.[6] That is particularly true for the millions of Pennsylvanians faced with economic hardship. For residential customers, the costs of energy efficiency programs are extremely low – PPL residential customers paid roughly $20 per year on average in the most recent program year.[7]

---

[3] Potential Study at 36.

[4] PA Business Coalition Letter on Act 129, AB Energy et al, submitted to Docket No. M-2020-3015228 on May 11, 2020.

[5] "Why Empty Office Buildings Still Consume Lots of Power During a Global Pandemic," Greentech Media, April 14, 2020, available at https://www.greentechmedia.com/articles/read/how-office-buildings-power-down-during-coronavirus-lockdown

[6] "New Data Suggest COVID-19 Is Shifting the Burden of Energy Costs to Households," State of the Planet, Columbia University Earth Institute, April 21, 2020, available at https://blogs.ei.columbia.edu/2020/04/21/covid-19-energy-costs-households/

[7] Calculated by dividing $25,647,000, the annual residential spending reported in PPL's PY10 Final Report, by 1,257,082 customers reported in PPL's most recent form Form EIA-861. PPL PY10 Final Report available at

Energy efficiency providers would be harmed by a reduction in Act 129 budgets. COVID-19 has taken its toll on the energy efficiency industry, which lost 69,800 jobs in March alone.[8] However, there are many additional jobs at stake if the Commission cuts Act 129 budgets in half and reduces critical incentives for a fragile industry. The Industrial Customers claim economic hardship for its members if they must continue to contribute to energy efficiency programs, but the economic impact of cutting programs on the energy efficiency industry, which employed 71,000 Pennsylvanians in 2019, is no less material. In Pennsylvania, energy efficiency companies have built business models around utility energy efficiency programs and rebates. KEEA member companies have relocated to or expanded operations in Pennsylvania because of the availability of Act 129 incentives, and energy efficiency jobs have increased 91% in Pennsylvania from 2014 to 2019.[9]

Energy efficiency programs can continue to deliver cost-effective measures during the COVID-19 crisis. COVID-19 has created challenges for energy efficiency programs, particularly the residential and small business programs that require onsite work and are performed by smaller firms with less runway.[10] Despite these challenges, energy efficiency contractors are developing innovative tools like virtual audits to deliver savings for customers and identify more substantial savings opportunities once in-home work can resume.[11] Programs that cover work in unoccupied buildings, such as energy efficient appliance, behavioral programs, and new construction, can continue. The impact has been less severe on large C&I contractors, which have successfully shifted to remote operations as much of the work involves design, engineering, and project development tasks.

---

http://www.puc.pa.gov/pcdocs/1645614.pdf; EIA Form 861 data available at https://www.eia.gov/electricity/data/eia861/

[8] Clean Energy Employment: Initial Impacts from COVID-19 Economic Crisis at 2, E2 and E4theFuture, April 15, 2020, available at https://e2.org/reports/clean-jobs-covid-economic-crisis-march-2020/

[9] Calculated by comparing 71,443 energy efficiency jobs in 2019 with 37,468 jobs in 2014. 2014 data from Clean Jobs Pennsylvania, E2 and KEEA, available at https://e2.org/wp-content/uploads/2016/01/Clean-Jobs-Pennsylvania-2014.pdf

[10] "Energy efficiency efforts are shutting down due to COVID-19, threatening jobs and savings," *Utility Dive*, April 6, 2020, available at https://www.utilitydive.com/news/energy-efficiency-efforts-are-shutting-down-due-to-covid-19-threatening-jo/575496/

[11] "Efficiency sector gets creative to stem COVID-19 job losses, maintain energy savings," *Utility Dive*, April 13, 2020, available at https://www.utilitydive.com/news/efficiency-sector-gets-creative-to-stem-covid-19-job-losses-maintain-energ/575931/

Now that Governor Wolf has classified construction as an essential business, and has lifted stay-at-home orders for many counties, [12] more work that accommodates the new realities of COVID-19 can continue and help recover local economic activity. Even as new protocols and regulations transform project operations, employers and communities alike could realize significant benefits from accelerated energy efficiency projects in vacant and under-utilized buildings. A reduction in Act 129 budgets would hobble that investment and deny those benefits to Pennsylvanians.

Therefore, KEEA reaffirms the position stated in our comments that the Commission should maximize the benefits of Act 129 by requiring EDCs to invest their entire statutory budgets into energy efficiency programs.

B. Phase IV Implementation Timeline

Multiple stakeholders suggest that the onset of the COVID-19 pandemic necessitates a delay in Phase IV Implementation.[13] KEEA agrees that the COVID-19 pandemic has had significant impacts on the energy efficiency and conservation industry, but we dispute that delaying Phase IV would be beneficial.

A delay in Phase IV and an extension of Phase III would create additional costs for businesses and other stakeholders who have to plan for sudden revisions to the way business is conducted in any interim phase. The Commission has already finalized the Phase IV Technical Reference Manual ("TRM") and the Phase IV Total Resource Cost Test ("TRC Test"), and has proposed the Phase IV Tentative Implementation Order. These finalized and proposed policies make important updates to account for new technology, changes in market conditions, and program maturation, and changes in federal policy since the development of Phase III of Act 129 in 2015. Additionally, these documents are the basis on which stakeholders, including KEEA members,

[12] Gov. Wolf Announces Online Vehicle Sale Process, Construction Restart Date, PLCB Curbside Pick Up, available at https://www.governor.pa.gov/newsroom/gov-wolf-announces-online-vehicle-sale-process-construction-restart-date-plcb-curbside-pick-up/

[13] OCA at 5, IECPA at 2, PECA at 6.

make business decisions. A delay of implementation would upend plans made by KEEA members and other parties that participate in Act 129 implementation.

It is unclear what information could be gained during a delay that would provide the Commission with the requisite certainty to move forward. The relevant time period to evaluate energy efficiency potential, avoided costs, and other critical projections that underpin the Phase IV Potential Study is May 2021 through June 2026, not the next several months. It is possible but not certain that in the coming months the Commission may learn additional information to more precisely develop sales forecasts for the 5-year period of Phase IV, but this information can be used to inform implementation and is not sufficient cause to delay.

Instead, KEEA recommends that it will be a better use of the Commission's and all stakeholder's time and expense to continue with the implementation of Phase IV, and build in appropriate flexibility to account for future uncertainty. This flexibility could include a priority on maximum energy efficiency investment rather than the highest achievable savings targets.

It is already the Commission's practice to build flexibility into its decisions, such as establishing savings targets below what is known to be achievable. Minimum savings targets are important to ensure that the program delivers on its primary goal to reduce electricity consumption. However, as long as EDCs are motivated or required to invest in energy efficiency programs after they have met the minimum savings target, any uncertainty resulting from the sales forecasts used to set savings targets in the Phase IV Tentative Implementation Order is mitigated by proposed savings targets that are more modest than historical performance suggests is possible. As KEEA discusses in our Comments, the proposed acquisition costs and savings targets likely overestimate the cost and underestimate the savings potential of energy efficiency programs under the budget,[14] and thus provide significant flexibility for EDCs to weather unexpected circumstances.

If the Commission determines it is necessary to delay the implementation of Phase IV due to COVID-19, the Commission should develop a clear process to guide programs in the interim phase between the current end of Phase III on May 31, 2021 and the beginning of Phase IV.

[14] KEEA Comments at 6.

During this interim phase, Act 129 budgets and EDC investment should be maintained at their full capacity, and the Commission should clarify whether major policy changes that have already been approved, including the TRC, TRM, and the status of demand response programs, would apply to the interim phase.

C. Process to Adjust EDC Targets

The Energy Association of Pennsylvania ("EAP") proposes that the Commission create a process by which an EDC can "apply for modifications of Phase IV consumption and demand reduction targets or other requirements based on unforeseen circumstances that are beyond the control of a utility."[15] Multiple EDCs proposed a similar process.[16]

KEEA stresses that minimum required reductions in consumption are an essential component for the success of energy efficiency and conservation programs in Pennsylvania, especially since EDCs currently lack a ratemaking or cost recovery structure that encourages investment in energy efficiency. Savings targets provide accountability for EDCs who otherwise have a financial disincentive to reduce their own electricity sales through investments in energy efficiency, and also give policymakers an important metric by which to measure Act 129's success.

However, we do recognize the unprecedented and unpredictable circumstances of the COVID-19 pandemic. We agree with EAP that it may be reasonable to adjust the savings targets to account for unforeseen circumstances beyond the control of the EDCs, and further that the Commission has discretion to set savings targets beyond those specifically mandated in the legislation.

If the Commission approves EAP's proposal, the Commission should take special care to ensure that the process is applied only as a measure of last resort in circumstances such as those presented by COVID-19, and not simply a fallback position for EDCs who have failed to take appropriate steps to mitigate uncertainty. The Commission should issue an order outlining a

[15] EAP at 7
[16] PECO at 7, Met-Ed et al at 5.

clear process, facilitate stakeholder participation, and establish firm criteria and high standards for instances in which adjusting the target would be considered and approved.

D. Industrial Customer Opt-Out

No customer should be allowed to exempt itself from Act 129 cost recovery. KEEA strongly disagrees with PECA, who requests that Industrial Customers be exempt from Phase IV energy efficiency programs.[17] Instead, we agree with previous Implementation Orders that have rejected requests to exempt industrial customers. As the Commission has stated, "Act 129 does not contain a provision to exclude a certain customer class from the EE&C program."[18] Legislation has been introduced in 3 consecutive legislative sessions to amend Act 129 to include an opt-out provision for industrial customers – SB 805 of 2015, SB 805 of 2017, and SB 129 of 2019 – and the legislature has declined to approve each bill. An opt-out for industrial customers does not appear to be the intent of the legislature.

Moreover, the proposal is harmful on its merits and would lead to reduced benefits for all industrial customers. Large C&I has the highest potential benefit-to-cost ratio of all customer segments in the Phase IV Potential Study,[19] and allowing an opt-out would reduce funding for programs and prevent customers from participating in Act 129 programs. PECA contends that companies are motivated to all cost-effective energy efficiency investments without utility partnership,[20] but this is not borne out by the evidence.

Even industrial customers who have a strong financial incentive to reduce energy costs face barriers to investing in energy efficiency and benefit from utility-sponsored energy efficiency programs. The untapped opportunity is demonstrated by the large potential for industrial energy savings identified in the Potential Study.[21] The most common and significant barrier to energy efficiency investment that large customers experience is long payback periods. Many cost-effective energy efficiency investments pay for themselves over seven or more years. This

[17] PECA at 16.
[18] Phase III Final Implementation Order at 114.
[19] Potential Study at 36.
[20] PECA at 15.
[21] Potential Study at 36.

is particularly true for measures beyond lighting that provide significant energy savings, such as motors, compressed air, and whole building upgrades. However, most businesses require payback periods of one to two years for capital investments. Utilities, on the other hand have a high tolerance for long paybacks of 20 or more years. Thus, by combining utility investment with customer investment, utility energy efficiency programs can effectively leverage resources to maximize investment in a much wider variety of energy efficiency measures with paybacks of seven - 10 years.[22]

The Commission should continue its longstanding commitment to a comprehensive energy efficiency and conservation program that applies to all customers of EDCs under Act 129. All customers benefit from energy efficiency programs and all customers must contribute.

E. Level at Which to Apply the Total Resource Cost Test

The Total Resource Cost Test should be applied at the portfolio, not measure, level as the Commission determined in the 2021 Total Resource Cost Test Final Order.[23] KEEA disagrees with the PECA that the TRC should be conducted at a measure level.[24]

KEEA agrees with the Commission in the 2021 TRC Test Final Order, which stated:

> It is important for EDCs to be able to offer comprehensive programs that address a suite of energy needs within a participating facility. Screening cost-effectiveness at the measure level could lead to adverse outcomes where EDCs are forced to limit the scope of efficiency projects within homes and businesses based on assumptions about avoided costs and incremental measure costs that each carry a degree of uncertainty.[25]

Furthermore, Chairman Dutrieuille notes in her Statement that she expects Phase IV to represent a "natural evolution from simple measures such as lighting to all-encompassing

---

[22] Everyone Benefits When Everyone Pays: The Importance of Keeping Large Customers in Utility Programs at 6-9, American Council for an Energy-Efficiency Economy, 2016 ACEEE Summer Study on Energy Efficiency in Buildings, available at https://www.aceee.org/files/proceedings/2016/data/papers/6_379.pdf

[23]

[24] PECA at 25.

[25] 2021 TRC Test Final Order at 16.

measures such as updating HVAC, weatherization, and water heating for a building."[26] We agree with Chairman Dutrieuille's expectations for Phase IV and assert that in order to meet these expectations, the TRC must be applied at the portfolio level. It is important to invest in these measures in order to transform the market and make them more cost-effective in the future as costs decline. EDCs invest more in whole building measures and innovative strategies to achieve deeper energy savings, individual measures that have not reached market maturity may not meet the test (particularly given the 15-year limit on benefits included in the TRC Test). Therefore, the Commission should continue to apply the TRC at the portfolio level.

F. Maximum Ratio of Non-Incentive Costs

KEEA disagrees with the Industrial Energy Consumers of Pennsylvania ("IECPA") that the requirement for non-incentive measures should be lower than 50 percent.[27] Instead, KEEA agrees with PECO that the proposed requirement for a 50 percent limit on non-incentive costs could have the effect of discouraging certain cost-effective energy efficiency programs that do not have an incentive component, such as behavioral and education programs.[28]

IECPA appears to be conflating "non-incentive costs" with "administrative costs" or "waste." Many non-incentive costs are in fact program costs, excessive limitation of which could reduce the effectiveness of efficiency programs. These include behavioral and education programs referenced by PECO. Additionally, effective marketing strategies are critical for the success of energy efficiency programs.[29] Few industries would consider advertising costs to be administrative waste. Energy efficiency programs are not simply a redistribution of utility resources toward customers who install energy efficiency measures. Energy efficiency vendors utilize sophisticated tools to identify savings opportunities, market them to potential customers, and educate, train, and mobilize a trade ally network to perform rigorous energy projects. Many of these expenses are "non-incentive" but are necessary to cost-effectively

---

[26] Dutrieuille Statement at 1

[27] IECPA at 5.

[28] PECO at 11.

[29] Targeted Marketing Strategies that Increase Energy Efficiency Program Participation of Commercial Companies, American Council for an Energy-Efficiency Economy, 2008 ACEEE Summer Study on Energy Efficiency in Buildings available at https://www.aceee.org/files/proceedings/2008/data/papers/4_395.pdf

deploy ratepayer resources as part of an overall portfolio that has generated billions in net benefits for Pennsylvania electric customers.

Furthermore, mandating a ratio of non-incentive to incentive costs could have the unintended consequence of increasing waste by motivating EDCs to overspend on incentives in order to meet the required threshold.

G. Disclosure of Conservation Service Provider Proprietary Information

Conservation Service Providers ("CSPs") should not be required to disclose per-measure costs or non-measure payments from EDCs, as suggested by IECPA.[30] CSPs are private companies who invest significant resources in proprietary systems, protocols, and other innovations in order to deliver high-performing energy efficiency programs as cost-effectively as possible. Requiring CSPs to disclose per-measure costs and non-measure payments would expose proprietary information to competitors and would chill the robust, competitive market for CSPs in Pennsylvania.

H. Requirement for Competitive Rebidding of Contracts

KEEA supports the proposal by multiple EDCs that EDCs be permitted to retain vendors without re-bidding for Phase IV.[31] The competitive market for energy efficiency services in Pennsylvania is a strong feature of Act 129 and our energy efficiency industry. The Commission should continue to ensure a fair and level playing field for CSPs to compete for and secure EDC contracts. However, we do not find the proposal necessarily unreasonable. We agree that if an EDC prefers to keep an existing vendor, the re-bidding process wastes time and valuable resources for EDCs and vendors alike.

If the Commission allows EDCs to retain vendors, the Commission should exercise caution and oversight to protect competition for all contractors. A successful Phase IV will employ a number of new or expanded energy efficiency programs and measures to achieve deep energy savings. This requires the kind of significant innovation that the competitive market is ideally suited to deliver. KEEA supports EAP's proposal that Commission Technical Utility Staff be empowered to

---

[30] IECPA at 16 and 17.
[31] EAP at 13, PPL at 18, PECO at X.

determine when it is reasonable and appropriate to waive the requirement to re-bid a contract.[32]

CONCLUSION

KEEA appreciates the Commission's continued commitment to Act 129 energy efficiency programs during these extraordinary times. We hope these Reply Comments provide helpful perspective for the Commission as it develops Phase IV of Act 129 to deliver lasting energy savings to Pennsylvania electric customers.

Sincerely,

Julian Boggs
Policy Director
Keystone Energy Efficiency Alliance

[32] EAP at 13.