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May 12, 2020

Via Electronic Filing
Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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 electronic filing please find the Keystone Energy Efficiency Alliance's Answer in Opposition to the Petition of the Industrial Energy Consumers of Pennsylvania in the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Sarah C. Stoner

Sarah C. Stoner

SCS/jls
Enclosure

cc: Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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Date: May 12, 2020

Sarah C. Stoner

Sarah C. Stoner, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

KEYSTONE ENERGY EFFICIENCY ALLIANCE
ANSWER IN OPPOSITION TO THE PETITION OF
THE INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA

Pursuant to Section 5.61 of the Pennsylvania Public Utility Commission's ("Commission") Regulation, 52 Pa. Code § 5.61, the Keystone Energy Efficiency Alliance ("KEEA")[1] hereby files this Answer in Opposition to the Petition of Industrial Energy Consumers of Pennsylvania to Suspend Implementation of the Act 129 Phase IV Requirements and for Other Relief ("Petition") of the Industrial Energy Consumers of Pennsylvania ("IECPA"). While there is no doubt that alternative routes to implementation may need to be taken in response to COVID-19, KEEA opposes the form and basis of relief requested by IECPA in the Petition. KEEA recommends that the Commission continue implementation of Phase IV on schedule and use established regulatory procedures to address stakeholder concerns.

I. KEEA'S INTEREST IN THE PROCEEDING

Pursuant to Section 5.61, KEEA has standing to participate in any Commission proceeding resulting from the Petition, 52 Pa. Code § 5.61(e)(2). To possess standing, a party must have an interest in the controversy that is distinguishable from the interest shared by other citizens. *Sierra Club v. Hartman*, 529 Pa. 454, 605 A.2d 309 (1992). A party possesses standing if it has a "substantial, direct, and immediate interest" in the subject matter of the litigation. *Wm.*

[1] The comments expressed in this filing represent the position of the Keystone Energy Efficiency Alliance ("KEEA") as an organization but may not represent the views of any particular member of the organization. More information on KEEA can be found at https://keealliance.org/.

Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975). An association, as a representative of its members, may have standing to bring a cause of action even in the absence of injury to itself; the association must allege that at least one of its members is suffering immediate or threatened injury as a result of the challenged action." *Malt Beverages Distribs. Ass'n v. Pa. Liquor Control Bd.*, 881 A.2d 37, 41 (Pa.Cmwlth. 2005), petition for allowance of appeal denied, 586 Pa. 775, 895 A.2d 1264 (2006) (citations omitted).

KEEA has an interest that is distinguishable from the interests shared by other citizens in this matter as it is a well-established 501(c)(6) trade organization that represents energy efficiency businesses in the commonwealth. *Sierra Club v. Hartman*, 529 Pa. 454, 605 A.2d 309 (1992). KEEA can offer the unique perspectives and insights of a trade association representing a diverse mix of members who implement energy efficiency improvements in buildings across the Commonwealth – an industry that accounted for more than 71,000 Pennsylvania jobs in 2019.[2] KEEA members include conservation service providers ("CSPs"), energy efficiency contractors and construction firms, and large energy users in health care, distribution, and manufacturing who have invested significant resources in Act 129 projects. Finally, KEEA's interest is distinguishable from other parties as it is the only organization in the Commonwealth that represents these businesses and is recognized as the voice for the industry in the state.

KEEA has a "substantial, direct, and immediate interest" in the proceeding because its members businesses will "suffer immediate or threatened injury as a result of the challenged action." *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975); *Malt Beverages Distribs. Ass'n v. Pa. Liquor Control Bd.*, 881 A.2d 37, 41 (Pa.Cmwlth. 2005), petition for allowance of appeal denied, 586 Pa. 775, 895 A.2d 1264 (2006) (citations

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[2] 2020 US Energy & Employment Report, NASEO and Energy Futures Initiative, Pennsylvania Report, available at https://www.usenergyjobs.org/2020-state-reports

omitted). KEEA's business members manufacture, design, and implement energy efficiency programs currently as part of Act 129 Phase III and will be participating in Phase IV programs. Some of KEEA's businesses exclusively work on Act 129 programs and rely on the plans and budgets established by the Commission and utilities to continue to operate. Therefore, any changes to Act 29 Phase III and Phase IV implementation, whether they be adjustments to timelines, budgets, or program designs will directly impact the business of KEEA members.

Further, as explained in KEEA's Petition to Intervene simultaneously filed with this Answer, KEEA's interests in this proceeding are unique from, and not adequately represented by, other parties that may seek to intervene, and KEEA's intervention is in the public interest. Therefore, KEEA has standing to participate in any Commission proceeding as a result of the Petition.

II. KEEA'S ANSWER IN OPPOSITION TO THE PETITION

On April 22, 2020 IECPA filed the Petition of Industrial Energy Consumers of Pennsylvania to Suspend Implementation of the Act 129 Phase IV Requirements and for Other Relief ("Petition").[3] The Petition requests that the Commission suspend or delay the implementation of Phase IV EE&C requirements for at least 270 days; extend the Phase III EE&C period for an equivalent 270-day period and provide other relief to consumers and utilities; mandate that any current or planned energy efficiency and demand reduction projects intended for the benefit of customers continue or start as soon as is feasibly possible; and suspend or waive all penalties applicable to the failure of an electric distribution company ("EDC") to meet specified energy or peak demand reductions for the duration of the Phase III Programs.[4]

[3] Petition to Suspend Implementation of Act 129 Phase IV requirements – Industrial Energy Consumers of Pennsylvania, Docket No. P-2020-3019562, (filed April 22, 2020) (hereinafter "Petition").
[4] Petition at 14-15.

KEEA agrees that the COVID-19 pandemic and the related economic crisis has had a significant impact on energy efficiency and conservation programs, but the response proposed in IECPA's Petition will come at a considerable cost to customers and other stakeholders as the procedures proposed will disrupt relied upon timelines and studies for the implementation of Act 129. Further, IECPA's proposed response will undermine the Commission's own savings targets for Phase III when reasonable alternatives exist. Therefore, KEEA proposes that the Commission reject the Petition and make other accommodations.

As an alternative, KEEA proposes that the Commission respond to COVID-19 but endeavor to meet the savings targets it has set for Phase III and Phase IV. To do this, KEEA proposes the Commission not reduce the collection of program charges but instead utilize the full budgets of Act 129 to deliver cost-effective energy efficiency portfolios. Additionally, KEEA proposes that the Commission take steps to increase regulatory flexibility in Phase III and the implementation of Phase IV to account for increased uncertainty, including a process to allow EDC targets to be revised based on circumstances beyond their control and standards to evaluate whether those requests should be granted.

A. It Is Not Necessary for the Commission to Delay the Implementation of the Phase IV EE&C Implementation for 270 Days and/or Extend Phase III Because Flexibility Can Be Provided Through Less Disruptive Procedures.

In the Petition, IECPA requests that the Commission should delay or suspend the implementation of Phase IV requirements for 270 days on the grounds that doing so is consistent with the issuance of an Emergency Order in Docket No. M-2020-3019262 ("Emergency Order"), in order to "ensure operations continue as smoothly as possible and to prevent any regulatory statute or rule prescribing procedures for the conduct of Commission business from unreasonably interfering with the public interest."[5] Delaying Phase IV implementation is contrary to the interests of the Commission and the public because the delay would interfere with implementation plans that have been finalized and the impacts of COVID-19 does not make these decisions mute. Additionally, such a delay is an inappropriate response given the history of past economic crises and the regulatory mechanism available to the Commission to accommodate for them.

A 270-day delay of Phase IV Implementation would interfere with proposed and final policies for Phase III and Phase IV that other parties have relied upon. The Commission has already finalized the Phase IV Technical Reference Manual ("TRM")[6] and the Phase IV Total Resource Cost Test ("TRC Test"),[7] and has proposed the Phase IV Tentative Implementation Order.[8] These finalized and proposed policies make important updates to account for new technology, changes in market conditions, program maturation, and changes in state and 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, make business decisions. 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 what business would look like in the interim phase. Utilities and energy efficiency vendors will have to revise planning, bidding and contracting, as well as reporting and evaluation for the interim phase. A 270-day interim period will present both an uncertain timeline and an unpredictable working scenario, both of which will cause additional stressors to the stakeholders in this process.

[5] Petition at 3.
[6] 2021 Technical Reference Manual Final Order, Docket No. M-2019-3006867
[7] 2021 Total Resource Cost Test Final Order, Docket No. M-2019-3006868
[8] Phase IV Tentative Implementation Order, Docket No. M-2020-3015228

COVID-19 has caused significant disruption to the energy efficiency industry and electricity sales, but the Petition fails to establish that a delay is the appropriate response. Electricity sales have dramatically declined and the Commission should evaluate the impact that decline will have on Phase IV. However, 270 days is an arbitrary timeline that is not informed by the circumstances and a delay would not provide certainty or relief that is used to justify it.

It is true that electricity sales have declined dramatically during the crisis, but historical data suggest that electricity sales will stabilize. The Energy Information Administration ("EIA") projects total electricity sales to fall 3.1 percent and industrial sales to fall 4.2 percent in 2020.[9] IECPA proposes that these declines cast doubt on the accuracy of the sales forecasts utilized by the Statewide Evaluator ("SWE") to develop energy efficiency, peak demand reduction, and demand response potential and avoided cost estimates for the Phase IV Energy Efficiency and Peak Demand Reduction Potential Study and Phase IV Dispatchable Demand Response Study (Collectively "Potential Study").[10] But it is not clear whether or by how much sales will continue to decline in the future. Currently, EIA projects electricity sales to increase 0.6% in 2021.[11] Unanticipated market conditions for one year or less out of five should not be a major factor in overall and phase-long program implementation.

Second, the Petition does not describe what circumstances would exist after 270 days that would provide the Commission certainty in its electricity sales forecasts. Because there is no way to provide certainty, the delay fails to address its stated purpose to accommodate disruptions caused by COVID-19. The Petition claims that a 270-day delay "would permit more time for the Commonwealth, including EDCs, businesses, and all stakeholders, to have a better grasp on the

[9] Energy Information Administration Short-Term Energy Outlook – April 2020, Table 7b. U.S. Regional Electricity Retail Sales, available at https://www.eia.gov/outlooks/steo/.
[10] Petition at 7.
[11] Energy Information Administration Short-Term Energy Outlook – April 2020, Table 7b. U.S. Regional Electricity Retail Sales, available at https://www.eia.gov/outlooks/steo/.

long-term impacts of the current pandemic, would provide some measure of opportunity for meaningful recovery to occur, and would roughly coincide with the year-end and the typical budget changes that accompany the new year for many businesses and individuals."[12] None of these developments would guarantee the accuracy of electricity sales forecasts, which is the primary evidence that IECPA provides to demonstrate that a delay is necessary.[13]

Further, the Petition does not discuss or address additional impacts to energy efficiency plans that will need to be accounted for as the Commission moves forward with Phase IV Implementation. In its Comments to the Phase IV Tentative Implementation Order, the Office of Consumer Advocate ("OCA") notes that incentive levels may need to be increased if underlying conditions cause customers to be less willing to invest in energy efficiency projects.[14] Such a process cannot be addressed through a delay; but through adjustments in implementation, which are already available to the Commission. The Commission has already established a process to provide for mid-phase plan adjustments, including adjustments to incentive levels, but the Commission could take steps to further simplify and streamline plan adjustments in order to provide additional flexibility.[15] Incorporating flexibility into Phase IV Implementation will allow the Commission to move forward with Phase IV on schedule.

The uncertainty concerning 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.[16] As KEEA discusses in its Comments to the Phase IV Tentative Implementation Order ("KEEA Comments"), the proposed acquisition costs and savings targets likely overestimate the cost and underestimate the savings potential of energy

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[12] Petition at 4.
[13] Petition at 2-4.
[14] OCA Comments at 4.
[15] Tentative Order at 45 and 46.
[16] Implementation Order at 8

efficiency programs under the budget, and thus provide significant flexibility for EDCs to weather unexpected circumstances.[17] Minimum savings targets are important to ensure that the program is delivering on its primary goal of reducing electricity consumption. Therefore, the uncertainty of the potential study is one reason to set lower savings targets than data suggests is achievable within budget constraints. Instead of setting the highest achievable savings targets, the Commission should focus on ensuring that EDCs invest their entire Act 129 budgets in a cost-effective energy efficiency portfolio.[18]

While COVID-19 has caused significant disruption to the energy efficiency industry and energy efficiency program delivery, there is ample time, flexibility, and procedures in place to make any adjustments for the implementation of Phase IV, which is planned to commence over a year from the onset of COVID-19 and conclude six years after the onset of the pandemic. Therefore, the Petition has not established that a delay of Phase IV would provide sufficient benefit to outweigh the associated costs.

B. A 50 Percent Reduction in Act 129 Surcharges Would Not Provide Meaningful Economic Relief for All Electric Customers and Would Lead to Further Harm.

IECPA proposes that the Commission reduce surcharges for Act 129 by 50 percent.[19] Axiomatically, this would decrease available funding for Act 129 energy efficiency programs by approximately the same amount. While certain large electric customers may see net economic benefits in the first year from reduced surcharges, Act 129 is a system-wide policy and its benefits or costs should be judged at the system level. By this measure, the Commission's evaluation has consistently found that the benefits of energy efficiency programs outweigh its

[17] KEEA Comments at 6.
[18] KEEA Comments at 6.
[19] Petition at 9.

costs.[20] Therefore, reducing energy efficiency budgets will cause net economic harm to Pennsylvania electric customers.

It is critical that energy efficiency programs maintain their full budgets in order to deliver benefits to all customer classes during this critical time, and maintain capacity to deliver benefits and hasten the economic recovery. Whether or not the Commission determines that circumstances require a delay of Phase IV, the evidence does not suggest that a 50 percent reduction in Act 129 budgets would be beneficial to Pennsylvania electric customers. On the contrary, customers of all classes and energy efficiency providers would be harmed by a 50 percent reduction in Act 129 budgets.

Large 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 SWE finds that Large C&I customers can receive $1.2 billion of benefits at a cost of $766 million in Phase IV.[21] 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.[22] The letter is provided in Exhibit A to this Answer. 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.[23] This demonstrates the need for additional investment in and utilization of energy efficiency and conservation technologies, such as

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[20] Phase I Final Annual Report at 16, Amended Phase II Final Report at 30

[21] Potential Study at 36.

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

[23] "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

advanced building controls, to reduce energy consumption in buildings that are not being used or are not in full use.

Finally, federal economic relief programs, run by the U.S. Treasury and the Federal Reserve have made resources available for large firms such as those represented by IECPA.[24] These programs would be a more appropriate form of relief for IECPA members than cutting programs that provide cost-effective benefits to all customers.

Residential customers would be particularly harmed by a 50 percent reduction in Act 129 budgets. As OCA noted in its Answer to the Petition, "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."[25] 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.[26] That is particularly true for the millions of Pennsylvanians experiencing 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.[27]

Energy efficiency providers would be harmed by a 50 percent reduction in Act 129 budgets. If the Commission considers economic harm to the industrial customers represented by

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[24] "The U.S. plans to lend $500 billion to large companies. It won't require them to preserve jobs or limit executive pay," *The Washington Post*, April 28, 2020, available at https://www.washingtonpost.com/business/2020/04/28/federal-reserve-bond-corporations/

[25] OCA Answer at 3

[26] "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/

[27] Calculated by dividing $25,647,000, the annual residential spending reported in PPL's PY10 Final Report at 41, by 1,257,082 customers reported in PPL's most recent form Form EIA-861. PPL PY10 Final Report available at http://www.puc.pa.gov/pcdocs/1645614.pdf; EIA Form 861 data available at https://www.eia.gov/electricity/data/eia861/.

IECPA, the Commission should similarly consider economic harm to energy efficiency providers. COVID-19 has taken its toll on the energy efficiency industry, which lost 69,800 jobs in March alone.[28] 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. IECPA claims economic hardship for its members if they must continue to contribute to energy efficiency programs,[29] but the economic impact of cutting programs on the energy efficiency industry, which employed 71,000 Pennsylvanians in 2019, is no less material.[30] 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 the energy efficiency jobs have increased 91% in Pennsylvania from 2014 to 2019.[31] Moreover, IECPA acknowledges that the reduced program capacity of energy efficiency providers will create challenges for restarting energy efficiency programs in the future,[32] and in its Comments to the Phase IV Tentative Implementation Order, PPL notes that energy efficiency contractor layoffs will impact its ability to meet savings targets.[33]

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 for residential and small business programs that require onsite work and are performed by

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[28] 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/
[29] Petition at 9-10.
[30] 2020 US Energy & Employment Report, NASEO and Energy Futures Initiative, Pennsylvania Report, available at https://www.usenergyjobs.org/2020-state-reports
[31] 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
[32] Petition at 9.
[33] PPL Comments at 6.

smaller firms with less runway.[34] Despite these challenges, energy efficiency contractors are developing innovative tools like virtual audits to continue to deliver savings for customers and identify more substantial savings opportunities once in-home work can resume.[35] Programs that do not require work to be performed in an occupied building, such as energy efficient appliance, behavioral programs, and new construction can continue. Large C&I projects have been less impacted by COVID-19 than residential and small business projects, as much of the work involves design, engineering, and project development that can be performed remotely.[36] Now that Governor Wolf has classified construction as an essential business, and stay-at-home orders are beginning to be lifted in many counties,[37] more work is permitted to resume, particularly in vacant or under-utilized buildings like schools. Accelerating energy efficiency projects in these buildings could yield significant benefits, but a 50 percent cut in Act 129 budgets would prevent that investment.

Even so, IECPA is correct that COVID-19 has impacted energy efficiency delivery. The KEEA Comments urge the Commission to address COVID-19's impact on Act 129 energy efficiency and conservation programs by convening EDCs, efficiency vendors, and other stakeholders, including industrial customers, to develop protocols and program design adjustments that can assist the safe delivery of energy efficiency during the health crisis.[38]

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[34] "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/

[35] "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/

[36] "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/

[37] 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/

[38] KEEA Comments at 4.

C. There Is No Need for the Commission to Suspend or Waive All Penalties, and a Process to Evaluate EDC Savings Target Compliance Is More Reasonable Than a Waiver of Statutory Penalties.

In its Comments to the Phase IV Tentative Implementation Order, the Energy Association of Pennsylvania ("EAP") proposes a process to allow the Commission to adjust savings targets if the Commission determines that an EDC is unable to meet savings targets through no fault of its own.[39] To the extent that EDC relief from savings target compliance is necessary, EAP proposal is a reasonable alternative to the IECPA proposal to waive all penalties.

All of the EDCs regulated by Act 129 except PECO are ahead of schedule in meeting Phase III savings targets, and Penn Power has exceeded its goals using Phase II carryover as of the end of PY10 in June 2019. [40] It is likely that most EDCs will be able to meet their minimum target with only a small portion of remaining budgets. However, one or more EDCs may be unable to meet the targets if their budgets were cut in half due to the impacts of COVID-19 on energy efficiency program delivery as discussed in the preceding section.

Rather than providing EDCs flexibility in this extraordinary time, IECPA's proposal takes away flexibility by forcing a reduction in energy efficiency programming through a 50 percent reduction of budgets and further encumbering EDCs' ability to meet the savings targets set by the Commission. As a solution for any underachievement, (which would be exacerbated by IECPA's own proposal to reduce budgets by half), IECPA suggests that the Commission pre-emptively waive all penalties required by legislation for failure to meet Act 129 Phase III savings targets.[41] This circumvention of the legislation, whether lawful or not under the standard of the

[39] EAP Comments at 4-7.
[40] The benchmark for "on schedule" is a pace of 1/5, or 20 percent, of the Phase III target each year, or 60 percent of the target by year three of Phase III (PY10). All EDCs except PECO achieved more than 60% of their Phase III target by PY10, and at least 78% of the target when including Phase III carryover. PY10 Final Annual Report at 6, available at http://www.puc.pa.gov/Electric/pdf/Act129/Act129-SWE_AR_Y10_021920.pdf
[41] Petition at 12.

Emergency Order cited by IECPA, is unnecessary and would only serve to undermine compliance with the savings targets set by the Commission.

KEEA proposes that the Commission's goals for Phase III and the implementation of the legislation would be better served by working with EDCs and energy efficiency providers to utilize the full available budgets to meet and exceed the Commission's targets while maintaining overall cost-effectiveness. Rather than presume that the savings targets are unachievable, the Commission could test the theory by maintaining the targets and penalties. If an EDC is still unable to meet the savings targets, EAP has proposed a mechanism by which the Commission could evaluate whether they were unable to do so because of circumstances beyond their control and adjust targets as necessary.[42] KEEA recommends the EAP approach as a reasonable alternative to a blanket waiver of statutory penalties.

If the Commission approves the EAP proposal or a similar proposal, KEEA recommends that the Commission take steps to outline the criteria under which it would approve a force majeure. The Commission should set high standards for what constitutes circumstances beyond the EDC's control, as well as standards to ensure that EDCs have made a good faith effort to meet targets.

D. KEEA Recommends That the Commission Continue Implementation of Phase IV on Schedule and Add Regulatory Flexibility to Address Stakeholder Concerns.

KEEA recognizes that the extraordinary circumstances precipitated by the COVID-19 pandemic warrant a response with regard to the implementation of the proposed Phase IV of Act 129 Energy Efficiency and Conservation Programs. KEEA finds that it is most reasonable for the

[42] EAP Comments at 4-7.

Commission to respond within the planned Phase IV implementation schedule by increasing the flexibility of the program. This flexibility should include the following:

A) A streamlining of the process for all utilities to file plan changes, including changes in incentive levels;

B) A process to allow EDC targets to be revised based on circumstances beyond their control and standards to evaluate whether those requests should be granted; and

C) Ongoing review of sales forecasts, and updates to the TRM and TRC Test, if necessary.

The Commission should direct the SWE to update the Potential Study given changing electricity sales forecasts and demand profiles. Updated forecasts would be helpful data in future planning and evaluation, including determinations as to whether Phase III or Phase IV targets were unachievable due to circumstances beyond the EDCs' control.

Finally, the Commission should convene stakeholders as soon as possible to determine what adjustments should be made to Phase III programs to ensure that EDCs and energy efficiency vendors are able to make the best possible efforts to meet and exceed Phase III savings targets with a cost-effective energy efficiency portfolio.

III. CONCLUSION

Based on the aforementioned reasons, KEEA opposes IECPA's Petition. IECPA's proposals to suspend Phase IV planning by 270 days, reduce Act 129 surcharges by 50 percent, and waive all penalties for EDCs are not necessary or reasonable, and come at a considerable cost to customers and other stakeholders. IECPA's proposals would undermine the Commission's own savings targets for Phase III when reasonable alternatives exist. KEEA respectfully requests that the Commission endeavor to: (1) meet the savings targets it has set for

Phase III by utilizing the full budgets of Act 129 to deliver cost-effective energy efficiency portfolios; (2) take steps to increase regulatory flexibility into Phase III and the implementation of Phase IV to account for increased uncertainty; and (3) grant any other relief deemed appropriate that does not reduce Act 129 energy efficiency investment.

Respectfully submitted,

Sarah C. Stoner

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Date: May 12, 2020

Attorney for Keystone Energy Efficiency Alliance

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 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Richard Selverian
President of the Board of Directors
Keystone Energy Efficiency Alliance

EXHIBIT A

May 8, 2020

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
RE: Docket No. P-2020-3019562

Dear Secretary Chiavetta:

As a group of manufacturers, trade associations, large energy consumers, and service providers with a significant Pennsylvania presence and investment interests, we urge you to support the successful Energy Efficiency and Conservation (EE&C) programs established under Act 129 and oppose any attempts to weaken or suspend these programs.

Our companies have a long and successful history of doing business in Pennsylvania. We have a dedicated and loyal workforce composed of several thousand employees in the state that we hope to grow in the future. As large employers, major energy consumers, and providers or energy products and services, we understand firsthand how Pennsylvania's energy policies affect the cost of doing business and the state's economic competitiveness. All Pennsylvania consumers and businesses benefit when we eliminate energy waste.

Act 129 EE&C programs are good for Pennsylvania's businesses and economy.
Act 129 has been a tremendous success for Pennsylvania. According to the Public Utilities Commission, every dollar invested in energy-saving programs returns $1.31 in benefits.[1] Benefits will exceed $453 million for last year's programs.[2] All consumers experience these benefits - whether or not they participate in energy-saving efforts. In addition to these benefits,

[1] "Act 129 Statewide Evaluator Annual Report: Program Year 9: June 1, 2014 – May 31, 2015," Presented to the Pennsylvania Public Utilities Commission, February 28, 2019, http://www.puc.pa.gov/Electric/pdf/Act129/Act129-SWE_AR_Y9_022819.pdf.
[2] Ibid.

EE&C programs support local jobs that cannot be outsourced. Meanwhile, the EE&C programs are costing less than anticipated.[3]

Energy efficiency is Pennsylvania's least expensive energy option.
Investing in energy efficiency keeps Pennsylvania's energy costs affordable, reliable, and stable. According to the Public Utilities Commission, the EE&C programs are Pennsylvania's least expensive option.[4] Other sources of energy cost more and do not provide the same level of savings.[5] Thus any reduction in EE&C program investment means that Pennsylvania would forgo its least expensive energy option for more expensive alternatives. As a result, *all* Pennsylvania customers would pay more.

While we recognize and applaud Pennsylvania's energy efficiency leadership, we are concerned that others in the state may seek to weaken or suspend Act 129 and the EE&C programs.
This concerns us because it would raise energy costs for everyone. Additionally, it would introduce uncertainties that make it harder for us to consider Pennsylvania in our long-term investment decisions. For these reasons, we urge you to send a strong signal that proposals to eliminate, suspend or modify Act 129 and the EE&C programs are not in Pennsylvania's best interest. Instead, we urge you to build upon the successes of Act 129 and these programs.

In closing, our companies stand ready to work with you to support a sound energy policy for Pennsylvania. We would welcome the opportunity to meet with you and your staff and to provide additional information about the benefits that Act 129 has delivered for Pennsylvania.

Sincerely,

AB Energy
Air-Conditioning, Heating, and Refrigeration Institute (AHRI)
Capstone Turbine Corporation
Cree Lighting
E-Finity Distributed Generation, LLC
EATON
Energy Management Solutions, Inc.
Geisinger
Goshen Mechanical
Integrated CHP Systems Corp.
Legrand
Lutron Electronics
National Association of Energy Service Companies (NAESCO)
Sheet Metal and Air Conditioning Contractors' National Association (SMACNA)
Sheet Metal and Air Conditioning Contractors' National Association of Western Pennsylvania
Sheet Metal Contractors Association of Philadelphia & Vicinity
Solar Turbines

[3] Ibid.
[4] Ibid. p. 21, reports that the acquisition cost per first year kWh saved is $0.197 per kWh. Assuming a measure life of approximately 10 years, this equates to 1.97 cents/kWh.
[5] "Pennsylvania Act 129 Phase IV Energy Efficiency and Peak Demand Reduction Market Potential Study Report ," Prepared for the Pennsylvania Public Utilities Commission, February 2020, http://www.puc.pa.gov/pcdocs/1656474.pdf. The Phase IV SWE Potential Study reports that avoided energy costs over the next 10 years in Pennsylvania would result in total incremental annual savings of 4,513 GWh and 878 MW of peak demand savings. This does not include avoided capacity or transmission costs.